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| Minutes of a meeting of the Health and Safety Commission held on 17 July 2007 in the Globe Room, Rose Court London | |
| <p>Present:</p> <p>Bill Callaghan – Chair Sandy Blair Danny Carrigan Sayeed Khan Hugh Robertson Elizabeth Snape Robin Dahlberg John Spanswick</p> <p>Apologies: John Longworth, Judith Donovan</p> | <p>Officials Present:</p> <p>Justin McCracken Jonathan Rees Alex Brett-Holt Vivienne Dews Colin Douglas René McTaggart Lorraine Cassell Ann Marie Farmer</p> <p>Apologies: Geoffrey Podger, Neal Stone</p> <p>Patrick McDonald – Item 3 John Hodgson – Item 3 Teresa Quinn – Item 4 Jenny Eastabrook – Item 4, 5 & 6 Giles Denham – Items 4, 5 & 6 Steve Wooley – Item 5</p> |
| | Welcome/Introduction |
| | The Chair welcomed everyone to the meeting. |
| 1 | Minutes of the meeting held on 5 June 2007 (HSC/M06/2007) |
| 1.1 | The minutes were agreed. |
| | Urgent Business |
| 1.2 | The Chair announced that his successor as Chair of the Health and Safety Commission would be Judith Hackitt who would take up post on 1 October. The Commission was also informed that Judith would be attending the September meeting as an observer. The Commission welcomed her appointment and wished her every success. |
| 2 | Deputy Chief Executives’ Report |
| 2.1 | In the absence of the Chief Executive Jonathan Rees and Justin McCracken presented the report which included the following issues: <ul style="list-style-type: none"> a. The Commission was informed that the UK had been successful in defending its implementation of the Framework Directive in the European Court. The Court dismissed the EC’s claim that the UK’s use of SFAIRP was in breach of the intention of the Directive. b. A successful stakeholder event had been held on causes and rates of work-related cancer at the end of June. Sayeed Khan and Hugh Robertson |

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| | <p>had attended. A report would be circulated in the next few weeks.</p> <p>c. The Commission was updated on the sentencing of the Managing Director and Site Manager following the fatal accident of a worker at the Concrete Company site in Norwich. (They were given 12 and 9 month custodial sentences respectively and the Company was fined £75k and made to pay £89k in costs). The Commission acknowledged that this case is particularly important as the Court held that the Managing Director <u>should</u> have been aware of the risks that led to the fatality and therefore had a duty to do something to prevent the incident. This ruling is mirrored by a similar one which HSE recently won in the Court of Appeal.</p> <p>d. The Commission were informed that the 6th Buncefield Report had been published that day. The Commission was also informed that report had a broader remit than previous reports as it looked at the wider emergency response procedures for major incidents. The Report makes 32 recommendations of which ten fall to HSE to implement.</p> |
| <p>2.2</p> | <p>The Commission thanked Jonathan and Justin for their report and commended all those who had been involved in the Buncefield investigation. The Commission also made the following comments:</p> <p>a. The Commission noted the high number of fatalities in June (acknowledging that not all may be RIDDOR reportable) and were grateful for HSE's assurance that key sectors (e.g.: agriculture and construction) were subject to targeted interventions. The Commission noted the HSE's proposal to provide a paper on agriculture at a later meeting.</p> <p>b. The Commission also requested sight of the detailed analysis of accident trends previously considered by the Construction Industry Advisory Committee (CONIAC).</p> <p>c. The Commission noted that following the recent crane collapses that the Strategic Forum for Construction were playing an active role in ensuring the industry took the lead in resolving key issues and improving safety.</p> <p>d. The Commission noted the outcome of the Cement Co sentencing and hailed it as a 'land mark case' for deterring others from ignoring their health and safety responsibilities.</p> <p>e. The Commission was pleased to note that Lord McKenzie and Anne McGuire had retained responsibility for health and safety during the recent machinery of Government changes.</p> <p>f. The Commission commended HSL, Eddie Morland and Communications for the excellent article in the Daily Mail which had praised the professionalism of HSL staff and the service they provide.</p> |
| <p>3</p> | <p>Release arrangements for Health and Safety statistics (HSC/07/57)</p> |
| <p>3.1</p> | <p>Patrick McDonald introduced this paper making the following points:</p> <p>a. The paper contains a detailed account of the arrangements for releasing statistics into the public domain - particularly those for the two principal releases; fatal injuries in July and the bulk of other material in November - and seeks a steer on whether to take steps to move to a single release date.</p> <p>b. The Commission had previously asked for consideration to be given to making HSE annual statistics available as a single package. HSE had developed four options in response to this and the Commission was asked</p> |

