

Noble



Keeping out of jail

Do Nothing



Andy



Jim



Bruce

**Who could I
be?**



Keeping out of jail

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 Do Nothing

 Be Perfect

Inspection | Audits | Risk Assessments | Asbestos Surveys | Asbestos Sampling | Advice | Management | Project Managements | Air Monitoring | Training
Health & Safety | Expert Witness | Site Inspection | Audits | Risk Assessments | Asbestos Surveys | Asbestos Sampling | Advice | Management | Project
Managements | Air Monitoring | Training | Health & Safety | Expert Witness | Site Inspection | Audits | Risk Assessments | Asbestos Surveys | Asbestos
Sampling | Advice | Management | Project Managements | Air Monitoring | Training | Health & Safety | Expert Witness | Site Inspection | Audits | Risk
Assessments | Asbestos Surveys | Asbestos Sampling | Advice | Management | Project Managements | Air Monitoring | Training | Health & Safety | Expert
Witness | Site Inspection | Audits | Risk Assessments | Asbestos Surveys | Asbestos Sampling | Advice | Management | Project Managements | Air Monitoring | Training

Be Perfect.....?

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USA: Union denounces DuPont's bad behaviour

A North American union has denounced DuPont corporation's 'abominable' health and safety record. A report from the Steelworkers' Union (USW) launched at last week's World Congress on Safety and Health at Work in Florida 'illustrates that DuPont's many violations and accidents are not just isolated incidents of worker failure, but establish a clear pattern of denial of corporate responsibility,' said the union. The report says the company has a record of serious safety violations and is on the official US safety watchdog's 'Dangerous Dozen' for putting over 9 million people at risk. 'When it comes to worker safety and protecting the environment, DuPont, does not 'Walk the Talk',' said Ken Test, chair of the USW DuPont union council. 'Many of our members and retirees suffer from their exposure to dangerous chemicals that they encountered on the job during their years of loyal service.' The report is also highly critical of the DuPont STOP system, a behavioural safety package sold to other firms by the company and that earns over \$100 million (£56.6m) in revenues, because it is 'based on the theory that almost all injuries are caused by worker unsafe acts.' Mike Wright, head of the USW health, safety and environment department, said 'USW has tracked data on fatality investigations for 20 years. What we almost always find when we investigate catastrophic accidents, including fatalities, is that multiple root causes related to hazards and unsafe conditions, not multiple unsafe behaviours, cause the accident.' According to USW's Ken Test: 'I could not think of a more inappropriate corporation to profit off the message of safety. These workers were asked to trust DuPont and now regret it.'

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 Be Perfect

 Create an audit trail and be lucky!

What's the Risk?

312 Prs in last 5 years from fatality 2671
in total

CDM 1994 86 in 5 yrs

CDM 2007 0 yet

ASLIC 23 in 5 years

CAWR 63 in 5 years

CAR 5 – all 5 against Envirocore – Bloom
Environmental

Case summary with words “asbestos” in
- 125 in last 5 years

So What do you do?

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- Do it properly - Policy
- Allocate responsibilities
- Make sure it happens
- Make sure h and s is agenda item on meetings and keep records
- emails – massive potential problem

Systems



- Responsibility – job description ?
- Contract of employment / terms of engagement for a sub contractor
- H and S Objectives
- KPI's – issues
- Supervision
- Management systems

Potentials



- Corporate Manslaughter – Fine plus bad PR plus ? Effect on value of business / careers
 - Manslaughter – Fine plus Jail
 - HSW Act – Fine plus Jail for some parts
 - H and S Regulations - Fine
- Defence costs insurable / fines etc not
- Civil Claim – all costs insurable – NB Directors and Officers Cover

Corporate Manslaughter

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What will the courts look at?

- What will the courts look at?
 - Activities and Management
 - Not based on an individual's failure
 - Senior Management failures – this is the only way a conviction is applicable
 - Factors that will be considered include:
 - Systems of work
 - Levels of training and adequacy of equipment
 - Supervision and middle management
 - Approach to H&S, RA, monitoring and auditing.

