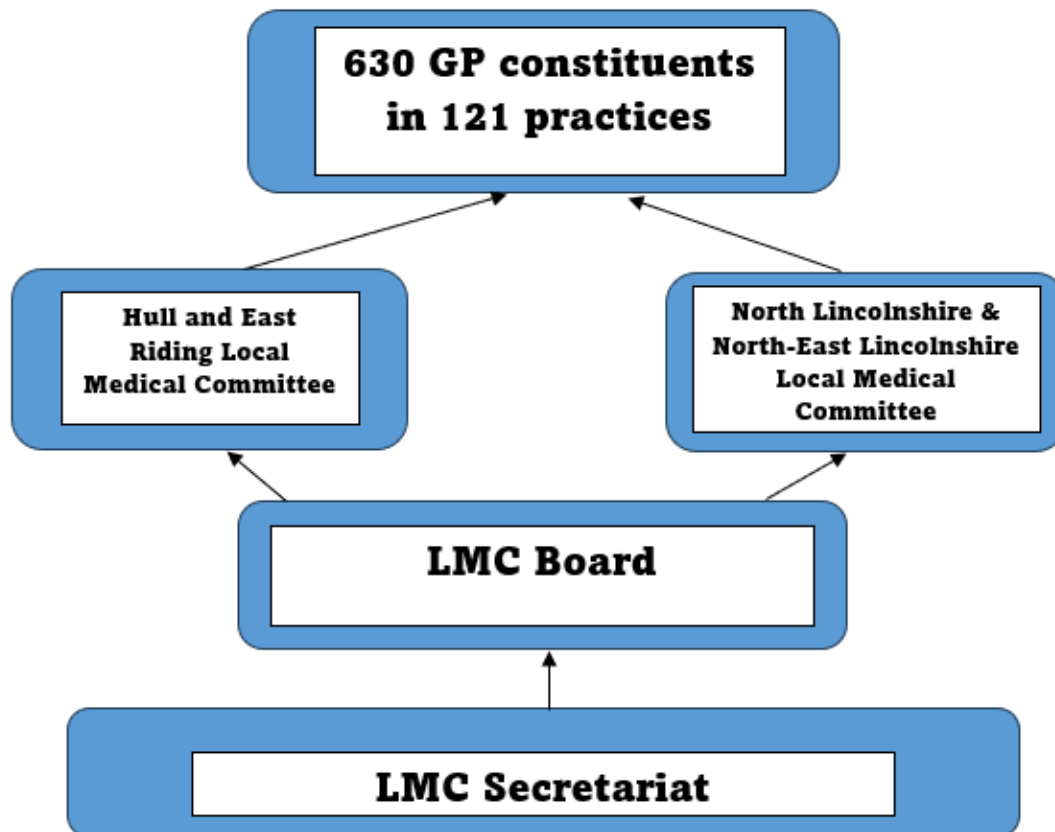


### Summary of LMC Management Board Governance and Accountability

- The LMC secretariat function is formed as a company limited by guarantee.
- It has a board of directors, currently six in number. Each director serves in 3-year terms.
- Directors are bound by external and internal governance requirements.

### Structure & Accountability



### Internal governance

- The board are appointed by and accountable to the LMC committees who are in turn accountable to our constituents who elect them democratically.
- They are bound by the articles of association for the company which set out the objects of the company – i.e. what it is that the company should be doing.
- These objects are at the heart of our company strategy which is set by the board for a three-year period and reviewed regularly

### External governance

- Governance and standards are set out in legislation and include duties, behaviour and probity of company directors such as the [Nolan Principles](#), [behaviours of directors](#) and [code of professional conduct](#)
- There is a requirement to publish accounts and statements to Companies House

## **Responsibility of Directors**

Directors have ultimate responsibility for the running of the limited company, and their duties are detailed in the induction document "Duties of a Director".

This includes responsibility for strategy, finance, reputation, and staff – the same as any company.

**Strategically** - to set a strategy for the company and ensure this is delivered operationally.

**Financially** - to ensure the company is solvent and trading stably with adequate funds to deliver against the strategy.

**Reputationally** – to uphold standards in public life and discharge the duties of director with probity and diligence.

**Staff** – to ensure compliance with HR legislation and good practice and that there are sufficient resources to deliver against the strategy, ensuring the safety and wellbeing of all staff.

