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DIRECTOR'S EXCELLENCE ACCELERATOR

Day One

Andrew Archer

Who are you?

- Name
- Role
- Anything you are particularly looking for from this event

Programme for today

- Introductions
- Directors' responsibilities
- Corporate Governance
- Culture
- Risk

Being a Director, Responsibilities, Governance and Risk

Differences between Ltd and PLC

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Ltd

- private
- limited liability
- at least 1 Director
- 9 months to submit accounts

Public

- shares can be freely traded to the general public and listed on a stock exchange
- minimum share capital of £50000
- at least 2 Directors and a professionally qualified company secretary required
- only 6 months to file accounts
- unable to purchase shares out of capital
- unable to issue shares in return for work or services provided
- has to have an AGM.

All companies ....

- are distinct legal entities
- can own assets and property
- can be held liable for debts
- limit the liability of shareholders to the value of their shares
- are incorporated companies and must be registered with Companies House, which involves creating a memorandum and articles of association, along with certain other formalities
- have annual filing requirements (i.e., Confirmation Statements, Annual Accounts, and Company Tax Returns)
- are governed by the Companies Act 2006.

Directors …

- are “office holders”, legally responsible for managing the company’s business
- are personally liable for the company’s actions (or inactions)
- are responsible for ensuring that corporate governance meets legal requirements
- as a board director have corporate responsibility, even if specific powers or tasks have been delegated to another committee or individual.

Directors

- Directors registered with Companies House are known as ‘de jure’ directors.
- Directors are not just those who are registered as directors at Companies House. They are anyone who acts as a director (de facto directors), whether they are called directors or not.
- They include directors who have been appointed by the company, but never properly registered. They also comprise those whom the law calls 'shadow directors’ - those who give directions and whom the company generally follows. These might commonly be business advisors, senior managers, ex-directors, shareholders or investors.

Question

- Directors’ duty to promote the success of their company includes having regard to which of the following?

A. The impact of the company’s operations on the community and the environment

B. The impact of the company in terms of competition with other companies

C. The need to expand at a reasonable rate year-on-year

D. The need to generate a healthy profit.

Question

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- Which of the following is <u>not</u> one of the original directors' duties incorporated into the Companies Act 2006?

A. A duty not to make a secret profit

B. A duty to exercise skill and care

C. A duty to provide a clean and safe workplace

D. A duty to act in the best interests of the company.

What are the 7 statutory general duties you must perform?

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1. You must follow the company's constitution and articles of association
2. Promote the success of the company including:
    - consequences of decisions
    - interests of its employees
    - relationships with customers, suppliers and other stakeholders
    - impact on the community and the environment
    - reputation
    - need to act fairly

If you have more than 250 employees you have to explain how you have fulfilled this duty in your annual report

What are the 7 statutory general duties you must perform?

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3. independent judgement - what does this mean?
4. exercise reasonable care, skill and diligence
5. avoid conflicts of interest:
    - avoid divided loyalties
    - declare conflicts of interest - comply with articles of association
6. do not accept third party benefits - avoid conflicts of interest
7. declare any personal interests in any transaction.

Also:

- avoid misuse of company property
- apply confidentiality to company affairs.

Make certain the board minutes properly record the decision-making process and declarations of interest

Question

- Which one of the following statements is incorrect?

A. The statutory minimum age of a director is 18

B. There is no statutory maximum age for directors

C. A company can be a director of another company

D. There are no legal qualifications necessary for being a director.

Question

- What is a shadow director?

A. A director who has management responsibilities in the company

B. A person whose directions or instructions the directors of a company follow

C. A person appointed to attend Board meetings and vote in place of a director

D. Anyone who acts as a director, although not validly appointed as one.

Do you need to read the articles of association?

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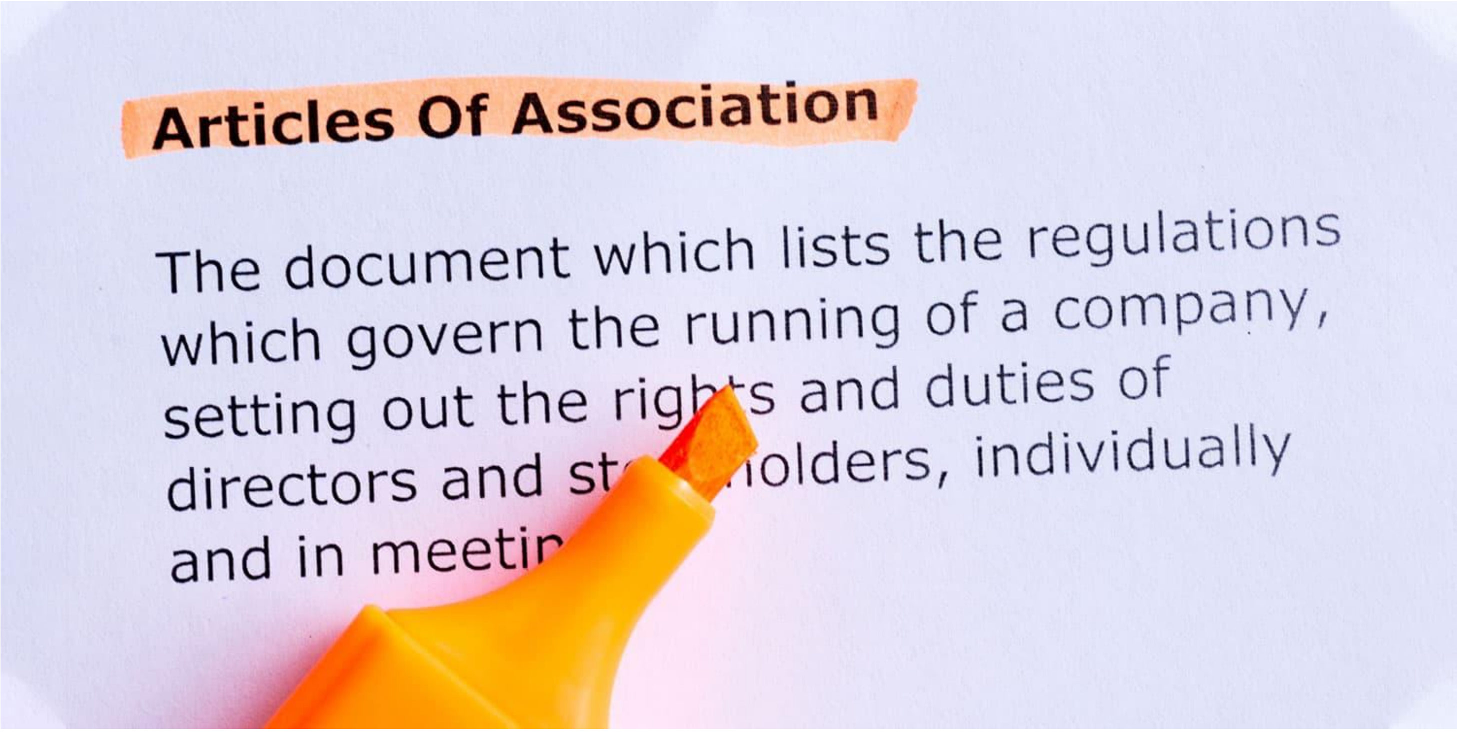
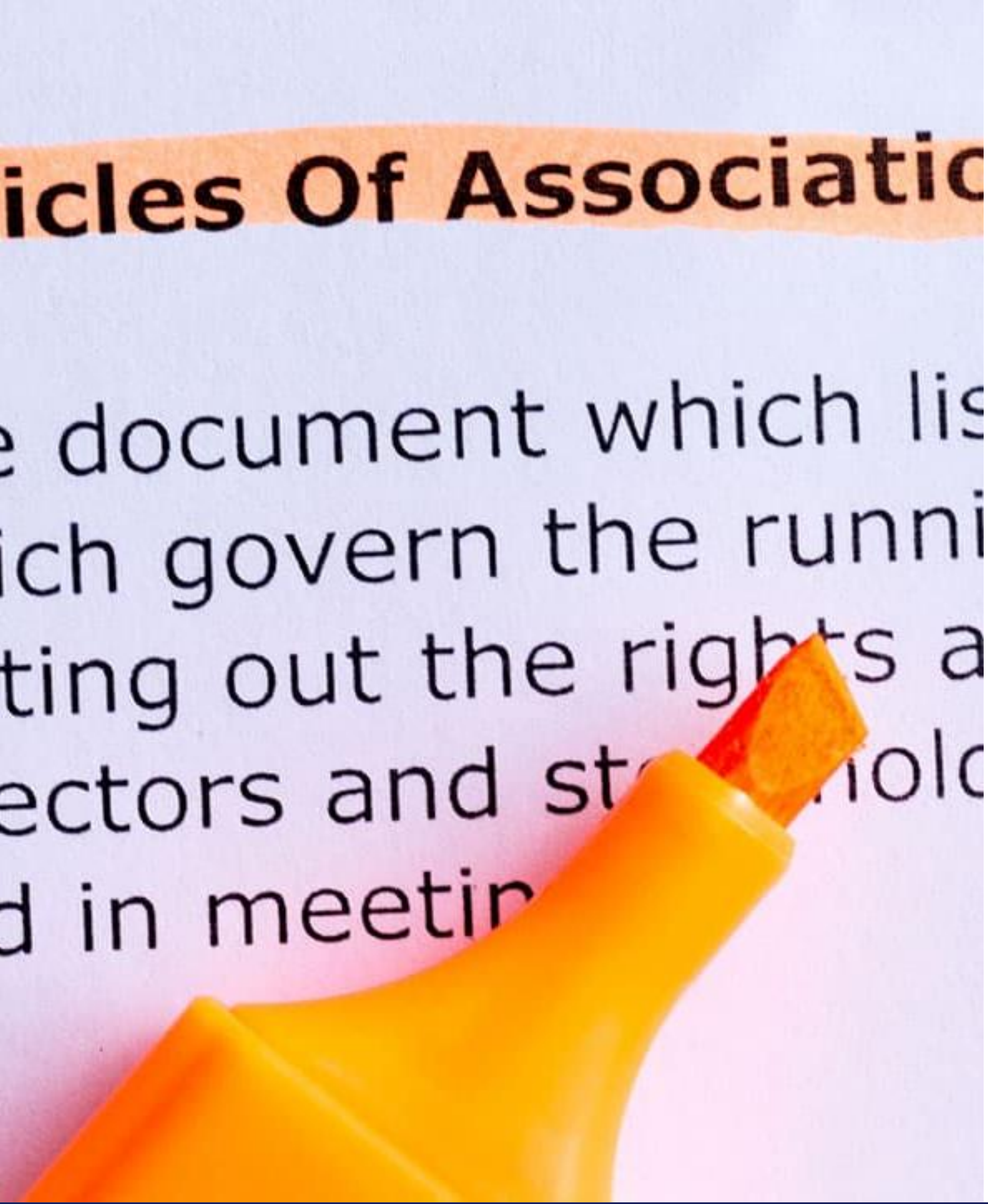
- Yes - they may include:
  - limitations on the powers of directors
  - rules on the number of directors and how they are appointed
  - rules on how decisions can be taken
  - rules on what must be agreed by shareholders.





