

# Thoughts on Health and Safety (HS) Governance

## Purpose

This paper brings together some thoughts on the corporate governance of health and safety. It draws primarily on the guidance relevant to corporate governance prepared by the FRC, guidance on HS governance prepared by HSE and other national regulators.

This aim is to bring together a fuller picture of how directors and boards can improve health and safety performance; and how good governance of health and safety fits into good governance.

This is still 'work-in-progress'. If you have criticisms, comments, contributions, or challenges please send them to: [Ostarius@HSG65.com](mailto:Ostarius@HSG65.com)

## What is the Corporate Governance of Health and Safety?

Corporate governance has been described as 'the system by which companies are directed and controlled'<sup>1</sup>. This description could include the totality of the way a company is operated including the way the company is managed at all levels.

In this paper the scope of corporate governance is the same as that taken in the UK Corporate Governance Code<sup>2</sup>. That is 'about what the board of a company does and how it sets the values of the company, and is to be distinguished from the day to day operational management of the company by full-time executives'. This includes the individual and collective behaviour of board members in the boardroom and in support of board room activities. This includes leadership in the sense that leadership is provided by the board in board room behaviours. This is not to suggest that leadership behaviours of directors and managers outside the boardroom are unimportant; it is merely to be clear that it is not within the scope of this paper.

In this context the Corporate Governance of HS is a description of that part of a company's corporate governance process by which the board, (the controlling mind), seeks to secure adequate direction and oversight of HS. This includes the activity of the board and its supporting committees. Recent research<sup>3</sup> has suggested that HS governance can be further defined as, 'the relationship between board members and senior executives in the safety leadership of an organisation and provides the structure through which the

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<sup>1</sup> The Cadbury Committee, 1992.

<sup>2</sup> Financial Reporting Council – the UK Corporate Governance Code  
<https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>

<sup>3</sup> 'A Study of Safety Leadership and Safety Governance for Board Members and Senior Executives' [http://eprints.qut.edu.au/81349/1/Kirstin\\_Ferguson\\_Thesis.pdf](http://eprints.qut.edu.au/81349/1/Kirstin_Ferguson_Thesis.pdf)

vision and commitment to safety is set, the means of attaining safety objectives are agreed, the framework for monitoring performance is established; and compliance with legislation is ensured’.

## Why focus on the Corporate Governance of HS?

‘Ultimately, management are responsible for running firms and ultimately firms fail because of the decisions taken by their boards and their management. These decisions are made within a firm's corporate governance framework. The (banking) crisis exposed significant shortcomings in the governance and risk management of firms and the culture and ethics which underpin them. This is not principally a structural issue. It is a failure in behaviour, attitude and, in some cases, competence<sup>4</sup>.

In ‘Roads to Ruin’<sup>5</sup> CASS Business School set out to investigate the origins and impact of over twenty major corporate crises of the last decade. The aims were to trace the deeper causes of the crises, to assess the post-event resilience of the companies involved and to consider the implications for the risk management of companies in general. The report is built around eighteen<sup>6</sup> detailed case studies that analyse the impact of critical events both on the enterprises most directly affected and, in many cases, on other associated firms. In summary the analysis indicated the following:

- **Board skill and NED control risks**- limitations on board competence and the ability of the Non-Executive Directors (NEDs) effectively to monitor and, if necessary, control the Executives.
- **Board risk blindness**- the failure of boards to engage with important risks, including risks to reputation and 'licence to operate', to the same degree that they engage with reward and opportunity.
- **Poor leadership on ethos and culture**
- **Defective communication**- risks arising from the defective flow of important information within the organisation, including to board-equivalent levels.
- **Risks arising from excessive complexity.**
- **Risks arising from inappropriate incentives** - whether explicit or implicit.
- **Risk 'Glass Ceilings'**- arising from the inability of risk management and internal audit teams to report on risks originating from higher levels of their organisation's hierarchy.

Experienced people exercising reasoned judgement are essential to secure effective governance including the direction and oversight of health and

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<sup>4</sup> Delivering effective corporate governance: the financial regulator's role.  
<http://www.fsa.gov.uk/library/communication/speeches/2012/0424-hs.shtml>

<sup>5</sup> ‘Roads to Ruin – The Analysis’  
[http://www.reputability.co.uk/files/press/Roads\\_to\\_Ruin\\_The\\_Analysis.pdf](http://www.reputability.co.uk/files/press/Roads_to_Ruin_The_Analysis.pdf)

<sup>6</sup> This included: BP Texas City Refinery (2005); Buncefield (HOSL) explosion (2005); Rail disasters: Great Heck, Hatfield, Potters Bar (2000-2).

safety. Experience both from worldwide events and from incidents at UK sites indicate that experienced and otherwise competent directors can be diverted by other matters from giving adequate and proportionate attention to the direction and oversight of the most serious hazards and risks of the business. This was inadvertent and unintended but it has happened.

