

# HEALTH AND SAFETY LEADERSHIP EXCELLENCE

A course book for the NEBOSH HSE Certificate in Health and Safety Leadership Excellence



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Edition 1

Version 1

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## Foreword



Health and safety is a key performance measure within successful and forward-thinking organisations. Effective leaders understand that health and safety is not just a moral imperative, but also contributes to the achievement of objectives across the organisational spectrum covering finance, operations, compliance and governance.

Productivity improvements, competitive advantage, talent retention and effective risk management are just a few of the things which flow from strong organisational health and safety performance and culture.

Whether it is finance, marketing, human resources, or health and safety, leaders should always seek to develop their high-

level understanding within each component part of their organisation in order to monitor and positively influence overall performance. The NEBOSH HSE Certificate in Health and Safety Leadership Excellence is designed to support both leaders and aspiring leaders in gaining core understanding of how their behaviours and responsibilities directly impact on health and safety management.

This qualification, which combines NEBOSH's ability to deliver strong, credible vocational OSH qualifications with HSE's industry-leading knowledge and expertise, will enable you to set a clear and credible benchmark that your leadership peers will aspire to.

## The foundations of health and safety leadership

### A guide to the symbols used in this course book

#### ACTIVITY

Carry out an activity to reinforce what you have just learned.



#### EXAMPLE

Real or imagined scenarios that give context to points made in the text



#### KEY TERMS

Definitions of key terminology

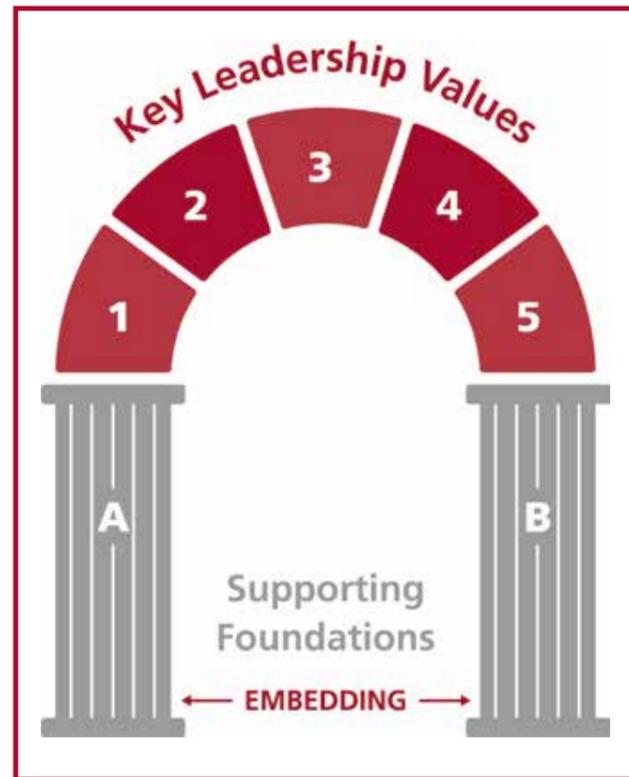


#### ASSESSMENT ACTIVITY

This symbol indicates that part of the assessment is to be undertaken. This must be done individually and not as part of a group activity. The accredited course provider will advise on the time to be allocated for each part of the assessment.



### The HSE's five leadership values



- 1 Building and promoting a shared H&S vision
  - 2 Being considerate and responsive
  - 3 Providing support and recognition
  - 4 Promoting fairness and trust in relationships with others
  - 5 Encouraging improvement, innovation and learning
- A Involvement / communication**  
**B Effective role modelling**

Wherever you see this diagram it indicates that one of the five leadership values will be discussed and assessed.



This chapter will explore the reasons for good health and safety leadership, why a health and safety vision is important to an organisation and the benefits that good health and safety leadership can bring to an organisation. To further highlight these areas we will then look at the specific moral, legal and financial arguments for good health and safety leadership. Here we will be looking at the level of penalties that organisations and individuals can expect to see should health and safety legislation be breached. The chapter will conclude with a look at how leaders can gain assurance that their organisation is managing health

and safety well and finally, the impact of good health and safety leadership on organisational health and safety culture.

#### Learning outcomes

- The reasons for health and safety leadership excellence, the importance of an agreed health and safety vision and the business benefits excellent health and safety leadership brings
- The moral, legal and financial reasons for good health and safety leadership
- How leaders can gain assurance that health and safety is being managed effectively
- How good leadership can positively influence health and safety culture.

# Reasons for health and safety leadership, organisational health and safety vision and benefits of excellent health and safety leadership



Leadership actions

## What is health and safety leadership?

### KEY TERMS

**Leadership** can be defined as the capacity to influence people, by means of personal attributes and/or behaviours, to achieve a common goal. CIPD <sup>1</sup>



Effective health and safety performance comes from the top; members of the board have both collective and individual responsibility for health and safety. Leaders need to examine their own behaviours, both individually and collectively and, where they see that they fall short, to change what they do to become more effective leaders in health and safety.

Why leaders need to act:

- protecting the health and safety of workers or members of the public who may be affected by workplace activities is an essential part of risk management and must be led by senior leaders/boards;
- failure to include health and safety as a key business risk in board decisions can have catastrophic results. Many high-profile safety cases over the years have been rooted in failures of leadership; and
- health and safety law places duties on organisations and employers, and directors can be personally liable when these duties are breached: members of the board have both collective and individual responsibility for health and safety.<sup>2</sup>

A debate has long existed about the differences between 'Management' and 'Leadership' across a wider spectrum than health and safety; sometimes it is difficult to determine what these differences might be. However, in the area of health and safety we can draw some clear distinctions about these terms.

It is perfectly possible, and hopefully probable, that a health and safety manager will also be a leader in health and safety. However, this does not mean that a health and safety leader automatically 'manages' the day-to-day functions of organisational health and safety or has ultimate responsibility for them.

When we start to examine the different styles of leadership it will become clear that leadership can come from many places and is not exclusively a 'top down' process. It can be, of course, but leadership is mainly about the ability to 'take people with you' and this skill can be present at all levels. It is, therefore, important that a good health and safety leader will not only have the necessary technical knowledge and skills, but that they also have 'soft skills' such as an open approachable personality, emotional intelligence, empathy etc.