What other documents that you must read and understand?

- Annual report and accounts
- Management accounts
- Strategy documents
- Key policy documents e.g. H&S, Equality, Modern Slavery, etc.
- Board minutes
- Key products, services, HR documents.

Do you need to notify changes if:

- you change your company name? ✓
- you change your company bank account? ✗
- you change your registered office address? ✓
- you change your internet supplier? ✗
- you have paid off a mortgage? ✓
- change your company secretary? ✓
- change your share structure? ✓
- change your accounting year? ✓

Changes to be notified in 14 days

What would stop you becoming a company director?

- are you under 16?
- are you disqualified?
- are you an undischarged bankrupt?

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If you think you might become insolvent where do your responsibilities as a director lie?

- If a company loses the ability to pay debts when they become due
- or if the value of liabilities exceeds the value of assets
- then the duties of the director are owed not to the company but to the company's creditors.

How could you become liable under the Insolvency Act?

- Wrongful Trading - if you continue to trade when you know (or ought to know) that there is no reasonable prospect of the company avoiding insolvency
- Fraudulent Trading - if the company have done anything with the intention of defrauding creditors
- Misfeasance - misapplying or retaining property of the company or breach of any other duty.

Statutory registers – what information must you keep?

- Register of people with significant control (from 6 April 2016)
- Historic register of people with significant control (as from 30 June 2016)
- Register of members
- Historic register of members (as from 30 June 2016)
- Register of directors
- Register of directors’ usual residential addresses
- Directors' service contracts
- Directors' indemnities
- Register of secretaries
- Records of resolutions and minutes of general meetings
- Contracts or memoranda relating to purchase of own shares
- Documents relating to redemption or purchase of own shares out of capital by a private company
- Register of debenture holders
- Report to members of outcome of investigation by public company into interests in its shares
- Register of interests in shares disclosed to public company
- Instruments creating charges and a register of charges.

Need to be available for inspection or placed on Companies House register

Who is a person with significant control

- will have more than 25% of the company's shares or voting rights
- will be able to appoint or remove a majority of the directors
- will be able to influence or control your company.

Do you need a professional accountant?

No - but you must prepare accounts every year including:

- a profit and loss account (or income and expenditure if you are not trading to make a profit)
- a balance sheet signed by a director
- notes to the accounts

Accompanied by

- a director's report
- an auditor's report (unless exempted).

All approved by the Directors

Question

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- In order to be a company secretary of a private limited company what qualifications must you have?

A. A qualified UK lawyer

B. A member of one of the named professions (such as Institute of Chartered Accountants, Institute of Chartered Secretaries and Administrators)

C. You need no qualifications

D. Have been a secretary of a public company for at least three years out of the last five.

Can I borrow money from the company?

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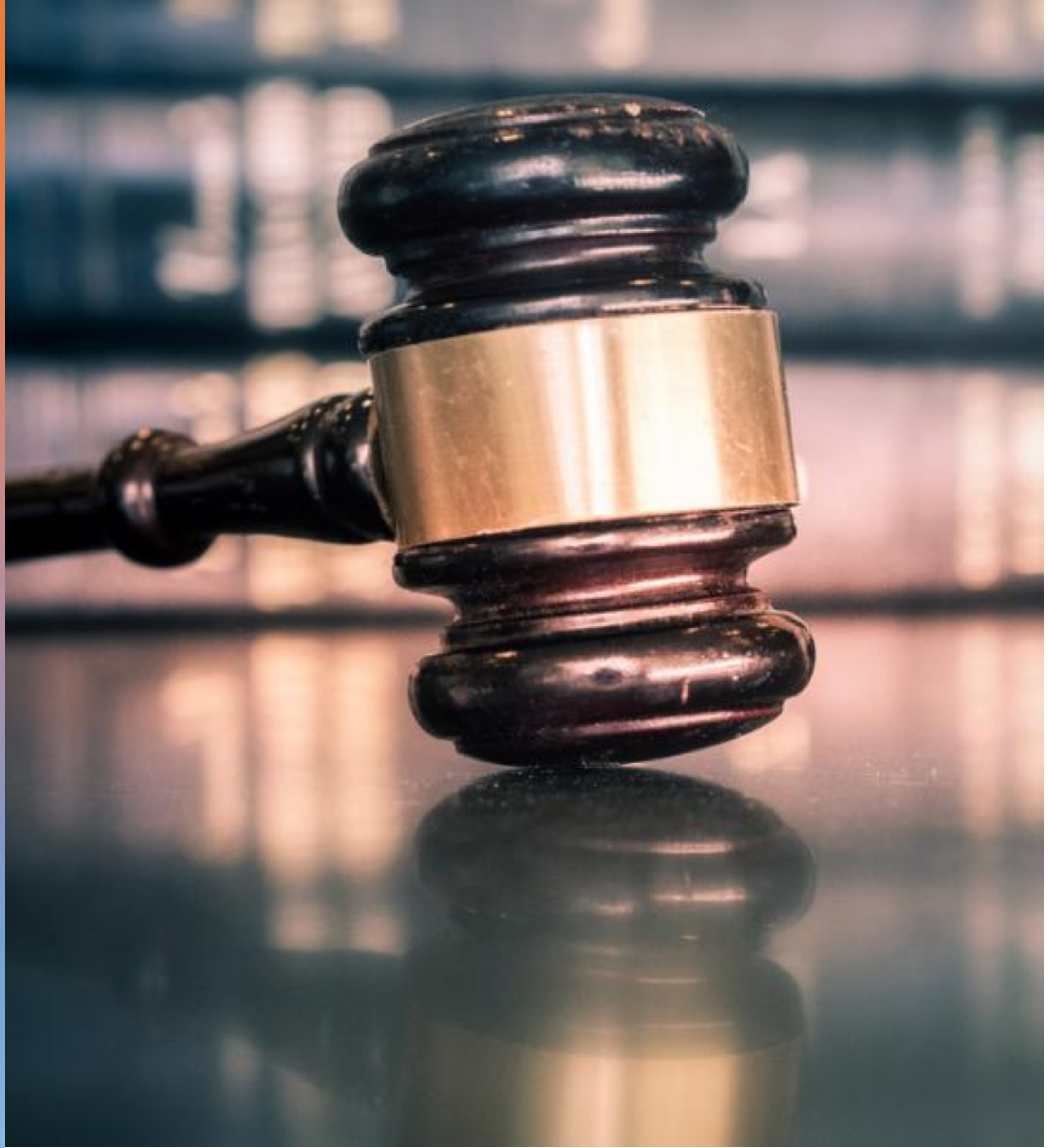
- Usually - if it is approved by the shareholders and is not forbidden in the articles of association.



