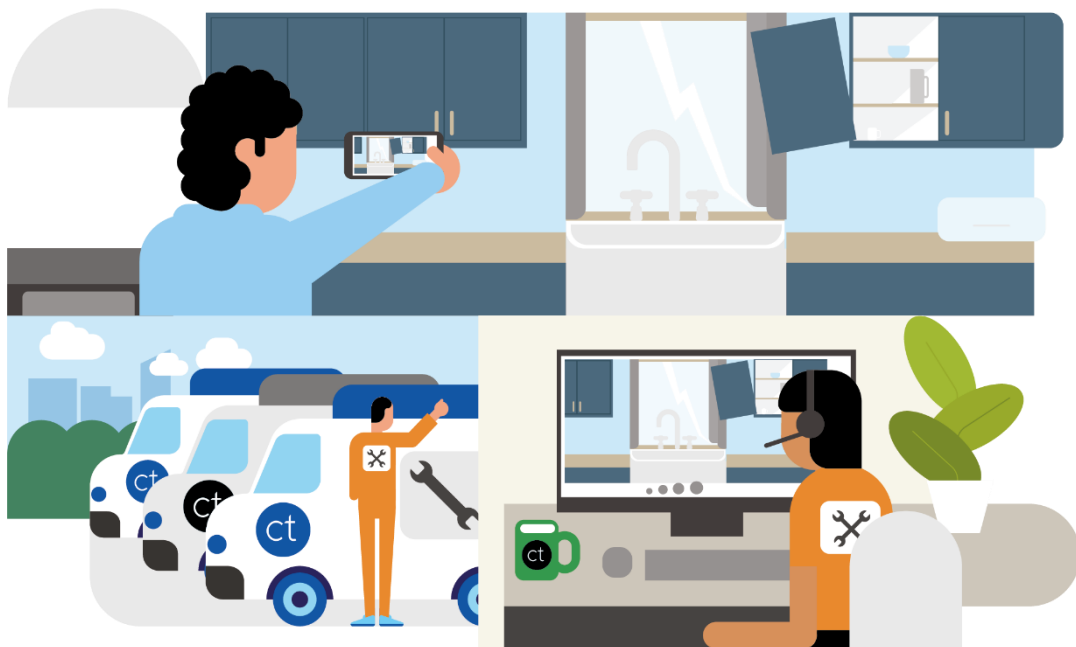


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Could it happen here?

The governance of housing health and safety



Summary Document

The full briefing is available from the [Campbell Tickell website](#) for £95 plus VAT. It may be copied freely within the purchasing organisation, but not more widely. It will be updated from time to time as statute and regulation changes, and re-sent to all purchasers at no additional charge.

It covers England, and is largely but not entirely applicable in Wales. We are preparing a version for Wales, and this will be similarly available; anyone who has previously purchased the England version may seek the Wales version at no extra charge. A Scotland version is available from the Scottish Federation of Housing Associations.

Campbell Tickell would be pleased to present it to Boards and/or committees, either online or in person. This can be offered for between one hour, up to a more interactive half day session, with two hours recommended. We are also pleased to review policies, statements, and processes.

Please contact james.tickell@campbelltickell.com to discuss how we can help and costs.

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Acknowledgements

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1. Introduction

This briefing

This briefing is aimed primarily at the board members of Private Registered Providers ('PRPs') in England, whether for-, or not-for- profit. It is also relevant to stock owning local authorities and other social landlords. The briefing is also largely relevant in Wales, although a separate version is being prepared. It is absolutely not a comprehensive guide to what is a highly complex area of legislation and regulation, but it aims to give board members the background knowledge and perspective they need to discharge their responsibilities at governance level.

Being a board member of a PRP brings many rewards. But it also carries some serious responsibilities, primarily associated with being a company director. These include several areas related to health and safety, and this briefing aims to support board members in carrying out their main responsibilities of that kind. Ultimately, they are responsible for the safety of tenants, residents, employees, possibly vulnerable adults and others who may be in their properties or working on their business.

It is important to say that board members do not need to become experts in all of these matters. What they do need to know is which questions to ask, and enough to know when they can take assurance from the answers that they receive. They also need to be familiar with the main risks their organisation may face, and then the resources, policies and reporting that apply to them. Above all, to sleep easy at night they need to be as near certain as possible that the reports and advice they are receiving are accurate and well-founded. Or, in other words, that they are receiving a good level of assurance from their staff team and their other advisors.