Corporate Manslaughter



- Juries may also use H&S guidance e.g. ACoPs - even if companies have chosen to take different action, to inform their decision.
- H&S guidance is available from the HSE and Local Authorities. Other sectors of industry produce their own Regs.
- **NEW GUIDANCE** “Leading health and safety: leadership actions for directors and board members”

Pdf on CD

Manslaughter



- ❧ In order to determine whether an act constitutes the offence of gross negligence manslaughter, the Crown must establish that:
- ❧ There was a **duty of care** owed by the accused to the deceased.
- ❧ There was a **breach of the duty** of care by the accused.
- ❧ **Death of the deceased was caused by breach of the duty of care** by the accused
- ❧ The breach of the duty of care by the accused was **so great as to be characterised as gross negligence** and therefore a crime.

So what was manslaughter



☞ Included some cases in your handout

Name of Deceased	Date of Deaths	Conviction Date	Convicted Defendants	Status	Sentence
Paul Alker	June 2007	November 2007	Steven Smith	Director	Two years and six months imprisonment
Christopher Meachen	Nov 2005	12 June 2007	Roy Burrows	Area manager	Nine months imprisonment
			Timothy Dighton	Managing Director	Twelve months imprisonment
			Concrete Company Ltd		Fined £75,000 for breaches of health and safety legislation, with £89,000 costs
Krisztian Takacs	Aug 2005	15 Feb 2007	Philip Wyman	Boat owner	18 months imprisonment
David Bail	May 2003	Aug 2006	Michael Shaw	Director	15 months imprisonment
			Gavin Shaw	Director	Fined £1,500 for breach of health and safety legislation
			Change of Style		Directors and company fined total of £70,000 for breaches of health and safety legislation
Colin Buckley, Darren Burgess, Chris Walters, Gary Tindall (Tebay Rail tragedy)	Feb 2004	Mar 2006	Mark Connolly	Business owner	Nine years imprisonment
			Roy Kennett	Employee	Two years imprisonment
'Cockle Pickers'	Feb 2004	Mar 2006	Lin Liang Ren	'Gangmaster'	14 years
Mark Jones	Feb 2004	Oct 2005	Wayne Davies	Sole Trader?	18 months imprisonment
Kevin Amup	Dec 2003	Jun 2005	Paul White	Director	1 year imprisonment
			M V White Ltd		Fine of £30,000 for breach of health and safety legislation
Daryl Arnold	Jun 2003	Jan 2005	Lee Harper	Managing Director	16 month imprisonment
			Harper Building Contractors Ltd		Charged with corporate manslaughter and breach of Section 2 of HSWA (These charges remain on the file as the company is in liquidation)

HSW Act



- ☛ In a prosecution the burden of proof is reversed and on the defendant to prove that it was not reasonably practicable to do more
- ☛ Regulators speak with forked tongues.....