Be aware of other legal requirements

- the Company Directors' Disqualification Act 1986
- the Insolvency Act 1986
- the Corporate Manslaughter and Corporate Homicide Act 2007.

What can I do to ensure that I don't become liable?

- Effective corporate governance
- Effective regular management accounts
- Spotting the early signs
- Challenge - avoid group think
- Get professional advice.

Corporate Manslaughter

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- You can be held personally liable (as well as the company) under the Corporate Manslaughter Act.

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Mobile Sweepers (Reading) boss fined over worker death

26 February 2014

A road-sweeping company's director has been fined for safety offences after a worker was killed.

Malcolm Hinton, 56, died in 2012 when a raised hopper for collecting dirt fell on him at a Mobile Sweepers (Reading) Ltd depot in Headley, Hampshire.

Mervyn Owens was fined £183,000 after he admitted a charge under Section 2 of the Health and Safety at Work Act.

A police and Health and Safety Executive (HSE) investigation found the hopper was in poor condition.

Role of the Board?

- The board's key purpose "is to ensure the company's prosperity by collectively directing the company's affairs, while meeting the appropriate interests of its shareholders and relevant stakeholders"
    - (Standards for the Board, IoD).

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Most recent?

- The Economic Crime and Corporate Transparency Act received royal assent on 26 October 2023
- The act gives Companies House the power to play a more significant role in tackling economic crime and supporting economic growth
- New responsibilities for:
  - all new and existing company directors
  - people with significant control of a company (PSCs)
  - anyone who files on behalf of a company.

Economic Crime and Corporate Transparency Act 2023

What changes?

Economic Crime and Corporate Transparency Act 2023

- Improving the quality of data
    - From March 2024, greater powers for Companies House to query information, stronger checks on company names, new rules for registered office addresses, and new lawful purpose statements
- Identity verification
    - Anyone setting up, running, owning or controlling a company in the UK will need to verify their identity
- Changes to accounts
    - Transitioning towards filing accounts by software only, and changes to small company accounts filing options
- Confirmation statement changes
    - From March 2024, new requirements to provide a registered email address and to confirm that the intended future activities of the company will be lawful ...

What changes?

Economic Crime and Corporate Transparency Act 2023

- Protected information
  - Individuals will be able to apply to suppress personal information from historical documents, and apply to have personal information protected from public view because of risk of harm
- Changes to limited partnerships
  - Limited partnerships will need to file their information through authorised agents, and they’ll need to file more information with Companies House
- Improving transparency of company ownership
  - New requirements to provide additional shareholder information, and restrictions on the use of corporate directors
- Investigation, enforcement and data sharing
  - More effective investigation and enforcement powers for Companies House, and new powers to share data with law enforcement agencies and other government departments.

Corporate Governance

What is governance ?

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- Simply put “governance” means: the process of decision-making and the process by which decisions are implemented (or not implemented)

- … the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies (Cadbury Committee 1992).

Corporate Governance – Board Role

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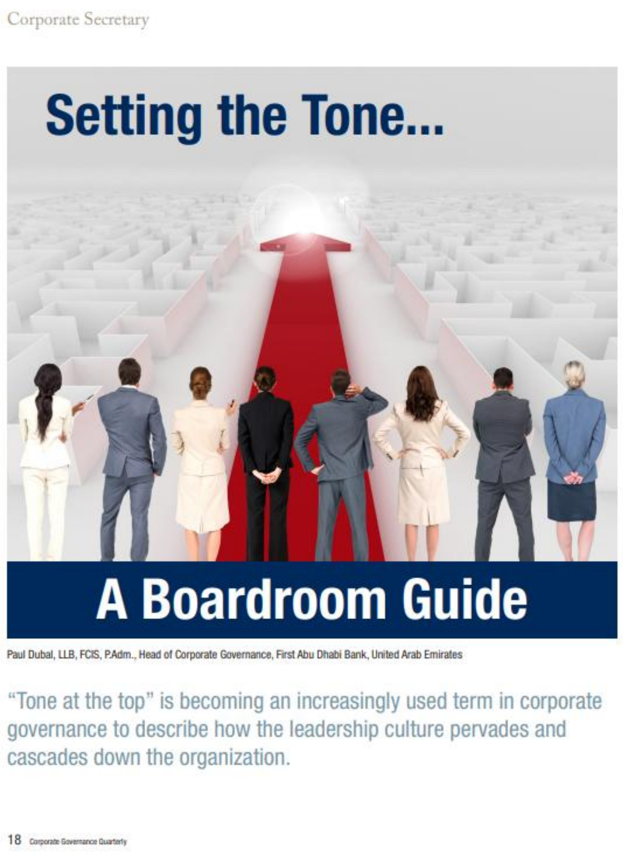
- *One of the key roles for the board includes establishing the culture, values and ethics of the company*
- *It is important the board sets the correct "tone at the top"*
- *The directors should lead by example and ensure that good standards of behaviour permeate throughout all levels of the organization*
- *This will help prevent misconduct, unethical practices and support the delivery of long-term success.*



Corporate Secretary

Setting the Tone...

A Boardroom Guide

Paul Dubal, LLB, FCIS, P.Adm., Head of Corporate Governance, First Abu Dhabi Bank, United Arab Emirates

"Tone at the top" is becoming an increasingly used term in corporate governance to describe how the leadership culture pervades and cascades down the organization.

18 Corporate Governance Quarterly

The Chartered Governance Institute of Canada

Discussion – Corporate Governance in your organisation

Sports Direct

- 2015 exposé showed horrific working conditions in warehouses; dangerous issues, management failings etc.
- CEO forced to testify to Parliament & legal issues ensued
- Board had failed in its fiduciary duties to ensure adequate working conditions
- Profit first culture.

Enron

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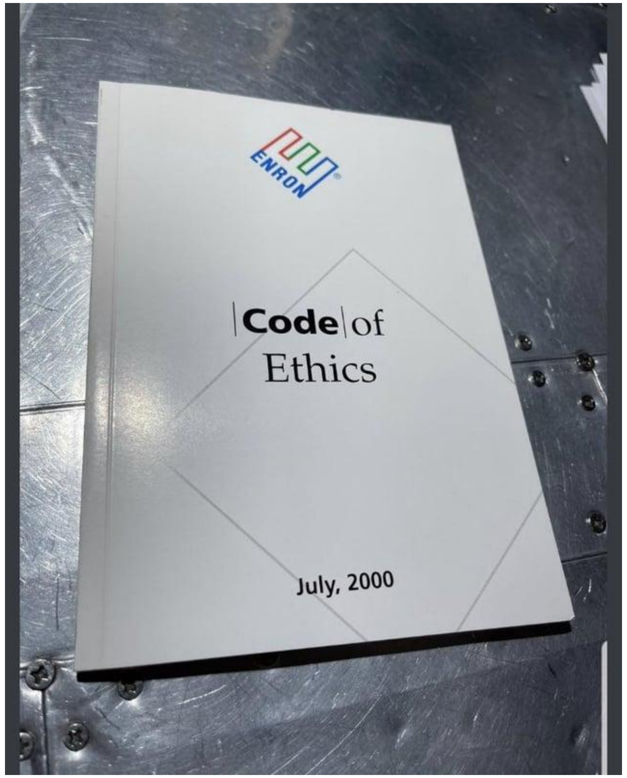
- One of the largest accounting frauds in US history
- Fraudulent accounting used to inflate revenues & hide debt
- Lack of oversight by board - despite warning signs
- US Securities & Exchange Commission, credit raters, investment banks & auditors also accused of negligence and, in some cases, deception
- Number of Enron executives prosecuted, including for fraud, money laundering, insider dealing & conspiracy.