The context

The context for all this will be well known. There was the disastrous fire at Grenfell Tower in London, which rightly created a furore across all the counties of the UK, and focused attention on fire safety. There was the tragic death of Awaab Ishak, which highlighted the dangers of condensation, damp and associated toxic mould. Others have also been reported. These are the worst-case, real-life consequences of serious failings that should never happen again.

The shocking death of Awaab Ishak

A two year old boy, Awaab Ishak, died of a cardiac arrest after exposure to toxic fungal mould in a dangerous flat in Rochdale, England. The coroner said "Awaab Ishak died as a result of a severe respiratory condition caused due to prolonged exposure to mould in his home environment." His parents had raised the issue with Rochdale Boroughwide Homes (RBH) on frequent occasions, and had been ignored, with Awaab's father being told to 'paint over' the mould.

NHS staff had also raised the case with RBH, although they too hadn't taken certain actions that may have helped. The role of claims solicitors in blocking RBH's access to the property may also have been an issue. There was no evidence that the family were in any way at fault. A coroner's report was highly critical of RBH and the case has had a huge media profile. The CE was replaced with an interim, and a new Chair has been appointed.

In a handful of extreme cases, boards or governing bodies of different kinds of organisations have been fined large sums for certain failings leading to the harm of residents or employees, and one or two each year have even been prosecuted for corporate manslaughter. And in July 2023, the Social Housing Regulation Act ('Awaab's Law') received Royal Assent, and its various provisions will come into force over the months to come, some directly relevant to the subjects of this briefing. The regulator is also consulting on new and extended Consumer Standards.

All of this is not to take away from the fact that in general, RPs provide safe, warm affordable housing for people all across the country. However, we can never be complacent as recent events have demonstrated.

Equality, diversity, inclusion

Although this briefing is about health and safety, we should note here at the outset that the issues covered may, and indeed often do, have a significant equality dimension that boards should always take into account. In addition to the specific lines of inquiry suggested below, board members should bear in mind the possibility that certain risks may affect some groups in the wider population more than others. Ethnicity, age, gender, religion, disability or other protected characteristics may be involved. And when that is the case, boards should actively consider how any planned remedial actions can redress that injustice as well as the wider issues identified.

Group structures

Many organisations operate within group structures, with a group parent, and a number of subsidiaries. We should note here at the outset that the exact split of legal responsibilities as between the group and a subsidiary may not always be clear. As a general principle we can assume that in respect of building safety, a subsidiary board which is the owner of properties has the main responsibilities in the first instance. However, in a contentious situation, the group parent might also find itself and its role under scrutiny. So it is safe to say that the group board at the very least needs its own assurance, avoiding undue duplication of effort, that its subsidiaries themselves have assembled the assurance they need.

The same will be true broadly of employee safety – the employing organisation is responsible in the first instance, but the group board may have certain 'long stop' responsibilities, hopefully never to be tested.

In conclusion

We hope that this briefing is useful. It is literally true to say that it has more questions than answers, as it suggests the areas where relentless board member curiosity is vital. In the briefing, we introduce for readers the concept of 'chronic unease' in relation to the governance of health and safety.

This may sound unsettling, but it has a solid track record from other safety-critical industries. It can act as a useful reminder of the need for eternal board and management vigilance in relation to such matters. Just because things have gone well for a while, doesn't mean that they always will. Every accident or disaster, with the benefit of hindsight, will likely have had tell-tale indicators well ahead of the event. Complacency is a risk in itself and must be actively

resisted. Chronic unease (or call it eternal vigilance if you will ...) is surely the price of assured safety.

James Tickell, August 2023

Chapters

2. *For starters: the key role of the board*
3. *Local authority members*
4. *Four cautionary tales*
5. *Where responsibilities may lie*
6. *The vital role of organisational culture*
7. *The growing importance of data*

8. The 'Chronic Unease Model'

The concept of 'chronic unease' in relation to safety was originally developed by Shell, and has been adopted in a range of safety critical industries, such as mining, quarrying, deep sea diving and flying. Chronic unease may sound uncomfortable, even disagreeable, but it's also a useful shorthand to describe the eternal vigilance that is required of board members. As one might expect, there is even quite a volume of research and writing about it.

The five key features of chronic unease can be set out as:

- A tendency to **worry** about health and safety;
- **Vigilance** - awareness of near misses, local failures;
- Resisting **complacency**;
- **Imagination** to visualise unfavourable scenarios; and
- **Flexibility**, systems thinking, not jumping to conclusions.