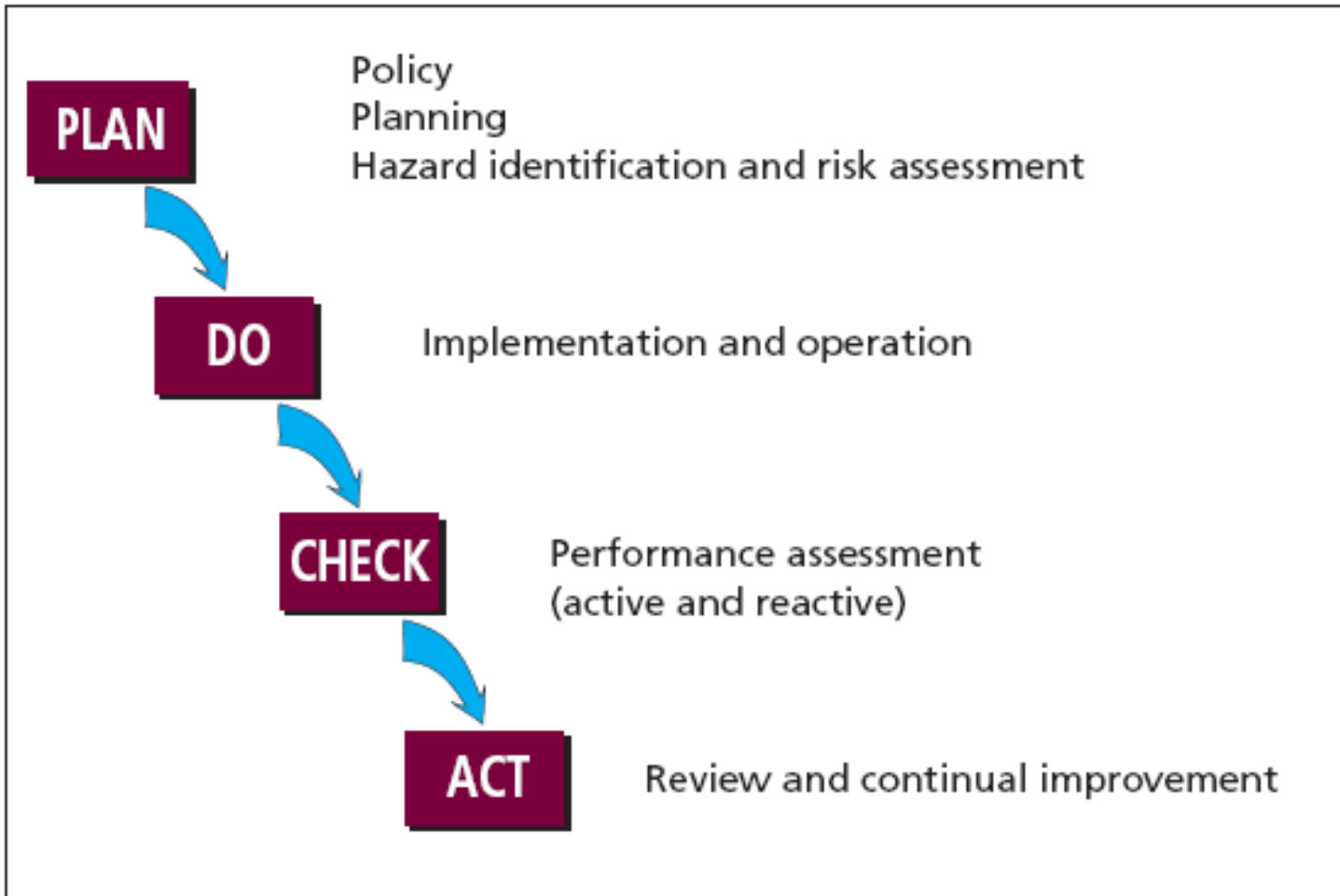
HSE's Simplification Plan aims to reduce bureaucracy and paperwork in a way that is proportionate to the risk. Some highlights of the 2007 plan include: Example risk assessments - none of the media popular 60 page bureaucratic tickbox exercises but actually real examples endorsed by HSE of risk assessments, which are fit for purpose and 'good enough'. This includes a three page risk assessment used by Leicestershire County Council, which covers multiple activities.