Blockbuster

- World leader of home movie & video rentals
- Netflix moved to on-line streaming
- Blockbuster refused to innovate or to buy Netflix when given opportunity
- Culture didn't embrace innovation & board members didn't think outside the box or challenge.

Volkswagon

- Illegal software enabled to lower emissions in testing
- Lack of independence in corporate governance
- Culture of fear

Volkswagen

Discussion – what do you think of your organisational values?

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Importance of Values

- Research by PwC highlights that companies with distinctive and aligned values are twice as successful with execution, and almost twice more likely to show higher profitability and growth
- Furthermore, strong and attractive values have been shown to significantly help to recruit and retain talent.

Importance of Values

- Can have a positive impact on:
  - employee engagement/commitment
  - work environment
  - recruitment/retention
  - reputation/brand
  - customer relations
  - decision making
  - defining culture
  - corporate governance.

Common Organisational Values

- **Respect**
- Equality
- **Accountability**
- No blame
- Trust
- Integrity
- **Honesty**
- Leadership
- Fairness
- Transparency
- Commitment

Discussion

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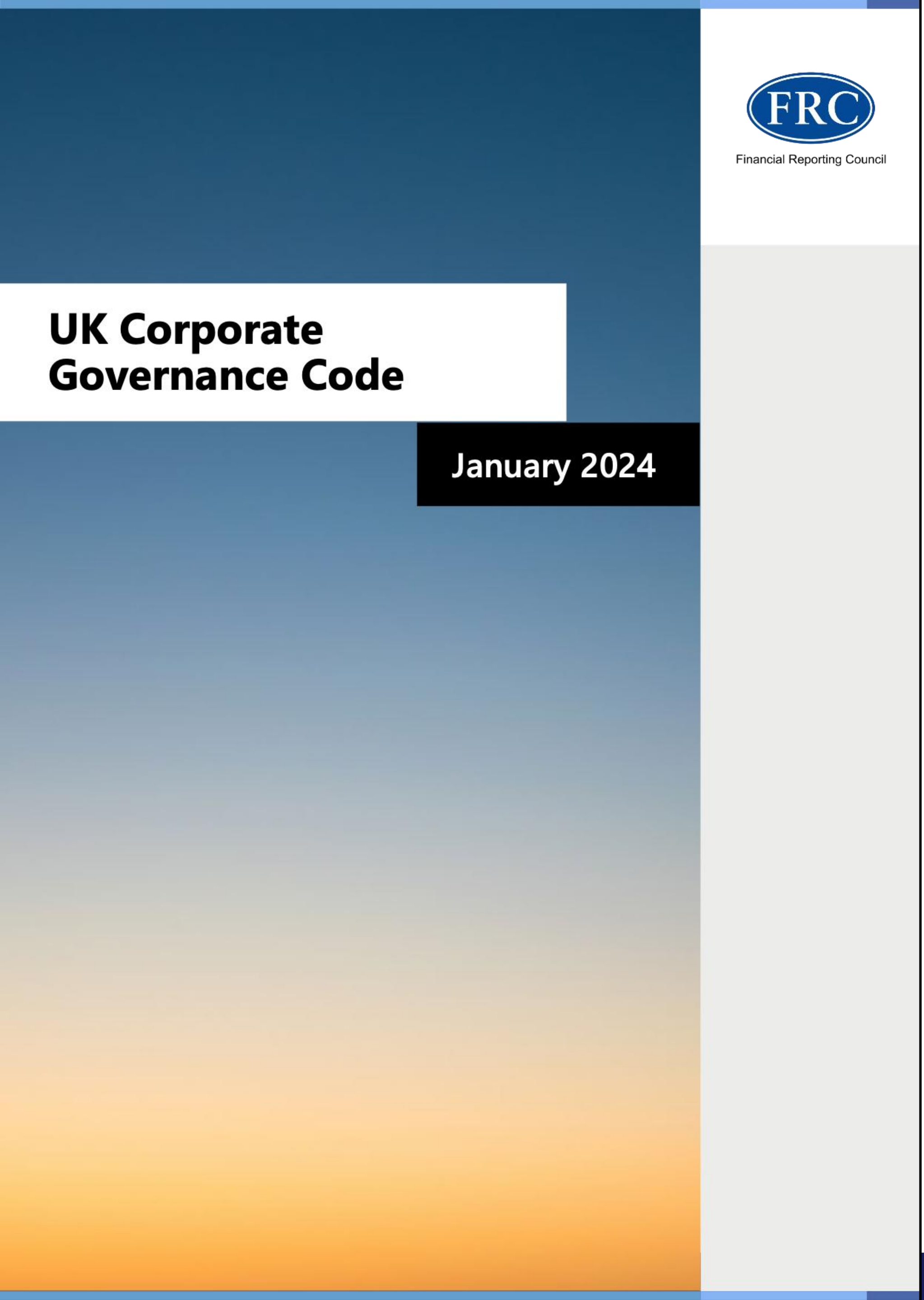
How do you ensure your values have meaning and influence your corporate governance?



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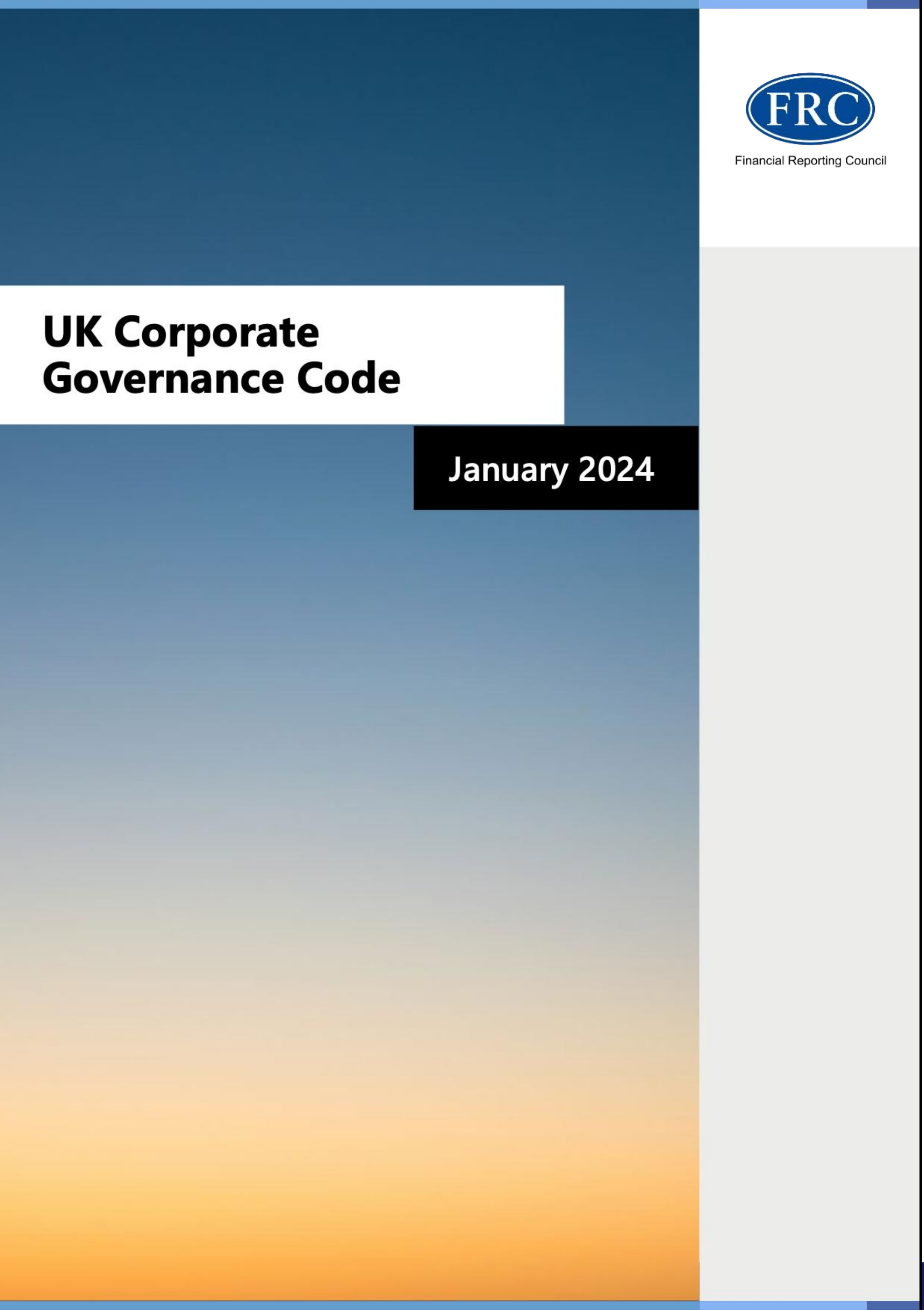
Applicable since January 2025

- The 2024 Code is separated into five sections:
- Board Leadership and Company Purpose
- Division of Responsibilities
- Composition, Succession and Evaluation
- Audit, Risk and Internal Control
- Remuneration.

https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/



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The Code

- Operates on a ‘comply or explain’ basis
- Now asks boards to make a declaration in relation to the effectiveness of their material internal controls
- A new Principle has been included to encourage companies to report on outcomes and activities.