The lessons here are simply stated. First of all, don't necessarily believe all that you are told or read. Understand what the risks are, and don't be afraid to ask questions. Ask yourself what else could be done, or what might be overlooked. Just because things have worked so far, doesn't mean they'll work going forward – very few systems are 100% reliable. Learn from tenant complaints, mistakes and near misses, whether your own or those of others. And when things seem to be going well, keep an eye on the tell-tale minor issues, as they are the proverbial canaries in the coal mine.

Chronic unease applied

In 1998, at Lassing in Austria, ten miners died in a mine collapse. Afterwards, it became apparent that the men had been sent to near-certain death for purely economic reasons by the mine owners, Rio Tinto, at that time the largest mining company in the world. People with local expertise were ignored, offers of valuable assistance declined, and a corporate cover-up got under way. The disaster's aftermath saw Rio Tinto's share price dropping by some 30%, with compensation and rescue costs as high as \$30m.

But this event acted as the positive catalyst for major change at the company, with health and safety becoming a top corporate priority, under the banner of “Zero Harm by Choice”. Employees with good records on health and safety were promoted, others conversely left the company. Using Rio Tinto’s own version of chronic unease, a massive overhaul of culture, processes, accountability, performance management and reporting was undertaken.

Reportable incidents dropped by 80% in the 8 years that followed, and continued to drop thereafter. Rio Tinto now has the best safety record of any major mining company in the world.

9. What do we mean by assurance?

10. How things do go wrong

11. What questions to ask

12. A checklist for board members

So in this complex area of health and safety, all board members need to be:

- Clear about their responsibilities and accountability, particularly in any group structure context;
- Generally aware of current issues and legal frameworks;
- Familiar with their own main policies and procedures;
- Able to review and learn from data & trends – within the organisation & beyond;
- Capable to scrutinise, support and challenge, ask the right questions, whether at board or sub-committee;
- With solid assurance on key areas with appropriate level of evidence, (including independent evaluation as relevant);
- Modelling leadership and nurturing a positive culture of compliance and learning.
- Modelling chronic unease in pursuit of appropriate assurance.

- 13. Two more case studies**
- 14. Building safety**
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- 29. A safeguarding checklist**

30. Top ten points for the way forward

This briefing covers a lot of ground, and the intention is not to give board members too many sleepless nights. Nor that they should suddenly bombard their staff colleagues with a great flurry of questions and requests for information. We refer above to 'chronic unease'. Let's rechristen that as 'eternal vigilance', which sounds less uncomfortable!

A few reminders by way of conclusion:

- (1) The buck stops with each board on health and safety matters, and it has significant legal responsibilities as a corporate body.
- (2) The culture of an organisation is the single most important strength it can have in terms of ensuring a safe and happy environment for its residents, employees, and all others with whom it comes in contact.
- (3) Good data integrity is a vital bedrock for building top performance, particularly in terms of building safety.
- (4) Damp and mould should be considered alongside other major areas of building safety, such as gas, electricity, asbestos and others.
- (5) Social landlords are making rapid changes to how they deal swiftly and effectively with damp and mould cases, and ensuring that they do not fall into the trap of 'tenant blaming'.
- (6) The safety of employees remains a top priority for governing bodies, and must be given regular attention.
- (7) The safety of vulnerable tenants is likewise a top priority, in which partnership working with statutory authorities and others is a vital 'must'.
- (8) Board members don't need to be experts in health and safety matters, but they do need to be broadly aware of the legal and regulatory frameworks, and of their own corporate responsibilities, as well as being familiar with their own key policies and procedures.
- (9) Board members must feel free to ask leading questions on health and safety matters, particularly around risks, and to keep on asking until they can be sure they have the robust assurance they need.
- (10) Robust assurance for each board on health and safety is key. It is crucial that board members understand and enact appropriate roles in scrutinising whether assurance exists.

Disclaimer

Please note that Campbell Tickell is not authorised or qualified to give legal advice to clients, and the advice in this briefing should not be taken as such; reference to a legal firm, advocate or barrister will always be required in connection with the interpretation of law, statute, regulations, or contracts. As regards building safety, we are not qualified to certify whether or not a particular building or building material is or is not safe in terms of fire or general safety. Accordingly, no formal or legal reliance may be placed on this briefing in relation to these or other similar matters without additional reference to an appropriately qualified person or firm, such as a valuer, lawyer, or safety professional.
