



# Regulatory Risks Roadshow

**“Peerless at anticipating and managing risks”**

(The Legal 500)

19 November 2025



**Welcome**  
from **Vikki Watt**

# BTO's Regulatory & Criminal Defence Team



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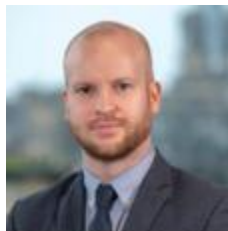
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# From inspection to investigation

Protecting your business and reputation

**Lindsay MacNeill**

Partner & Criminal Solicitor Advocate

19 November 2025



# Agenda

- Who regulates what?
- What can a regulator do?
- How to mitigate the impact - practical steps to:
  - **Prepare** before an inspection or potential incident
  - **Respond** during an investigation
  - **Protect** your business and reputation

# The Regulatory Landscape in Scotland

## Who regulates what?

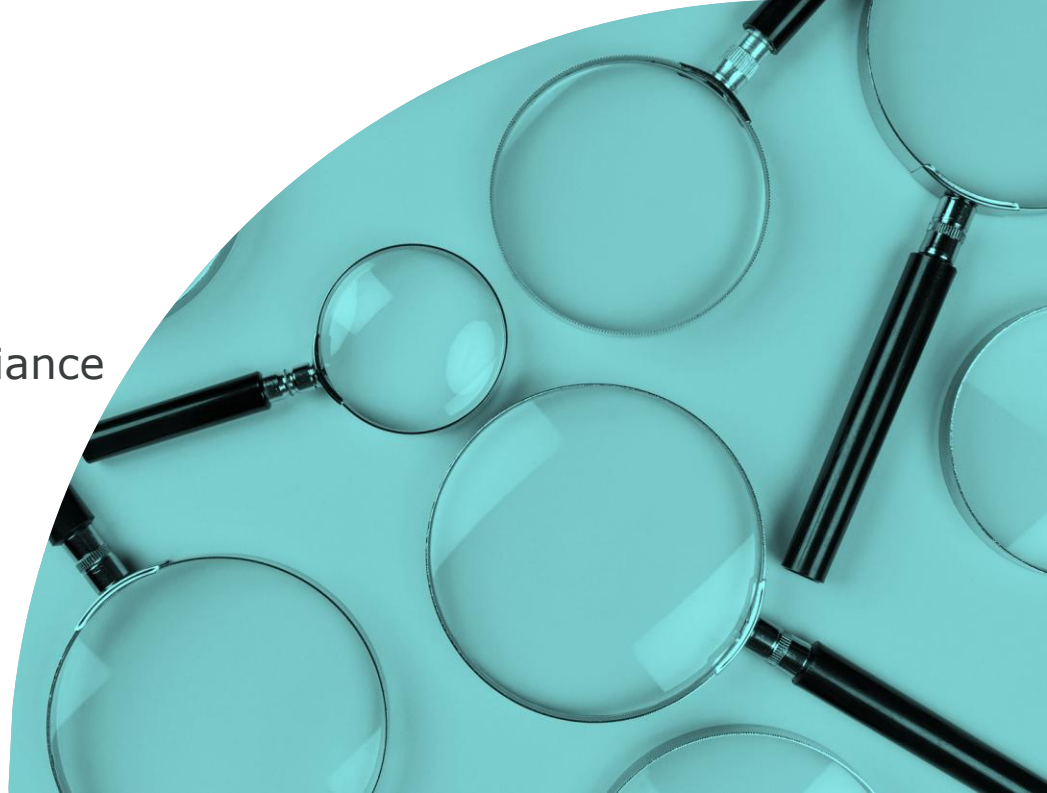
- Police Scotland
- The Health and Safety Executive (HSE)
- Local Authority
- Industry specific regulators
- Crown Office and Procurator Fiscal Service (COPFS)



# Role of the Regulator

## Friend or Foe?

- Set and enforce standards
- Provide compliance guidance
- Licence and monitor
- Inspect and investigate non-compliance
- Review incidents and complaints



# When an inspection becomes an investigation

- **Inspection:** checking procedures and safety systems, regulator giving advice
- **Investigations:**
  - Mandatory
    - fatalities
  - Following a RIDDOR report/complaint
  - Tipping point during an inspection
- Important to recognise the purpose of a visit and the potential outcomes