## The reasons for, and benefits of, effective health and safety leadership

These should be self-evident in any organisation; however, it is unfortunately not always the case. *"The sad but true fact is that many organisations only get to learn the true cost of poor health and safety after an incident has occurred. Many high-profile incidents, trace their root causes back to failures of leadership at the very top and many result not just in high penalties, but cause the business to collapse due to irreparable reputation damage."* Dame Judith Hackitt, the past Chair of HSE.

If you do not regulate yourselves things are likely to go wrong; this is when you are going to meet the regulator. Investors want to know that they are investing in a well led/ run organisation that performs well. In this day and age, your customers will expect you to evidence your good health and safety performance; there are many companies that will not include organisations in their supply chain who cannot evidence good health and safety management.

It is important for you to realise that an organisation's reputation is built over many years but it can be destroyed in seconds. Any adverse incidents will have a major impact on all stakeholder interactions which include productivity, investment, sales and regulatory action.

Even if health and safety law did not exist, there are still sound business drivers that makes investing in good health and safety good business sense. If health and safety is not managed well by its leaders, and things do go wrong, this will have a massive effect on the organisation. As well as the financial reasons, which we will discuss in more detail later, it could mean that the business is totally destroyed; this will, obviously, have a major impact on workers and other stakeholders alike.

In the UK, there is a well-established health and safety regulatory system. Companies and individuals can, therefore, face serious consequences when health and safety leadership falls short of what is required. Sanctions include fines, imprisonment and disqualification.

### ACTIVITY



What do you think the reasons and business benefits are for effective health and safety leadership?



Empty box for activity response.

The following case studies from the HSE show what can happen with poor and good leadership.

### LEADERSHIP CASE STUDIES

The HSE has highlighted a number of examples of weak health and safety leadership. In one such case, the HSE describes the fatal injury of a worker in a recycling firm employing approximately 30 people. The worker had been maintaining machinery that was not properly isolated and then started up unexpectedly, with fatal results.

Commenting on the case, HSE's investigating principal inspector said, "Evidence showed that the director chose not to follow the advice of his health and safety adviser and instead adopted a complacent attitude, allowing the standards in his business to fall."

As a result, the company director received a 12-month custodial sentence for manslaughter after an HSE and police investigation revealed there was no safe system of work for maintenance and that instruction, training and supervision were inadequate.<sup>3</sup>

Conversely, the HSE offers the example of British Sugar as a case study in the benefits to be gained by organisations through robust health and safety leadership.

The HSE says British Sugar had historically had an excellent safety record but in 2003 there were three fatalities at the company. Although health and safety had always been a business priority, the company recognised that a change in focus was needed. This included:

- the CEO assigning health and safety responsibilities to all directors;
- creating effective working partnerships with workers, trade unions and others;
- overseeing a behavioural change programme; and
- annual health and safety targets, and initiatives to meet these.

The results of the leadership-led changes included a two-thirds reduction in both lost times and minor injury frequency rates over a 10-year period, as well as much greater understanding by directors of health and safety risks.<sup>4</sup>



### Behaviours/traits of a good health and safety leader



Taking the lead on health and safety initiatives

So what qualities should a good health and safety leader evidence? The behaviour of a health and safety leader is as or is more important than their attitude. A good health and safety leader will display a variety of behaviour that can positively influence the workforce. Very often they will not even be aware that they are doing this. Some of these types of behaviour include:

- encouraging communication (whether this be face-to-face or via other communication methods) with all workers regarding any health and safety anxieties the workers may have;
- making changes to improve working conditions (this is especially useful if the initial idea came from communications with the workforce; it shows that the leader has listened and, more importantly, acted to address the workers' anxieties);
- leading by example by showing the workforce that not only do they know the site health and safety rules but that they also model the correct health and safety behaviours;
- encouraging all levels of the workforce to understand and adhere to the site health and safety rules;
- being actively involved in health and safety committees and taking the lead on any health and safety campaigns/initiatives that are being introduced;

- where unsafe working practices are taking place, advising the workers concerned about the possible consequences of their unsafe act and that working in such a way is unacceptable.

### Developing an agreed health and safety vision for an organisation (health and safety leadership value 1)

#### ACTIVITY



- What would be appropriate for the health and safety vision of your own organisation?
- Does the present version contain or take account of these factors?
- List what you think the most important components might be.



Empty box for activity response



You may have identified items such as a 'speak out' culture where everyone is encouraged to point out issues with health and safety wherever they encounter it. Or where all members of the workforce are inspired to take ownership of health and safety in the organisation. You may have identified communication as a vital component in the development of an agreed vision.

Needless to say, something as vital as an agreed health and safety vision or strategy will not be easy to implement. The effective leader will need to understand and balance points of view, overcome barriers and objections and listen carefully to what all stakeholders have to say, worker input is key.

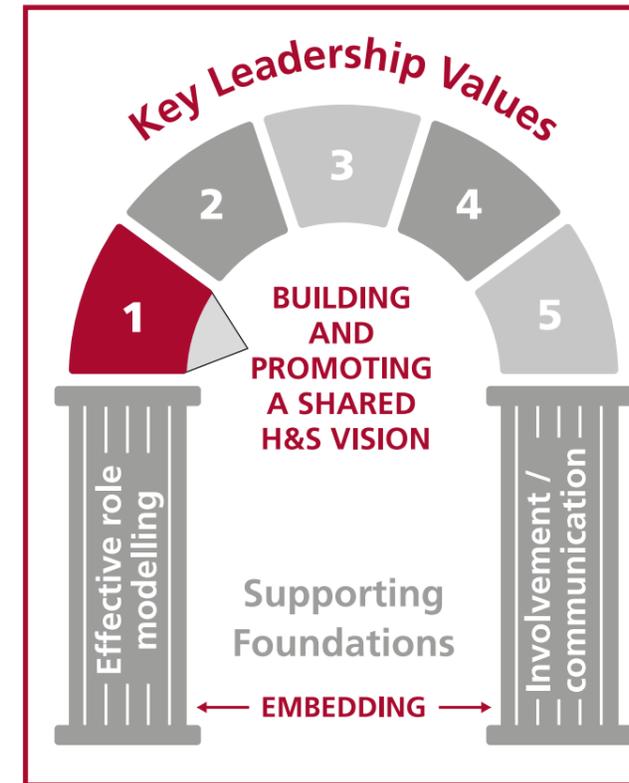
A vision is about where you want to get to. Vision is not strategy. Vision is a 'where' and a 'what', while strategy is a 'how'. In developing your health and safety vision you may want to consider your organisation's values or stance on health and safety management eg, on corporate social responsibility. You may also discover that what you want your organisation's vision to be, is not what it currently is; as leaders, you are of course empowered to change this. For your vision to develop and grow, it will ideally build on what you are already successful at. Organisations can be very critical

