

Achieving Effective Compliance in a Regulatory Environment

Regulatory issues can have a huge impact on the fortunes of your business. Why? Because regulations have become more complex, regulators more focused and the consequences of breaches more severe. Criminal investigations and prosecutions brought under environmental, safety and health (ESH), and licensing legislation now attract substantial (and in many cases, unlimited) fines, with an increasing number of custodial sentences being imposed on directors, employers and employees. Apart from the criminal consequences, a prosecution may also have far-reaching commercial effects on your business.

Help is at hand. We have developed a range of support services to provide you with practical, commercial and tailored assistance where you need it most. The services are designed to be flexible to meet your business needs exactly.

We are a global law firm with the technical and practical expertise and experience necessary to design and implement solutions that are sensitive to the requirements of your business. Our Environmental, Safety & Health Group is a nationally recognised, specialist group, which draws together lawyers acknowledged by their peers and clients as experts in their field. Where appropriate, we work with specialist, experienced and trusted consultants. We will find the people with the right credentials to advise you on any aspect of compliance, risk management and trial preparation, so you do not have to.

“Squire Patton Boggs excels at providing comprehensive, sound advice in relation to workplace manslaughter, HSE, Environment Agency, local authority and trading standards prosecutions.”

The Legal 500

Risk-based Training

Investing in the skills, knowledge and competencies at all levels of an organisation is the most effective solution to preventing and mitigating the risks impacting on every business. Our lawyers can train your board, legal team and/or operational staff in relation to legal requirements, obligations and developments; directors' duties under the relevant regime(s); and the likely approach of the courts to any breach, such as sentencing powers and relevant case law.

We can also conduct “mock PACE interviews” and “mock trials” as training exercises, which, in our experience, really bring home the importance of being able to provide evidence of precautions, procedures and safeguards in place to prevent breaches of legislation and ensure compliance by employees; and the potential penalties that individuals can face, in addition to penalties faced by the company.

We also work with our consultant partners who provide executive, management and specialist training to help businesses address the risks and regulatory requirements relevant to their organisation. This strategic risk-based training includes training on competency management (training needs assessment, mentoring and coaching, professional development support); risk management (standards and models, decision-making and risk perception, tools and techniques, cultural and behavioural models, resilience and crisis management, HSEQ incident investigations); legal and technical training (standards, e.g., BSI, IEC, ISO, CEN); and accredited courses (IOSH, NEBOSH, IEMA, ILM, CIPD, GWO).

A risk-based approach to training is the most effective way to maximise business efficiencies, stimulate innovation and drive continual improvement.

24/7 Incident Support

Our 24/7 service gives you incident support at your fingertips when you need it most. Our hotline number provides 24/7 support in the event of a major accident, fatality or environmental incident. We have lawyers who are trained and qualified as lead accident investigators and as such are well placed to assist in the event of an incident or accident. If you find yourself managing such an incident and need urgent assistance, you will find one of our experienced lawyers available to provide you with immediate and practical advice, 24 hours a day, 365 days a year to ensure any crisis is managed from the outset, helping you to remain objective and in control.

Consultation

We can, of course, advise you on all of your ESH legal issues, including all aspects of criminal investigations, interviews under caution and prosecutions relating to health and safety at work, environmental pollution, waste management and disposal, packaging waste and CLP requirements, product safety and recall, WEEE, public health, food safety and information, statutory nuisances (including noise, vapour, dust and odour), breach of consents, licences, permits and authorisations and product liability and labelling. We can also advise on civil litigation in connection with environmental pollution, contaminated land, waste management and disposal, workplace accidents and fatalities, chemical spills, claims for damages and injunctions.

Risk Management

In addition, we work with external partners to provide strategic and operational risk management consulting relating to the particular political, economic and operational environment of any business. One-off consultancy and research projects are available, as well as retained services and advisory support. Consulting support is available in relation to risk management (strategic risk appraisals, organisational design and improvement, horizon scanning, risk profiling, leadership and risk culture); governance (leadership, policies – scoping and development, balanced scorecards, organisational culture, regulatory compliance, non-financial reporting); resilience (crisis management, threat assessments, communications, media and public relations, reputational management); and technical and specialist support (risk assessment, e.g., HAZID/QRA/ BowTie, cost benefit analysis, inspections/surveys, specialist investigations, expert witnesses).

Trial Preparation, Inquest and Court Services

New sentencing guidelines apply to organisations in England and Wales sentenced on or after 1 February 2016 (regardless of the date of the offence) and to all individual offenders aged 18 and over. The guidelines include a number of tables that set out starting points and ranges for sentences for the various offences, which are defined partly by reference to the turnover of an organisation (e.g., large organisations are categorised as those with a turnover of £50 million or more). Sentencing is also dependant on the court's determination of culpability and level of risk. Thorough preparation for trial should, therefore, include witness familiarisation, mitigation and financial reports where appropriate.

