

Health and Safety Commission Minutes

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Health and Safety Commission

**Minutes of a meeting of the Health and Safety Commission held on 25 July 2006
in the Globe Room, Rose Court, London.**

Present

Bill Callaghan – Chair
Sandy Blair
Margaret Burns
Danny Carrigan
Judith Donovan
Sayeed Khan
John Longworth
Hugh Robertson
Elizabeth Snape

Officials Present

Geoffrey Podger
Jonathan Rees
Alex Brett-Holt
Vivienne Dews
Colin Douglas
Susan Mawer
Neal Stone
Peter Jackson
Ann Marie Farmer

Apologies: John Spanswick, Justin McCracken

Welcome/Introduction

The Chair welcomed everyone to the meeting.

1 Minutes of the meeting held on 4 July 2006 (HSC/M05/2006) and matters arising

1.1 The minutes were agreed.

2 Urgent Business

2.1 None.

3 Chief Executive's Report

3.1 Presenting his report Geoffrey Podger highlighted the following issues:

- Brent Bravo – Although the Sheriff's determination into the two deaths had not been critical of HSE, the trade unions remained critical. Kevin Myers, Director of Hazardous Installations Directorate, was meeting trade union representatives in Aberdeen on 26 July to try and resolve the issues. Danny Carrigan was also attending on behalf of the Commission.
- Metropolitan police prosecution - the prosecution of the Office of the Metropolitan Police Commissioner under the Health and Safety at Work Act (HSWA) for the death of Jean Charles de Menezes had nothing to do with HSE. Unfortunately the media thought otherwise and although HSE had had letters published putting the record straight it was likely HSE would continue to be linked to it.
- Milford Haven – The Commission were aware that HSE had made an error in its submission to the Court describing its role in the planning process. The subsequent appeal had not been upheld, as the error had not been germane to the decision of the first appeal.
- The historical database of prosecutions had been restored to HSE's website with 2100 entries.

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| <p>3.2</p> | <p>The Commission thanked the Chief Executive for an excellent report. It discussed the nature of the criticism of HSE over Brent Bravo.</p> <p>Following comments about information Commissioners would like to receive, the Chief Executive said he would be happy for them to be provided with whatever they needed and would ask officials to find out the individual needs of Commissioners.</p> |
| <p>4</p> | <p>Proposed Control of Asbestos Regulations: Recommendations following consultation (HSC/06/56)</p> |
| <p>4.1</p> | <p>Jonathan Rees presented the paper which sought approval of a package comprising the proposed new Control of Asbestos Regulations and two associated Approved Codes of Practice: one dealing with the regulations, and one on the Duty to Manage.</p> <p>This was a significant strengthening of protection to those working with asbestos with a new lower single control limit of 0.1 fibres per cm³ over 4 hours and imposition of mandatory training. It was also a major simplification of the regime pulling together requirements of the new EC Directive and existing GB regime and replacing 3 sets of regulations with 1 and 3 ACoPs with 2.</p> <p>Textured coatings had been removed from the licensing regime, because of the low level of risk compared with other asbestos products and other conventional hazards, but not from the Duty to Manage or the requirement to undertake such work properly.</p> <p>A definition of “sporadic and low intensity”, as agreed by the Commission at the last meeting, was now in the Regulations and allowed HSC to set a limit. This limit was specified in the ACoP at 0.6f/ cm³ in the air over any ten-minute period.</p> <p>Since writing the paper HSE had continued to consult stakeholders and HSC had received an addendum, with proposed changes, which were primarily clarifications and minor technical amendments.</p> <p>The next steps, subject to Commission approval, would be:</p> <ul style="list-style-type: none"> • The Chair to write to the Minister (Annex 5) to recommend the Regulations; • To ensure effective communications to business and others, in particular the building trade (paragraph 15); • To ensure compliance particularly among smaller companies as detailed at paragraph 14 of the paper; and • Over time to simplify guidance (paragraph 12). |
| <p>4.2</p> | <p>The Chair questioned the timing set out in the draft of his letter to Ministers. It would be preferable to delay slightly the regulations so that Parliament was in session when they were laid. This would also enable a presentation to be made to the All Party Group on Asbestos.</p> <p>He recognised that the issue of textured coatings raised considerable</p> |