of themselves and sometimes forget to celebrate success. The term 'lessons learned' is not just about stopping things happening again, it is about making sure what is done well is repeated.

The most successful 'visions' tend to be simple, succinct and non-ambiguous. Workers and other stakeholders need to be able to easily understand and support the vision; this is difficult to do if it is overly complex or involved. An overly complex vision is an indication that it is trying to achieve too much and the quality and/or achievements will be diluted as energies and resources will be focused in different directions.

Although a vision should be looking to the future, it should also be time-bound so certain goals can be agreed and ultimately achieved. Each time a goal is achieved that success should be shared and celebrated with stakeholders, they are obviously key in turning the vision into reality.

## Building and promoting a shared health and safety vision (health and safety leadership value 1)



The key word here is 'shared'. It is vital that everyone feels part of the health and safety vision. It should not be something that people right across the organisation just comply with, it needs to be something to which they contribute. Their contribution must have equal value to all others.

For this to happen effectively it will require excellent communication, continuous consultation and discussion, reflection and feedback. Everyone should feel part of the process when establishing goals and objectives for their safety culture.

This should also clearly include shared responsibility; therefore, safety responsibilities need to be clearly defined. This needs to take place across each level of the organisation and should include the policies, goals and plans for the safety culture.

It is vital when building and promoting a shared vision that everyone involved is clear on what is happening, understands why and has the opportunity to comment or challenge when appropriate. It is also important that this health and safety

vision is recognised as a long-term process; it should be something worth people buying into and not perceived as a 'quick fix' or box ticking exercise for compliance purposes. This will certainly be more credible if the leadership style adopted is responsive and considerate to all those involved.

### ASSESSMENT ACTIVITY 1

- Please refer to the document Unit HSL1, guidance and information for candidates and internal assessors



You should now complete task L1: Building and promoting a shared health and safety vision.

## The characteristics that make a good health and safety leader

This could be a very long list and, unfortunately, can be somewhat discouraging for anyone aspiring to become an effective health and safety leader. You will also find many '10 Best Ways' '5 most effective...' '15 Top Tips...' all over the internet and of course many publications which will promise wonderful things.

For now, let us just say that we should regard many characteristics as learned skills and behaviours. It helps, however, to understand what leadership really means and we look at that in detail later on. However some of these characteristics include:

- relentlessly driving the health and safety message forward, not as an add-on but as a fundamental business imperative;
- being visible and proactive; and
- being able to articulate important messages across a wide variety of understanding and cultural mix.

# The moral, legal and financial reasons for good health and safety leadership

## Moral

The case for needing good health and safety leadership is often framed in terms of three basic reasons – moral, legal and financial.



RELIABILITY



INTEGRITY



HONESTY



CORE VALUES



SOCIAL RESPONSIBILITY



TRUST



COMMITMENT



TRANSPARENCY



CONNECTION

## Societal expectations

There are many social issues that a good leader should be aware of that could affect their organisation.

Government initiatives and campaigns are aimed at the public to raise their understanding of health and safety issues. You may find that health and safety leaders are asked more questions as a result of such initiatives. Some examples of recent campaigns in the UK include the UK Health and Safety Executive's 'Helping Great Britain work well' strategy and campaigns such as the 'Go Home Healthy' campaign.

To try to prevent incidents from occurring in the first place, there is an expectation that health and safety leaders understand their organisation's risk profile. The HSE, in its guidance 'Managing for health and safety' (HSG65)<sup>5</sup> states that "effective leaders and line managers know the risks their organisations face, rank them in order of importance and take action to control them. The range of risks goes beyond health and safety risks to include quality, environmental and asset damage, but issues in one area could impact in another". The risk profile should cover the:

- nature and level of the risks faced by the organisation;
- likelihood of adverse effects occurring and level of disruption;
- costs associated with each type of risk; and
- effectiveness of the controls in place to manage those risks.

Social media/the media in general, business globalisation and consumer choice all have a big part to play. Today the world is a much smaller place and most people tend to have a mobile communication device; stories are shared on social media, on the television, radio etc almost as soon as they break; this can sometimes be very damaging to an organisation's reputation. Consumers now have a much bigger say in the products that are on the market with many consumers now only buying brands that have been ethically produced or sourced.

As stated earlier, a good health and safety leader should be ensuring that sufficient control measures are in place to manage the organisation's health and safety risks. At the end of each working day, your workers (and their families) understandably expect to return home after being kept healthy and safe while at work.

## Responsibility and accountability for health and safety

ISO 45001 is an agreed international standard for health and safety management systems. It represents an expectation of best practice. Clause 5.1 requires an organisation's leadership to take "overall responsibility and accountability for the prevention of work-related injury and ill health as well as the provision of safe and healthy workplaces and activities". By taking responsibility for health and safety a good leader sends a clear message to the workforce that they care about the workers' health and safety. As this message flows through the organisation it can lead to positive changes, for example, by improving morale in the workforce which in turn could lead to an improved health and safety culture. Health and safety leaders should aim to make themselves as approachable and visible as possible within the organisation, for example, by conducting regular walkabouts.

