

The background of the slide is a photograph of a construction site at dusk or dawn. The sky is a pale, hazy blue. In the foreground, the dark silhouettes of steel beams and scaffolding are visible. A crane hook is suspended in the center, holding a large, dark rectangular object. A worker is visible at the bottom center, standing on a platform. The overall mood is industrial and professional.

Health and Safety Update

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Why safety needs to be a priority

- + Accidents and investigations are costly and time consuming
- + Risk of exposure of sensitive operations
- + Reputational damage which impacts on the whole organisation
- + Damage to morale
- + Impact on ongoing operations
- + Cost and impact of legal and regulatory activity

Corporate Liability for employees

- + Health and Safety at Work Act 1974
- + 2(1) It shall be the duty of every employer to ensure , *so far as is reasonably practicable*, the health, safety and welfare at work of all of his employees

Corporate Liability for non employees

- + S3 Health and Safety at Work Act 1974
- + (1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, *so far as is reasonably practicable*, that persons not in his employment who may be affected there
- + (2) – extends to self employed persons

Reverse burden of proof

+ S40 HSWA

+ .."it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement."

Extension of liability to directors

+37(1) Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly

Offences attributable to others

- + S36 Where the commission of any person of an offence under any of the relevant statutory provisions is due to the act of default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence...whether or not proceedings are brought against the first mentioned person.

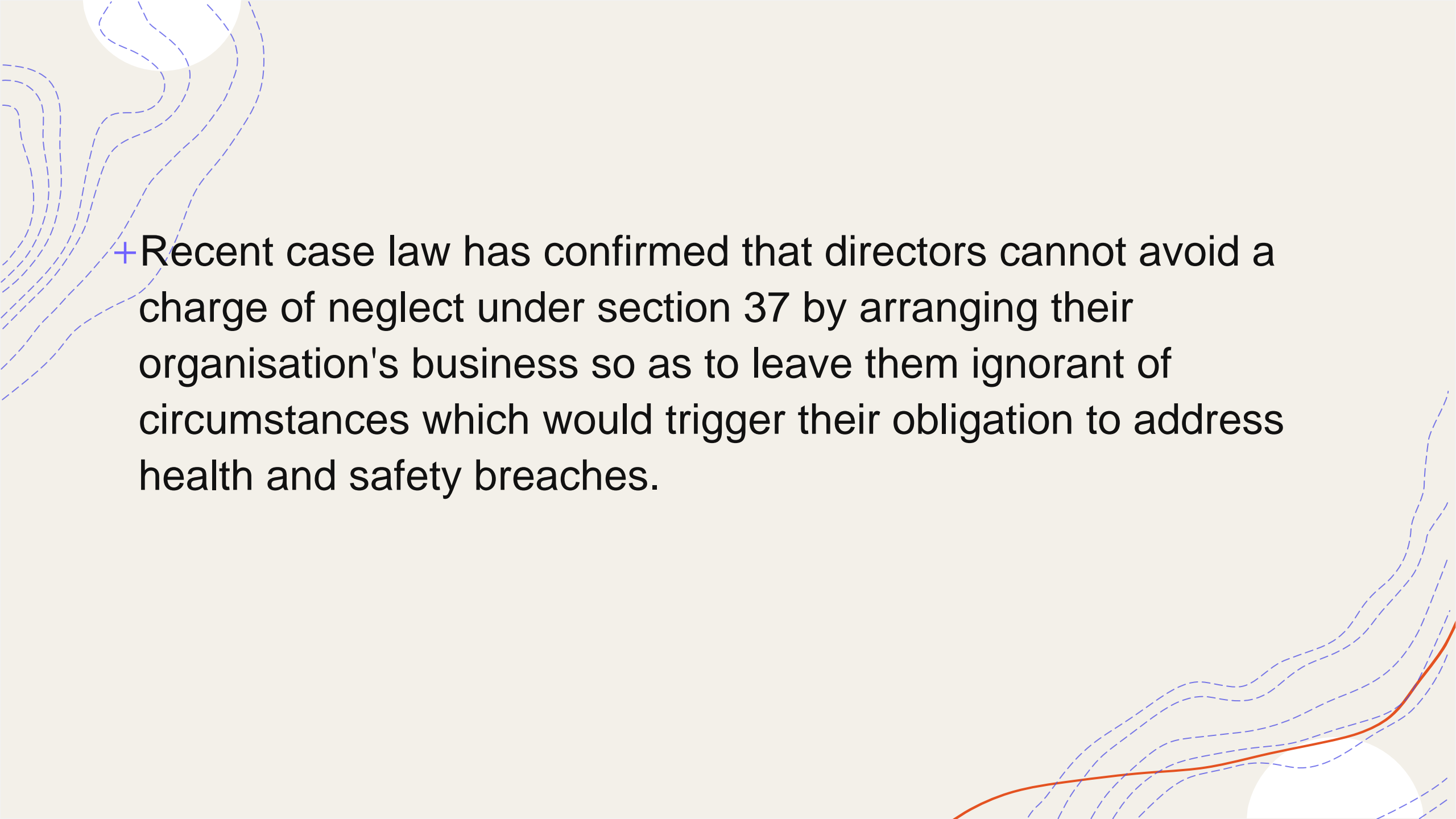
Liability for employees acts

+S21 Management of Health and Safety at Work Regulations

Nothing in the relevant statutory provisions shall operate so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of