HSW Act



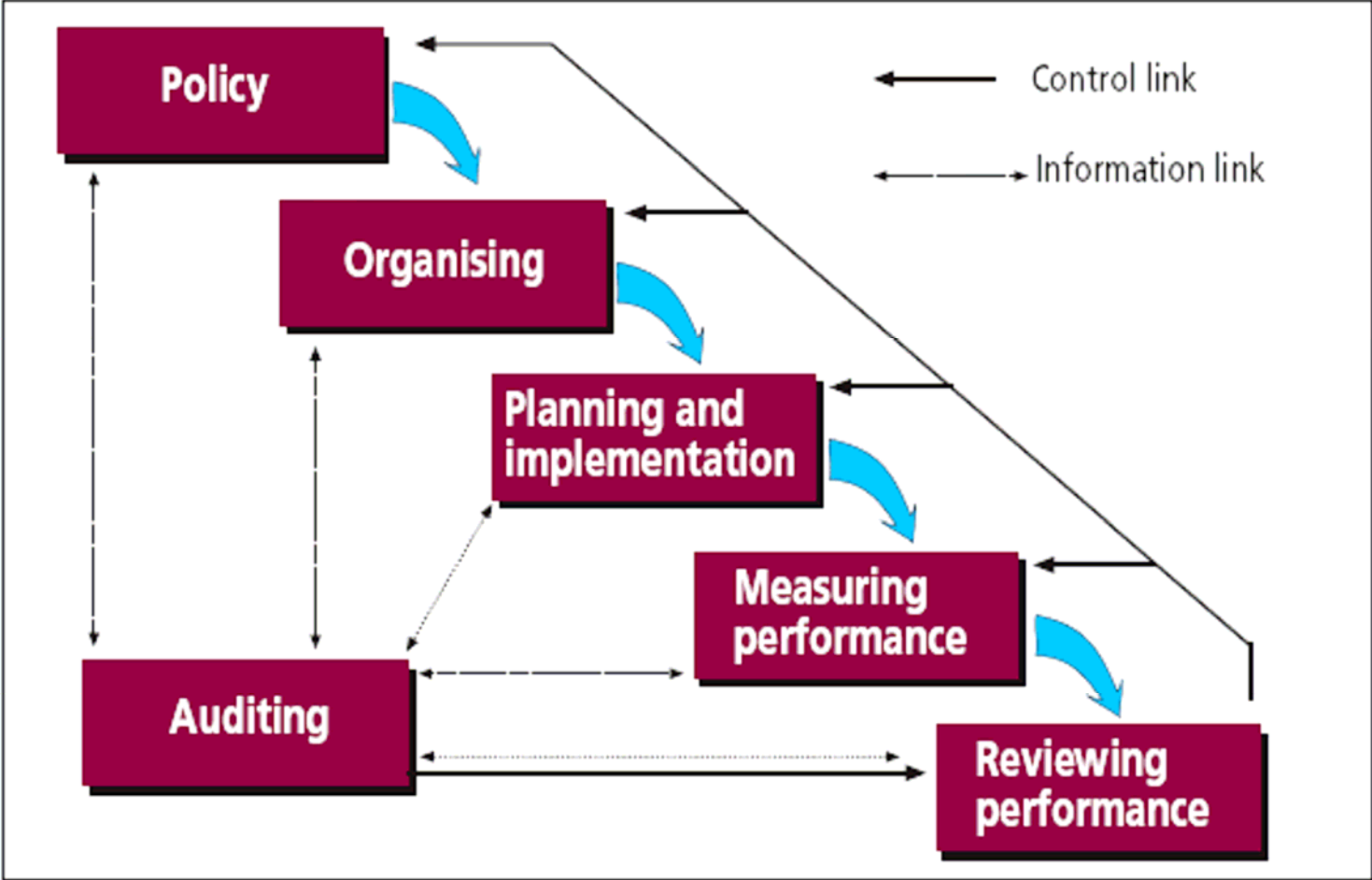
- ❖ JCB fined £266,000 plus costs of £31,701
- ❖ Section 2(1) Health and Safety at Work etc Act 1974 .
- ❖ Mr McNamara suffered fatal head injuries after being crushed by the boom of an excavating machine (known as a backhoe loader). HSE's investigation revealed that it was common practice for workers to operate the controls for the boom whilst standing outside the cab of the machine and leaning through the back window. A fault on the hydraulic system resulted in the control lever not working properly causing the boom to carry on moving, trapping Mr McNamara and inflicting fatal injuries.