Court Proceedings and Advocacy

Our team includes advocates with many years' experience in magistrates' courts, Crown Courts and inquests. We will provide advocacy services anywhere in the country, or where appropriate, will partner with trusted, specialist Counsel. Our understanding of the inquest and trial processes and dealing with the sensitive issues which can be involved, including the potential for adverse publicity, is derived from years of experience advising on and representing clients at inquests, including in many cases as advocate. We also provide witness familiarisation services before an inquest or trial, where needed, to ensure that employees and others know what to expect from the process and can present their evidence correctly and confidently (please also see details of our mock interview and mock trial training service overleaf if you want to ensure your team fully understands the process, potential consequences of non-compliance and the importance of due diligence before proceedings are imminent).

Mitigation Reports

If a due diligence defence cannot be established in the event of a trial, it is important for organisations sentenced under the new guidelines to try to demonstrate that culpability and the risk of harm in their case falls into the lower categories and, therefore, into the lower ranges for fines. A mitigation report can be crucial in demonstrating to the court that this is the case. We will partner with experienced consultants to prepare a thorough report that deals with all relevant aspects of mitigation to present to the court.

Financial Analysis Reports

The Criminal Justice Act 2003 requires that fines must reflect the seriousness of the offence and take into account the financial circumstances of the offender. Under the new guidelines, "[p]articular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet" when determining the level of the fine to impose. Financial analysis reports can, therefore, be crucial to prepare in the event of a trial for breach of ESH/regulatory laws. Reports are likely to be particularly useful when the company being prosecuted is part of a wider group and/or has subsidiary companies. We work with a global leader in assurance, tax, transaction and advisory services to provide such reports.

"Robust practice handling defence work for a number of major companies ... has extensive expertise in various sectors such as retail, power, entertainment and waste."

Chambers and Partners UK

Audit

Health and Safety Perceptions Audit

Our lawyers have successfully worked with a number of clients to provide health and safety perceptions audits. As part of the audits, we survey both the board and a sample of employees (by online questionnaire) regarding the role the board plays in leading and managing health and safety. By obtaining perspectives from employees and directors, we identify gaps between what the directors believe they are and should be doing, and what the workforce believe the directors are and should be doing on health and safety. We then provide the directors with an action plan/report on how the business can align with the guidance on leading health and safety at work, which will help to close the perceptions "gap". We deliver the report to the board as part of a training session once the audit has been carried out.

Compliance Audit

Our experienced partners can also provide a range of risk-based audits and reviews on compliance, risk management and due diligence. All audits are conducted to best practice protocols to meet the precise requirements of each client. Compliance audits include regulatory and legal compliance audits (e.g., HS&E); verification of risk control systems; technical/industry standards gap analysis; legally privileged reports (in anticipation of litigation); and specialist and technical audits. Audits against management systems are also available, including 9001, 14001, 18001/45001. These audits will include checks in relation to system design and integration, gap analysis (preparing for certification), internal auditing and legal and technical scoping and assessment. Due diligence audits include contractor and supply chain systems (selection, verification and results); financial/investor due diligence; and specialist reports and investigations.

Security, Threat and Risk Protection

We work with a team of industry professionals from trusted, confidential and secure operational backgrounds to provide security, threat and risk protection services. They work with businesses to protect assets, including the threats of espionage, fraud and theft of intellectual property, and to protect employees, their families and others who may be affected by the business' activities. Their processes have been tried and tested, and successfully deployed in many sensitive environments, including military, nuclear, gas and oil, retail, leisure and entertainment, media and sport. We also work directly with organisations to review and/or develop their policies and decision making processes in relation to security, in order to limit liability and mitigate against risk. We have advised and represented companies in relation to security related fatalities, including terrorist attacks and the Coroner's Inquest process.

Services include: vetting and screening to provide vulnerability and risk solutions to help prevent fraud, dishonesty or misconduct, information security leaks and hacking of websites; and a wide range of support in relation to cybersecurity, including services to address concerns regarding malware and antivirus, information security policies, business continuity planning, IT security strategy, identity management and access control methods, data life cycle management, data loss prevention, network security and endpoint protection, secure cloud-based services, data warehousing, computer forensics and fraud prevention, asset tracking and technical surveillance counter-measures.

Please call or email us to discuss your needs for training or any of our other products. We will be happy to help you and give you a tailored quote depending on your needs.



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