Exercise

- What corporate governance issues concern you?
- Any examples of where things went really well?
- Things that could have been done better?

Case Study - The Post Office

- Post Office pursued thousands of innocent subpostmasters for apparent financial shortfalls caused by faults in Horizon
- Horizon was an accounting software system developed by Fujitsu
- Massive miscarriage of justice
- Between 1990 & 2015, over **900** sub-postmasters were convicted of theft, fraud & false accounting, based on faulty Horizon data
- Others were prosecuted but not convicted, forced to cover shortfalls from their own money, or had their contracts terminated
- Results included criminal convictions, imprisonment, loss of livelihoods & homes, debts, bankruptcies, stress, illnesses, family breakdowns & suicides
- Despite known problems, Post Office failed to disclose knowledge of the faults, insisting in court cases that Horizon was robust …

Case Study – The Post Office

- In 2009, Computer Weekly broke the story about problems with Horizon
- A former sub postmaster, Alan Bates, launched Justice for Sub postmasters Alliance in 2012
- In 2012, following pressure from campaigners & MPs, Post Office appointed forensic accountants Second Sight to investigate Horizon – but… mediation scheme was set up but then terminated
- In 2017 group action brought by 555 sub postmasters, led by Bates
- In 2019 judge ruled that Horizon contained "bugs, errors & defects" & that subpostmasters contracts were unfair…

Case Study - The Post Office

- Government set up independent inquiry in 2020
- That became a statutory public inquiry in 2021
- Courts began to quash the convictions in 2020
- In 2024 law passed to overturn the convictions
- Compensation will be over £1 billion.

Key governance lessons: Lack of Independent Scrutiny and Critical Thinking

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- Board's Role:
  - The board failed to adequately question the Horizon system's reliability and the narrative promoted by management and legal advisors, instead prioritising financial and reputational issues over technological and legal concerns
- Reliance on Assurances:
  - The Post Office placed undue reliance on assurances from Fujitsu without conducting independent verification
- Failure to Challenge:
  - Board members failed to challenge the prevailing narrative that financial shortfalls were due to sub-postmasters' actions, rather than system errors
- Groupthink:
  - A culture of groupthink within the Post Office led to the denial of potential problems with the Horizon system, even in the face of mounting evidence.

Key governance lessons: Misplaced Trust in IT Systems

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- Presumption of Accuracy:
  - The Post Office assumed the Horizon system was accurate and reliable without proper verification, leading to the wrongful prosecution of sub-postmasters
- Failure to Address Systemic Issues:
  - The focus remained on individual accountability rather than addressing the systemic problems with the Horizon system
- Lack of Transparency:
  - There was a lack of transparency regarding the operation and reliability of the Horizon system, making it difficult to identify and address potential problems.

Key governance lessons: Organisational Culture and Ethical Failures

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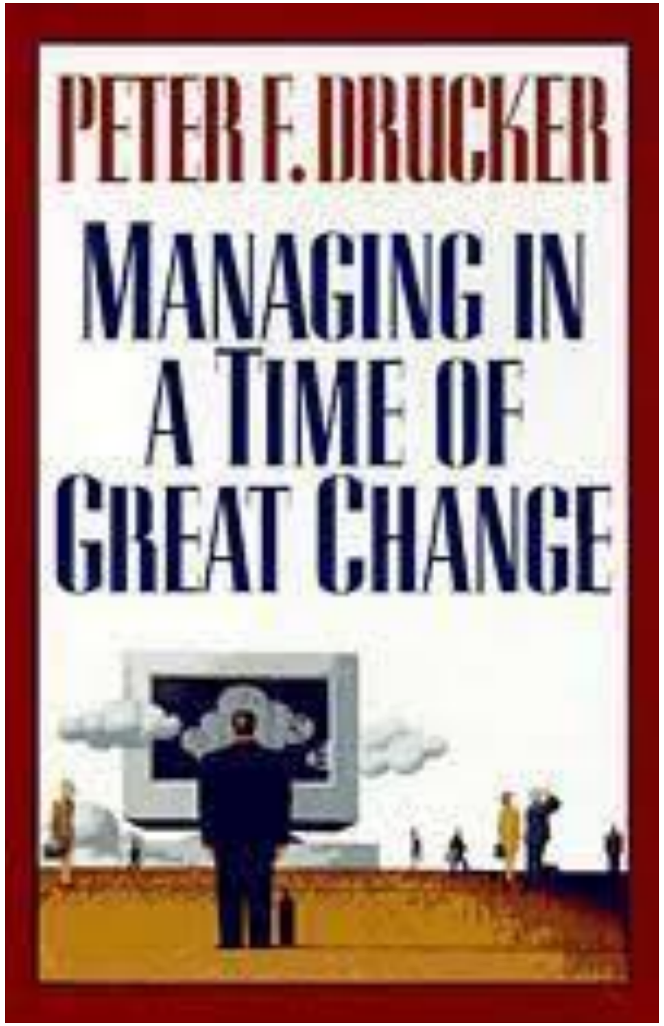
- Dysfunctional Culture:
  - The Post Office's corporate culture was dysfunctional, with managers viewing sub-postmasters as inherently vulnerable to fraud
- Lack of Ethical Leadership:
  - The board failed to establish and enforce strong ethical standards, leading to a culture of mistrust and a willingness to prioritise short-term financial gains over the long-term well-being of sub-postmasters
- Cover-Up and Destruction of Evidence:
  - The Post Office engaged in a cover-up and destruction of evidence, further undermining trust and accountability
- Failure to Learn from Past Mistakes:
  - The Post Office failed to learn from past mistakes and systemic issues, leading to a repeat of similar problems.

Lunch



How important is culture?

- According to Peter Drucker:
- “Culture eats strategy for breakfast".

What is organisational culture?

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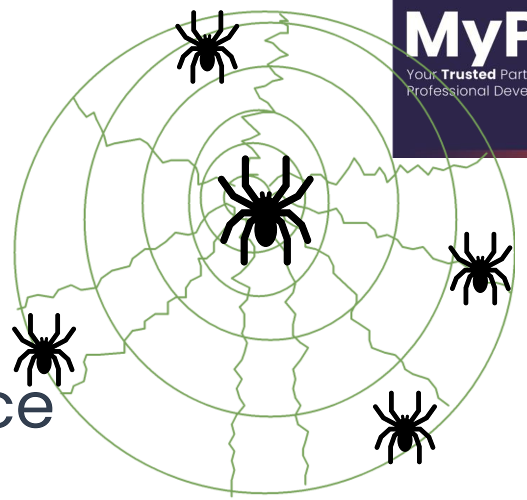
- Organisational socialisation
  - Formal
  - Informal
- Behavioural conformity
  - Values and beliefs
  - Behaviours
- Observable: Artifacts and behaviours: symbols, awards, stories, heroes, slogans, ceremonies
- Not Observable: Values and beliefs, underlying assumptions.

What is organisational culture?

- It is an organisation's value system and its collection of guiding principles
- Values are often seen in conjunction with mission or vision statement
- Culture is reflected by management policies and actions
- Culture and values are strongly influenced by the leadership.

Culture – institutions



- Power culture
- Energy, drive and direction from central power source
- Source can be a person or “club”
- Personal relationships matter more than formal titles or position
- Ability to move quickly, react well to threat and danger
- Individuals need to be power oriented, politically minded and risk takers
- Quality of central power paramount to success
- Minimal systems
- Resource power base
- Faith in an individual not in a committee.