Managing – The concept



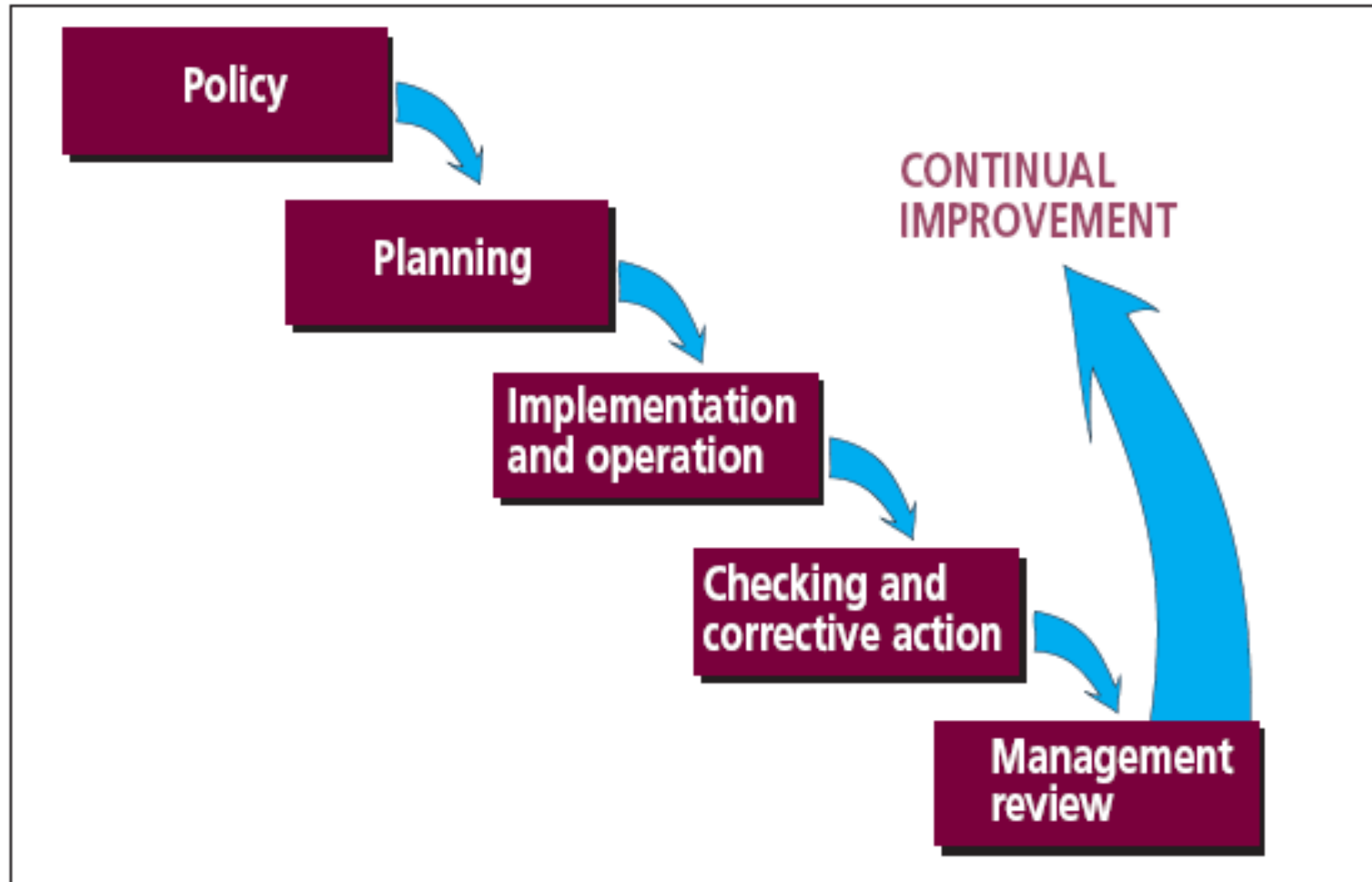


HSG 65