## Protection of workers from reprisals when reporting health and safety incidents and hazards

As stated earlier, the health and safety management system standard (ISO 45001) contains a clause relating to health and safety leadership. Part of this clause is to ensure the protection of workers when reporting health and safety incidents. As a leader you should be encouraging your workers to report all cases where they believe there is danger from an uncontrolled hazard, or if they have been involved in an incident (accident or near-miss). You should ensure that all managers, team leaders, supervisors etc understand your organisation's policy on reporting and that they should be encouraging workers under their control to report incidents. You can do this by, for example, ensuring that systems are in place for reporting (especially a near-miss reporting system), that the system is accessible by all workers, is easy and not time consuming to use and ensure that this message is cascaded down throughout the workforce. Feedback to the workforce on actions taken regarding reported incidents will go some way to proving to your workforce that you do want them to report and that no reprisals will be taken against them if they do report an incident.

Many countries also have legislation in place to protect their workers when reporting a health and safety incident or a hazard, eg, in the UK workers are protected under Regulation 44 of the Employment Rights Act 1996 ('protection from suffering detriment in employment') in relation to health and safety cases.



### Legal

#### The role, function and limitations of legislation as a means of promoting health and safety performance

In simple terms, health and safety legislation is there to help to protect the health and safety of the workforce. It does this by imposing legal duties on employers and workers and a system of penalties (such as fines and imprisonment) for non-compliance. Although it should not be the only driver, the threat of these penalties can be a big motivator for better health and safety performance.

**KEY TERMS**

Legislation tends to be either:

- goal setting** (sets objectives to be met, leaving the detail on exactly how to do this up to the employer); or
- prescriptive** (tells organisations exactly what to do and when to do it).

Some of the limitations of using legislation to promote health and safety performance include:

- organisations ignoring best practice and only doing enough to meet the legal minimum requirements;
- health and safety can be seen by organisations as a regulatory and financial burden instead of a tool to help them protect their workforce;
- legislation (particularly prescriptive legislation) may not always keep pace with change and may not address current issues;
- the language used can sometimes be unclear and open to interpretation; and
- some organisations (especially those with inadequate health and safety assistance) may be unfamiliar with the law.

### Content for UK students



As a leader there are specific pieces of legislation that can affect you and that you must be aware of. Ignorance is no defence when it comes to the law.

### The Health and Safety at Work etc. Act 1974 (as amended)

The Act is goal setting. As a leader the main sections of the Act that you need to be aware of are Sections 2, 3, 36 and 37. The Act applies in England, Scotland and Wales; Northern Ireland is covered by the Health and Safety at Work (Northern Ireland) Order 1978. Where we refer to Section numbers, these refer to the Health and Safety at Work etc. Act 1974. The equivalent sections from the Northern Irish Order are as follows:

Health and Safety at Work etc. Act 1974	Health and Safety at Work (Northern Ireland) Order 1978
Section 2	Section 4
Section 3	Section 5
Section 36	Section 34
Section 37	Covered under Section 20(2) of the Interpretation Act (Northern Ireland) 1954. Section 34A of the 1978 Order amends the wording of Section 20(2) in relation to health and safety offences.

We will now look at the duties contained in each of these sections.

**KEY TERMS**

*Reasonably practicable*

Balancing the level of risk against the measures needed to control the real risk in terms of money, time or trouble. However, you do not need to take action if it would be grossly disproportionate to the level of risk.<sup>6</sup>

## Section 2

The first part of this Section puts a duty on employers to protect the health, safety and welfare of all of their workers. The second part of this Section imposes specific duties and we will now look at each of these. Further information on what each of these duties requires can be found in the 'further information' box.

1. Provide and maintain safe equipment and systems of work as far as is reasonably practicable.
2. Storage, use, handling and transport of articles and substances: you must provide arrangements for ensuring, so far as is reasonably practicable, that safe working practices for these activities are in place.
3. The provision of information, instruction, training and supervision to ensure, so far as is reasonably practicable, the health and safety of all workers.
4. Any workplace that is under the employer's control must, as far as is reasonably practicable, be maintained in a safe condition so that it does not provide risk to the health and safety of all workers. The workplace must also have safe points of access and egress and these points must be maintained.
5. The provision and maintenance of a working environment that is, so far as is reasonably practicable, safe, without risks to health, and has adequate facilities and arrangements for the workers' welfare at work.

**FURTHER INFORMATION**

What do the duties under Section 2 of the Health and Safety at Work etc. Act 1974 mean?

1. Your will need to:
  - provide safe systems of work and procedures (written wherever possible) for the organisation's activities; and
  - make sure that not only is equipment bought that is manufactured to recognised standards/from a trusted source (look for the 'CE' mark or equivalent) but that it also undergoes regular maintenance and is withdrawn when it is deemed to be unsafe.

2. You should ensure that you have in place adequate control measures for storage, use, handling and transport of hazardous substances/articles. Such substances/articles can be identified from risk assessments and other sources of information such as Safety Data Sheets. As discussed in the previous paragraph, you should ensure that there are adequate written procedures for such activities. Issues associated with safe storage can include segregation of different types of hazardous substances, temperature requirements, loading/unloading procedures etc. When transporting hazardous substances, most countries have minimum requirements in the form of legislation for transportation equipment (containers and vehicles) and the use of competent workers in these operations.

3. To ensure the health and safety of all workers you must:

- provide information and instruction to all workers regarding their work activities. This information can come from various sources such as risk assessments, machinery manuals, organisational policies, procedures, safe systems of work etc; and
- ensure that your workforce receives adequate training and supervision in respect of the work activities that they carry out.

4. You must ensure that your workplace is maintained in a safe state, including safe entrance and exit points. This can be done by carrying out regular building maintenance activities and inspections to spot any potential risks before they escalate eg, do not wait for someone to trip over a loose carpet tile before getting it fixed or allow storage of equipment in front of fire exit doors which is only discovered during a fire drill.

5. You must provide and maintain welfare facilities such as toilets, washing facilities, clean drinking water, changing rooms (if applicable) etc. This applies to both fixed and temporary workplaces.

Organisations are also required to have a health and safety policy; if the organisation employs five or more workers this must be a written a policy that states how the organisation is going to manage health and safety. The policy must be brought to the attention of all workers. Further information on health and safety policy can be found on the HSE's website (<http://www.hse.gov.uk/simple-health-safety/write.htm>).

