

Health and Safety Commission Minutes		HSC/03/M07	
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Health and Safety Commission

Minutes of a meeting of the Health and Safety Commission held on 15 July in the Hope Room, 2 Southwark Bridge, London SE1 9HS

Present

Bill Callaghan – Chair
Owen Tudor
George Brumwell
Abdul Chowdry
Judith Donovan
Joyce Edmond-Smith

Apologies

John Longworth
Judith Hackitt
Margaret Burns

Officials Present

Timothy Walker
Kate Timms
Justin McCracken
Vivienne Dews
Robert Humm
Mark Dempsey
Paul Kloss
Paul Denman
Sian Lewis
Dave Watson
Sandra Caldwell

Presenters

Item 3 – Jonathan Russell, Simon Newman, Richard Hooker
Item 4 – Dr Elizabeth Gibby, Miles Sibley, Avril Adams, Joanne Dee
Item 5 – Anne Sharp, Anne Loach, Gill Dixie
Item 6 – Vivienne Dews, Jane Willis
Item 7 – Sandra Caldwell, Jenny McGilvray, Mike Leppard
Item 8 – Sandra Caldwell, Elizabeth Gyngell, Neal Stone, Matthew Holder, Stephen Taylor, Dominic Pritchard
Item 9 – Kate Timms

1	Minutes of the meeting held on 10 June 2003
	The minutes were changed to fully open status and agreed.
2	Urgent business not covered by items on the agenda
	<ul style="list-style-type: none"> • Kate Timms informed the Commission that the Reasoned Opinion on Implementation of the Framework Directive had not materialised in early July. The Commission was to be briefed as soon as more information became available. • Sandra Caldwell informed the Commission that the Crown Prosecution Service (CPS) was the lead prosecutor in the Hatfield Rail Crash cases. The CPS had agreed to pursue the Health and Safety at Work etc Act 1974 (HSWA) cases for HSE, should the manslaughter charges fail.
3	Police Reform Act Section 95. HSC Consultation outcome (HSC/03/77):
3.1	Jonathan Russell introduced the paper. In general, the responses (copied to the Home Office) to the Commission's 12 week consultation offered no basis for recommending that HSC should support the changes proposed in section 95 of the Police Reform Act. 120 responses had been received and the balance of opinion indicated that the change would introduce inherent problems. HSC/E had been informed that the Home Secretary had

	decided to postpone implementing section 95 but was keen for an alternative to be found which removed personal liability of Chief Constables for organisational failings.
3.2	The Commission was concerned that the Police Federation was not represented at the first 'solution seeking' meeting at the Home Office, on 4 June. It felt that, in reaching a decision, the Home Office needed to expand its small group of stakeholders in order to consider opinion from those on the front line.
3.3	The Commission was concerned by some of the events and press coverage surrounding the recent trial of Sir John Stevens and his predecessor Lord Condon. The Commission was not convinced that HSE had been able to get its side of the story across and felt that HSC/E should now find opportunities to explain its position calmly and accurately. While it was important not to rake over the embers of the case, HSC/E had to be prepared for any future cases of a similar nature.
3.4	The Commission felt that the knock on effect of the case would be beneficial, as the safety of police officers had been improved. Chief Police officers had been reminded of the need to take responsibility for the health and safety of their workforce.
3.5	<p>The Chair thanked the presenters. In summing up, he noted that the Commission:</p> <ul style="list-style-type: none"> • Agreed there was no basis for endorsing the proposal to make police authorities the employers of police officers (under section 95, Police Reform Act) as this risked undermining effective health and safety regulation; • Agreed that Chief Police officers should remain the 'employers' of police officers for health and safety purposes; • Believed that the law should be changed so that: <ul style="list-style-type: none"> ➤ Chief Constables remain personally liable where their personal action or neglect has caused a breach, or they have knowingly permitted it; ➤ Chief Police Officers might be prosecuted, with no personal criminal liability, for health and safety breaches arising from wider 'organisational' decisions for which an individual would not normally be prosecuted; • The Commission should write to respondents welcoming Home Office led work on alternatives to section 95 and calling for an amendment to primary legislation which would achieve these policy objectives, while ensuring effective accountability for health and safety management. <p>In addition, the Commission asked HSE to develop a pro-active strategy to help explain why police officers should be covered by HSWA and HSE's recent actions.</p>
4	Railway Safety Regulations 1999: TPWS Exemption Consultation (HSC/03/49):
4.1	Dr Elizabeth Gibby introduced the paper. Network Rail (NR) had applied for exemption from a requirement of the Railway Safety Regulations 1999 (the requirement being to fit train protection to permanent speed restrictions at diverging junctions with approach controlled signalling). This particular exemption application was not concerned with TPWS for SPAD mitigation but with TPWS as a measure to reduce risk of derailment from overspeeding in certain categories of location. Although HSE was minded to grant the exemption, and with the conditions specified, a final decision was only to be made when the views of all consultees, including HSC, had been taken into account.
4.2	Miles Sibley (HMRI) described the technical case made by NR. He explained that NR had presented evidence to show risks to a derailment from overspeeding were falling due to the increased frequency of speed checks and improvements in driver training. He informed the Commission that NR has presented a plausible argument thus far and that HSE would make a final decision on the exemption application beyond the date of closure.