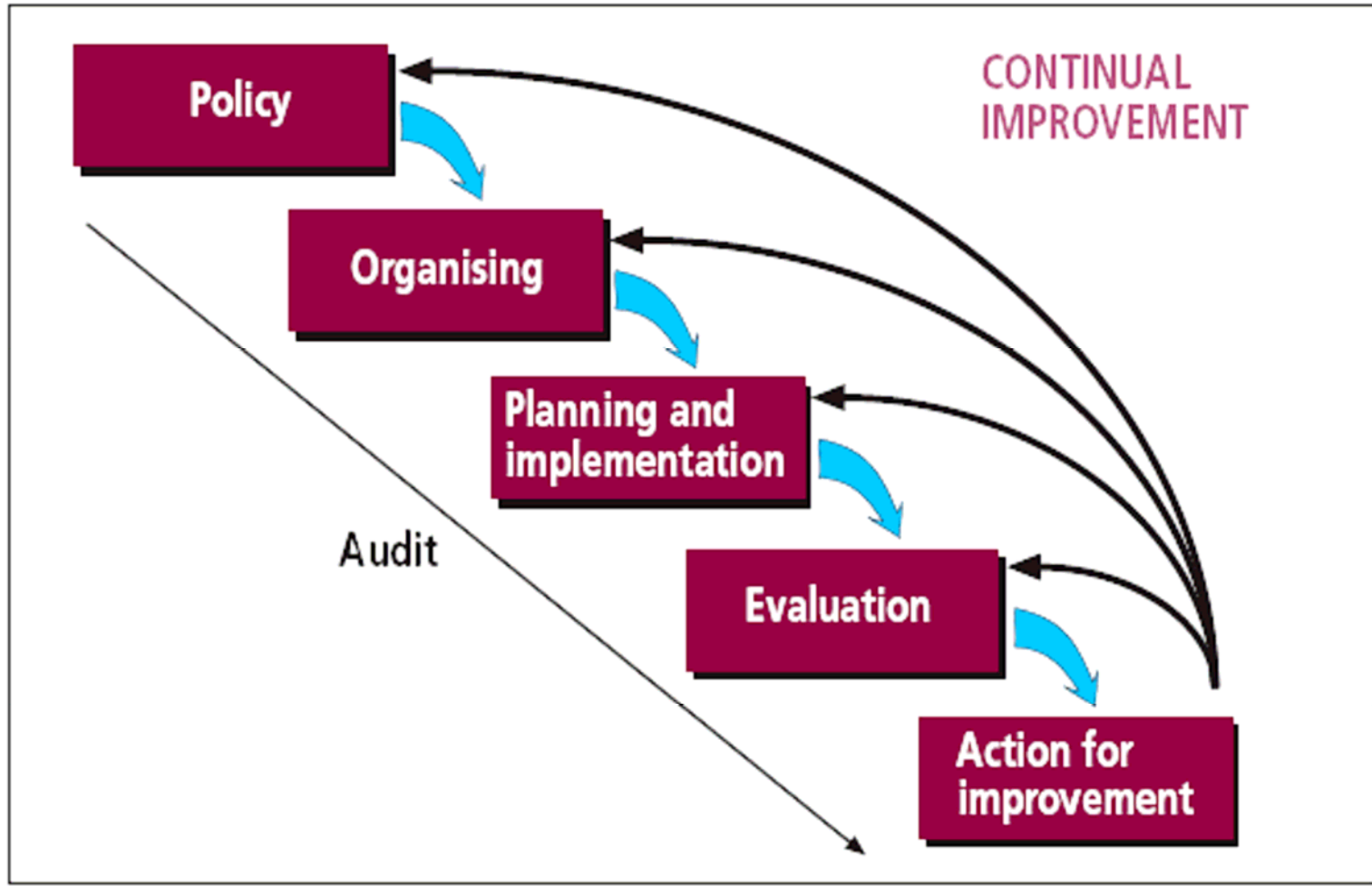
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Benchmarking