It is evident that corporate governance is both part of the problem and part of the solution to improving effective health and safety in business.

## **What does good Corporate Governance of HS look like?**

Work by the FRC<sup>789</sup>, Tomorrows Company<sup>1011</sup> and others provide useful guidance on the generics of good corporate governance parts of which can inform good governance for health and safety. There are also several models of governance which can also provide a structure for thinking about building a good board process for health and safety, e.g. Board Intelligence 'Six Conversations'<sup>12</sup>, and the Garratt 'Learning Board Model'<sup>13</sup>.

The main UK guidance on the governance of health and safety is captured in HSE's 'Leading Health and Safety at Work'<sup>14</sup>. A more detailed examination of the process of governance is in the New Zealand publication, 'Health and Safety Guide: Good Governance for Directors' produced jointly by the IOD New Zealand and Worksafe the New Zealand regulator<sup>15</sup>. 'Managing for Health and Safety'<sup>16</sup> and 'Corporate Governance for Process Safety'<sup>17</sup> also contain guidance relevant to boards and directors.

All the guidance points to the need for a clear process for the governance of HS to support good decision making and to avoid directing and oversight failures.

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<sup>7</sup> The UK Corporate Governance Code - <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>

<sup>8</sup> Guidance on the Strategic Report - <https://www.frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/Guidance-on-the-Strategic-Report.pdf>

<sup>9</sup> Guidance on Risk Management, Internal Control and Related Financial and Business Reporting - <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Risk-Management,-Internal-Control-and.pdf>

<sup>10</sup> The Boardroom and Risk [http://tomorrowscompany.com/wp-content/uploads/2016/05/TC\\_GGF\\_The\\_boardroom\\_and\\_risk\\_Guidet\\_vfl.pdf](http://tomorrowscompany.com/wp-content/uploads/2016/05/TC_GGF_The_boardroom_and_risk_Guidet_vfl.pdf)

<sup>11</sup> The Case for the Board Mandate - [http://tomorrowscompany.com/wp-content/uploads/2016/05/TC\\_Corp\\_Gov\\_Board\\_Mandate\\_vfL\\_509b873d754be-1.pdf](http://tomorrowscompany.com/wp-content/uploads/2016/05/TC_Corp_Gov_Board_Mandate_vfL_509b873d754be-1.pdf)

<sup>12</sup> The Six Conversations of the Board by Board Intelligence – see - <https://www.boardintelligence.co.uk/advisory/board-priorities>

<sup>13</sup> See - [http://www.megaplanning.com/casestudies/vol18\\_03\\_26.pdf](http://www.megaplanning.com/casestudies/vol18_03_26.pdf)

<sup>14</sup> Leading Health and Safety at Work INDG417 - <http://www.hse.gov.uk/pubns/indg417.pdf>

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[https://www.iod.org.nz/Portals/0/Governance%20resources/Health%20and%20Safety%20Guide\\_Good%20Governance%20for%20Directors.pdf](https://www.iod.org.nz/Portals/0/Governance%20resources/Health%20and%20Safety%20Guide_Good%20Governance%20for%20Directors.pdf)

<sup>16</sup> <http://www.hse.gov.uk/pUbns/priced/hsg65.pdf>

<sup>17</sup> <http://www.oecd.org/chemicalsafety/chemical-accidents/corporate%20governance%20for%20process%20safety-colour%20cover.pdf>

In essence a well-structured governance process provides checks and balances in the directing activity to ensure that proportionate and appropriate attention is given to HS. Such an approach should provide the 'defence in depth' or resilience at corporate level, commensurate with the scale of the hazards and risks of the organisation.

The board of a company forms the highest level of the safety management system expected by the Management of Health and Safety at Work Regulations 1999, Regulation 5<sup>18</sup>. A board should be the primary source of direction in the organisation. How they think and act is significant to health and safety.

A clear process for the corporate governance of health and safety can ensure that it remains at the 'front of the mind' throughout the company governance process. To ensure it is given explicit consideration rather than being implicit or mentioned only by exception.