4.3	The Commission took the view that HSE needed to set some conditions in the event of an exemption to avoid the impression that original commitments were being watered down. The clear message to NR had to be that HSC/E can consider these exemption applications pragmatically but that safety results were expected.
4.4	The Commission was assured that the type of derailments in question were rare and felt HMRI's judgement of the risks was to be trusted.
4.5	The Chair thanked the presenters. In summing up he explained that an HSC response to the consultation package would be drafted and sent to HSE. This response could then be made publicly available.
5	Progress on Implementing the Railway Public Inquiry Reports (HSC/03/52):
5.1	Anne Sharp introduced the paper. She said that the industry had made significant progress. At this stage, out of the 116 recommendations remaining from the original 295, HSE considered 40 to be completed. It continued to examine ten, which the industry considered complete; and both the industry and HSE agreed that work on 66 recommendations was still to be delivered. HSE was, in particular, concerned to see that the effect of work in hand and planned in relation to health and safety culture and contractor management penetrated down through all levels of the industry to the trackside. On points of detail, she clarified that paragraph 21 of the paper should read that DfT and DWP had each provided £2m a year for 2003/04 and 2004/05. She also said that the entry in the progress report in relation to the recommendation on funding of HSE was to be reworded on the advice of PEFD. Finally she explained that HSE was committed to publishing the report in the summer, and hoped to do so by the end of July.
5.2	The Commission agreed that culture was an important issue within the rail industry and the messages must get through to those who work at the trackside. They asked for additional information in the tables in the report and discussed the need to move towards a different style of report as recommendations were progressively closed out. . Commissioners asked if they could be sent the press release that would accompany publication.
5.3	The Chair thanked the presenters. The Commission: <ul style="list-style-type: none"> • noted the progress reported by industry; • noted that the introduction in the latest progress report is on behalf of the Commission, rather than the Chair; • endorsed the views on progress set out in the report; • agreed that the attached progress report at Annex 1 is made publicly available
6	Summary of the financial outlook: A prelude for the Commission to the SR2004 discussion on 5 August (No paper):
6.1	Vivienne Dews gave a short powerpoint presentation. A fuller paper would be presented at the next meeting. The net cash resource position was affected by the the ring fencing of Cullen money and the level of inflation HSE would face was uncertain. Accommodation costs and rent for Rose Court would increase as the area improved and there would be costs for the replacement accommodation of HSE's offices on Merseyside.
6.2	The outlook for the next spending review was discussed with the projections being based on assumptions made in the Budget 2003. It was explained that there were no plans to put further money in for the 2005-06 period and that in 2007-08 the lion's share of the money will go to transport and health.

