

Health and Safety Commission Minutes		HSC/04/M03	
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Exemptions:			

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

Present

Bill Callaghan – Chair
Abdul Chowdry
Joyce Edmond-Smith
John Longworth
Judith Hackitt
Owen Tudor
Judith Donovan
Margaret Burns
Elizabeth Snape
George Brumwell

Officials Present

Timothy Walker
Kate Timms
Vivienne Dews
Alex Brett-Holt
Colin Douglas
Mark Dempsey
Paul Kloss
Paul Denman
Paul Nicholson
Kate Carroll

Presenters

Item 3 – Teresa Graham, Philip Clarke (Better Regulation Task Force)
Item 4 – Peter Brown, John Cullen
Item 5 – Elizabeth Gibby, Robin Foster, Peter Hornsby
Item 6 – Anne Sharp
Item 7 – Anne Wilson, Nick Ratty, Jane Willis, Cathy Jones
Item 8 – Kate Timms
Item 9 – Mike Shepherd, Andie Michael
Item 10 – Mark Dempsey, Kate Timms

1	Minutes of the meeting held on 10 February 2004
1.1	The minutes were agreed.
2	Urgent business not covered by items on the agenda
2.1	<p>I. Vivienne Dews updated the Commission on SR2004. Sir Peter Gershon's efficiency review was still underway. There were several strands to the work and recommendations for the future funding of regulation would affect HSC/E. This area was about setting stretching targets in order to make savings, although it was not specified as to how this might be achieved. On the basis of HSC/E's baseline, delivery would appear to be possible at significantly less cost than in the past. Charging and how work might be undertaken with other inspectorates were two other areas being examined. Pilot studies were underway and a paper to update the Commission would be submitted in April.</p> <p>II. Paper HSC/04/02 (Proposals for the Control of Noise Regulations) would now be taken above the line as item 9 on the agenda.</p> <p>III. The Chair noted that this was Owen Tudor's last meeting as a Commissioner. The Commission thanked him for his contribution to the work of HSC and HSE and wished him well in his new role at the TUC.</p>
3	Better Regulation Task Force (BRTF) – Discussion

3.1	Teresa Graham gave a presentation to the Commission. The litigation and compensation study was undertaken in order to uncover the truth behind “compensation culture”. The study was not about whether or not people should have rights, but more about how those rights could be enforced. The regulation of claims management companies had been examined and HSE’s risk index was commended. The study found that the vast majority of people did not believe there was a compensation culture, although awareness of a compensation system had increased. Statistics indicated that the number of cases of litigation was decreasing, while payments were on the increase. The fear of litigation meant there was a need for businesses to manage risk better. However, the fear of litigation could also promote risk aversion. In extreme cases this had led to activities such as school trips being cancelled.
3.2	The BRTF found a system that was over complicated and did not always appear to act in the best interests of claimants. Rehabilitation was now much higher up the agenda than in the past and numerous pilot studies were taking place around Great Britain. The BRTF was keen to explore the use of the Health and Safety index in the small firms sector. The study was nearing its conclusions and the final report would be drafted by mid-April. It was hoped that Lord Falconer would agree to be the sponsoring Minister. It was important to find the proper levers here, and HSC input would be valuable.
3.3	The Commission welcomed the study. It noted a growing number of “no win, no fee” firms which encouraged people to make claims. Poor risk management was at the heart of this issue and HSC/E could help to promote sensible approaches. Rehabilitation and getting individuals back to work were crucial. The business case for rehabilitation would need to be clearly expressed although it was recognised that there were some deep-seated cultural views about rehabilitation that would need to be overcome. The Trade Unions were keen to promote rehabilitation and emphasise the benefits to employers. HSC welcomed any efforts to get the right messages to small firms that would help to reduce fees and insurance premiums. The Commission would be interested to find out the percentage of claims that fell within the scope of the Health and Safety at Work etc Act.
3.4	The Chair thanked the presenters. There was a lot of interest in this issue. A clear picture in terms of the effectiveness and efficiency of litigation and the alternatives as regulatory tools for securing compensation for individuals would be in the interests of all. The Commission looked forward to the publication of the BRTF report..
4	The Government Setting and Example (GSE) Programme and Communications with the Public Sector (HSC/04/12):
4.1	Peter Brown introduced the paper. Following slow progress to date on improving public sector health and safety, this area was being re-examined under GSE. The focus was on a small number of large public sector employers to identify areas of good practice that could then be utilised more widely. Commissioner Liz Snape would act as a champion for this work. The aim was to stimulate debate in Whitehall as to what would make a difference. Unions and the Civil Service should not just be supportive but be pressing for progress on these issues. The Local Authorities forum had made progress over the last two years and a report to HSC summarising this would be useful. A separate communications strategy for Wales and Scotland would be necessary. An associated issue was the question of enforcement in the public sector, particularly the emergency services. HSE had been criticised in the media for its handling of some prosecution cases in the past and a well developed communications strategy to deal with such cases in the future would be helpful.