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| | <p>for a steer on their preferred option. The options were:</p> <ul style="list-style-type: none"> • Option A: Delay releasing the fatals statistics so that a single package of statistics can be published in November. This is permitted under the Office of National Statistics guidelines but would result in unofficial estimates of fatals being used in the interim period resulting in HSE losing control of the agenda and having constantly to take a defensive stance. • Option B: Bring forward the release of the complete statistics correspond with the publishing of the fatals (in July). This has inherent technical difficulties, would involve changes to the timing of the health and safety question module in the LFS with consequent compromise to the assessment of trends. The option would cost around £250K to implement. • Option C: Move both release dates to a date between July and November. This would combine the risks of both A) and B) and any material bringing forward of the November release would also incur the costs of changing our LFS timing (as in option B). • Option D: No change. |
| <p>3.2</p> | <p>The Commission thanked Patrick and his team for the presentation and discussed the following issues:</p> <ol style="list-style-type: none"> a. The Commission agreed that it would be useful if the statistics, injuries and fatalities were made available as soon as possible. This would enable the early identification of trends and would facilitate dialogue with key stakeholders. b. The Commission asked whether fatal statistics could be released on a more frequent basis. They were told that this was possible but that there were risks associated with this approach. The risks identified included un-validated figures being higher than actual end year figures resulting in 'fixing' claims. c. The Commission thought that a quarterly release of fatality statistics would help both from the point of view of early identification of trends and in helping strike the balance of attention between injury and ill health outcomes. It acknowledged that this quarterly data would have to be on an incompletely validated basis. d. The Commission also noted the need to address the long-term ill health related deaths, particularly in construction and agriculture, as a serious issue. e. The Commission agreed that a single release for all statistics in July was not a viable option because of the cost and discontinuity. f. The Commission agreed that advance notice of any proposed changes would need to be given to stakeholders - perhaps at the launch of this years statistics on 2 November 2007. |
| <p>3.3</p> | <p>The Commission concluded the discussion by agreeing in principle, subject to further advice on press issues, to move to a single principal release date in late October/November from next year. The Commission also agreed that this principal release will need to give prominence to health and safety performance as a whole, covering both injury and ill health risks. It also agreed that fatal statistics should be issued quarterly with the final validated figures being released on the</p> |

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| | web as soon as possible after the year to which they relate. |
| 4 | Update on initiatives HSE is undertaking as part of the Better Regulation agenda (HSC/07/55) |
| 4.1 | <p>Jonathan Rees introduced the paper which updated the Commission on developments on better regulation with the following comments:</p> <ol style="list-style-type: none"> a. The BRE had moved from Cabinet Office to the new Department for Business, Enterprise and Regulatory Reform. b. The BRC had been asked to develop a modified structure and approach to help policy making benefit from a fuller and more rounded consideration of public risk. c. HSE has a good record as a risk-based regulator that is committed to better regulation. d. The paper flagged up four current areas of work and the details of a fifth, new work on low risk businesses, which was covered separately in MISC/07/21. e. The Commission were informed of the publication of the new Impact assessment guidance which requires impact assessments on both regulatory and non-regulatory proposals. The guidance also sets out the new 'sign off' arrangements for proposals. f. The Commission was informed of HSE's progress with the development and implementation of the simplification plan. This work includes the production of example risk assessments for convenience stores, estate agents and office cleaning and the work to engage with SMEs through the SBTAF. g. The Commission was reminded that the next simplification plan in October will need to show how HSC/E proposes to meet the 25% regulatory burdens reduction target and the challenge this poses. The Commission will be provided with a draft plan for their consideration at the October meeting. h. The paper also provided a brief update on the NAO/BRE Hampton Implementation Review of HSE and on the NAO review on business perceptions on the outcomes of Admin Burdens Reductions. i. The Commission was also asked to nominate Commissioners to be interviewed as part of the Hampton review process. |