Roger Harrison & Charles Handy

Culture – institutions

- Role culture
- Logical, rational, bureaucratic
- Top (pediment) co-ordinates
- Strength in its pillars - functions, specialisms
- Control through procedures and systems for roles, communication, disputes
- Role more important than the person or personal relationships
- Power, typically, depends on position within the institution
- Slow to see need for change, slow to change.

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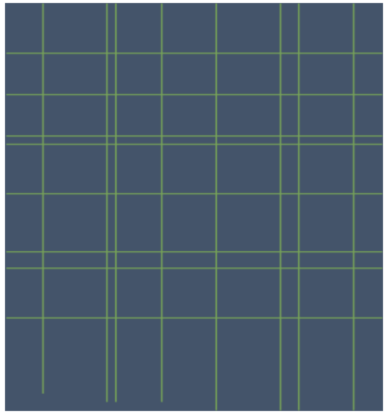
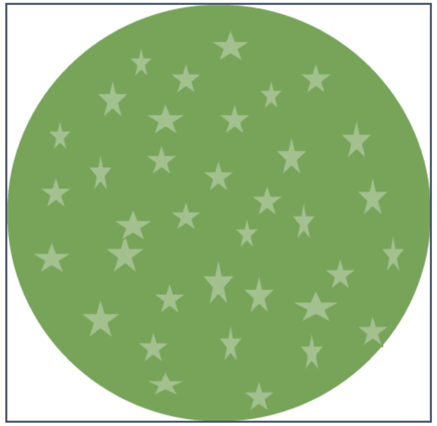
Culture – institutions



- Task or Athena culture
- Concerned with continuous and successful solutions to problems
- Focus on bringing together the right resources
- Expertise power
- Team culture - uses unifying power of the group
- Very adaptable - forms project groups/task forces
- Appropriate where flexibility and sensitivity to market or environment are important
- Performance focused, reward results
- Difficult to control - full of resourceful people.

Roger Harrison & Charles Handy

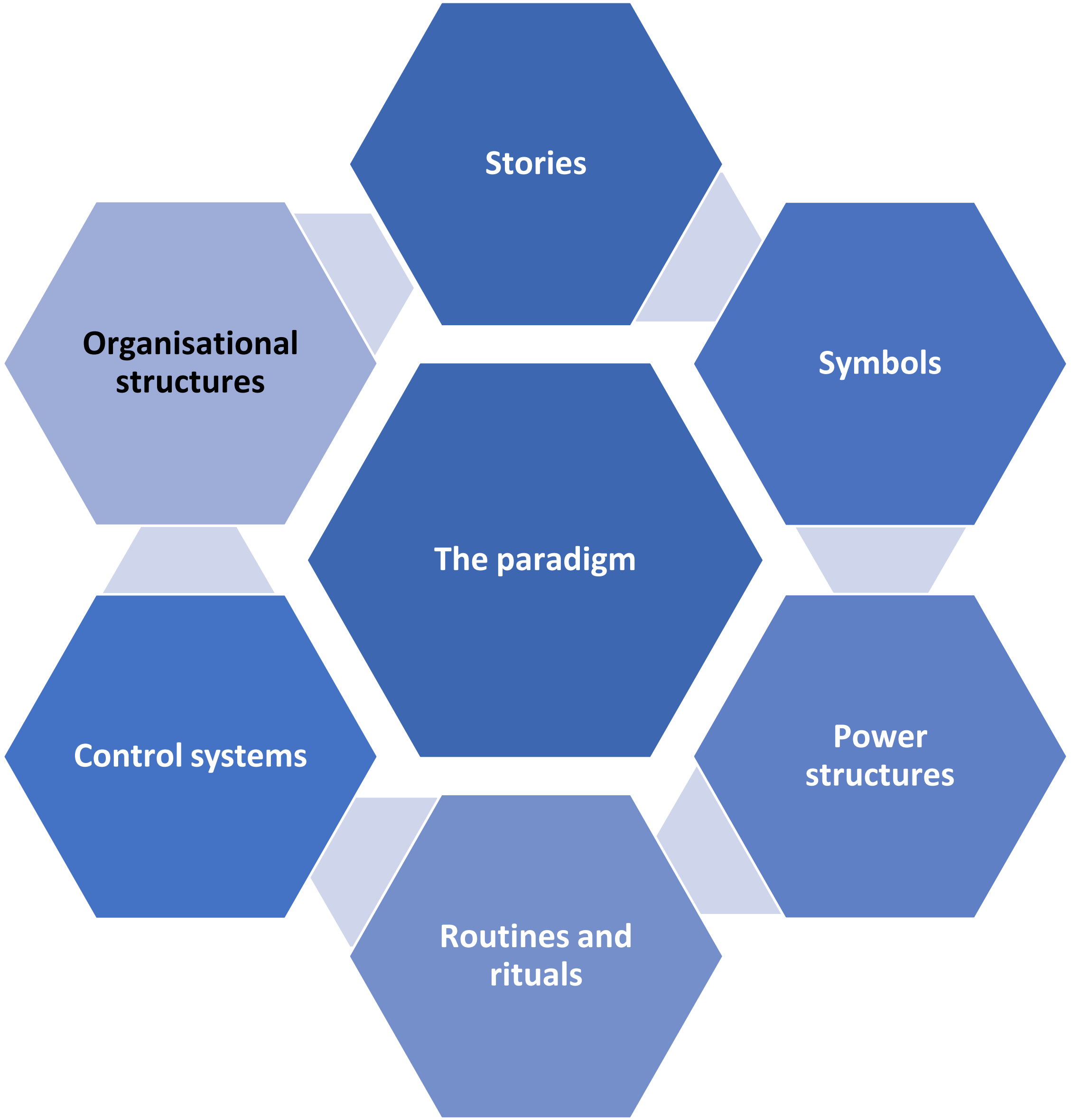
Culture – institutions



- Person or Dionysus culture
- An existential institution which exists to help individuals achieve their own objectives
- Culture liked by professionals, expert power
- People don't like to be classified
- Individual is paramount
- Management seen as a chore, control mechanisms are through mutual consent
- Little allegiance to organisation, team members are typically very marketable and can be very mobile
- Hard to influence but, at the same time, very adaptable.

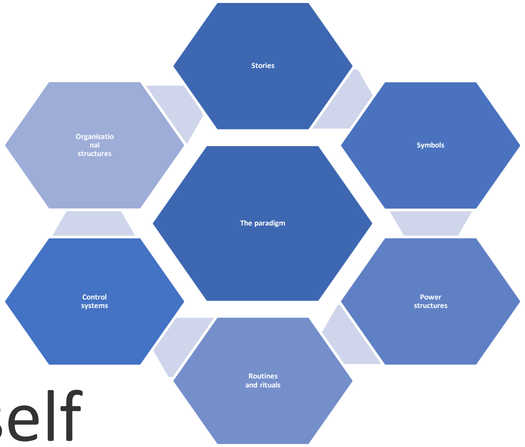
Roger Harrison & Charles Handy

The Culture Web



Developed by **Gerry Johnson and Kevan Scholes** in 1992

Stories



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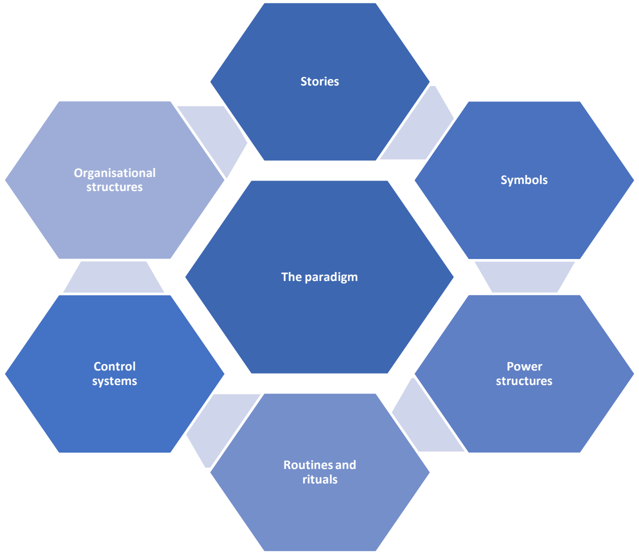
- How an organisation understands and explains itself
- Stories can tell us much about what an organisation really values
- What stories do people currently tell about your organisation?
- What reputation is communicated amongst your customers and other stakeholders?
- What do employees talk about when they think of the history of the organisation?
- What stories do they tell new people who join the organisation?
- What heroes and villains appear in these stories?