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| | <p>concerns for stakeholders and this was recognised in the draft letter. Although the proposals were not a reduction in protection of workers they had been perceived as such and perceptions were important when dealing with such an emotive issue.</p> <p>He recognised the legitimate concerns of stakeholders but gave an assurance that there was no overall reduction in protection and that there was an adequate enforcement regime in place. He would ask officials to keep this issue under review and return with an evaluation in two years' time, or earlier if anything of concern arose. On that basis he asked the Commission to agree to the proposals</p> |
| 4.3 | <p>The Commission thought the regulations were a positive improvement. The inclusion of the "sporadic and low intensity" definition in the regulations and the new control limits provided improved protection. The discussions on exposure levels and the comments on enforcement had been reassuring.</p> <p>The Commission was well aware of the risks from asbestos and the deaths associated with its use. It understood and appreciated the emotions and the perception of risk expressed by stakeholders and thought it important to put those concerns on record. Trades unions, in particular, had made it clear that they did not support the removal of textured coatings from the licensing arrangements. Their view was that even low levels of exposure to asbestos could cause harm and that carrying out the work under license provided a higher degree of protection.</p> <p>Whilst acknowledging these views and the legitimate concerns, the Commission felt that overall the proposals were an improvement in worker protection and were content with the draft letter which set out the concerns that had been expressed.</p> <p>The Commission placed on record their thanks to officials for all the work involved in developing the package and providing the Commission with the information it needed to make a decision.</p> |
| 4.4 | <p>The Commission:</p> <ul style="list-style-type: none"> • Approved the proposed Control of Asbestos Regulations and two associated Approved Codes of Practice • Agreed the draft letter from the Chair to the Minister subject to amendments on timing • Noted the concerns of certain stakeholders about the removal of textured coatings |
| 5 | <p>Better Regulation Executive (BRE) – Macrory Penalties Review Consultation Document: Regulatory Justice – Sanctioning in a post Hampton World (HSC/06/30)</p> |
| 5.1 | <p>Jonathan Rees presented the paper which proposed a response to the BRE's penalties review, and sought a strategic steer from the Commission on the approach.</p> |

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| | <p>The review took forward a recommendation in the Hampton report. It was not a new issue for HSC/E which had long been concerned about the level of penalties and looking at alternatives such as restorative justice.</p> <p>The starting point was that:</p> <ul style="list-style-type: none"> • Health and safety already had a mature and flexible enforcement regime with no major gaps • Any change must give added value and be effective in changing behaviour. • Health and safety dealt with a wide range of incidents and needed a wide range of penalties – it was helpful that there was no attempt to impose one solution • The principals of the Macrory Review were ones we could welcome. <p>Paragraph 16 in the paper set out our general position. The key points were:</p> <ul style="list-style-type: none"> • The review should be consistent with other work going on in government such as on the compliance code; • Disappointment that more was not said about how the low level of fines awarded in courts could be addressed; • There should be clarity on how the differing legal systems would operate; • Whilst there was merit in areas such as restorative justice, there needed to be a common framework for all regulators. <p>The draft letter from the Chair made these points and Annexes 4 and 5 elaborated on the answers to questions posed in the review. Comments already made by Commissioners had been taken on board.</p> |
| <p>5.2</p> | <p>The Commission thanked officials for a balanced and concise paper. The questionnaire had been long and complex and the draft HSE response managed to get the key messages across.</p> <p>The Commission discussed the issue of low penalties and made the following points:</p> <ul style="list-style-type: none"> • Scotland had a lower level of fines than England and Wales and it should be stressed that higher penalties were a matter of urgency; • The low penalties imposed by Courts raised questions about their understanding of the nature of health and safety offences and the need for training; • The higher courts had imposed some large fines and had guidance that penalties should be proportionate to the scale of business; the issue might be more relevant to the magistrates courts; • It was regrettable that the Corporate Manslaughter Bill had not been used to raise the level of penalties; • Health and safety offences were of a different nature to those dealt with by other regulators; they dealt with death and injury to people, and this should be reflected in the penalties; • The average fine was well below the maximum possible which suggested it was not just a matter of raising the level of penalties. On average a magistrate would hear a health and safety case once in 14 years which raised the question of whether special benches were |

needed;

- The letter should emphasise more what was happening in the system at the moment. Whilst some take health and safety offences seriously, others don't.