The board also manages overall company risk using a risk register which is updated and reviewed quarterly.

## **Part 1 – A summary of the duties of a director**

When you become a company director you take on whole new set of responsibilities. Along with your fellow board members you will set out the strategy of your business. This is an outline of the key duties that come with being a director.

### **The role of the board**

The board of directors of a company is primarily responsible for:

- Determining the company's strategic objectives and policies
- Monitoring progress towards achieving the objectives and policies.
- Appointing senior management
- Accounting for the company's activities to relevant parties, e.g. constituents

### **Appointing directors**

The first directors of a company are appointed at the time of its registration. On registration, the persons named will be deemed to have been appointed as the first directors. Subsequent appointments are governed by the company's [articles of association](#). Typically, the articles will provide for the board of directors to fill any casual vacancies or to appoint additional directors up to the maximum number specified by the articles.

On appointment, a new director will be asked to provide certain personal information (full name, address, date of birth, nationality, country of residence, former names and business occupation) to be included in the relevant form which the director is required to sign to signify consent to act as a director. It is possible for a director to file a service address at Companies House as well as his or her home address. It will be the service address (which can be the registered office of the company) that appears on the public record. Additionally, the director will give a general notice of any interests in contracts involving the company.

On a practical note, the new director should make sure that he/she receives: a copy of the company's memorandum and articles of association; details of the business and affairs of the company, e.g. recent board minutes and management accounts; and the statutory reports and accounts for the past two years. These can all be found in the secure board section of the LMC website.

### **What powers do directors have?**

The directors are generally responsible for the management of the company, and they may exercise all the powers of the company. However, the extent of their authority may be constrained by the Companies Act 2006 and the articles of association. For example, articles of association often include provisions and restrictions on borrowing by the company.

Generally, the directors must act collectively as a board to bind the company. However, the articles usually entitle the board to delegate powers to individual directors as considered appropriate. In practice, most of these are delegated to the secretariat to oversee the day to day running of the company.

### **What are the duties of a Director?**

Directors need to be aware that they are personally subject to statutory duties in their capacity as directors of a company. In addition, the company as a separate legal entity is subject to statutory controls and the directors are responsible for ensuring that the company complies with such statutory controls.

The Companies Act 2006 codified certain common law and equitable duties of directors for the first time. The act sets out the general duties of directors, which are:

- to act within powers in accordance with the company's constitution and to use those powers only for the purposes for which they were conferred.
- to promote the success of the company for the benefit of its members
- to exercise independent judgement
- to exercise reasonable care, skill, and diligence
- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare an interest in a proposed transaction or arrangement

The statutory duties that replace the fiduciary or equitable duty are interpreted in accordance with the previous case law, which remains relevant. These statutory duties cannot be seen in isolation because in addition a director will be subject to a wide range of regulation and legislation including the Insolvency Act 1986, the Company Directors' Disqualification Act 1986, the Health and Safety at Work etc Act 1974 and the Corporate Manslaughter and Corporate Homicide Act 2007.

A private company is not required to appoint a company secretary and where no company secretary is appointed the duties and responsibilities of the company secretary will fall on the directors.

Directors may be liable to penalties if the company fails to carry out its statutory duties. However, they may have a defence if they had reasonable grounds to believe that a competent person had been given the duty to see that the statutory provisions were complied with e.g. the CEO.

One of the main statutory responsibilities falling on directors is the preparation of the accounts and the report of the directors. It is the responsibility of the directors to ensure that the company maintains full and accurate accounting records. This includes the preparation of a balance sheet and a profit and loss account for each financial period of the company, and the presentation of these to shareholders and, subject to various exemptions, the filing of the accounts and report of the directors with the Registrar of Companies.

### **What liabilities do I have as a director?**

A company director can be held personally liable for losses incurred by a business which are proven to be the result of board decisions, or a failure to act properly. For this reason, Directors Liability Insurance is an essential protection for a company director.

Directors should be aware of the effects of the Company Directors' Disqualification Act 1986, which could lead to the disqualification from acting as a director of a company for a period of between two and 15 years, and the Insolvency Act 1986 which gives rise to the possibility of directors being made

personally liable for the company's debts, the Health and Safety at Work etc Act 1974, and the Corporate Manslaughter and Corporate Homicide Act 2007.