4.2	<p>The Commission supported this programme and the need to resource it adequately to ensure momentum was maintained. The Commission also agreed that a strong well thought communications strategy should be developed to tackle the public sector enforcement issue. However, the messages in the Annex were too defensive and would need to be re-drafted. The Armed Forces were a positive example of how good practices could be brought into the Public Services sector.</p>
4.3	<p>The Chair thanked the presenters. A letter would need to be sent to David Blunkett asking about opportunities to speed up the resolution of the issue of chief constable accountability. HSC/E would also need to take account of how the Gershon Review could positively influence progress with the Programme. Summing up, the Chair:</p> <ul style="list-style-type: none"> • noted the progress that had been made with the programme so far; • offered comments on progress so far, the key messages from the communications strategy and the statement for intent for communicating with the emergency services; • agreed to support and publicise the communications strategy and considered the advantages of having a Commission champion for the programme.
5	<p>Safety on the Railway – Shaping the Future (HSC/04/25):</p>
5.1	<p>Elizabeth Gibby introduced the paper. The Discussion Document (DD) “Safety on the Railway – Shaping the Future” (HSC/03/101) had invited views on the future of the main regulatory requirements for health and safety on the railways and the development of industry schemes for the supply of safety critical goods and services and licensing of key safety critical workers. The response to this DD was reported to the Commission in Annexes 1 and 2. The Commission’s views were sought on key issues as HSE started to work up formal proposals for publication in a Consultative Document (CD). There were specific issues to be considered in Annex 3 and HSE wanted to check that HSC were content to revoke ROTS requirements for the “non-interoperable” railways. The model in Annex 3 had been tested with stakeholders and the feedback was that they were broadly content. ATOC and RIA have challenged HSC/E’s view that “reasonably practicable” in the Railway Safety Directive was broadly compatible with its meaning in HSWA. The legal position was currently being examined.</p>
5.2	<p>The Commission welcomed this clear, detailed paper. At RIAC there had been broad support for Annex 3. However, ATOC had not given support to the proposal to introduce a national voluntary licensing scheme. The rail industry had pressed to be treated more in line with the approaches to road safety yet did not agree that train drivers should be licensed</p>
5.3	<p>ROTS were affected by the EU Interoperability Directives. HSC confirmed that it wanted to withdraw from direct approval. Time would be needed for withdrawal and the switch to the implementation of interoperability. A longer transition of disapplying ROTS regulations for the “non-interoperable” railway would better suit smaller operators and give time to better develop and apply the standards. Improvements to the regulatory regime would enable the Inspectorate to use evidence relating to fatigue in bringing about prosecutions. Improved guidance and an ACoP would help duty holders in understanding how to manage the issue of fatigue.</p>

