



DIRECTORS DUTIES: FAIL TO PREPARE, PREPARE TO FAIL

APRIL 2017

A thorough approach to processes and procedures was one of the lessons for directors from legal experts at Collas Crill's latest directors' duties conference.

The event, that took place on Tuesday 25 April, saw [Wayne Atkinson](#) and [Gareth Bell](#), partners from Collas Crill, alongside leading barrister [Philip Marshall QC](#) from Serle Court and insurance and professional negligence specialist [Greig Anderson](#) of Herbert Smith Freehills LLP present on what directors need to know and do in the modern regulatory era.

[Gareth](#), a partner in Collas Crill's dispute resolution practice who specialises in complex financial services litigation, kicked off the event discussing recent case law from last year involving claims against directors.

Looking at three key cases from 2016, [Gareth](#) took the audience through the facts behind the judgement, explaining how the directors were exposed and what position the Court took.

[Gareth](#) also emphasised the kind of advice that directors should seek to protect themselves ahead of any possible litigation.

Contentious insurance specialist [Greig Anderson](#) then provided an insight into directors and officers liability insurance, its scope of coverage and why a holistic approach to risk management should be adopted.

[Greig](#) highlighted the importance of fully reviewing insurance documentation, understanding its application and regularly revisiting it to ensure that the correct coverage for both director and company is in place in the event of a claim.

Commercial group partner [Wayne Atkinson](#), who is co-leader of the firm's risk and regulatory practice, then led an interactive session with hypothetical situations to consider what response directors should have when potential issues arise.

Using a range of crisis management case studies, [Wayne](#) addressed the importance of creating a framework for successful corporate governance and the various parties that should be involved should a crisis happen; from IT specialists and lawyers to the PR and external communications team.

[Wayne](#) also highlighted the importance of board oversight and understanding the regulatory requirements that should be undertaken to avoid criticism.

Finally, [Philip Marshall QC](#) focussed on the recent developments in litigation concerning non-executive directors.

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Considering the basic fiduciary obligations, the common law duty of care and shareholders' and creditors' interests, [Philip](#) looked at recent cases and explored whether the Court thought that the director had taken these into account when issues arose and whether they were perceived to have acted in the best interests of the company.

[Wayne](#) said: "Knowledge is key. When you become a director, you put yourself in the firing line for any issues that may arise. While nobody can predict the future, you can put processes in place that protect you and your business, should the worst happen.

"Whatever the situation, with the benefit of proper advice and an appropriate corporate governance framework, you can be confident that, in your role of director, you've put yourself in a position to make the best choices for your company."



(L to R): Greig Anderson, Herbert Smith Freehills LLP, Wayne Atkinson, Collas Crill, Gareth Bell, Collas Crill and Philip Marshall QC, Serle Court

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