# Understanding Powers and Procedures

## Know the rules of engagement

- Powers of entry, seizure of evidence and witness statements differ for Police Scotland and regulators
  - HSE – section 20 HSWA 1974
  - Police Scotland – warrants
- Witness Cooperation Powers
  - Section 20 HSWA 1974 v Section 14 CP(S)A 1995
- Legal Privilege



# Enforcement Powers

## Fees, Notices and Beyond

- Fees for Intervention (**FFI**)
  - **Material Breach**
  - Notification of Contravention
  - **£183 p/h**
- **Improvement Notice** (s21 HSWA)
- **Prohibition Notice** (s22 HSWA)
- **Public** Register
- Appeals
  - Employment Tribunal
  - **21 days to appeal**



# Managing the investigation

## Control, Coordination, Communication

- Stay on the front foot by seeking **early specialist legal support**
- **Preserve any potential evidence**, e.g. CCTV
- **Establish an internal team** to manage the investigation and nominate a single point of contact for external regulators – **consistency** helps manage requests
- **Keep a record** of visits and requests made/actioned for regulators

# Early Missteps

## Common Pitfalls

- Trying to be overly helpful...
- Combative early communication with Inspectors
- 'Tidying up' documents
- Failing to understand the potential for enforcement or a prosecution from outset
- Speaking to regulators "off the record"
- No one leading the internal investigation or response



# Protecting your people and your reputation

## Two sides of the same coin

- Investigations are stressful - provide **employee support** and consider how any injured party is treated
- Have a concise, factual **press statement prepared** with input from legal advisors
- **Good internal and external communication** can impact the course of an investigation

# Practical Steps

## Be investigation ready

- Develop an **incident response plan** - who to call, how to manage comms, how to preserve evidence
- **Train** key staff on **regulatory engagement**, particularly those likely to meet inspectors – it will help ensure a **calm response** in a crisis
- Establish and maintain a robust **document management** system
- Build a relationship with your **legal team** early not just in crisis mode

# Key Takeaways

## Prepare, Respond, Protect

- **Be prepared** - know your regulators, your rights and the applicable powers of the regulator
- **Respond calmly and consistently** - early legal advice can prevent escalation to enforcement or prosecution
- **Protect your people and reputation** - the way you handle an investigation can impact the outcome







# Managing the risk of fraud

**Ramsay Hall**  
Partner

19 November 2025



# Agenda

1. Changing regulatory risk landscape
2. What is fraud?
3. Falling victim to fraud
4. The consequences of engaging in fraud
5. Corporate duty to prevent fraud – the new law
6. What steps should businesses take to manage the risk of fraud?

# 1. Changing regulatory risk landscape

- As Lindsay has explained traditional risks such as H&S still apply
- Know your regulator(s) and their powers
- Additional risks such as fraud / financial crime apply to businesses regardless of sector
- Use of technology to commit breaches e.g. rise in cyber incidents
- Trend of authorities holding organisations to account for conduct of staff and supply chain – 1 September 2025 - duty to implement **fraud prevention procedures** in line with existing anti-bribery & corruption and anti-tax evasion facilitation obligations

## 2. What is fraud?

- Dishonest conduct intended to lead to some form of gain
- Submission of false or exaggerated invoices
- False information as to quality of goods / services to be provided in order to secure contract and / or to increase contract value
- False certification as to safety of materials / creation of false permits
- Persuade contacts to submit falsely high contract bid and then submit lower bid in order to win (fraud + competition law breach)

# Fraud as a key risk

- UK Finance's Annual Fraud Report 2024 - in 2023, **£1.17 billion** was lost in the UK by businesses and individuals following fraud
- Across the UK, fraud accounts for approximately **40%** of all offences
- National Crime Agency: *"It is estimated that **67% of fraud reported in the UK is cyber-enabled**"*
- UK Govt position:
  - *"Fraud and serious economic crime destroy people's finances and hurts the reputation of doing business in the UK"* (Lord Hermer KC, Attorney General)

### 3. Falling victim to fraud

- Take action to investigate circumstances and pursue recovery
- Internal investigation - identify whether internal vulnerability allowed fraud to occur – address the issue to avoid a repeat – benefits of **legal professional privilege**
- PR strategy to manage impact on reputation
- Various recovery options:
  - Engagement with banks and other parties involved (perhaps professional advisers)
  - Report to regulators and criminal enforcement authorities
  - Civil court actions