### ***Board 'Arrangements'***

The guidance indicates that the board process can usefully be captured into a board 'charter' or 'mandate'<sup>19</sup>. For HS this could:

- Clarify the purpose(s) of the board process and methods relevant to HS to guide the board and any committees;
- Clarify what is delegated to management and what is reserved for the board on HS;
- Ensure that HS is overtly and consciously addressed in board thinking and decision making by using adequate and appropriate information and decision-making methods and approaches;

### ***Board Composition, Capability and Competence***

'Every company should be headed by an effective board which is collectively responsible for the long-term success of the company... No one individual

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<sup>18</sup> Health and safety arrangements considering

5.—(1) Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

(2) Where the employer employs five or more employees, he shall record the arrangements referred to in paragraph

<sup>19</sup> See <http://au.goodman.com/system/~media/Files/Sites/Australia/about%20us/Health-Safety-Corporate-Governance.pdf> for an example of corporate governance framework for health and safety

should have unfettered powers of decision. As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy'.<sup>20</sup>

For unlisted companies with or without non executives the boards could usefully consider whether it has the necessary expertise and the appropriate challenge to effectively govern health and safety.

'The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively. There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively. All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge'.<sup>21</sup> The Institute of Directors, (IoD), have now developed a competency framework which aims to clarify the range of skills, knowledge and mind-set required of a director.<sup>22</sup>

Directors should know about the most significant health and safety hazards and risks facing the organisation, (the hazard/risk profile), and be able to position them in importance to other business risks. The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties<sup>23</sup>.

Directors can always seek assistance on HS issues through competent persons appointed under the law<sup>24</sup> or other internal or external advisers. Directors need to be able to ask the right questions to get the best out of advisers – they need to become 'intelligent customers'<sup>25</sup> of HS advice.

### **Board Behaviours**

Thinking and decision making skills and styles within the context of board meetings are critical to effective health and safety governance. All board decisions involving health and safety should be rational, objective, transparent and prudent. The board process should also aim to minimise the risk of the board being diverted from addressing key decisions by other issues. Non-executive directors can play a key part in providing sufficient challenge.

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<sup>20</sup> UK Corporate Governance Code – Principles A1, A2, A4

<sup>21</sup> MHSW Regulations Reg13 and UK Corporate Governance Code - Principles B1 –B4

<sup>22</sup> [https://www.iod.com/training/iod-approach/iod-competency-framework/utm\\_medium/email?utm\\_campaign=1440371\\_pd%20-%20competency%20framework%20solus%20email%20august%202016%20-%20non-members&utm\\_source=institute%20of%20directors%20%28iod%29&dm\\_i=2kqa,uveb,5z6rn3,2a6v7,1](https://www.iod.com/training/iod-approach/iod-competency-framework/utm_medium/email?utm_campaign=1440371_pd%20-%20competency%20framework%20solus%20email%20august%202016%20-%20non-members&utm_source=institute%20of%20directors%20%28iod%29&dm_i=2kqa,uveb,5z6rn3,2a6v7,1)

<sup>23</sup> UK Corporate Governance Code B5

<sup>24</sup> MHSW Regulations 99 Regulation 7

<sup>25</sup> See - <http://www.hse.gov.uk/humanfactors/topics/customers.htm>

Generic principles are set out in the FRC guidance, 'Guidance on Board Effectiveness'<sup>26</sup> is relevant to HS. This includes:

- Facilitating good decision making by:
  - high-quality board documentation;
  - obtaining expert opinions when necessary;
  - allowing time for debate and challenge, especially for complex, contentious or business critical issues;
  - achieving timely closure; and
  - providing clarity on the actions required, and timescales and responsibilities.
  
- Awareness of factors which can limit effective decision making, such as:
  - a dominant personality or group of directors on the board, which can inhibit contribution from other directors;
  - insufficient attention to risk, and treating risk as a compliance issue rather than as part of the decision-making process, especially in cases where the level of risk involved in a project could endanger the stability and sustainability of the business itself;
  - failure to recognise the value implications of running the business on the basis of self-interest and other poor ethical standards;
  - a reluctance to involve non-executive directors, or of matters being brought to the board for sign-off rather than debate;
  - complacent or intransigent attitudes;
  - a weak organisational culture; or
  - inadequate information or analysis

Some of the other factors to consider in effective board behaviour are in guidance on avoiding common judgement traps and biases prepared by the Committee of Sponsoring Organizations of the Treadway commission, (COSO), entitled , 'Enhancing Board Oversight'.<sup>27</sup>

Director behaviour is significant in shaping and sustaining a culture supportive of HS. A D Little in 'Risk Intelligence of Leaders'<sup>28</sup>, describe this as the 'Leadership Shadow'. Behavioural safety' is not something which can be applied only to frontline workers, but also to the board.