| 4.2 | <p>The Commission thanked Jonathan and his team for the paper and praised HSE on its pragmatic, proportionate and balanced response to the Better Regulation agenda that did not compromise the HSC's strategy. The Commission also made the following remarks:</p> <ol style="list-style-type: none"> a. The Commission acknowledged the importance of the work to develop better regulation as everyone benefits from clear evidence based regulation. b. The Commission noted the challenges in producing a simplification plan and expressed their concern about the arbitrary target of a 25% reduction in 'red tape' which could be interpreted as deregulation rather than better regulation. c. The Commission agreed that before deciding on what 'red tape' to cut that stakeholders views should be sought. d. The Commission were concerned that the new impact assessment guidance provided an opportunity for businesses to do less. They were |

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| | <p>assured by the HSE that the impact assessment guidance was only a tool to aid decision making and is in line with HSE's current approach.</p> <p>e. Hugh Robertson, Robin Dahlberg and Judith Donovan were nominated to be interviewed by the Hampton Implementation Review team.</p> |
| 5 | Formal Cabinet Office consultation on proposed Regulators' Compliance Code – HSC Response (HSC/07/50) |
| 5.1 | <p>Giles Denham presented the paper which provided a draft response for approval to the consultation on a compliance code for regulators. Giles introduced the paper with the following comments:</p> <ol style="list-style-type: none"> a. The proposal for a compliance code derives from the Hampton Report. The Legislative and Regulatory Reform Act created powers to give statutory force to the five principles of regulation (already at the core of HSC's Enforcement Policy) and to create a Compliance Code to ensure regulators' policies are in line with Hampton principles. The code would replace the existing enforcement concordat. b. During development of the code HSE's sought changes to the code which have been reflected so that: <ul style="list-style-type: none"> • it was clear the code applies at the strategic policy level and not to decisions by inspectors in individual cases. • the 'no inspection without a reason' principle did not conflict with HSE's approach to enforcement. • HSE are able to continue to balance the advice it provides with its enforcement activities to help meet its objectives. |
| 5.2 | <p>The Commission thanked Giles for his concise presentation and during the discussion raised the following issues:</p> <ol style="list-style-type: none"> a. The Commission supported the approach taken in the code to apply at the policy level only. b. The Commission was assured that although the code only applied directly to English local authorities, steps to ensure consistency across GB were covered, as the Code would apply to guidance given to all LAs by the Commission (such as the Enforcement Policy Statement). c. The Commission expressed some reservations that the supporting economic progress principle appeared to be balanced in favour of business rather than to 'people' more generally. d. The Commission noted that joint inspections with organisations should only be undertaken where there is benefit in doing so and enforcers are working towards the same aim. This was critical if HSC/E is to maintain its relationship with employers and employees. e. The Commission suggested that the availability of information principle (principle 5.2) could be achieved by providing free downloads of all advice. f. The Commission were reassured that work involving major hazards and sector blitzes, along with the targeted inspection approach, could and would continue under the Code. |
| 5.3 | <p>The Commission agreed the proposed response subject to minor amendments to reflect the points raised during the discussion as the code did not undermine either HSE's and LAs statutory duties to enforce HSAW Act or the regulatory approach.</p> |

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| 6 | Cabinet Office Consultation on Draft Regulatory Enforcement and Sanctions Bill – HSC Response (HSC/07/54) |
| 6.1 | <p>Giles Denham presented the paper which provided a response to the consultation on the Regulatory Response and Sanctions (RES) Bill with the following comments:</p> <ol style="list-style-type: none"> a. The Bill is comprised of two distinct parts: establishing the Local Better Regulation Office; and implementing recommendations in the Macrory Review relating to powers for ministers to give regulators new civil sanctioning powers where they feel that would enhance regulatory toolkits. b. Part 1 establishes the Local Better Regulation Office as a statutory corporation with formal powers to: <ul style="list-style-type: none"> • Set the national priorities for local authority regulatory services; • Issue statutory guidance to LAs, this could overlap with HSC’s statutory duty under section 18 HSW ACT and there will need to be close liaison in the first instance with the possibility of an MoU. • To establish the Primary Authority Principle on a statutory basis. c. Part 2 implements powers to create new civil sanctions. d. The Commission was reminded of their desire to see higher levels of penalties available and awarded under the existing sanctioning regime, as reflected in government policy and reinforced by Macrory’s findings. e. The Commission was asked to note that some local authorities may call for new civil sanctioning powers and that LACORS may reflect this in its own response to the consultation. HSE will keep in touch with LACORS on this, which might be an issue for discussion at the Local Government Panel in November. f. There is also a need to liaise with LBRO to agree a process for setting local authorities priorities for enforcement and to ensure the new power to produce statutory guidance is does not adversely effect HSC’s ACoPs. |