## 4. Engaging in fraud – the consequences

- June 2025 – fraudster who earned more than £500,000 by deceiving luxury hotels and stores into buying 'unique' Scottish-grown tea that was actually imported - imprisoned for three and a half years
- Thomas Robinson claimed that he cultivated exclusive tea plants at his Perthshire estate. In reality, he bought the tea from wholesalers in Italy before repackaging the plants and reselling them to retailers for five times the original cost
- The Balmoral Hotel purchased the tea: *"To have been deceived in such a calculated manner left us all profoundly disappointed and embarrassed"*
- **Custodial sentence is a continuation of a theme + sends a strong message**
- **Significant media coverage and damage to reputation for all involved**

## 5. Duty prevent fraud

- Organisations can be subject to criminal investigation and prosecution for failing to prevent an underlying criminal offence such as **bribery** (Bribery Act 2010), **tax evasion facilitation** (Criminal Finances Act 2017) and, from 1 September 2025, **fraud** (Economic Crime and Corporate Transparency Act 2023)
- Organisations must implement reasonable prevention procedures to address risk of financial crime offences
- Consequences of a breach are severe, both for organisations and senior management including imprisonment, fines and damage to reputation
- The authorities are eager to investigate and bring enforcement action - *"Come September, if they haven't sorted themselves out, we're coming after them. **I'm very, very keen to prosecute someone for that offence.** We can't sit with the statute books gathering dust, **someone needs to feel the bite.**"* (Nick Ephgrave, SFO Director)



# Overview

- Corporate 'failure to prevent fraud' offence applies to **large organisations & their subsidiaries** meeting 2 out of 3 criteria in the FY preceding the year in which the underlying fraud occurs:
  - More than 250 employees
  - Turnover exceeding £36 million
  - Total assets exceeding £18 million
- A large organisation will be criminally liable for fraud committed by their employees, agents, subsidiaries or other 'associated persons' providing services for or on behalf of the organisation, where the fraud was committed with the **intention of benefiting the organisation or its clients**
- It does not need to be demonstrated that the organisation's senior managers or directors **ordered or knew about the fraud**

# Who is an associated person?

- Employees, agents, subsidiaries and others providing services **for or on behalf of** organisation
- There does not need to be a contract between the company and the person
- Provision of services **to** an organisation is not caught - external lawyers, valuers, accountants or engineers are not acting 'for or on behalf' of the organisation so are not associated persons
- If an associated person commits fraud in their private life - no corporate offence

## Other considerations

- Victims of fraud are **not** in scope....but an organisation is not a victim only because it suffered indirect harm as a result of the fraud by an associated person (for instance, because revelation of the fraud damaged reputation)
- The fraud must **intend to benefit** (1) the large organisation or (2) any person whom, or to whose subsidiary, the associated person provides services on behalf of the large organisation i.e. a **client / customer**
- The offence will apply to **overseas large organisations whose UK employees / subsidiaries / associated persons commit fraud** – sufficient UK nexus
- The offence will not apply to UK organisations whose overseas employees / subsidiaries / associated persons commit fraud abroad with **no UK nexus**.....but tread carefully – UK authorities will take a robust approach + conduct may be a breach of overseas fraud laws

# Examples

- UK Govt guidance example:
  - A salesperson who is on a commission may engage in mis-selling to increase their own commission, but in doing so, they also increase the company's sales. **Even though this is not the fraudster's primary motivation, the intention to benefit the company can be inferred in this case because the benefit to the salesperson is contingent on the benefit to the company.** As a result, the company may be prosecuted for failure to prevent the fraud
- An employee of a large organisation submits exaggerated invoices to a third party (perhaps to achieve an internal target and therefore a bonus)
- An associated person forges a licence to ensure that a large organisation secures work

# Impact on non-large organisations

- A subsidiary that is not a large organisation can be prosecuted where the **parent company is a large organisation**
- Legislation may be amended to include SMEs – original draft legislation applied to all businesses regardless of size
- Non-large organisations in the supply chain of large organisations will likely be required to demonstrate compliance – **change to contractual terms and audit approach**
- **Regulatory action** in the event of a fraud incident for a non-large organisation

## 6. Managing fraud risk

- Defence to corporate offence
  - Reasonable procedures in place to prevent fraud
  - Demonstrate to the satisfaction of the court that it was not reasonable in all the circumstances to expect the organisation to have any prevention procedures in place
- Difficult to demonstrate that it was not reasonable to expect the organisation to have fraud prevention procedures
- Focus instead on implementing **reasonable fraud prevention procedures**
- Must prove that procedures were in place **at the time the fraud was committed** .....not enough to implement **after** fraud incident – the horse has bolted