#### Company Directors' Disqualification Act 1986

The circumstances in which an application may be made for the disqualification of a director are as follows:

- the director has been guilty of three or more defaults in complying with companies' legislation regarding the filing of documents with the Registrar of Companies during the preceding five years;
- he or she is, or was, a director of a company that has at any time become insolvent and that his/her conduct as a director of that company makes him/her unfit to be concerned in the management of a company.
- the director is found to be guilty of wrongful or fraudulent trading as defined in the Insolvency Act 1986 (see below).

#### What other legislation should I be aware of?

##### **Insolvency Act 1986**

*Wrongful Trading:* If a company has gone into insolvent liquidation and before that liquidation took place a director knew, or ought to have known, that there was no reasonable prospect that the company could avoid the liquidation, then the court may declare that the director makes a personal contribution to the company's assets.

However, the director will not be made personally liable in circumstances where the director can show that every step was taken prior to the liquidation to minimise the potential loss to the company's creditors.

*Fraudulent Trading:* Under this heading the court may also require a director to make a contribution to the company's assets if, in the course of the winding up of a company, a director was knowingly a party to the carrying on of the company's business with the intent to defraud the creditors.

##### **Health and Safety at Work Act 1974**

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. Larger public and private sector organisations need to have formal procedures for auditing and reporting health and safety performance.

If a health and safety offence is committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted under section 37 of the Health and Safety at Work etc Act 1974.

Those found guilty are liable for fines and, in some cases, imprisonment. In addition, the Company Directors Disqualification Act 1986, section 2(1), empowers the court to disqualify an individual convicted of an offence in connection with the management of a company. This includes health and

safety offences. This power is exercised at the discretion of the court; it requires no additional investigation or evidence.

Individual directors are also potentially liable for other related offences, such as the common law offence of gross negligence manslaughter. Under the common law, gross negligence manslaughter is proved when individual officers of a company (directors or business owners) by their own grossly negligent behaviour cause death. This offence is punishable by a maximum of life imprisonment.

### **Corporate Manslaughter and Corporate Homicide Act 2007**

Under this Act, an offence will be committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care owed to the organisation's employees or members of the public, which results in death. The maximum penalty is an unlimited fine and the court can additionally make a publicity order requiring the organisation to publish details of its conviction and fine.

### **What is the Statement of Directors Responsibilities?**

The Statement of Director Responsibilities essentially codifies, within a financial context, the implications of the General Duties for all Company Directors. The result is a standard "Statement of Directors' Responsibilities" that should be included within every Directors' Report contained within the Annual Accounts. These Director Responsibilities for finance apply to all directors, irrespective of whether or not the standard "Statement of Directors' Responsibilities" has actually been included in the Annual Accounts.

The published Statements of Director Responsibilities are fundamentally the same for all companies, apart from minor variations of grammar and word sequencing. It would be against the law for any director to approve their own annual accounts without having a reasonable basis for that approval. The law has clarified what would be required to constitute a reasonable basis for that opinion. The result is the **Statement of Directors Responsibilities**. The components of which and their implications, are individually discussed below.

#### **The directors are responsible for preparing the directors' report and the financial statements in accordance with applicable law and regulations**

This means that the directors are collectively responsible for ensuring that the annual directors' report and the financial statements are submitted on time to Companies House. If they are not submitted or are not in compliance with the law. Each and every director is jointly and severally liable for any breaches. They cannot simply assume that it is the sole responsibility of the Finance Director or of the auditors.

#### **The directors must not approve the financial statements unless they are satisfied that they give a true and fair view**

This requires directors to be sufficiently familiar with the company and its overall financial performance to know whether the financial figures agree with the operational results the management accounts. This in turn requires the directors to genuinely engage with and question the accounting systems of the company.

#### **The directors must select suitable accounting policies and apply them consistently**

To do this the directors must understand the accounting policy options available to the company and know which accounting policies have been selected and how those selections were made. This

requires the directors to fully understand the fundamental accounting concepts of **Matching, Prudence** and **Accruals**. They would also need to know how these fundamental accounting concepts had been applied to the accounting functions of the company, in order to decide if they were suitable and consistently applied.

#### **Make judgments and estimates that are reasonable and prudent**

To understand whether the judgments and estimates used are reasonable and prudent. Every Director would need to know what those estimates were and how they related to the financial numbers put before them.