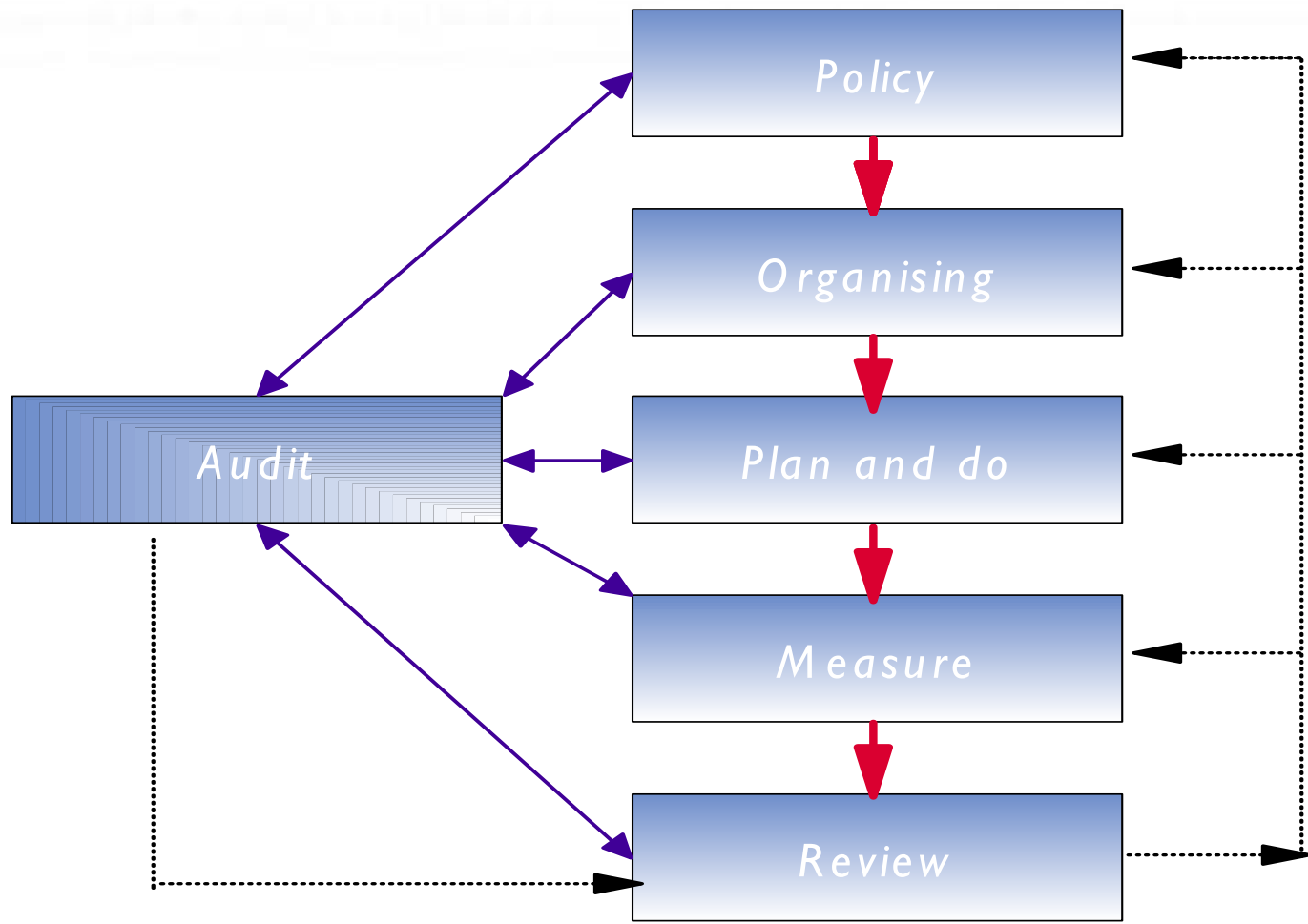
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- <http://www.businesslink.gov.uk/bdotg/action/haspi>
- <http://www.chaspi.info-exchange.com/>



HSE HSG65



BS:OSHAS 18001 2007



Be careful

- Google – sales stuff
- Corporate manslaughter checklist in handout
- Get the relevant HSE Guidance for your sector - oh and read it
- NEBOSH Cert is a start but not an end

Keeping out of jail

- Need a clear policy
- Must have responsibilities on it
- Must be some way of checking that it is happening
- Strongly suggest – h and s dealt with like accounts i.e. records
- Manage it



Or Alternatively.....



Or Even.....!!!!

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