Section 2, also requires you to consult with workers on health and safety matters. The duty to consult is set out in legislation and further information can be found on the HSE's website (<http://www.hse.gov.uk/workers/safetyrep.htm>). Consultation will be discussed further later in this book.

The final part of the Section relates to forming a health and safety committee. It is good practice to set up a health and safety committee as this will involve the workforce in organisational health and safety matters. Further information on health and safety committees can be found on the HSE's website (<http://www.hse.gov.uk/involvement/hscommittees.htm>).

## Section 3

Section 3 is very similar to Section 2 but it looks at the protection of 'others' who are not directly employed by the organisation but who could be affected by the organisation's work activities. For example, protection of temporary and contract workers, visitors to site and the general public.

The Act also imposes a duty on self-employed people to carry out their work so that other persons are not exposed to risks to their health or safety. However, self-employed people 'whose work activities pose no potential risk of harm to others' are now exempt from this Section of the Act.

The Act also requires employers, and qualifying self-employed people, to provide information to relevant parties on the way that they conduct the work activities that might affect the health and safety of others.

## Section 36

This Section of the Act looks at offences committed by a 'person' (this could be an individual or an organisation) due to the act or default of some 'other person' (this could be a worker, manager, supervisor, contractor, consultant etc) then the 'other person' is guilty of the offence. In these cases the HSE could bring a prosecution against the 'person', the 'other

person' or both. So, for example, if poor advice from a senior manager to a worker leads to a breach of duty, the senior manager could be prosecuted. The organisation may also be prosecuted but it would depend on the level of culpability. Prosecutions under Section 36 are not very common.

## Section 37

This section will probably have the biggest impact on leaders; it means that senior directors/managers of an organisation can be individually liable for breaches of health and safety law and can be prosecuted as well as the organisation.

The wording from the Act states that it is for offences made by a 'body corporate' (an organisation). It must be proved that the offence was 'committed with the **consent or connivance** of, or have been attributable to any **neglect** on the part of any director, manager, secretary or other similar officers or a person who was purporting to act in any such capacity'. **Consent and connivance** is interpreted as having knowledge and making decisions based on that knowledge but turning a blind eye. In these circumstances **neglect** can include situations where a director ought to have been aware of the circumstances, in other words neglect does not require knowledge.

Recent years have seen a rise in Section 37 prosecutions and the sentences handed down. To illustrate this, a Section 37 case, which was prosecuted in November 2017, saw two company directors receiving prison sentences.

These sentences were given following a worker being killed when he was drawn into machinery at a recycling company. This was due to a fixed gate, which fenced off the area, being removed a number of weeks prior to the incident; this allowed workers free access to the area. The management of the company was aware that the gate was not in place.

- The Managing Director was sentenced to 20 weeks in prison (suspended for two years) and given a £50,000 fine.
- The former Operations Director of the company was sentenced to 20 weeks in prison (suspended for two years).

In addition to this the company was fined £880,000 plus costs of £100,000 for breaching Section 2 of the Health and Safety at Work Act. Further details about the case can be found here.<sup>7</sup>

## Enforcement



*Health and safety leaders do not want to be seeing the inside of a court room!*

It is important for you to realise that the HSE can bring prosecutions against the organisation for breaches of Sections 2 and 3; these could result in substantial fines for the organisation (we will talk about this later when we discuss the application of the sentencing guidelines). Figures released by the HSE show in 2016/17 that fines from prosecutions where a conviction was achieved amounted to £69.9million. As well as prosecutions the cost of any civil claim brought against the organisation could also be substantial.

### The Company Directors Disqualification Act 1986

If a director is found guilty of an offence (in this case Section 37 of the Health and Safety at Work Act etc. 1974), the court can make an order to disqualify the individual from 'the promotion, formation or management' of another organisation. The maximum period of disqualification is five years for a summary offence or 15 years for an indictable offence.

## KEY TERMS

England, Northern Ireland and Wales



A '**summary offence**' is a 'less serious' offence and is usually heard in Magistrates' Courts. The maximum sentence that a Magistrates' Court can hand down is an unlimited fine and/or up to six months' imprisonment.

An '**indictable offence**' is a more serious offence and is usually heard in the Crown Court. The maximum sentence that the Crown Court can hand down is an unlimited fine and/or up to two years' imprisonment.

Scotland

A '**summary offence**' is a 'less serious' offence and is usually heard in the Sherriff's Courts. The maximum sentence that can be handed down is a fine up to £10,000 and/or up to one year's imprisonment.

An '**solemn offence**' is a more serious offence and is usually heard in the Sherriff's Court. The maximum sentence that can be handed down is an unlimited fine and/or up to five years' imprisonment. If a sheriff decides that the maximum sentence at the sheriff court level isn't high enough, they can send the case to the High Court for sentencing. The maximum sentence that the High Court can hand down is an unlimited fine and up to life imprisonment.

## Individual duties and possible enforcement actions for involuntary manslaughter/gross negligence

Involuntary manslaughter/gross negligence applies to an individual rather than the organisation. The offence is where someone is killed due to another person's extreme recklessness/carelessness. The maximum prison sentence for gross negligence manslaughter is life imprisonment.

There are four stages of 'legal test' that must be proved in order to bring a gross negligence manslaughter case:

- there must be a duty of care owed by the defendant to the deceased person;
- the defendant must have breached the duty of care;
- the breach must have caused or significantly contributed to the death of the deceased; and
- the breach must be characterised as gross negligence and, therefore, considered a crime.

A breach of duty of care happens when an individual, who owes the duty of care, does not act in the same way as a reasonable person would do in the same position. Therefore, if the individual was acting within the range of what was generally accepted as standard behaviour/practice, it will be difficult to prove that they have breached the duty of care.

When looking at work-related deaths, very often proceedings are also taken against the individual under Sections 7 (which is not part of this course), 36 or 37 of the Health and Safety at Work Act.