#### **The directors must prepare the financial statements on the going concern basis, unless it is inappropriate**

To decide that the going concern basis is appropriate the directors would at least need to refer to realistic cash flow and profit forecasts. They would need to consider any material risks, if any facing the company and its clients. Any contingent liabilities would also need to be considered. These are critical activities to flag at the earliest possible stage, any budding insolvency issues.

#### **The directors are responsible for keeping adequate accounting records**

These must be good enough to show the financial position of the company at any time throughout the year.

#### **The directors are responsible for the prevention and detection of fraud**

This is mainly about making the directors realise that they are solely responsible for preventing and detecting fraud. They cannot escape liability by putting any blame on the auditors or the Finance Director.

Many directors mistakenly believe that the prevention and detection of fraud is the sole responsibility of the Auditors or of the Financial Director. This is most definitely not true. A careful reading of any Audit Report would establish that the Audit simply confirms that based upon the schedules shown and the statements made to the Auditors by the Senior Management; the accounts present a true and fair view. That is very different to saying that the accounts are correct. This approach arises from the fact that the schedules shown to the Auditors and the statements made could have been deliberately misleading or factually incorrect.

That is why the Companies Act makes it clear that legally these responsibilities rest solely with the Board of Directors (collectively).

The Director Responsibilities include ensuring that there are suitable internal controls in place to prevent fraud and to ensure that the accounts truly reflect the actual position of the company at any point in time.

The General Duties requirements for Directors to exercise “**Independent Judgement**” and “**Reasonable Care, Skill and Diligence**” would in any case, prevent the Directors from simply accepting the assurances of third parties, even their own staff, that the accounts are correct and that the company assets are safe from fraud and other irregularities.

**And if you'd like to, here are 3 summary quizzes that consolidate the above information!**

[Directors' Duties Quiz | Solicitors London | Carter Lemon Camerons \(cartercamerons.com\)](#)

[Oxford University Press | Online Resource Centre | Multiple choice questions \(oup.com\)](#)

[Oxford University Press | Online Resource Centre | Multiple choice questions \(oup.com\)](#)

This induction document is not exhaustive, and the small nature of the LMC means many of the things referenced above may seem not to apply. The core functions of a director remain, as do legal responsibilities.

If you would like to know more, please feel free to look at the following resources and read the extended section below:

[Companies House webinars - GOV.UK](#)

[NHSLeadership-HealthyNHSBoard-2013.pdf](#)

[Company Law and Governance | Croner-i Tax and Accounting \(croneri.co.uk\)](#)



## Part 2 - Additional reading with further detail on each of the legal duties under the Companies Act

**The Companies Act 2006 deems all Board Directors to share equally in the legal responsibilities of running a company.**

It does not differentiate between Executive and Non-Executive Directors. This means that the legal duties and potential liabilities of Non-Executive Directors are exactly the same as those of the Executive Directors, no matter how little or how much time they spend on Board Matters. It would be impossible to fulfil the legal duties of a Board Director without a good understanding of those legal roles and responsibilities according to the Companies Act 2006.

### **Legal Duties of Directors under The Companies Acts 2006**

The Companies Acts 2006 contains seven specific statutory duties of a director. These important legal duties are collectively called the “General Duties”. The General Duties are applicable to all Board decisions and all Director activities within all UK companies. The General Duties are different to the Statement of Directors Responsibilities, which refers to the responsibilities of the Directors for all matters financial, including their Annual Accounts.

Directors face many challenges and obligations, arising from many sources. Most of these are legal obligations, such as those contained within (plus many others):

- **1. The Companies Act 2006**, CA 2006; especially the 7 statutory director duties, collectively known as the **General Duties**. The **General Duties** apply to all Director actions and decisions. They are effectively principles which directors must adhere to at all times
- **2. Health and Safety** legislation
- **3. Money Laundering** laws
- **4. The Bribery Act** and the **Criminal Finances Act**, which covers tax evasion. These are both unusual in that they have created an offence of “Failing to Prevent...”and they have reversed the normal presumption of innocence to a presumption of guilt
- 5. Other laws concerning **Economic Crimes**
- **6. Climate** related legislation

### Section 1 - General Duties of Directors under the Companies Act 2006

The 7 General Duties of Directors under the Companies Acts 2006 are:

- They must always **Act Within Their Powers**. This would include only using their powers for the benefit of the company
- They have a duty at all times to **Promote The Success of The Company** for the benefit of the shareholders as a whole. Taking into account the interests of all of the Stakeholders (employees, customers, suppliers, climate community and the economy) and the consequences of the decisions in the long term
- They must exercise **Independent Judgment** in all matters. This means that every director must make up their own mind on every issue. They can take expert advice, but they must not simply accept the opinions of their fellow directors, even from those with relevant specialist expertise.