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<sup>26</sup> See - <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Board-Effectiveness.pdf>

<sup>27</sup> See [http://www.coso.org/documents/COSO-EnhancingBoardOversight\\_r8\\_Web-ready%20\(2\).pdf](http://www.coso.org/documents/COSO-EnhancingBoardOversight_r8_Web-ready%20(2).pdf)

<sup>28</sup>

[http://www.adlittle.co.uk/uploads/tx\\_extthoughtleadership/ADL2014\\_Risk\\_Intelligence\\_of\\_Leaders.pdf](http://www.adlittle.co.uk/uploads/tx_extthoughtleadership/ADL2014_Risk_Intelligence_of_Leaders.pdf)

## **Board Process**

Good governance guidance,<sup>29</sup> indicates the need for a regular, (usually annual) cycle of activity which approximates to the plan, implement, check, review quality management cycle. This would typically include:

- Providing direction to management: setting policies, strategies and plans for health and safety to maintain and improve health and safety performance; making well-informed high quality decisions based on a clear line of sight into the business
- Delegating to management in a way which promotes and sustains a positive nuclear safety culture; providing ethical leadership – and promoting throughout the company – behaviours consistent with the culture and values it has defined for the organisation
- Oversight and monitoring of implementation of policy, strategy and plans to verify that standards and expectations and goals set by the board are being met;
- Reviewing the implementation and effectiveness of policies, strategies and plans to inform further progress;
- Reviewing the effectiveness of the board process.

### **Providing Direction to Management:**

*(setting, policies, strategies and plans for health and safety to maintain and improve health and safety performance; making well-informed high quality decisions based on a clear line of sight into the business).*

### **Policy:**

The HSW 74 requirement for a ‘written statement of ...general **policy**... with respect to the health and safety at work of his employees’ derives from the work of the Roben’s Committee<sup>30</sup> who in their report were impressed by examples of firms which set out policies for health and safety. At the time ‘policy’ was seen as one of the key ways in which a board provided direction to management. So the requirement for health and safety policy put the topic clearly in the board room.

Today the business language puts emphasis on mission, vision and strategy though policies remain an essential component of business. The official guidance appears to downplay the importance of policy although for one

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<sup>29</sup> See footnotes 6-14 above

<sup>30</sup> See - <http://www.hse.gov.uk/aboutus/40/robens-report.htm>

business expert policymaking is still the 'highest level of intellectual thought in an organisation',<sup>31</sup>

Policies are standing arrangements that set out principles and guidelines for decision making. They establish the boundaries or limits within which decisions are to be made and within which judgment must be exercised. They therefore simplify decision making and promote efficiency by removing the need for repeated analysis of recurring problems. Policies permit boards to delegate to management more decisions than would otherwise be the case.

A statement of general HS policy sets out the relationship of the board with management, employees, customers and the public. It sets out:

- how it will conduct business as part of its 'licence to operate';
- the 'risk appetite' for the risks posed to people as a part of business activities;
- the principles which will guide decisions and the parameters in which the board and management will operate; the latitude in which discretion will be exercised.

It will implicitly or explicitly encompass the values of the organisation.

As a policy of the board it represents the collective view of the 'controlling mind' of the organisation. Though HS policies will be unique to each organisation perhaps some general characteristics can be suggested. HS policies can usefully include:

- the purpose of the policy in context of company activity, business model and vision, e.g. why it is necessary and how will it benefit the company; how does it retain or add value?
- an explanation of the HS policy within the context of the values and ethos of the company and the reward systems. The HS policy is part of the 'tone at the top' and how the necessary freedom, empowerment and collaboration in the 'entrepreneurial leadership' of the organisation will be balanced with the 'prudent control' of HS risk, needs to be explained to avoid conflict in the delegation of activities to management;
- the relative significance of HS risks within the range of business risks and how important HS is to the company. How are risks to real 'persons' to be balanced against the risks to 'corporate body' of the company? What is the appetite for harming people as part of the business activity?

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<sup>31</sup> Performance Improvement Quarterly Vol 18, Number 3/2005, page 29 at [http://www.megaplanning.com/casestudies/vol18\\_03\\_26.pdf](http://www.megaplanning.com/casestudies/vol18_03_26.pdf)



- an outline of how a proportionate, (reasonably practicable), approach will be adopted to policy implementation by both the board and management, e.g. how will the scale of hazard/risks influence such things as:
  - how the board, (and management) spend time and attention in directing and overseeing implementation of HS policy and performance;
  - the effort, resource and detail put into risk assessments;
  - the resources, and detail of the controls for risk, including the scope and complexity of the HS management system;
- How the policy will impact on business activities, e.g.
  - how the financial resourcing of HS will form part of the business planning and budgetary control and matched to the hazard and risk profile;
  - how the human resource policies will be affected by the policy, including such things as recruitment, selection, placement, development, competence, involvement and consultation;
  - operational activities and service and product design.