## EXAMPLE

Gross negligence manslaughter case



In May 2017 a company director was sentenced to 32 months' imprisonment when he admitted causing the death of a golf club worker. The worker was 29 years old and had ADHD and learning difficulties. He died while collecting golf balls from an eight-foot deep lake with a weighted belt and breathing equipment; the breathing equipment was lost during the dive. The golf worker was paid £20 to £40 per day instead of the defendant employing a trained diver that would have cost approximately £1000 day. The director had stood and watched the incident happen and only raised the alarm when he saw a constant stream of bubbles rising to the lake's surface and saw that the floatation device carrying the air supply floated to the side of the lake. The director admitted to manslaughter by gross negligence.<sup>8</sup>

## The Corporate Manslaughter and Corporate Homicide Act 2007



The legislation is about holding the organisation accountable rather than individual directors. As we have already discussed, individuals can be prosecuted under gross negligence manslaughter charges or under various sections of the Health and Safety at Work Act.

The offence of corporate manslaughter/homicide can be brought:

- when the way in which an organisation's activities are managed or organised cause a person's death and amount to a gross breach of a relevant duty of care owed by the organisation to the deceased; and
- if the way in which its activities are managed or organised by its senior management is a substantial element of the death.

The offence is, therefore, aimed at the strategic/top level management of an organisation rather than activities conducted by junior level workers (in other words the organisation's leaders).

The offence of corporate manslaughter/homicide is an indictable offence which can only be heard in the High Court.

The penalties available to the Court when an organisation is found guilty are:

- a fine (which we will discuss next in the sentencing guidelines section); and/or
- a remedial order; and/or
- a publicity order.

A remedial order can be handed down on a guilty conviction

which will require the organisation to remedy:

- the breach of the duty of care;
- anything that looks like it may have caused the death; and
- any deficiencies in the organisation's health and safety systems that the offence highlights.

The Court can also hand down a publicity order. This will require the organisation to publicise:

- that it has been convicted of the offence;
- the details of the offence;
- the amount of any fine; and
- the terms of the remedial order (if applicable).

The organisation can be ordered to publicise details of the offence on their website or by taking out an advertisement in the local press or in trade publications/websites. If the organisation does not comply with the publicity order this is also an indictable offence and could result in an unlimited fine should the organisation be found guilty.

### EXAMPLE

Corporate Manslaughter convictions

The first Corporate Manslaughter case was sentenced in 2011 following an incident in September 2008. A geologist employed by an organisation was investigating soil conditions in a trench; the trench collapsed and killed the worker. The organisation was successfully prosecuted and received a fine of £385,000 payable over 10 years.<sup>9</sup>

The biggest fine to date given after a guilty verdict for Corporate Manslaughter was hand down to a plant hire company. One of their workers was driving a heavy crane which experienced a malfunction with its brakes causing it to crash into an earth bank and fall from the road. The company was found guilty of Corporate Manslaughter and also two offences under the Health and Safety at Work etc Act 1974 (breaches of Sections 2 and 3). In December 2015 the company was fined £700,000 and ordered to pay costs of £200,000.<sup>10</sup>



## The Health and Safety Offences and Corporate Manslaughter sentencing guidelines

### Sentencing in England, Wales and Northern Ireland

The Guidelines were published by the Sentencing Council in February 2016 and became applicable for all offences sentenced after 1 February 2016, no matter when the offence was committed. The Guidelines are applicable to England and Wales only. However, courts in Northern Ireland can refer to the Guidelines as a starting point when sentencing.

### KEY TERMS

**Culpability**<sup>11</sup> how much the defendant is at fault for the offence. This ranges from very high to low. High is where there was a deliberate breach or a flagrant disregard for the law. Low is where it is found that failings were minor and occurred as an isolated incident.

**Harm category**<sup>12</sup> Levels 1 to 4, with 1 being the most severe. The harm level is based on two factors, the harm that occurred (levels A to C) and the likelihood (high, medium or low) of the harm occurring.

Level A: death or an injury which will result in life long care being needed.

Level B: includes physical or mental impairment, not requiring lifelong care, but which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work; or a progressive, permanent or irreversible condition.

Level C: includes all other cases not falling within Level A or Level B.



The guidelines give a range of sentences that are appropriate for each type of offence (offence ranges). For each offence there are a number of categories that reflect varying degrees of seriousness. For each category there is a starting point for sentencing.

When deciding on the level of fine the judge must consider the following:

- the level of culpability of the defendant;
- the level of harm created by the offence;
- the number of workers or members of the public exposed to the risk AND whether the breach was a significant cause of actual harm.

The level of fine is based on the organisation's **turnover**, not profit. There are five categories of organisation:

- micro (turnover of not more than £2million) organisations;
- small (turnover between £2million and £10million);

- medium (turnover between £10million and £50million);
- large (turnover of £50million or more); or
- 'very large organisations' that have a turnover which greatly exceeds £50million can be fined outside of the normal ranges should the offence warrant this.

When sentencing, the judge will look at the starting point for the fine but will also take into account if there are any factors where an increase or reduction in the fine can be made. The table below gives a few examples of the level of fine that **organisations** can expect to see based on the above factors.

Level of culpability	Harm category	Size of organisation	Fine starting point	Maximum fine	Minimum fine
Very high	1	Large	£4million	£10million	£2.6million
High	4	Large	£240,000	£700,000	£120,000
Very high	1	Medium	£1.6million	£4million	£1million
Low	2	Medium	£40,000	£100,000	£14,000
High	3	Small	£54,000	£210,000	£25,000
Medium	2	Small	£54,000	£230,000	£25,000
Very high	1	Micro	£250,000	£450,000	£150,000
Medium	2	Micro	£30,000	£70,000	£14,000

For Corporate Manslaughter offences there is an unlimited maximum fine but the offence range is from £180,000 to £20million. As with fines for health and safety offences, the fine is payable by the organisation. An offence that is considered to be level 'A' (where the organisation is deemed to have a high level of culpability) for a 'large organisation' would have a starting point of £7.5million with the category range between £4.8million and £20million.

As we mentioned earlier, in the book, individuals can be prosecuted as well as organisations. As with organisations, fines are based on the culpability of the individual. However, it is also important to note that individuals could also receive a jail term for the most serious offences. Summary offences can attract an unlimited fine and/or up to six months' custodial sentence. An indictable offence will also attract an unlimited fine but the jail term for these offences could be up to two years.