- They must exercise **Reasonable Care, Skill and Diligence** at all times. Due to a lack of actual experience or qualifications, a Director may be unable to deliver the standards that might reasonably be expected of the Director; even if they are performing to the best of their abilities. These duties naturally flow into each other. For example, it would be difficult to exercise independent judgment regarding the year-end Financial Accounts, without first understanding accounting policies and Generally Accepted Accounting Practice (GAAP). This initial homework would be exercising **Reasonable Care, Skill and Diligence**.
- They have a duty to **Avoid Conflicts of Interest**, wherever possible. These could arise from multiple directorships, e.g. if you are also on the board of a competitor/customer/supplier or have a financial stake in any of these. For this purpose, directors are deemed to be connected to their brothers and sisters.
- They must not **Accept Benefits from Third Parties** unless they are of minor commercial value and unlikely to influence the Director.
- They must **Declare Interests in any Proposed Transaction or Arrangement** and steps should be taken to minimise the impact of any **Conflicts of Interest** that cannot be avoided

The implications of following the general duties in every aspect of their work would require all Directors, at least in part, to develop a wide range of knowledge across a host of areas, that prior to becoming Directors they may have previously considered to be specialist areas that they did not need to know about. Failure to recognise the need to move beyond being a purely functional specialist to becoming actively involved in a broad range of decisions whilst exercising **Independent Judgment** and taking **Reasonable Care, Skill and Diligence** could cause legal problems and might attract personal liabilities for the Director.

The area in which Directors are most often caught out is connected to the finances of the company and commonly related to insolvency. 1200 Directors are usually disqualified from being directors annually, due to shortcomings identified by the Liquidator. The most common defence historically put forward by directors was along the lines of, "I did not realise that was our responsibility." For this reason, there is a standard **Statement of Director Responsibilities** which sets out the responsibilities of the Directors for the company's financial affairs. These Director Responsibilities are different to the General Duties of Directors, which are seven specific statutory director duties contained in the Companies Acts 2006, CA 2006. The General Duties are applicable to all Board decisions and all Director activities within all UK companies.

## **Section 2 - Health and Safety Responsibilities of Directors and Managers**

Directors, board members and business owners of organisations of all sizes must provide effective leadership for health and safety. Protecting the health and safety of employees, or members of the public who may be affected by work activities, is an essential part of risk management and must be led by directors and senior managers. It is not simply a matter for middle managers.

Many health and safety prosecutions in recent years have been the result of failures in leadership. Directors can be personally liable when health and safety duties are breached, and members of a board can have both collective and individual responsibility.

There is a positive side to all this as well as the responsibilities.

The HSE publication INDG417 *Leading Health and Safety at Work: Actions for Directors, Board Members, Business Owners and Organisations of All Sizes* states that addressing health and safety should not be seen as a regulatory burden. Directors are instead advised to concentrate on the benefits:

- reduced costs and reduced risks — employee absence and turnover rates are lower; accidents are fewer and the threat of legal action is lessened
- improved standing among suppliers and partners
- a better reputation for corporate responsibility among investors, customers and communities
- increased productivity — employees are healthier, happier and better motivated.

#### The role of the director

Directors have a key role to play in ensuring that health and safety is properly managed and that risks are controlled. The HSE has repeatedly stressed the need for boardrooms to improve their performance in this area and take greater responsibility for health and safety within their organisations.

The health and safety responsibilities of directors should be clearly articulated in the organisation's statement of health and safety policy and arrangements.

The HSE suggests that directors and boards need to:

- review the health and safety performance regularly
- ensure that health and safety policy statements reflect current board priorities
- ensure that management systems provide effective monitoring and reporting procedures
- be kept informed about significant health and safety failures and of the outcome of the investigations into their causes
- ensure that implications in respect of health and safety are addressed in all decisions
- ensure that risk management systems for health and safety are in place and effective.

All board members should be made aware of the need to ensure that statutory health and safety law and guidance is taken into account whenever business decisions are taken. In practice, the larger the organisation, the more individual directors may lead on health and safety matters. However, this will not usually impact on the collective responsibility for the Board.