### **Strategy:**

One expert defines the kernel of good strategy<sup>32</sup> as:

- *'A diagnosis that defines or explains the nature of the challenge. A good diagnosis simplifies the often overwhelming complexity of reality by identifying certain aspects of the situation as critical;*
- *A guiding policy for dealing with the challenge. This is an overall approach chosen to cope with or overcome the obstacles identified in the diagnosis;*
- *A set of coherent actions that are designed to carry out the guiding policy. These are steps that are coordinated with one another to work together in accomplishing the guiding policy.'*

The strategy making process is the activity by which the organisation defines its strategy and ensures that the defined strategy becomes a reality rather than just an abstract wish list. It involves not only coming up with a strategy but also planning how to execute it and adjusting to unexpected events.

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<sup>32</sup> Good Strategy/Bad Strategy: The Difference and Why it Matters – by Richard Rumelt – see <http://goodbadstrategy.com/>

The overarching implications and commitments of a HS policy has potential to influence the strategic choices of a business. Some potential business ventures may pose HS risks beyond the appetite of the board or challenge the capability of the organisation to effectively manage the impact. Similarly, business developments such as growth, takeovers, new products, and new markets will influence the hazard/risk profile of the organisation and the consequent risks and demand a review of the adequacy of the policy and its implementation. The HS implications of business strategic choices need to be considered as an integral part of the strategy making process.

In making strategic choices for HS the implications of reasonable practicability would suggest the long term goal of a reduction in overall risk. In broad terms there are three approaches which can be adopted to reducing risk;

- Reduce hazards – reducing or eliminating the scale and nature of the potential for harm reduces the ‘hard burden’, which lessens risk;
- Improve the means of risk control to reduce residual risk - adopting more reliable/robust means of control can reduce risk, e.g. substitute engineering controls in place of procedures ;
- Improve the consistency and reliability of application of controls, so that the desired risk reduction is fully achieved.

A good knowledge of the hazard/risk profile of the organisation would facilitate a good diagnosis of the HS problems. A hazard/risk profile can be used to identify and rank the most significant hazards and risks and identify those HS issues of which the board needs to constantly mindful. It also assists targeting by identifying where the organisation is most vulnerable and where the greatest reductions in risk can be obtained.

#### **Delegating to management:**

(in a way which promotes and sustains a positive health and safety culture; providing ethical leadership – and promoting throughout the company – behaviours consistent with the culture and values it has defined for the organisation).

FRC guidance on risk<sup>33</sup> outlines a board’s responsibility for an organisation’s overall approach to risk management, (and internal control), as including:

- the design and implementation of appropriate risk management and internal control system that identifies the risks facing the company and enables the board to make a robust assessment of the principal, (significant), risks;

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<sup>33</sup> See Ref 9

- determining the nature and extent of the principal risks faced and those risks which the organisation is willing to take in achieving its strategic objectives, (determining its “risk appetite”);
- agreeing how risks will be managed and mitigated, (mitigated to reduce the likelihood of their incidence or their impact);
- incorporating risk management and internal control within the company’s normal management and governance processes, not treating it as a separate compliance exercise;
- satisfying itself that management has understood the risks, implemented and monitored appropriate policies and controls, and are providing the board with timely information so that it can discharge its own responsibilities;
- considering whether the company’s leadership style and management structures, human resource policies and reward systems support or undermine the risk management and internal control systems;
- ensuring sound internal and external information and communication processes and taking responsibility for external communication on risk management and internal control.

Guidance on HS governance aligns with the FRC approach but adds the role of devising a HS management system, (including hazard identification, risk assessment and identification of risk controls) which deals proportionately with all HS risks and:

- Promotes collaboration with employees and those affected by the HS risks through involvement, participation, and cooperation. Legal expectations already promote involvement through the appointment of safety representatives and safety committees. The board challenge is how this voice can penetrate to the boardroom;
- Promotes an open, fair and just culture, (being able to know of bad news and not shooting the messenger), which encourages the reporting of events and circumstances which can promote learning in the control of risk;
- Secures the competence of all those involved in HS risk management, and the HS management system, including the board.