6.3	“Delivery within existing resources” was the strong theme coming from the Treasury. SR 2004 would not revisit the spending plans for 2005/06 and for 2006/7 and 2007/8 there would be no increase in real terms. Any increase over the 2005/6 baseline would depend on the delivery of agreed targets and programmes to increase efficiency and productivity.
6.4	The Treasury has made it clear that any extra money would be based on delivering and not on ideas. HSC/E was expected to prioritise delivery against targets in SR2004. Evidence of delivery meant assessing the impact of HSC/E’s work. to support the case. It was important that HSE got this case across in the submissions that would be sent to DWP and that they supported the DWP themes for 2004 (Consolidate, Innovate, Invest).
6.5	Summing up, the Chair noted that it would not be an easy spending round. It was helpful to have a preview of how things stood before the meeting on 5 August, with a senior member of DWP present for discussion at the August meeting. HSC/E needed to bear in mind the messages on outcomes and delivery, which should be central to the new strategic plan.
7	Proposals for HSC/E’s future involvement in award schemes (HSC/03/86):
7.1	Sandra Caldwell introduced the paper. She explained that HSC/E’s prime involvement in awards schemes was the promotion and sponsorship of the annual European Week for Safety and Health (EWSH). While the week is an effective tool for workplace health and safety awareness, concerns had been expressed that the awards could be more focused in raising awareness and the delivery of HSC/E’s vision and that the event could contribute more to the achievement of HSC/E’s goals. Value for money was a key consideration and HSC/E could make efficient use of an awards system that was more targeted in delivering HSC/E’s vision and goals.
7.2	The Commission welcomed this initiative and recognised the need to identify the criteria and most desired outcomes from any awards scheme that HSC/E got involved in. It was felt that awards schemes can be a good source of motivation but they are devalued if there are too many winners. A greater sense of clarity was required. The Commission was keen to ensure that money and resources were put into the most worthy causes. The Commission felt that it was important not to isolate small businesses from any awards schemes and that those at the sharp end of industry should be involved as much as possible.
7.3	The Commission was largely in favour of an awards scheme which promoted good health and safety management as integral to business excellence (option 4 in the paper) but also wanted to try and keep a modified EWSH route. HSC/E could sponsor several high profile health and safety awards within existing business schemes, some of which currently contain environmental awards, in order to raise the profile of health and safety as a management issue. There was also the opportunity of engaging business schemes at a more local level by sponsoring awards within the business in the community schemes.
7.4	The Chair thanked the presenters. There was a need to look at the EWSH role in the longer term and think about who might take the sponsorship role on. With the next steps discussed, HSC looked forward to a future progress report.
8	Employee Involvement – Consultation Document (HSC/03/83):

8.1	Sandra Caldwell introduced the paper and draft proposals for a consultation document, <i>Securing Effective Employee Involvement</i> . The document included regulatory proposals [from the harmonisation of the Safety Representatives and Safety Committees Regulations 1977 and the health and Safety (Consultation with Employees) Regulations 1996] and non-regulatory proposals. She drew the Commission's attention to the questions raised in the paper on which officials needed a steer to enable this issue to be progressed.
8.2	Members of the Commission were concerned about the draft document. It was felt that the consultation document did not convey a clear understanding of worker involvement including what a workers rep is and the role of the trade unions. Questions were raised about the absence in the CD on issues dealing with enforceability and there was nothing in the document about making the discrimination against a safety representative a criminal offence.
8.3	The Commission found problems with the issue of constituencies, which were thought to be very bureaucratic and unrealistic. The Commission discussed the question of safety representative access to employees' personal information and members considered such access should be the same as managers in order to investigate workplace accidents. The Commission also noted some wording problems in the Regulations and informed HSE that the Workers Safety Advisor's Pilot was not necessarily costly but the way the Pilot was set up and run did make it appear that way.
8.4	The Commission raised the concerns of CBI who would like to see the status quo maintained in certain areas. They want goal setting regulations with no increased burdens on business, and they had to be risk based and demand lead, not process driven. Other Commission members also had concerns over the nomination of safety representatives to represent employees though they are not an employee of the employer. The union model is too narrow to be imposed elsewhere but leaving the non-unionised workforce out puts them at a disadvantage, cementing injustice or unfairness. Although some members could live with thresholds regarding the forms of consultation, others thought it perpetuated the two-tier workforce.
8.5	The Chair summed up the discussion. He said that a consultative document appeared to be a long way off. The CBI and the TUC made points of detail and of principle. The CD needs to articulate why we think worker involvement and safety reps are a good thing, but most importantly we need a broad political underpinning of the case for worker involvement. Further discussions would be needed with both parties and it was not for officials to sort out. HSE needs a clearer steer on these difficult issues in order to progress the document. The Commission agreed that HSE should pursue the non regulatory proposals outlined in the CD.
8.6	The Chair thanked the presenters and said it was clear that a lot of hard work had gone into the proposals. There was material in the paper that could be used but this was a complicated issue that would have to be returned to. Something less burdensome would need to be drafted since the stage was not set for a consultative document that all parties involved would sign up to.
9	Communications – Follow up from the Residential (HSC/03/111):