#### Guidance for directors

The HSE recommends in their publication NDG417 *Leading Health and Safety at Work: Actions for Directors, Board Members, Business Owners and Organisations of All Sizes* (referred to earlier) that:

- directors and boards should set the direction for effective health and safety management.
- health and safety should appear regularly on the agenda for board meetings.
- the presence on a board of a health and safety director can be a strong signal that the issue is being taken seriously.

- health and safety should be integrated into key governance structures, including board subcommittees such as risk, remuneration and audit.
- health and safety arrangements are adequately resourced.

INDG417 sets out an agenda for the effective leadership of health and safety with strong and active leadership from the top: worker involvement, and assessment and review as its essential principles.

This includes a checklist for directors based on the Plan, Do, Act, Check (PDCA) model. This can be applied to all sizes of organisations, not just larger ones and those who have management systems subject to ISO 9001:2015 (Quality) or ISO 14001:2015 (Environmental Management) will already be familiar with PDCA.

<b>Plan</b>	<ul style="list-style-type: none"> <li>• <b>How do you demonstrate the board’s commitment to health and safety?</b></li> </ul>
<b>Do</b>	<ul style="list-style-type: none"> <li>• What have you done to ensure your organisation, at all levels including the board, receives competent health and safety advice?</li> <li>• How are you ensuring all staff — including the board — are sufficiently trained and competent in their health and safety responsibilities?</li> <li>• How confident are you that your workforce, particularly safety representatives, are consulted properly on health and safety matters, and that their concerns are reaching the appropriate level including, as necessary, the board?</li> <li>• What systems are in place to ensure your organisation’s risks are assessed, and that sensible control measures are established and maintained?</li> </ul>
<b>Check</b>	<ul style="list-style-type: none"> <li>• How well do you know what is happening on the ground, and what audits or assessments are undertaken to inform you about what your organisation and contractors actually do?</li> <li>• What information does the board receive regularly about health and safety, eg performance data and reports on injuries and work-related ill health?</li> <li>• Do you compare your performance with others in your sector or beyond?</li> <li>• Where changes in working arrangements have significant implications for health and safety, how are these brought to the attention of the board?</li> </ul>
<b>Act</b>	<ul style="list-style-type: none"> <li>• What do you do to ensure appropriate board-level review of health and safety?</li> </ul>

#### Appointing a health and safety director

Appointing a “health and safety director” creates a board member who can ensure that health and safety risk management issues are properly addressed, both by the board and by the organisation as a whole. The chairman and/or chief executive have a critical role to play in ensuring that risks are properly managed and that the health and safety director has the necessary competence, resources and support of other board members to carry out his or her functions.

It is important that the role of the health and safety director should not detract either from the responsibilities of other directors for specific areas of health and safety risk management or from the health and safety responsibilities of the board as a whole.

Appointing a health and safety director may not be an option in a small business and this means the directors need to understand the benefits and responsibilities of health and safety compliance — this is not something that can be delegated to a junior person.

#### Establishing a “safety culture”

Directors and boards are often referred to as being responsible for the “safety culture” in an organisation. This is the way that safety is viewed in general. A positive safety culture will see safety as a high priority and as benefiting performance.

There is little doubt that the strongest influence on safety culture within most businesses is “the message from the top”. The directors of a company send out signals, either consciously or subconsciously, of what they expect of their employees. Strong leadership from the top is vital in delivering effective control of risks to health and safety.

#### Prosecutions of Directors

Directors, managers and company secretaries are under a duty to ensure that the company’s statutory duties are performed and can be prosecuted if they fail in this regard. Most prosecutions occur under the Health and Safety at Work, etc Act 1974 (HSWA), but other legislation may be employed where appropriate. Directors may also be prosecuted under common law, particularly for manslaughter.

#### The Health and Safety at Work, etc Act 1974

If a health and safety offence is committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted under s.37 of the HSWA.

Anyone who acts in a managerial capacity may be held liable under s.37, irrespective of their title. Persons who purport to act as directors, managers, secretaries or similar officers are also equally liable.

Directors must make sure that any independent third party appointed to carry out the necessary duties is competent and properly supervised. However, they cannot escape responsibility for health and safety matters by delegating responsibility to the third party. They remain liable. This is a key point to remember.