# Reasonable fraud prevention procedures

- Compliance is based on six principles. Same principles as required by corporate failure to prevent offences in relation to bribery and tax evasion facilitation
  - Top level commitment
  - Risk assessment
  - Proportionate risk-based prevention procedures
  - Due diligence
  - Communication (including training)
  - Monitoring and review
- Organisations may have existing fraud prevention procedures – focus likely to be on the organisation as the victim of fraud. New law requires a change in focus
- Organisations may have existing financial crime procedures e.g. ABC policy – may inform fraud procedures but **cannot copy and paste**

## Where to start?

- Top level commitment – who within the senior team has responsibility for development, implementation and monitoring of fraud prevention procedures?
- Do they have sufficient experience and authority?
- Do they have sufficient capacity and resources?
- Do they need external support from professional advisers?
- Once top level responsibility is confirmed, focus on implementing procedures.....



# Key compliance measures

- **Risk assessment** underpins compliance framework – assess risks across the organisation based on variables such as (1) operations (2) jurisdiction(s) (3) people (4) access to funds (5) approval levels (6) client engagement
- **Anti-fraud policy** + test **whistleblowing** processes
- **Training** for all staff + enhanced training for 'at risk' teams – *"Consideration should be given to the specific training needs of those in the highest risk posts"* (official guidance)
- Know your supply chain – **due diligence** pre take-on and **monitor** conduct
- Tailor the approach – *"this guidance is not intended to provide a safe harbour: **even strict compliance with the guidance will not necessarily amount to having reasonable procedures** where the relevant body faces particular risks arising from the unique facts of its own business that have not been addressed."* (official guidance)



# Buffet Lunch



# How incisive decision making in criminal matters delivers case winning outcomes

**Alasdair Gillies**

Partner & Solicitor Advocate

19 November 2025





### **Criminal Defence experience**

Decades of collective experience both in defence and unusually prosecution experience too.

### **Partners and Solicitor Advocates**

4 partners and 4 Solicitor Advocates within a criminal defence team of 10. That abundance of experience and expertise is unique for a criminal defence teams in our sector.

### **Our clients**

High profile individuals in politics, sport, music & business. Represented doctors, solicitors including prosecutors and judges. Decades of experience acting for uniform services - Police, Prison Officers & Military personnel.



**Out of court,  
out of the media  
and out of trouble.**

# Indirect criminal prosecutions

- Legal actions against business owner for non-business matters;
- Charges involving family members – spouse, children or siblings
- Cases against employees and key members of the business; or
- Prosecution of peers, mentors, associates and friends if they are providing support

# The effect on you or those you care for being prosecuted

- Exceptionally distressing ordeal;
- Feelings of *helplessness*, lack of control and apprehension;
- Uncertain future, 'life on hold', the possibility of incarceration and social judgment;
- Complicated, unfamiliar legal terminology and processes;
- Indirect reputational damage for the business;
- Mental strain and illness - many cases have an underlying medical background and the act could be as a direct result of the condition but then the prosecution magnifies the condition.

**Distractions and impairments to your key people performing in the business.**





# Remember.....

- Not every interaction with the police or the criminal justice system, means that you have broken the law. Often things have not happened as first perceived, often witnesses are mistaken, often the exculpatory evidence or context is not known to the police.
- The police are reacting, appropriately, to the resultant event and ingathering evidence of that prima facie case for presentation to the prosecution or ultimately a judge and/or jury.
- The burden of proof on the Crown –
  - present **corroborated** evidence
  - to prove their case **beyond reasonable doubt**