9.1	<p>Kate Timms introduced the paper. She explained that, following the Commission's strategy meeting on 24/25 June, the Commission had requested some further work to develop their thinking about:</p> <ul style="list-style-type: none"> • how the Commission saw its role in communicating the message of better health and safety; • What that message might comprise; • Who should be the target groups.
9.2	<p>Commissioners supported the document although a few points were raised. Annex A could have contained more about workforce involvement and there was a need to speak of 'controlling' and 'managing' risks as opposed to 'minimising' them. A clear distinction should be made between the employees of HSE and the HSC. HSC/E has a good world ranking in terms of health and safety so this message should be emphasised.</p>
9.3	<p>Concluding the discussion, the Chair noted that the three messages in annex A seemed to be strong and clear. These were that:</p> <ul style="list-style-type: none"> • People have a right to have their health and safety protected; • HSC/E work together to protect worker and public health and safety in the UK; • HSC/E succeed only with the support of employers, employees and the public. <p>This should form the basis of high level communications. Work on targeting and tailoring the messages to specific audiences was the next step. . The Commission noted the opportunity for further discussion at the next strategic review meeting on 23 September.</p>
	<p>Below the line items</p>
10	<p>Review of Fairground Safety: Update Report (HSC/03/50):</p>
10.1	<p>The Commission noted the actions taken by HSE</p>
11	<p>Biocidal Products: New Agency Agreement and ACoP (HSC/03/88):</p>
11.1	<p>The Commission:</p> <ul style="list-style-type: none"> • Agreed to enter into the agency agreements represented by the attached drafts (annexes A, B and C) • Delegated to the Chair the power to sign the final agency agreements • Agreed to write to Des Browne with proposals to adopt as an ACoP Annex V to EC Directive 67/548/EEC (as amended)
12	<p>Review of Railway Approvals Regieme (HSC/03/91):</p>
12.1	<p>The Commission noted the timetable for the review and the intention to take it forward as part of a wider review of railway health and safety legislation</p>
13	<p>Further consultation on proposals for the carriage of Dangerous Goods & use of Transportable Pressure Equipment Reg's 200[x] (HSC/03/96):</p>
13.1	<p>The commission approved the issue of the consultative letter which seeks views on certain changes to the draft provisions contained in the main CD by 2 September</p>
14	<p>2nd Report to the EC on the Practical Implementation of the Temporary Workers Directive (91/383/EEC) (HSC/03/97):</p>
14.1	<p>The Commission approved the report attached at Annex 1 and agreed it can be sent to the Minister to seek agreement for onward transmission to the European Commission</p>
15	<p>Work Related Road Safety: Progress Report (HSC/03/99):</p>
15.1	<p>The Commission noted the report</p>
16	<p>Update on the 2nd Rail Package (HSC/03/78):</p>
16.1	<p>The Commission noted progress on the package to date</p>
17	<p>Report by the UK on the 1st five years of practical implementation of Directive 95/63/EC on the amended use of work equipment (HSC/03/103):</p>
17.1	<p>The Commission noted the draft report and agreed it should be submitted</p>

18	Shiftwork and Breast cancer: A critical review of the epidemiological evidence (HSC/03/106):
18.1	The Commission noted the publication of the research report
	Miscellaneous Papers
19	HSC/E's PSA Targets: Quarterly Performance Report (MISC/03/17):
19.1	The Commission noted: <ul style="list-style-type: none"> • that information streams had been developed to give ministers confidence in HSE's performance management; • that briefing had been prepared for the performance review meeting on 12 June; • that the Minister has been asked to support HSE's case to develop a Workplace Health and Safety Survey to provide improved statistical information (to become operational in 2004/05); • that "Government by example" is being developed as a potential ninth priority programme.
20	European Week for Safety and Health 2002 Report – Working on Stress (MISC/03/18):
20.1	The Commission noted: <ul style="list-style-type: none"> • the significant volume of high quality activity in the UK • the success of UK organisations in the 'Good Practice Awards' organised by the European Agency • the outcome of the Agency co-funding for projects targeted at small and medium sized firms, and the evaluation by NPD Associates
21	European Week for Safety and Health 2003 – Dangerous Substances – Handle with Care (MISC/03/19):
21.1	The Commission noted: <ul style="list-style-type: none"> • the theme of Dangerous Substances and the UK priorities of occupational asthma, asbestos, dermatitis and the promotion of e.COSHH Essentials, CHIP and Safety Data Sheets, • arrangements for the European Agency 'Good Practice Awards' • opportunities for co-funded projects targeted at SMEs and organised by the European Agency
22	HSC's RIAC Report 2002/03 (MISC/03/20):
22.1	The Commission noted the contents of the paper
23	Corporate Accountability & Responsibility for Health and Safety: Publication of 2 HSE reports on public reporting & directors responsibilities (MISC/03/21):
23.1	The Commission noted the progress of the various initiatives
24	Merseyside HQ Project (MISC/03/23):
24.1	The Commission noted the presentational aspects of the proposals in relation to affordability and the health and safety risks that arise from large construction projects.

**Commission Secretary
July 2003**