The Commission discussed the response to question 1 of the questionnaire. It did not agree that there should be prosecutions only when an offence was 'egregious', that is shocking. They were also necessary where there had been deliberate or reckless disregard of health and safety. The response should also reflect that any proposals should have the full confidence of workers as well as business.

It questioned the need for a common framework. Much of what was being proposed was about financial mismanagement which made it difficult to respond. It was important that whatever resulted from the review was flexible; would be effective in the circumstances of specific regulators; and was evidence based.

On restorative justice comments included that:

- This was already available through civil action which provided a strong form of financial redress.
- Local authorities were looking at this issue in terms of community safety and there could be lessons to be learnt from them
- Victims did not want a regime that was punitive but it did need to be a deterrent

Other points made by the Commission were:

- The review was lacking in detail on how it might work in practice. As part of the process of developing the detail it should be asked to carry out a Regulatory Impact Assessment (RIA) on the proposals so that it could be seen which were disproportionate
- Complex penalties could have resource implications for the regulator
- Equity of justice was important. Health and safety legislation put the onus of proof on the defendant, whereas a due diligence defence might be preferable
- Small businesses did not calculate the gains of non-compliance; they did not have the time
- If the outcome of the review was additionality rather than substitution it would be acceptable but substitution would downgrade the importance of health and safety offences
- The experience and practice of other countries should be explored
- Should the possibility of disqualification of directors be extended to the public and voluntary sectors
- It was important to work in partnership with the local authorities on this issue
- It should be put on record that, with Prohibition and Improvement notices, we already have an effective range of tools that deliver the Macrory principles.

5.3

The Commission agreed that the letter and annexes should be amended to reflect the discussion, in particular:

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| | <ul style="list-style-type: none"> • To recognise that any new arrangements should not be overly complicated or bureaucratic and consider asking for a RIA; • To strengthen the case that health and safety offences are of a different nature from economic regulation; • That through our regulation we protect workers and members of the public from serious risks and that workers needed to be confident in the proposals; • The urgent need for higher penalties; and • The phrasing of the response to question 1. |
| 6 | <p>Review of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995 – Progress and Strategic Steer (HSC/06/40)</p> |
| 6.1 | <p>Jonathan Rees introduced the paper, which sought a strategic steer on whether the Commission considered RIDDOR reform to be a priority and if so, how radical it wanted HSE to be.</p> <p>RIDDOR provided information to the enforcing authorities and was a source of statistical data. Whilst it had inadequacies these were not disastrous. In 2000 the Commission asked HSE to review RIDDOR and as a result new arrangements with the Incident Call Centre were established. A further review was started in 2005. This revealed that whilst there was support amongst enforcers and health and safety professionals for change there was no agreement on what that change should be; in particular there were strongly divergent views on the use and perceived value of the data on over 3 day accidents. It was also clear that SMEs had very poor knowledge of the requirements.</p> <p>Having considered the response to consultation and the various options HSE's conclusion was that:</p> <ul style="list-style-type: none"> • Process and communication improvements should be made • Whilst there was a case for considering radical change, but this would mean consulting on getting rid of over 3 day accident reporting which would be of serious concern to local authorities • Less radical changes could be made, but as the benefits they would bring were unlikely to justify the cost impact of change on business, it would be preferable to keep the status quo. |
| 6.2 | <p>The Commission congratulated HSE on a good paper which put the options clearly. It shared the view that fundamental changes were needed but now was not the time. Before any radical revamp was undertaken there needed to be confidence that information would be available from other sources.</p> <p>Tinkering with RIDDOR was not an option. This would result in a loss of historic comparative data. RIDDOR provided a consistent means of tracking whether safety was improving or not over a long period of time and was thus a valuable measure and tool. Any change would damage this, and would be costly.</p> <p>Ways of communicating more effectively and possibly simplifying the mechanism for reporting in order to improve compliance by SMEs should</p> |