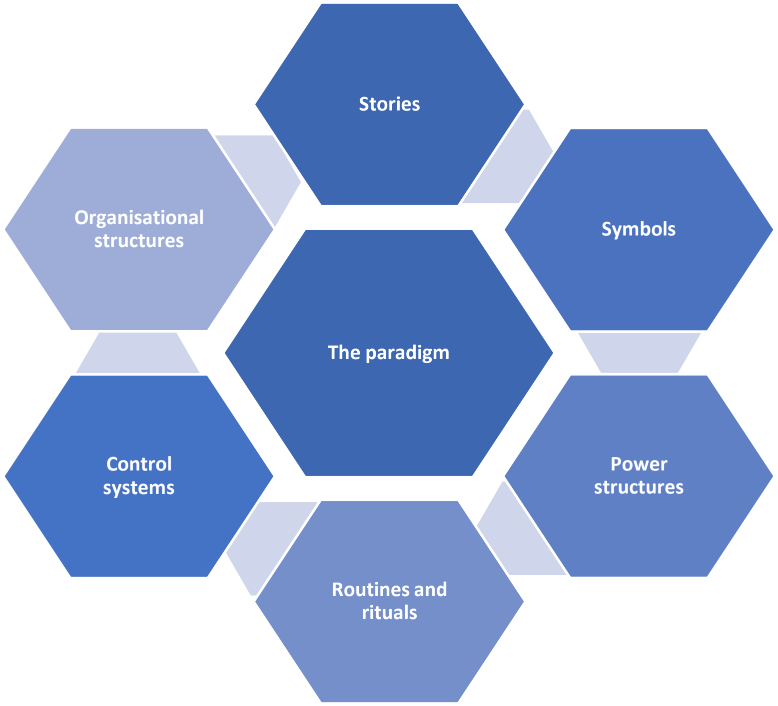
Rituals and routines

- The expected norms and practices - expectations
- What do visitors to your organisation expect when they walk in?
- What do people working in your organisation expect?
- What would be immediately obvious if it was changed?
- What behaviours do these routines encourage?
- What core beliefs do these rituals reflect?



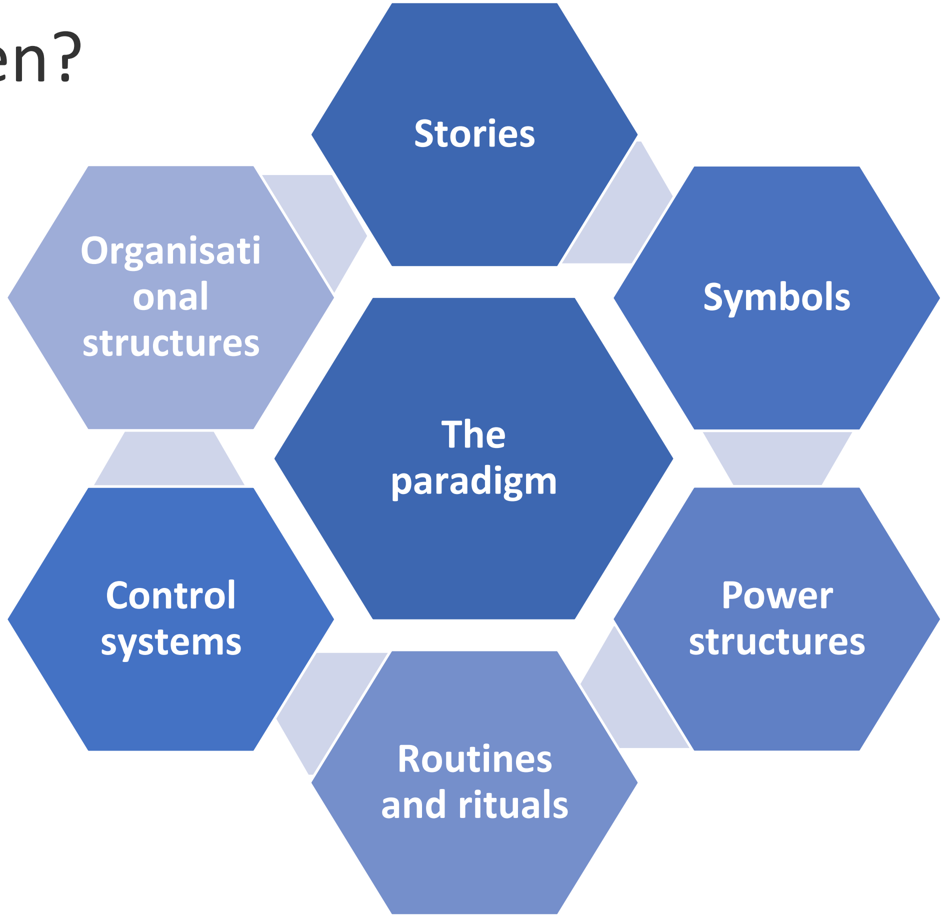
Symbols

- Physical artifacts. The official and unofficial representation of culture
- Are there any visible status symbols?
- What image is associated with your organisation, looking at this from the separate viewpoints of stakeholders and staff?
- What language and jargon is used?
- Includes branding, the way the office looks and the dress code.



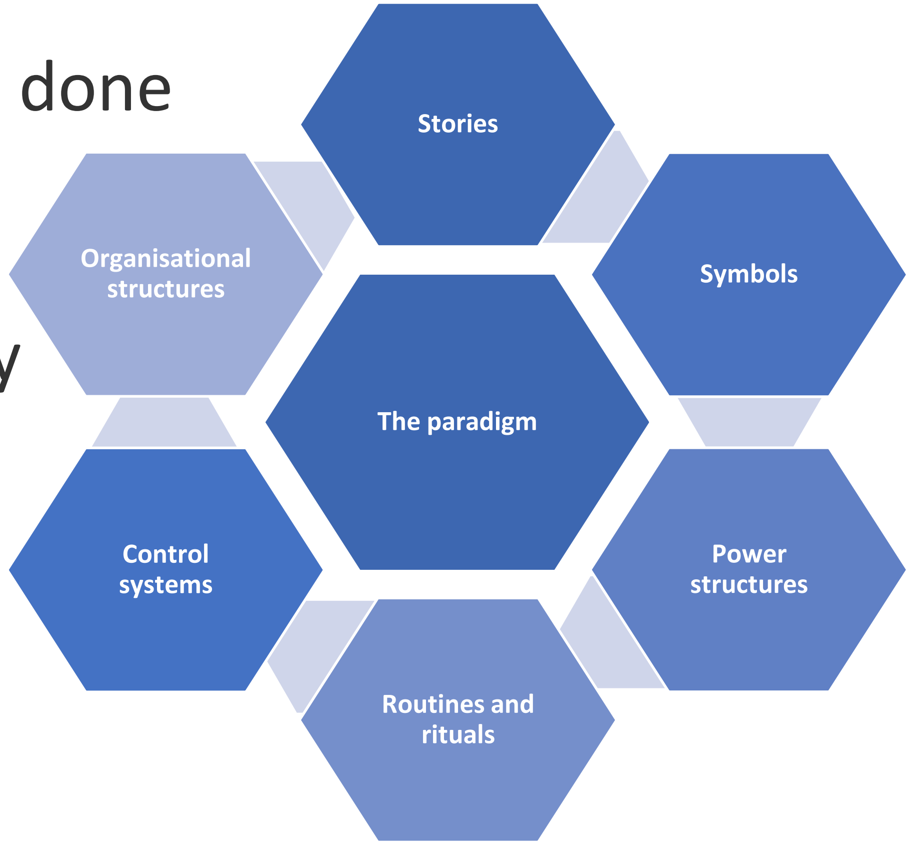
Organisational structures

- What is written down and what is unwritten?
- Is the organisational structure:
  - Flat or hierarchical?
  - Formal or informal?
- Where are the formal lines of authority?
- Are there informal lines?