Both the FRC and the HS guidance recognises the importance of creating a culture to support policy and strategy. FRC research<sup>34</sup> covering governance, culture and risk management, has identified the value in organisations developing a culture which meets the expectations of all stakeholders to

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<sup>34</sup> <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Corporate-Culture-and-the-Role-of-Boards-Report-o.pdf>

secure long term success. The research refers to boards taking active steps to establish a supportive culture including things such as:

- Recognising the value of culture - connecting purpose and strategy to culture;
- Demonstrating leadership, embodying the desired culture;
- Openness and accountability – to all stakeholders;
- Embedding and integrating values – the values need to inform all behaviours. All business functions including risk management can embed values;
- Aligning values and incentives; performance management and reward systems should support and encourage behaviours consistent with the purpose, values, strategy and business model - motivating executive directors and senior managers to give due priority to HS;
- Assess, measure and engage; boards should devote sufficient resource to evaluating culture and reporting on it;
- Exercising stewardship.

Other advice on risk culture is in the Institute of Risk Management, (IRM), work, 'Risk Culture'.<sup>35</sup>

The challenge is to design an organisation which avoids conflict between business objectives and HS policy in the management of risk; supported by safety management systems and processes which establish standards for operations in line with strategic goals and plans. The necessary freedom, initiative, empowerment and collaboration in the organisation needs to be balanced with the discipline and control necessary for effective risk control.

### **Oversight and monitoring:**

(of implementation of policy, strategy and plans to verify that standards and expectations and goals set by the board are being met).

The generic FRC guidance explains that 'effective and on-going monitoring and review are essential components of sound systems of risk management and internal control. The process of monitoring and review is intended to allow the board to conclude whether the systems are properly aligned with strategic objectives; and satisfy itself that the systems address the company's risks and are being developed, applied and maintained appropriately'<sup>36</sup>

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<sup>35</sup> [https://www.theirm.org/media/885907/Risk\\_Culture\\_A5\\_WEB15\\_Oct\\_2012.pdf](https://www.theirm.org/media/885907/Risk_Culture_A5_WEB15_Oct_2012.pdf)

<sup>36</sup> Guidance on Risk Management, Internal Control and Related Financial and Business Reporting - <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Risk-Management,-Internal-Control-and.pdf>

The guidance goes on to define the role of the board as:

- Defining the processes for on-going monitoring and review, including specifying the requirements, scope and frequency for reporting and assurance. Board reports should provide a balanced assessment of the risks and the effectiveness of the systems of risk management and internal control for managing the risks;
- Forming its own view on effectiveness, based on the evidence it obtains, exercising the standard of care generally applicable to directors in the exercise of their duties;
- Considering, 'how effectively the risks have been assessed and the principal risks determined; how they have been managed or mitigated; whether necessary actions are being taken promptly to remedy any significant failings or weaknesses; and whether the causes of the failing or weakness indicate poor decision-taking, a need for more extensive monitoring or a reassessment of the effectiveness of management's on-going processes'.

The HS guidance aligns with the FRC approach but adds that a board needs to cover all HS risks, and consider a balance of preventive and incident data. There should be both learning from incidents and learning before things go wrong.<sup>37</sup>

The frequency, nature and depth of board oversight and monitoring should reflect the strategic goals, policies, standards and expectations. This should be based on a structured rationale setting out information needs to enable adequate monitoring of performance. The approach for measuring HS performance should provide a proportionate approach to measuring and monitoring which gives appropriate attention to plant, process and people, (culture), using an appropriate balance of active and reactive monitoring.

HS oversight and monitoring should include - the longer term strategic decisions made as part of the policy, strategy, planning and review cycle; and the shorter term/immediate decisions of the implementation of operational controls.

Although it is tempting to distil 'measures' into a few Key Performance Indicators, some of the key things that need 'measuring' for HS are not readily amenable to simple quantification. They are 'intangibles' which need a

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<sup>37</sup> There is considerable information and advice about how to measure HS performance and performance indicators which is not explored here. This includes: 'A Guide to Measuring Health and Safety Performance', <http://www.hse.gov.uk/opsunit/perfmeas.pdf>; 'Measuring Performance', <http://www.hse.gov.uk/managing/delivering/check/measuring-performance.htm>; 'Measuring Safety Performance', <http://www.rssb.co.uk/risk-analysis-and-safety-reporting/safety-intelligence/measuring-safety-performance>; 'Measuring Safety – Safety Related Key Performance Indicators', <http://www.risktec.co.uk/knowledge-bank/technical-articles/measuring-safety---safety-related-key-performance-indicators-.aspx>; 'Developing Process Safety Indicators', <http://www.hse.gov.uk/pUbns/priced/hsg254.pdf>.

different approach<sup>38</sup>; something which perhaps needs a more qualitative approach through good dialogue between directors and management.