5.4	<p>The Chair thanked the presenters. Summing up, the Commission:</p> <ul style="list-style-type: none"> • noted the responses to the Discussion Document (Annex 1 on general comments and Annex 2 on the specific questions raised in the DD), and that a summary would be published on HSE's website. • gave a steer on the issues in paragraphs 18, 21, 24, 25, 26, 29, 38 and 44 and annex 3 so that the scope and architecture of future regulation could be agreed; • noted the good progress made by industry on developing accredited certification at the supply chain (paragraphs 53 –55) which currently contrasted with a lack of progress on discussion of a voluntary accredited national licensing system, for train drivers (paragraphs 45 – 52).
6	Update on DfT Rail Review
6.1	<p>Anne Sharp updated the Commission. The Chair's letter of 19 January to Alistair Darling raised the set out key principles relating to the Rail Review and the two notes which HSE officials had sent DfT had been consistent with these. Officials were planning a further note to DfT covering issues such as reasonable practicability, the use of the 'high hazard' descriptor and the possible consequences of structural changes in safety regulation. A meeting of senior industry figures was being arranged in order to discuss concerns further. At the Commission meeting in February, HSC had expressed a desire to publicise its own views on the rail review. A move was now planned from background briefings towards a higher media profile. HSC might wish to consider a submission to the Secretary of State, which could usefully cover, for example the political value of an independent safety regulator.</p>
6.2	<p>The Commission welcomed the communication initiative. HSC/E would need to express themselves clearly and strongly through an influencing strategy, rather than a more limited communications strategy: the arguments needed to be debated in the public arena. An HSC submission to Ministers could be a starting point. It was agreed that the Chair and officials would develop an influencing strategy and consider the best timing for an HSC submission to the Secretary of State.</p>
6.3	<p>The Chair thanked the presenter. The Commission looked forward to a further update on future developments.</p>
7	Operational Work on Health and Safety Priorities
7.1	<p>Anne Wilson and Nick Ratty gave a presentation. There had been step changes since 2001/2 towards topic based inspection and multi-industry groups. The top five inspection priorities were stress, MSD's, falls from height, slips/trips and workplace transport in line with the Commission's priorities. In addition, there were extra health issues to be considered, including asthma, asbestos, noise and hand-arm vibration. Inspectors used risk control indicators (RCI) for example in workplace transport they were safe sites, safe vehicles and safe drivers. Topic based inspection had achieved consistent assessment of employers, simple recording and clear inspection.</p>
7.2	<p>Examples of initiatives were:</p> <ul style="list-style-type: none"> • 'milk moves' – transport supply chain; • university animal houses – asthma; • aerial installers, Sky TV – falls; • local authorities – stress; • seminars for intermediaries and employers – slips and trips; • use of lifting aids – MSD.

7.3	<p>The operational benefits included:</p> <ul style="list-style-type: none"> • an explicit backing for work not now done; • improved efficiency; • a clear focus on priorities; • better evaluation.
7.4	<p>Achievements so far included:</p> <ul style="list-style-type: none"> • more engagement with duty holders and closer working with Policy - all topics; • falls from height, transport – good progress towards PSA targets; • MSD – fewer poor performers, more good ones; • stress, slips and trips – central to the inspection agenda.
7.5	<p>Effort had been put into increasing competence of HSE and LA inspectors and employers. Examples were:</p> <ul style="list-style-type: none"> • a manual handling assessment tool; • a slips assessment tool; • management standards for stress.
7.6	<p>Next steps in the programme involved:</p> <ul style="list-style-type: none"> • more local pilot and national projects; • sharing good practice both in and out of HSE; • true partnership with LA's; • applying lessons from new ways of working pilots across FOD.
7.7	<p>Jane Willis emphasised that the main focus now was on long term planning and taking work forward. New forms of intervention and communications were being developed. HSE would look to engage the Commission in developing an overview of the priority programmes and build on work in the coming months.</p>
7.8	<p>The Commission welcomed the presentation. This was a big change compared to how inspectors worked in the past although it was noted that there was still work to be done. Attempts to make real improvements with the LA partnerships were recognised.</p>
7.9	<p>The Chair thanked the presenters. HSC was keen to ensure that different areas of HSE were working well together. The Commission looked forward to further reports on the progress of the pilot studies.</p>
8	Review of HSE's Legislative Programme (HSC/04/35):
8.1	<p>Kate Timms introduced the paper. From 1 April the Commission would adopt new ways of working. The changes should enable the Commission to provide, among other things, a more strategic focus. As part of this new way of working and to support the new Commission strategy the Commission needed to consider how it wished to influence regulatory packages in the future. A critical look at legislative activity was now important. Policy Group had taken the first steps to facilitate this by creating a categorised Register of present planned legislative work, attached as Annex 1.</p>
8.2	<p>The Commission welcomed this work. The European requirements were unavoidable but in some cases, the value of carrying out comprehensive five year reviews as a matter of routine would have to be reassessed. HSC/E should concentrate its resources on areas where there were genuine health and safety benefits and report back to the Commission in due course,</p>