Section 37 also applies where the affairs of a body corporate are managed by its members. The acts and defaults of a member in connection with their functions of management can be treated as if they were a director of the body corporate.

#### Corporate Manslaughter and Corporate Homicide Act 2007

Under the Corporate Manslaughter and Corporate Homicide Act 2007, an offence is committed where failings by an organisation’s senior management are a substantial element in any gross breach of the duty of care owed to the organisation’s employees or members of the public, which results in death.

### Common law

A director may also be prosecuted for manslaughter under common law. Prosecution for manslaughter under common law has to link a company's guilt to the gross negligence of an individual who is said to be the embodiment of the company. In practice, it has proved very difficult to prosecute large organisations and the only successful prosecutions have been against small companies where the director and company are essentially one and the same.

### Companies Act 1985

According to the Companies Act 1985 (as amended by the Companies Act 2006), the Secretary of State may prescribe cases whereby directors' reports will contain information about the arrangements in force for that year for:

- securing the health, safety and welfare at work of the employees of that company (and any subsidiary company)
- protecting other persons against risks to health resulting from the activities at work of the employees.

### Company Directors Disqualification Act 1986

Under the Company Directors Disqualification Act 1986, the court may disqualify a person from being a director of a company if they are convicted on an indictable offence, whether on indictment or summarily, if the offence was in connection with the management of the company.

A Magistrates' Court may impose a disqualification for up to five years, while higher courts may disqualify for up to 15 years.

### **Section 3: Money laundering laws**

Company law requires all Board Directors to understand their own accounts and holds the Directors collectively responsible for the validity of the annual financial accounts. The law demands a good knowledge of finance from directors as does success in business. Directors must not approve their financial statements, unless they are satisfied that they give a true and fair view of the state of affairs of the company and of its profit or loss.

Neither the job titles, nor the job functions of the individual directors can eliminate or reduce their individual or collective responsibility for the validity of their internal accounts and of their annual year end accounts. Legally the directors cannot argue that they are not their responsibility, nor can they rely on the fact that the auditors have not flagged any problems in their audit opinion.

In preparing their financial statements that will be submitted to Companies House, all the directors are collectively required to:

- Select suitable accounting policies and then apply them consistently,
- Make judgments and estimates that are reasonable and prudent,
- Prepare the financial statements on the going concern basis unless it is inappropriate.
- Keep adequate accounting records,

- Safeguard the assets of the company,
- Take reasonable steps for the prevention and detection of fraud

#### **Section 4 - Other laws concerning economic crimes.**

A director who breaches the obligations and duties imposed on him by his office may be liable to compensate the company for breach of duty, may incur personal liability for the company's debts, may also face criminal or civil penalties and may be disqualified from acting as a director. The position of the company director has never been the subject of more scrutiny than it is today.

The obligations imposed on directors by the law in the UK are wide in number. They may relate to specific types of business (for example, many specific rules are applicable to businesses in the financial services sector) or to the way the business is operated (for example, health and safety matters).

While many are familiar with the general duties imposed on all directors under sections 171 to 177 of the Companies Act 2006 (the 2006 Act), as well as the numerous other obligations imposed under the 2006 Act, attention also needs to be paid to the variety of other duties and obligations that other statutes and laws impose, the breach of which may also result in civil and criminal penalties. The below note seeks to highlight some of the additional obligations that directors need to be aware of to ensure compliance.

#### **Civil penalties**

- Financial Services and Markets Act 2000 and the Financial Services Act 2012: impose civil penalties for the abuse of confidential inside information in connection with dealings in the company's securities, for example, where a director discloses such information except in the proper performance of his duties or disseminates false or misleading information in relation to the company's securities.
- Insolvency Act 1986 (IA): renders a director personally liable to contribute to the company's assets if the company goes into insolvent liquidation where: (i) the director has failed to fulfil his duties properly, or at all, causing the company to suffer loss (section 212 of the IA); (ii) the company's business has been carried on for a fraudulent purpose (section 213 of the IA) - if the directors knew that the company was carrying on business when there was no reasonable prospect of it ever paying its debts, the company will be treated as having carried on business for a fraudulent purpose (fraudulent trading is also a criminal offence punishable by imprisonment or a fine or both (section 993 of the 2006 Act)); or (iii) the director knew, or ought to have concluded, that there was no reasonable prospect of the company avoiding insolvent liquidation and the director failed to do everything that a reasonably diligent person would have done to minimise the potential loss to creditors (so-called 'wrongful trading') (section 214 of the IA).