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| | <p>be looked at. This needed to recognise that those SMEs that did report were demotivated, as they believed this lead to increased enforcement which these that did not report avoided. This was a particular issue in the LA enforced sector where SMEs believed there was an overreaction to minor injuries.</p> <p>Consideration should be given to ways of improving other sources of data, such as involving occupational health nurses in THOR or earlier proposals for safety accident data information exchange.</p> <p>The Chair concluded that although there were deficiencies with RIDDOR, there was no appetite for change at the current time. There was a need for a further fundamental review in the future, but at present there was no consensus on viable level of change.</p> |
| 6.3 | <p>The Commission agreed that there should be no change to the current regulations but that communication and process improvements should be pursued.</p> |
| 7 | <p>Delivering HSE's Targets: Summary Performance Report. (HSC/06/44)</p> |
| 7.1 | <p>Jonathan Rees presented the paper, which covered the Strategic Programmes' performance against the PSA targets during the first quarter of 2006/07. Overall the report was cautiously positive: at amber green but signalling challenges ahead given the tightening resource position.</p> <p>Conventional health and safety (Fit3), reporting against milestones met, remained stable at amber/green. The proof of success however would be whether we were meeting the targets. An indication of this would be the fatal accident figures due to be released shortly.</p> <p>On Major Hazards the indicator had shifted from green to green/amber. Although the indicators were on target, incidents such as Buncefield and resulting resource shifts indicated we should not be too sanguine. The Commission would have the opportunity to explore this further at their meeting on 5 September.</p> <p>The four enabling programmes were on course.</p> <p>The Commission were asked whether they were happy to endorse the report for submission to the Minister.</p> |
| 7.2 | <p>The Commission thought that the discussion with the Minister should highlight the pressure on staffing and expertise resources for Major Hazards, which raised real concerns about HSE's ability to maintain a satisfactory level of assurance.</p> <p>The Commission questioned why paragraph 19 indicated that the prospects for the LA partnership were amber when all milestones had been met, and were informed that this reflected the importance of ensuring that the partnership was maintained and delivered results.</p> |

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| | <p>In response to a query as to whether the next report would take account of injury statistics, the Commission was informed that these would not be available for the next report but a running account was kept which helped in developing leading indicators.</p> <p>The Commission questioned why Workplace Health Connect had been given amber green when it was exceeding its target of visits and was informed that this was because it was not yet meeting the target on enquiries.</p> |
| 7.3 | The Commission endorsed the report subject to the changes discussed and agreed that subsequent reports would have more statistical information. |
| 8 | Oral Update Fundamental Review Phase 2 – Action Plans |
| 8.1 | <p>Vivienne Dews updated the Commission on the latest position. The five themes were almost completed and the Board had considered the action plans last week and they would be shared with the trade unions. A paper pulling everything together would go to the Board in September and would be copied to the Commission at the same time.</p> <p>The broad areas covered were:</p> <ul style="list-style-type: none"> • Strategy: being clearer about business outcomes and public accountability • A better framework for setting priorities • Evaluating what works and delivering interventions • Streamlining planning and monitoring arrangements • Science and technology arrangements • Performance information and management – freeing up time, productivity, recording time, fewer meetings and travel less • Measures of success • Better intelligence about duty holders • Expectations for support services |
| 8.2 | The Commission thanked the presenter for the update and thought it would be useful to have the paper by the end of August so that it could be considered at the September meeting. |
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| | Below the Line |
| 10 | Delegated Authority for the Metropolitan Police to Enforce under the Health and Safety at Work etc Act 1974 (HSC/06/60) |
| 10.1 | The Commission granted powers to the Metropolitan Police in accordance with Section 13(1) (a) of HSWA for the duration of the pilot project, the Frreight Operattors Recocognition Scheme. |
| 11 | Communications Update (HSC/06/63) |
| 11.1 | The Commission noted the developments in the paper. |
| 12 | The Health Agenda (HISC/06/64) |

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| 12.1 | The Commission noted the paper. |
| | Miscellaneous Papers |
| 13 | Draft Services Directive:Progress(MISC/06/14) |
| 13.1 | The Commission noted the report and the publication date. |
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