| 6.2 | <p>Robin Dahlberg, as a member of the LBRO board, provided the Commission with an insight into the newly formed organisation. Robin informed the Commission that LBRO is a small organisation of 20-25 people and that the Chair of LBRO is personally interested in ensuring there is interaction with HSE to build on the partnership.</p> |
| 6.3 | <p>The Commission thanked Giles and Robin for their introduction and made the following remarks in response:</p> <ol style="list-style-type: none"> a. It was noted that Geoffrey Podger (HSE CE) and Sandy Blair had already met with the Chair of the LBRO b. The Commission agreed that the creation of LBRO was an opportunity to improve performance, consistency, coherence and promote best practice in partnership with local authorities. c. The Commission agreed that while it supported the general approach of the Sanctions Bill the response to the consultation needed to clearly state that, as they did not see an ‘enforcement gap’ for health and safety enforcers, they did not support adopting civil administrative penalties at this time. d. The Commission noted its previous interest in Restorative Justice as having some potential value, but noted that was something BRE was considering as a non-legislative issue. |

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| | <p>e. The Commission agreed to take the opportunity to emphasise the need to increase the penalties available for health and safety offences in light of the failure of Wayne David's government supported Private Members Bill. The response should state this should be a priority and suggested the regulatory and Enforcement Sanctions Bill would be a good vehicle for the government to achieve this aim.</p> |
| 6.4 | <p>The Commission agreed the response, subject to the issues discussed being incorporated, welcoming the Bill. It was also agreed that HSE would continue to engage with the BRE and maintain close contact with the LBRO via Robin Dahlberg.</p> |
| | Closed Session |
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| 7.3 | In summarising the discussion the Chair asked HSE to return to the Commission in the autumn with stronger evidence on the organisational benefits of a single HQ; address HSE's estate as a whole (not just London and Bootle); address how HSE will maintain its strategic thrust and manage risks to the business arising from a single HQ; and give assurances that staff will be fairly treated. |
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| | Below The Line |
| 9 | Disability and Risk assessment: agreement of joint DRC/HSE guidance (HSC/07/49) |
| 9.1 | The Commission approved the joint guidance on risk assessment and disability. |
| 10 | Proposed European Regulation on Classification, Labelling and Packaging of Substances and Mixtures – UK Negotiating Strategy and publication of the Consultation Document (HSC/07/58) Partially Closed, Annex A is closed under Sections 35 and 36 of the FoI Act. |
| 10.1 | The Commission approved the negotiating strategy and agreed to publish the Consultative document. |
| | Miscellaneous |
| 11 | Update the proposed European Regulation on Classification and Labelling of Substances and Mixtures based on the United Nations’ Globally Harmonised System (MISC/07/10) |
| 11.1 | The Commission noted the developments in the European Union’s implementation of the Regulation. |
| 12 | Revised Licence Conditions for Electricity and Gas Suppliers (MISC/07/14) |
| 12.1 | The Commission noted the response to proposals for revised licence conditions arising from a review by the Office of Gas and Electricity Markets. |
| 13 | Publication of Research Results: Impact of the EMF Directive on Magnetic Resonance Imaging (MRI) (MISC/07/15) |
| 13.1 | The Commission noted that the research had been published in June. |
| 14 | Energy White Paper – “meeting the Energy Challenge” and consultation document on the ‘Future of Nuclear power’ (MISC/07/17) |
| 14.1 | The Commission noted the information in the paper. |
| 15 | The European Court of Justice (ECJ) judgement on the SFAIRP infraction (MISC/07/18) |
| 15.1 | The Commission noted the Court’s conclusions in the infraction case following the ECJ judgement that found in the UK’s favour. |
| 16 | Update on development of Sound advice guidance for the music and entertainment sectors on the Control of Noise at Work Regulations 2005 (MISC/07/19) – Partially closed Annex B FoI Section 36 Prejudice to effective conduct of public affairs. |
| 16.1 | The Commission noted the developments in producing web based guidance and the media handling strategy. |
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