#### **Criminal offences**

- Criminal Justice Act 1993: it is a criminal offence for a director (or any other 'insider') to make use of confidential inside information in connection with dealings in the company's securities or to disclose such information except in the proper performance of his duties.

- Fraud Act 2006: it is a criminal offence for a director to: (i) dishonestly make a representation which is untrue or misleading where he knows that it is, or might be, untrue or misleading; or (ii) dishonestly fail to disclose to another person information which he is under a legal duty to disclose. Both of the offences require the intention of making a gain or causing loss or risk of loss to another person.

Bribery Act 2010 - [The Bribery Act 2010 - Guidance \(justice.gov.uk\)](https://www.justice.gov.uk/bribery-act-2010)

- created four criminal offences: (i) offering, promising or giving a bribe (section 1 of the BA 2010); (ii) requesting, agreeing to receive or accepting a bribe (section 2 of the BA 2010); (iii) bribing a foreign public official to obtain or retain business (section 6 of the BA 2010); and (iv) a strict liability offence for any company that fails to prevent bribery by associated persons acting on behalf of the company (section 7 of the BA 2010).

Where a company is convicted of an offence under section 1, 2 or 6 of the BA 2010 and that offence is proved to have been committed with the consent or connivance of a senior officer of the company, the senior officer as well as the company will be guilty of an offence (section 14 of the BA 2010). Section 7 of the BA 2010 is a strict liability offence for the company unless it can show that it has “adequate procedures” in place to prevent bribery. Therefore, the directors should satisfy themselves that there are such adequate procedures in place to prevent instances of bribery.

- Health and Safety at Work etc Act 1974: states that any offence committed by the company with the consent or connivance of, or attributable to any neglect on the part of, any director, manager, secretary or similar officer could lead to that person being prosecuted as well as the company.
- Company Directors Disqualification Act 1986: renders a director criminally liable, and potentially also personally liable for the company’s debts incurred as a result, if he acts in the management of the company while disqualified or acts on the instructions of someone whom he knows to be disqualified.
- Equality Act 2010: a director may be personally responsible or jointly and severally liable with the company where discrimination (direct or indirect), harassment or victimisation takes place because of a person’s age, disability, gender, sexual orientation, marital/civil partnership status, pregnancy, maternity, race, religion or belief, even where it takes place in the ordinary course of business or where authorised by the company.
- Environmental legislation: if an environmental offence is committed with the consent or connivance of, or is attributable to any neglect on the part of, a director, manager, secretary or other officer of the company, then that person (as well as the company) can be prosecuted.
- Data Protection Act 1998: it is an offence to knowingly or recklessly obtain, disclose or procure the disclosure of information without the permission of the data controller. Directors can be personally liable in the case of breaches which they consented to, or encouraged, or which can be attributed to their neglect.
- Competition Law: It is a criminal offence punishable by imprisonment or fine, for an individual, including a director, to be involved in anti-competitive agreements with competitors. This includes formal or informal arrangements regarding bidding or allocation



of customers or markets, as well as more obvious anti-competitive conduct such as price fixing.

- Misrepresentation: In addition, directors may be personally liable for damages (i) if they make a fraudulent or negligent misrepresentation in the course of negotiating a contract between the company and a third party; (ii) under a contract if they fail to make it clear that they are contracting as an agent of the company and not personally; or (iii) to a third party for damages for breach of an implied warranty of authority if they conclude a contract on behalf of the company but exceed their authority in so doing.

### **Section 5 - Climate related legislation**

In the UK, the two directors' duties most relevant to climate change arise under the Companies Act 2006. First, according to section 172 of the Act directors are under the fiduciary duty to promote the success of the company for the benefit of its members as a whole. There is an express obligation under section 172 to 'have regard' to certain factors when acting in good faith to promote the success of the company. These factors include 'the impact of the company's operations on the community and environment' and 'the likely consequences of any decision in the long term'. Climate change is often relevant for both of these factors. Second, under section 174 of the Act directors must 'exercise reasonable care, skill, and diligence'.

Given what the Bank of England tells us about ['the breadth and magnitude'](#) of climate risks to entities across the whole economy, directors should consider climate risks when fulfilling their duties under both sections 172 and 174.