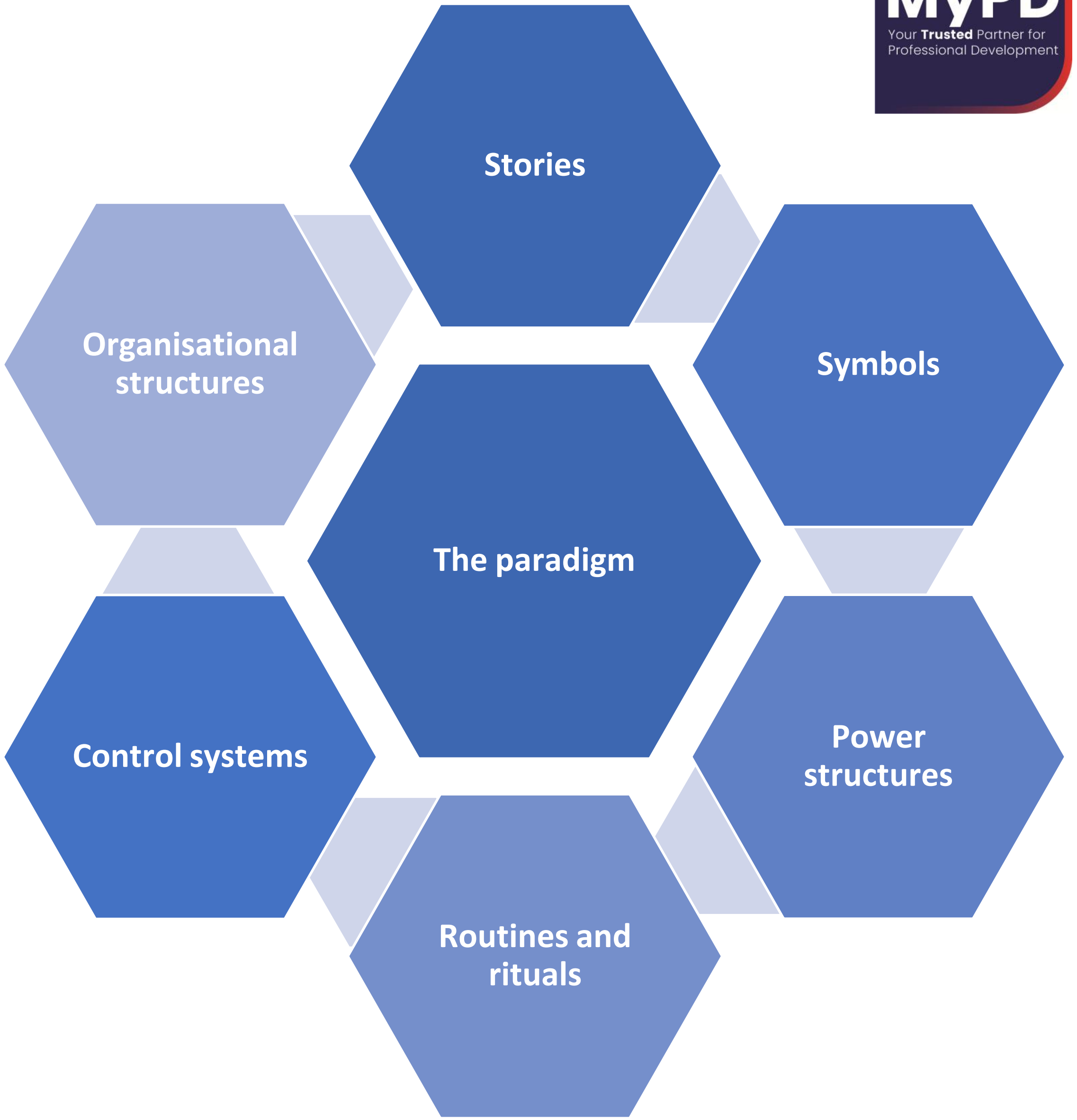
Control systems

- How an organisation controls how things are done
- What processes or procedures have the strongest/weakest controls?
- Is the organisation generally loosely or tightly controlled?
- What gets rewarded?
- Are there penalties, e.g. for poor work?
- What reports are issued to keep control of operations, finance, etc...?



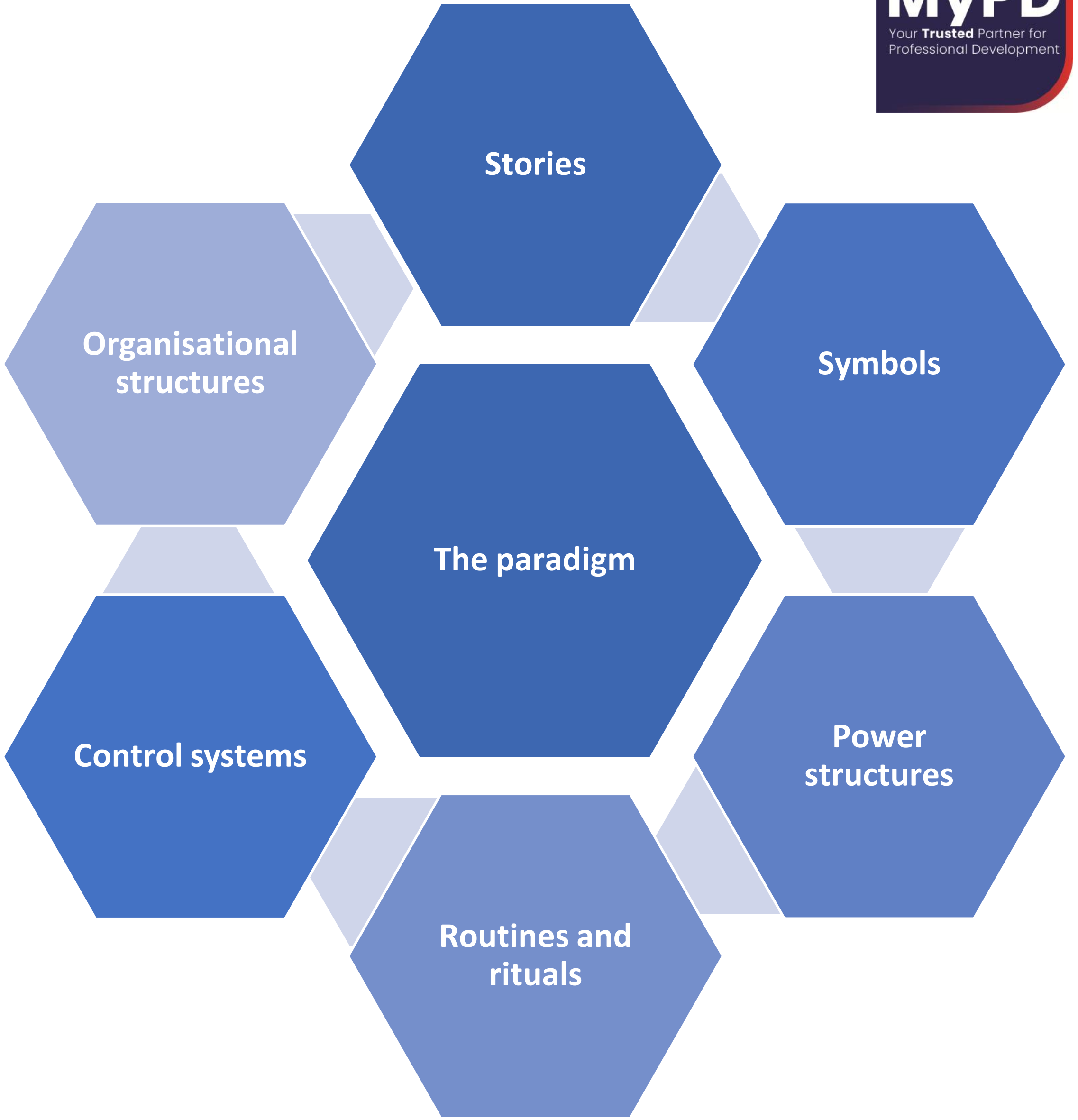
Power structures

- Where does real power lie within the organisation?
- An individual or a group of people?
- What do these people believe in and champion within the organisation?
- How is this power used or abused?



Paradigm

- Set of assumptions about the organisation held in common and taken for granted in the organisation.



Culture and competing values

- We want a high-performance culture but reward loyalty/length of service
- We want to reward great leadership but job evaluation rewards the task
- We want to reward great leadership but we don't look for it in recruitment
- We are committed to equality but few women or people from different ethnic groups make it to the top
- We want to focus less on hierarchy and more on empowerment - but only senior managers can present to Ministers.

Leadership culture reinforcement actions

- The behaviours leaders measure and control
- How leaders react to crises
- Modelling and coaching of expected behaviours
- Criteria for allocation of rewards
- Criteria for selection, promotion, and termination of employees.

Risk (and its management)

Exercise

- What are your key risks?

Close and Questions