+ (a) an employee

+ (b) a person appointed by him [to assess health and safety risks and ensure compliance]



+ Recent case law has confirmed that directors cannot avoid a charge of neglect under section 37 by arranging their organisation's business so as to leave them ignorant of circumstances which would trigger their obligation to address health and safety breaches.

Penalties

- + The maximum penalty for failure by an employer to comply with a general duty imposed by HSWA 1974, ss 2–6 on summary conviction is six months imprisonment or an unlimited fine or both. On indictment the maximum penalty is two years imprisonment or a fine or both.
- + Levels of fine are determined in accordance with the Sentencing Guidelines which were revised in February 2016.

Sentencing Guidelines

- + Calculation based on culpability and harm
- + Calculation is based on annual turnover
- + For companies with a turnover in excess of £50 million, starting point is £4 million – with a category of £2.6 to £10 million for the most serious cases
- + The fine may be the cheapest cost! Add also legal fees, civil claims and reputational damage.

ALARP

- + The definition set out by the Court of Appeal (in its judgment in *Edwards v. National Coal Board*, [1949] 1 All ER 743) is:
- + "'Reasonably practicable' is a narrower term than 'physically possible' ... a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them."

R v HTM [2007] All ER 665

+ Judge accepted the Defence argument that the issue of reasonable practicability had to be approached by looking at four key factors: whether there was an appreciable risk to employees' safety; insofar as there was risk, what the incidence of that risk was; how that risk had been addressed by measures already in place; and how effective and costly it would be to implement further measures.

Determining risk reduction ALARP

- + Determining that risks have been reduced ALARP involves an assessment of the **risk** to be avoided, of the **sacrifice** (in money, time and trouble) involved in taking measures to avoid that risk, and a **comparison** of the two.
- + This process can involve varying degrees of rigour which will depend on the nature of the hazard, the extent of the risk and the control measures to be adopted. The more systematic the approach, the more rigorous and more transparent it is to the regulator.
- + The greater the initial level of risk under consideration, the greater the degree of rigour HSE requires of the arguments purporting to show that those risks have been reduced ALARP.

Sacrifice

- + The costs which should be considered are only those which are necessary and sufficient to implement the measures to reduce risk. For any particular measure, these might include the cost of installation, operation, and maintenance, and the costs due to any consequent productivity losses resulting directly from the introduction of the measure Temporary shutdown costs incurred during implementation must be included
- + Individual duty-holders' ability to afford a control measure or the financial viability of a particular project is not a legitimate factor in the assessment of its costs.
- + The size and financial position of the duty-holder is not relevant when making judgements on whether risks have been reduced ALARP.
- + Benefits gained by duty-holders as a result of their instituting a health and safety measure should be offset against the costs they incur.

Good Practice

- + There is often a limited number of options for dealing with a particular health and safety issue and the optimum option may have been already established as relevant good practice (e.g. ACOP). Such documents may only deal with some of the risks which the duty-holder must consider. Good practice which covers all the risks which a duty-holder must address in order to reduce risks ALARP may not be available, and this is particularly likely to be so for major investments in safety measures or unique arrangements.
- + A universal practice in the industry may not necessarily be good practice or reduce risks ALARP. It may cease to be relevant with the passage of time

Leading Health and Safety

- + 1. How do you demonstrate the board's commitment to health and safety?
- + 2. What do you do to ensure appropriate board-level review of health and safety?
- + 3. What have you done to ensure your organisation, at all levels including the board, receives competent health and safety advice?
- + 4. How are you ensuring all staff – including the board – are sufficiently trained and competent in their health and safety responsibilities?
- + 5. 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?
- + 6. What systems are in place to ensure your organisation's risks are assessed, and that sensible control measures are established and maintained?
- + 7. 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?
- + 8. What information does the board receive regularly about health and safety, eg performance data and reports on injuries and work-related ill health?
- + 9. What targets have you set to improve health and safety and do you benchmark your performance against others in your sector or beyond?
- + 10. Where changes in working arrangements have significant implications for health and safety, how are these brought to the attention of the board?