For example, where an individual is found guilty and was found to be very highly culpable, the following sentences (depending on the harm category) could apply:

Harm category	Sentence starting point	Category range
1	18 months' custody	1 - 2 years' custody
2	1 year's custody	26 weeks - 18 months' custody
3	26 weeks' custody	Band F fine* or high level community order - 1 year's custody
4	Band F fine	Band E fine - 26 weeks' custody

\* Fines are split into six bands; the starting point for each band is as follows:

- Band A – 50% of relevant weekly income
- Band B – 100% of relevant weekly income
- Band C – 150% of relevant weekly income
- Band D – 250% of relevant weekly income
- Band E – 400% of relevant weekly income
- Band F – 600% of relevant weekly income

Therefore, a director earning £98,000 per annum (£1885 per week) could find themselves with a personal fine starting at around £11,500 when the harm category is 4.

### Sentencing in Scotland

Scotland does not currently have any official guidelines but there are 'sentencing factors' which the judge can consider.

The Scottish Sentencing Council have drawn up a wide range of factors which judges should generally consider when deciding on a sentence. The judge will decide:

- which factors presented to the court are relevant and should be taken into account; and
- what weight to give to each factor; these can be aggravating factors (which will make the sentence more severe) and mitigating factors (which will make the sentence less severe).

Some of the general factors which can be consider are:

- the type and seriousness of the crime;
- the culpability of those involved;
- protection of public and deterrence; and
- personal circumstances of the offender.

Some of the aggravating factors which the judge will take account of include:

- the effects of the crime on the victim(s); and
- past convictions.

Some of the mitigating factors which the judge will take account of include:

- whether the offender pleaded guilty;
- first offence (if no crime has previously been committed the sentence will usually be less server); and
- whether the offender assisted the prosecutor after entering a guilty plea.

The following table gives an overview of the sentences available in the various levels of Scottish Court (the Procurator Fiscal will decide which court the case will be heard in):

	Justice of the Peace Court	Sheriff Court (summary)	Sherriff Court (solemn)	High Court
Who decides the verdict?	Justice of the Peace	Sheriff	Jury	Jury
Who sets the sentence?	Justice of the Peace	Sheriff	Sheriff	Judge
Maximum fine available	Up to £2,500	Up to £10,000	Unlimited	Unlimited
Maximum length of imprisonment	Up to 60 days	Up to 1 year	Up to 5 years	Up to life

Sheriffs/judges are able to impose a fine and/or imprisonment depending on the offence. The courts can also hand down community based sentences.

For more information on the sentencing factors please refer to guidance from the Scottish Sentencing Council<sup>13</sup>.

### Content for international students



### Different levels of standards and enforcement in different jurisdictions

There are different standards of health and safety around the world; some countries have mature, well-embedded systems while other countries have very rudimentary systems or no system at all. Organisations that operate globally can find this frustrating; what meets the standard in some countries will not in others. Some larger organisations will, therefore, use standards from countries with a robust system to manage their risks wherever they are operating in the world. When tendering for large projects, their systems of work, policies, procedures etc will reference these higher standards. These organisations are sometimes seen as leaders within the country of operation; once the local workforce sees that better standards are available they are more likely to start demanding this from other organisations.

Having a robust regulatory system in place (including an enforcement regime), for the majority of organisations, is a big incentive to provide better health and safety standards for their workforce.

The International Organization for Standardization (ISO) has recently published an occupational health and safety management systems standard (ISO 45001:2018); ISO 45001 is the successor to OHSAS 18001. The standard is recognised globally and provides a framework for organisations to use to manage their health and safety risks. As all organisations will have to evidence how they meet each of the clauses within the standard, this can also be seen as a driver to improve health and safety standards globally.

The International Labour Organisation (ILO) <http://www.ilo.org/global/lang--en/index.htm> has drawn up over 40 conventions and recommendations and produced over 40 codes of practice relating to occupational health and safety. These conventions/codes of practice give the minimum standard that countries and organisations should be looking to implement. However, the issue here is that there is no policing of standards within the countries who have ratified the convention. No policing usually means no enforcement actions are taken, which in turn disincentives countries/organisations from improving health and safety standards. As we discussed earlier, there may be different standards of health and safety around the globe due to countries interpreting the language of the convention in different ways.

### Responsibilities of leaders under Article 20 of the C155 Occupational Health and Safety Convention 1981

As discussed earlier, the ILO established the above convention in 1981. The convention requires each member state to have a “coherent national policy on occupational safety, occupational health and working environment”. Article 20 of the convention requires “Co-operation between management and workers and/or their representatives within the undertaking ...”. Health and safety leaders should, therefore, be proactive and be seen to be engaging with the workforce whenever possible (we will discuss methods of engagement later in this book). Workers are more likely to co-operate with the employer when leadership is visible and is interested in the workforce.

## Financial



### The level of fines/penalties/compensation

As we discussed in Section 2 the level of fines in the UK following the introduction of the ‘sentencing guidelines’ have risen dramatically over the last few years. However, organisations should be aware that not only are there fines to consider but there could also be costs associated with:

- fees charged by regulators;
- putting right anything identified in enforcement notices;
- the cost of non-production should a prohibition notice be served by a regulator;
- loss of business and reputation should any enforcement action be publicised;
- level of compensation/damages due to injured parties.

### The real cost of accidents/incidents

Each year millions of days are lost due to workplace accidents and ill-health. Each year, the UK Health and Safety Executive publishes health and safety statistics. The following statistics will give you an idea of the size of the health and safety issue in the UK (the statistics have been averaged out over a five-year period):

### EXAMPLE

Recent fines for health and safety offences



In January 2017 a retail company was fined £2.2million and ordered to pay costs of £71,000. The fine was due to a worker being injured by a cage falling over which left the worker paralysed below the hip with only a 1% chance of ever walking again. The level of culpability in the case was set at high with a harm category of 2. The organisation’s turnover was way in excess of that for large companies so the judge treated this case as a ‘very large organisation’. When sentencing the judge took into account the guilty plea and other mitigating circumstances.

