

Business risks & the law

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Pinsent Masons LLP

- Global law firm but with a strong regional presence
- Law firm of the year 2016
- Substantial experience in construction and manufacturing sectors
- Tier One team for H&S

Headline legal risks

- Safety, health & the environment
 - Thames Water - £20m
 - Sentencing guidelines
- Competition – some industries are considered more high risk than others
- Data breach – Information Commissioner is pursuing an aggressive line through financial sanctions
- Corporate economic crime/bribery and tax evasion/avoidance
- Contractual formation and T&C's etc
- And now UK's Modern Slavery Act 2015

What's important?

- There is a moral dimension
- A good deal of emphasis has been placed on bribery and competition matters:
 - Manuals and compliance
 - Dawn raid training
 - On-line compliance tools
- All vitally important but:
- How many prosecutions and fines have been handed down in those type of offences – contrast to:

SHE matters

- New sentencing guidelines for environmental and safety offences
- Fines in the millions and now in Thames Water the many millions
- And the HSE prosecute over 600 cases a year
- So for businesses where this is a live operational risk what becomes the biggest legal risk – bribery or SHE interventions?
- Leading to the question – how is this all managed?

Structural issues

- Who has overall responsibility for identifying managing risks?
- If there is a legal team what is their role?
- Is HS&E seen as something apart and managed separately
- How is this reported and actioned by the senior leadership team?
- How are incidents investigated – will teams be marking their own homework still?
- How is this all relevant to business continuity and planning?

Continuity issues – Legal risks

- Inadequate insurance/no insurance
- Inadequate planning causing:
 - A confused response/lack of leadership – what are we investigating and why?
 - Reacting to events and demands of clients/customers and regulators
 - Admissions of liability
 - The creation of additional damaging materials
- Contractual liabilities – can no longer supply or meet contractual requirements

Any solutions?

- Ensure adequate planning takes into account legal issues and risks – legal privilege, document preservation and destruction procedures, establishing an investigation team
- Test that plan
- Review contractual terms and arrangements and insurance provisions
- Effective training both at operational level and senior management where complexity of organisation requires it

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