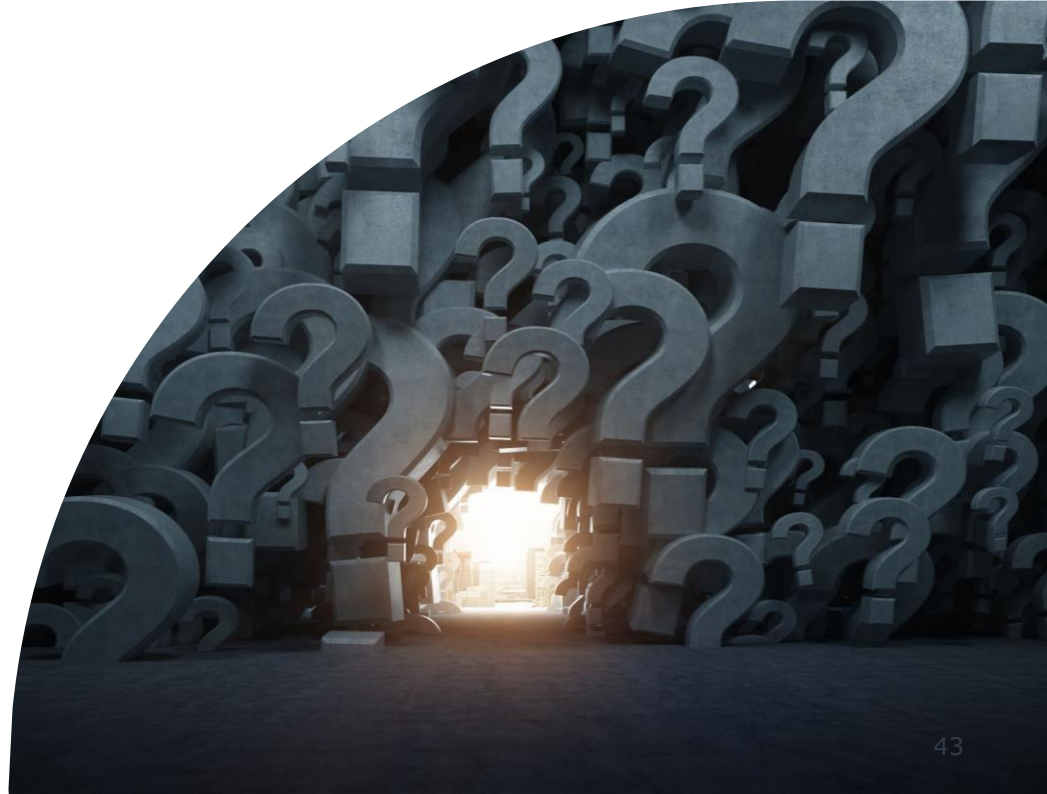
# Our role...

- To *create an event of our choosing* in the minds of the decision makers – be that the police, the prosecutor or ultimately the Judge and/or Jury.
- So **not** the evidence viewed through the prosecutorial prism, **not** the mistaken witnesses and **not** the incomplete CCTV footage.
- To create that event - the accused's position – in the mind of the decision maker, it is of critical importance that we
  - Legally and appropriately restrict the Crown's ability to gain evidence they can use against the accused; and
  - Secure exculpatory evidence



# Police describe the 'golden hour' after the crime

- "One never gets a second chance to make a first impression. By the same token, in forensic scene examination **one never gets a second chance to recover evidence that had been destroyed or damaged by poor decision making in its identification, retrieval and subsequent handling.**"
- The "golden hour" refers to the period immediately following an incident "when **material is abundant and readily available**". Positive action during this time "minimises the attrition of material and maximises the chance of securing the material that will be admissible in court."



# Incisive decision making – securing evidence

**01**

Medical evidence

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**02**

Electronic evidence

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**03**

Locus

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**04**

Video evidence

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**05**

Vehicle examination

# 1. Medical evidence

- Allegation - assaulted someone in a nightclub – Phoned for advice on Sunday afternoon following release. Career ending event. They says acting in self defence.
- Monday morning
  - Examined by an eminent consultant medical expert
  - Photographed by a professional photographer at the same time
  - Critical defensive injuries missed by the police preserved
- Acquitted.



## Medical experts

- We have a bank of significant experts in every medical field
- Psychiatrists and psychologist to assist in helping the accused or getting key information to enable negotiations with the crown or mitigation before the court.
- Recently in two cases, ADHD a live issue – in one, expert assisted in challenging the fairness of the interview; in another, ADHD expert explained the accused's reaction at the scene which assisted in negotiations with Crown.

## 2. Electronic evidence

- Messages, Messenger, Whatsapp, Snapchat's disappearing messages. Can be edited and/or deleted. Important to **preserve** - screenshot it! We also have experts who can **recover** such evidence from the devices.
- Critical that our clients appreciate that post incident text messages/posts – all recoverable and can be used against them.
- Social media postings of witnesses is admissible evidence.



# Other examples following the electronic breadcrumbs

- **Biometric data**
  - **Myrna Nilsson Case (Australia, 2016):** Data from the victim's Apple Watch was crucial in charging Caroline Nilsson with murder. The Watch Data showed intense activity followed by a rapid heart rate drop. Contradicting the suspect's story and suggested time to stage the scene, leading to conviction
- **Location Data**
  - Now can be very helpful in proving activities, locations and timings.