Also in January 2017 a food manufacturer was fined £2million and ordered to pay costs of £20,000. The offence was that a worker sustained a spinal fracture after falling nearly 2 metres from the top of a mixing machine while attempting to clean it. The company’s turnover put them in the ‘very large organisation’ category but the judge decided to treat the organisation as ‘large’. The culpability level was high and the harm category was 1. The starting point for the fine would, therefore, have been £2.4million with a category range of between £1.5million and £6million.

Work-related illness	1.2million
Mesothelioma deaths	2,484
Fatalities	141
Non-fatal injuries to workers	612,250
RIDDOR injuries	74,927
Musculoskeletal disorders	503,000
Work-related stress, depression or anxiety	470,800
Lost working days due to work-related illness and injury	28.82million

majority of the iceberg, which is hidden under the water, represents the uninsured costs.



*The hidden costs of accidents*

Examples of costs that you can insure against are:

- medical costs relating to injury and/or ill-health; and
- damages to the injured party or to the family of a deceased worker.

In the UK the insurable costs are covered through compulsory employers' liability insurance.

Some examples of costs which are uninsurable are:

- delays in production;
- additional wage bills for overtime payments/temporary workers to cover the injured person's job;
- sick pay for the injured person;
- loss of contracts resulting from either loss of reputation and/or being unable to meet orders due to production down-time;
- damage to equipment, plant, products or premises;
- fines;
- legal expenses (own or the prosecution's);
- investigation time and site clear up costs; and
- excess of any insurance claim.

The cost to the UK of these injuries and ill-health is, on average, £14.26billion per annum.

These figures are also reflected globally. The International Labour Organisation (ILO) has produced the following statistics. However, it should be noted that not all nations affiliated with the ILO report health and safety figures.

Annual deaths due to work-related accidents or diseases	>2.78million
Non-fatal work-related injuries and illness	374million

The following statistics have been averaged over a five year period:

Average fatalities from occupational injury per year	17,500
Non-fatal occupational injuries	9.7million
Days lost due to occupational injury	66.5million

The annual cost to the global economy is estimated to be 3.94% of global Gross Domestic Product.

Taking this down a level to that of the organisation we have already discussed the level of fines likely to be seen within the UK. However, there are many other costs that also need to be considered. Some costs can be insured against but the majority of costs incurred are not covered by insurance and must be absorbed by the organisation.

It is estimated that the ratio of insured v uninsured costs is roughly 1:8 (so for every £1 of insurance payment the organisation receives they will pay out a minimum of £8 but could be as much as £36). The analogy that is very often drawn is comparing costs to an iceberg. The tip of the iceberg, visible above water, represents insured costs but the

## How leaders can gain assurance that health and safety is being managed effectively

The Health and Safety Executive, in association with the Institute of Directors, produced a set of guidelines for organisations to assist in giving assurance to leadership teams that the organisation's health and safety practices are being managed effectively. These guidelines<sup>14</sup>, which you are encouraged to read, provide more detail on this vital component of health and safety culture.

### Context of the organisation

Boardroom decisions must be made in the context of the organisation's health and safety policy; it is important to 'design-in' health and safety when implementing decisions. Identifying who is a stakeholder with regards to an organisation is also key; as we know, stakeholders extend further than internal workers. For example, suppliers, local communities, customers etc can all be consulted with (when identified that it would be appropriate to do so), and they can provide some valuable insight.

Suppliers and contractors also have specialist knowledge that can be vital when introducing change. It is important to remember that often, it is also these people who are the last to know when work-based changes have been introduced, and any changes undertaken can directly affect their activities on a work site.

The context of the organisation is also a clause from ISO 45001:2018 (Health and safety management system).

### Risk profiling

The risk profile of an organisation should inform all aspects of the approach to leading and managing health and safety risks.

Every organisation will have its own risk profile and effective leaders must know the risks their organisations face, rank them in order of importance and take action to control them. This is the starting point for determining the greatest health and safety issues for an organisation. In some businesses the risks will be tangible and with immediate obvious safety hazards. In other organisations the risks may be health-related and it may be a long time before any illness becomes apparent.

In essence, a risk profile examines the nature and levels of

threats faced by an organisation. It examines the likelihood of adverse effects occurring, the level of disruption and costs associated with each type of risk and the effectiveness of the control measures in place.

Health and safety leaders need to ensure that their respective organisations have built a risk profile that covers:

- the nature and level of the threats faced by an organisation;
- the likelihood of adverse effects occurring;
- the level of disruption and costs associated with each type of risk; and
- the effectiveness of controls in place to manage those risks.

The outcome of risk profiling will be that the right risks have been identified and prioritised for action, controls communicated, with minor risks not given too much priority. It also informs decisions about what risk control measures are needed and where resources should be made available and allocated.

Further information on risk profiling can be found in the HSE's publication 'Managing for health and safety' (HSG65)<sup>5</sup>.

### Management system thinking

Good health and safety management does not happen by accident. Management of health and safety in any type of organisation requires clearly defined processes. An effective health and safety management system will help an organisation meet legal obligations, as it will assist compliance with legislation and any internal corporate standards eg, the health and safety management system ISO 45001.

An effective HSMS is the product of a structured and focused effort that places health and safety at the centre of business decisions and not as an after-thought. There are many different models of HSMS, but all follow the same plan-do-check-act cycle (known as 'PDCA') as part of a continual improvement process. In the PDCA cycle, the following broad steps are taken:

- **plan** - establish a clear set of goals and targets that will move the organisation forward in terms of health and safety management;

# Health and Safety Leadership Excellence follows the syllabus for the NEBOSH HSE Health and Safety Leadership Excellence qualification. It provides the knowledge you need to help you gain the qualification.

The book contains practical activities and examples/case studies and gives definitions for key terminology. It can be used as part of your studies during a taught course or as a study aid for e-learning and distance learning.

Health and Safety Leadership Excellence should help health and safety leaders understand their responsibilities (moral, legal and financial) and their leadership style, as well as giving pointers on building relationships with the workforce. HSE and NEBOSH hope that the book will also become a valuable reference source once the leader is back in the workplace.



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PUBLISHED BY NEBOSH 2018 ©  
Registered in England and Wales  
Company number 2698100  
Registered charity number 1010444

HSLBK0518



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