The Board Intelligence model suggests there are 6 key board 'conversations' centred around two themes:

- 'Steering' conversations – tackling the questions: (1), do we have the right strategy; (2), how can we work smarter; (3), what culture policies do we need?
- 'Supervising' conversations - tackling the questions: (4), is our strategy on track; (5), will we hit this year's targets; (6), are we working in the 'right' way?

The impression is that board oversight and monitoring is an active process driven by the board; not a passive one where the board accept information determined by management. It involves questioning and challenging and its effectiveness appears linked to the quality of the conversations at the board.

This applies to the HS risk conversations and demands a high level of board maturity, where there can be open, 'adult-adult' conversations. Where the board consists of executive directors and non-executives, (NEDs), then the NEDs would be expected to provide the challenge. Where there are no NEDs the board would have to self-challenge or invite this as part of a board review. An alternative may be to invite a HS 'devil's advocate' to provoke challenge and discussion.

Starting, rather than avoiding the conversations is the first step to effective HS governance. Conversations often start with questions and one experienced NED chairman has said: 'There are three questions that every board should ask themselves.

- Do I really know what is going on?
- Are we focusing on the right things?
- And are we asking the right questions?

The lurking dangers are rarely what you find on the risk register'<sup>39</sup>.

So what are some of the relevant questions? Some research<sup>40</sup> indicates that some 'starter' questions can be suggested which aim to avoid three common

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<sup>38</sup> See [http://www.ap-institute.com/media/4137/measuring\\_and\\_managing\\_intangible\\_value\\_drivers.pdf](http://www.ap-institute.com/media/4137/measuring_and_managing_intangible_value_drivers.pdf)

<sup>39</sup> 'Sixty Seconds with... Michael O'Higgins' <https://www.boardintelligence.co.uk/news/60-seconds-with-dot-dot-michael-ohiggins>.

<sup>40</sup> 'Conceptualisation in Preparation for Risk Discourse: A Qualitative Step toward Risk Governance'  
[https://dspace.lib.cranfield.ac.uk/bitstream/1826/6793/5/Michael\\_Alan\\_Lauder\\_Thesis\\_2011.pdf](https://dspace.lib.cranfield.ac.uk/bitstream/1826/6793/5/Michael_Alan_Lauder_Thesis_2011.pdf)

traps: a failure to 'see' (what's going on); a failure to appreciate, (the significance of what is 'seen'); and a failure to act on what is appreciated. Annex 1 sets out the 20 questions proposed. Other useful questions are in the references 13 – 17.

### **Reviewing the implementation and effectiveness of policies, strategies and plans to inform further progress**

FRC and HS guidance indicates that at least an annual review of performance is undertaken to identify the strengths and weakness in policy, performance and progress towards strategic goals as a basis of learning to further improve performance. The board should specify the process of the review and enable it to examine the totality of the information on HS and see the 'big picture' on overall HS performance. The board can then arrive at a balanced and understandable assessment of the company's position on health and safety.

The FRC risk guidance also adds advice which can be applied to HS, such as that annual reviews could include:

- A review, of the effectiveness of the HS management system to ensure that it has considered all significant aspects of risk and risk control; (Including the operation of the risk management and internal control systems, covering the design, implementation, monitoring and review and identification of risks and determination of those which are significant HS risk);
- the culture within the company and whether this culture has been embedded;
- the integration of HS risk management and internal controls within strategy and business decisions;
- the changes in the nature, likelihood and impact of HS risks, and the company's ability to respond to changes in its business and the external environment which may impact on HS risk management;
- the extent, frequency and quality of the communication of the results of assessment of the state of HS control in the company and the effectiveness with which risk is being managed or mitigated;
- issues dealt with in reports reviewed by the board during the year, in particular the incidence of significant control failings or weaknesses that have been identified at any time during the period and the extent to which they have, or could have, resulted in unforeseen impact;
- keep the company's risk profile under review. It should satisfy itself that management's systems include appropriate controls, and that it has adequate sources of assurance;

Reviews may draw on a range of information from the 'three lines of defence' which in HS terms would include information from:

- 'first line' - management who 'own', and have the responsibility for controlling and accounting for the control of HS risk;
- 'second line' – HS advisers and others who assist and advise on the design of risk controls and facilitate implementation of effective HS management practices by line management and who can provide independent advice on the implementation and effectiveness of risk controls;
- 'third line' – audit activity, (internal or external) which can cover how effectively the organisation assesses and manages its HS risks and will include assurance on the effectiveness of the first and second lines of defence. This could also usefully include learning opportunities from external sources through benchmarking, reviews of significant HS incidents in other firms both in similar and other industries.