### 3. Locus

We will go to the locus.

- Step into the shoes of the accused, the complainer and witnesses. See what they see
- Identify evidence sources such as cameras
- Identify potential eye-witnesses
- Take scene of crime pictures – views, measurements, videos showing limitation of distance, lighting
- Helps us present to the decision maker or cross examine key witnesses
- Defence crash investigators instructed to examine the locus and vehicles

## 5. Vehicle examination - Road traffic fatalities

- Client's vehicle impounded following crashes can be examined and key evidence recovered.

# Knock at the door....

- Police
  - Want to 'talk'
  - Come in for questioning
  - Police interview
  - Charge
  - Arrest
  - Search warrant
  - Deliver court proceedings

What do you do?....



# Call BTO!

- **Entitled** in law to request to speak to your solicitor - do it!
- We will tell you immediately the position to take and will be there at the police station to protect you.
- Just because you have nothing to hide does not mean that anything you say will not be used against you.
- No adverse inference if taking **no comment** position.
- Remember **Corroboration...**



# Support that can be provided for interviews

- Your children potentially alone within an inhospitable environment;
- Those within the public eye – want to ensure *this* event is not in the public eye.
- Clients who are in a vulnerable and emotional state – not thinking rationally or logically – we are there with you to protect you.
- Other issues – Decisions about evidence - Mobile phone; DNA tests, clothing, fingerprints & photographs.

# Court proceedings raised

- Simply start of a process – not necessarily determinative that the only successful outcome has to be after trial
- That early phone call can be critical in terms of strategic decisions for a case winning outcome
- Papers can contain key documents – if you do not object within a short timeframe held to have admitted.



# Saturday morning. Example call from Key business executive copy complaint for a speeding offence, however...

- Currently has 9 penalty points - additional 3 points will mean **6-month driving ban**
- Losing license disrupts vital business contracts
- Partner does not drive
- Cares for elderly parents, one regularly attending hospital for treatment
- Child at critical point in football career training with multiple weekly/weekend training session/games



# Time critical preliminary investigations

## Key questions *before* responding to charge

- Did they get a Notice of Intended Prosecution within 14 days - if not, **fatal** to any prosecution.
- Is it a Traffic Regulation Order (TRO) to temporary reduce speed limit? Is the road order still **in force** - was it renewed?
- Some cases require to be raised within a set time frame of 6 months – if not **time barred**.





# Next stage – challenging the crown evidence

- **Speed capture equipment**
  - Must be certified
  - Used in accordance with that certification
  - Officer trained in the equipment?
- **Checking for Faulty or Inadequate Signage**
  - Speed limit signs must comply with **The Traffic Signs Regulations and General Directions (TSRGD)**. If the signage was damaged, obscured, missing, or incorrectly placed, the speed limit may not have been legally enforceable.

# Options and outcomes

- So many different ways we can achieve a successful objective.
- Provide Crown with key information not in their possession about background may result in proceedings being **dropped** in exceptional cases.
- Timely challenges or service of documents, preliminary pleas – key to potential outcomes.
- Sometimes a well crafted plea to
  - Keep out of jail; or
  - Admonition; or
  - Absolute discharge



# Navigating the journey

- Our team can help you, your family and your colleagues to navigate an exit from difficult circumstances they have got caught up in. Get lives, health and careers back on track.
- Take control of the case & narrative and secure key evidence. Restrict the Crown to only get evidence to which they are lawfully entitled. Strategic and insightful preparation frequently wins these cases.
- Even when the facts are against you, everything does not need to come crashing down because of a misunderstanding, misrepresentation or a real mistake that has been made.
- **Incisive decision making innovates the outcome**





# Panel Session



## How we can help

**BTO's Health & Safety  
& Environmental  
Defence Brochure**



**BTO's Health & Safety  
& Environmental  
Defence Webpage**



**BTO's Health & Safety  
Compliance Audit**





## How we can help

### **Regulatory & Compliance** Webpage



### BTO's Cyber**Protect** Service



### **BTO's Road Traffic Defence – Fixed Fee Package**





## Connect with us

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# We see the **bigger picture**







## How can we improve?



To help us continually improve the quality of our events,  
please take a couple of minutes to provide your feedback.

**Thank you!**