8.3	<p>The Chair thanked the presenters. Summing up, the Commission:</p> <ul style="list-style-type: none"> noted the contents of the Register and the categories and descriptors used and the resulting prioritisation; noted the work underway in Policy Group to build on this and looked at the implications for resources; was invited to identify those packages that may benefit from early Commission input on policy or presentational issues and how this might be handled.
9	Proposals for the Control of Noise Regulations (HSC/04/02)
9.1	The Commission discussed the details of the paper. Margaret Burns had discussed the package with officials on the Commission's behalf. This was a European Union requirement and not an example of HSC/E "gold-plating". A wide range of industries and occupations were likely to be affected by the proposals. Media interest was anticipated, particularly with regard to the music and entertainment sectors.. Careful thought would need to be given to the presentation of the new Regulations. It would be vital to get the key messages across in a way that made clear to stakeholders how the regulations would affect them and what they needed to do.
9.2	Summarising the discussion, the Chair noted the Commission's comments and the need for the presentational aspects to be handled with care. HSE had sought to engage stakeholders in the process and these efforts should be maintained. It was agreed that the Chair should write a covering letter to the CD to summarise the key points for dutyholders.
10	Managing Commission Business (HSC/04/40)
10.1	Mark Dempsey introduced the paper. With the Commission adopting new ways of working from 1 April, a more active approach to managing HSC agendas would be necessary. Annex A proposed draft agendas for the remainder of 2004. The Commission was also invited to consider the themes for an open Commission meeting in the Autumn.
10.2	The Commission welcomed a more systematic approach to forthcoming agendas. There would no longer be a need for regular strategy days in the future and the Commission's annual residential meeting would enable strategic discussions. The themes and audience for the open meeting needed further thought, but should concentrate on early deliverables from the new strategy. This form of dialogue with stakeholders was important. Significant strategy papers should be submitted to the Commission as early as possible. The Commission noted that discussions on specific sets of regulations needed to involve a representative sample of the Commission rather than relying on individuals to report to the full Commission.
10.3	Summing up, the Chair noted that the Commission would need to return to the question of how regulatory packages were handled. The Commission: <ul style="list-style-type: none"> welcomed the implementation of changes to agenda planning; agreed that individual Commissioners support specific strategic programmes and sectors; discussed some of the key issues or theme for an open meeting in the autumn.
	Below the Line Items:
11	Proposals for the Control of Noise Regulations (HSC04/02)
11.1	The Commission discussed this item above the line – See item 9
12	The Importation of asbestos from MoD sites in British Overseas Territories (HSC/04/28)
12.1	The Commission noted the Executive's decision to issue exemption certificates to allow the importation of asbestos waste from British military properties on Ascension Island and The Falklands Islands for the purposes of safe disposal in the UK.

13	Revision of the Code of Practise for the safe use of pesticides on farms and holdings (HSC/04/34)
13.1	The Commission agreed to the public consultation on the revised Code.
14	HSC/E Response to the DfT Consultation on Conventional Interoperability (HSC/04/31)
14.1	The Commission agreed to send the letter at Annex A.
15	Proposals for the import and export of dangerous chemicals 2003 (HSC/04/38)
15.1	The Commission agreed: <ul style="list-style-type: none"> (i) the publication of the Consultative Document at Annex A; and (ii) the list of consultees at Annex C.
	MISC Papers circulated:
16	National Audit Office Report: Improving passenger Rail Services through new trains (MISC/04/05)
16.1	The Commission noted, in the context of the Government's Rail Review, the NAO report and recommendations affecting HSC/E and the position on Mark 1 rolling stock.

Commission Secretary
March 2004