### **Reviewing the effectiveness of the board process**

FRC generic good practice for corporate governance expects a '.... rigorous annual evaluation of its own performance and that of its committees....' This good practice can include an examination of how the board has addressed HS. Some of the issues which can be addressed are:

- What time and attention has the board given to HS issues in board, other director and committee meetings?
- Have the board HS discussions been reactive or based a structured examination of the HS risks and the adequacy of the HS risk management arrangements in a proportionate manner?
- What has been the content and 'quality' of the conversations and has this involved meaningful challenge and dialogue with management on HS?
- How does the time, attention and quality of conversations align with the hazard/risk profile and the vulnerabilities on HS?

### **Conclusion**

There is substantial alignment with the FRC guidance on good governance (and risk management), with good governance of HS.

The quality and nature of the boardroom conversations appears a key determinant of both good governance and good HS governance.



## Questions for Risk Governance

	<b>Summarising Questions</b>
	What “ <b>unwanted</b> ” occurrences (including those perceived as “ <b>inconceivable</b> ”) might affect our organisation?
	What evidence exists to show that our organisation’s culture, structure or processes do NOT <b>provoke errors</b> or rule violations?
	<b>The Problems</b>
	Where do we need to have clear and fully justifiable criteria for which events or scenarios are <b>included in</b> and <b>excluded from</b> our risk management process?
	While we normally monitor “ <b>outcomes</b> ” (“end”), where do we need to monitor the “ <b>processes</b> ” (“means”) that might create unacceptable outcomes?
	What risks are “ <b>acceptable</b> ” to us and why; how have we tested our reasoning for both core and non-core activity (against both internal and external yardsticks) to ensure that our reasoning is robust?
	Of those issues that we judge to be so improbable as to be “inconceivable”, which of these still have such <b>potentially serious consequences</b> (unacceptable) that we must stay alert to them?
	What evidence do we have that we have a shared understanding about: (1) when we will prepare an alternative plan (anticipation), (2) when we will set aside reserve capacity (resilience), (3) where we just react to situations (reactive)?
	How might our approach to <b>risk taking be stifling</b> our organisation?
	<b>The Group</b>
	Are we aware of what factors might: (1) inhibit us from <b>taking note of warning signs</b> , (2) <b>affect our perception</b> of them, (3) <b>restrain us from acting</b> upon them?
	a. <b>How well do we understand</b> our system’s operating modes (routine, high tempo, emergency and maintenance) and manage the transition between them? b. How well do we know those who will have to handle potential crises and are we sure they are equipped to do so?
	How do we judge the most <b>appropriate level</b> within our organisation for decisions to be made and whether each <b>decision maker</b> has the appropriate intuitive understanding of the issues, the organisation and its

	resources, and the ability to act in a timely manner?
	What proof is there that we are conscious of the <b>dynamics</b> and personal interactions that might cause our board and executive <b>team</b> to be <b>dysfunctional</b> (thereby generating risk) and what are we doing to ensure that we do not fall into these traps?
	<b>The Process</b>
	How can we be sure that we have a culture that takes every key <b>opportunity to learn</b> from unwanted events experienced within the organisation (accidents and near-misses) and from the experience of other organisations?
	How do we, as the board/ executive group and as an organisation, ensure that we are getting <b>the appropriate and relevant data</b> to feed into our risk discourse? How do we judge appropriate and relevant?
	How do we judge whether the way we <b>analyse risk</b> is appropriate to the risks we face?
	What might give us confidence that after an unwanted event our <b>decision-making will stand up</b> , in hindsight, to critical <b>external scrutiny</b> ?
	How do we ensure that all the members of the board/ executive have a <b>shared view and understanding</b> of the organisation, the way it works and its risks?
	What evidence can be provided that our <b>plans and policies</b> are <b>robust enough</b> to withstand a disruptive event?
	How might we notice where an <b>emerging gap</b> between our practice and our formal procedures becomes a potential source of risk?
	When would we expect our people to use their <b>experience and intuition</b> rather than adhering strictly to written plans or standards; when might this <b>cause problems</b> ? Where might our “ <b>rule-book</b> ” <b>actually hamper</b> the achievement of our organisational goals?