

Health and Safety Commission Minutes		HSC/05/M01	
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Health and Safety Commission	
Minutes of a meeting of the Health and Safety Commission, held on 11 January 2005 in the Hope Room, 2 Southwark Bridge, London, SE1 9HS.	
Present Bill Callaghan – Chair Margaret Burns Danny Carrigan Abdul Chowdry Judith Donovan Joyce Edmond-Smith Judith Hackitt – for part of the meeting only Hugh Robertson Elizabeth Snape Apologies John Longworth	Officials Present Timothy Walker Jonathan Rees Alex Brett-Holt Colin Douglas Vivienne Dews Susan Mawer Paul Nicholson Paul Baldwin Observers: Colin Purcell-Lee Lisa Gregory
1	Introduction:
	The Chair welcomed Colin Purcell-Lee and his colleague Lisa Gregory. Mr Purcell-Lee is participating in the 'Disabled People Public Appointments Shadowing and Mentoring Scheme'. The Chair invited them to meet and talk with Commissioners at the end of the meeting.
1	Minutes of the open meeting held on 7 December 2004 (HSC/M12/2004)
1.1	Accepted.
2	Urgent business not covered by items on the agenda
2.1	Spending Review – Timothy Walker updated the Commission, who noted that details about the final settlement have not yet been received.
3	The strategic programme for developing PSA1
3.1	Jonathan Rees introduced this item where the aim was to explain how HSE has organised its work to deliver PSA 1 Targets (see Annex 1) and to flag up the challenges faced. Justin McCracken would be making a similar presentation to the Commission on PSA 2 Targets. The key elements of PSA 1 were, partnerships with outside bodies and being clear where we were going to make the most difference.

	<p>This meant fewer, bigger programmes.</p> <p>Jane Willis went through the detail. In reviewing the priority programmes it was clear there was some duplication. The economists and social scientists had been asked to identify areas where improvements had to be made, and by how much, if the targets were to be met. This had resulted in 3 blocks of work.</p> <p>HSE now felt that there was more clarity and purpose to the programmes, with a stronger evidence base. But there were challenges around involvement of LAs, workers and business.</p> <p>See PowerPoint presentation attached at annex 1</p>
<p>3.2</p>	<p>The Commission welcomed this restructuring. The Commission agreed that Local Authority input was key in taking forward many of the work streams within the programmes. However the challenge was in identifying where LA involvement was critical and how best to incorporate them into the overall programme.</p> <p>The Commission explored how they could best contribute to the different programmes. They accepted that it was difficult to develop a single model for Commissioners input, however they did feel they could play a variety useful of roles. These included influencing key stakeholders and acting as ambassadors for particular work streams; providing HSE with a challenge function and, where appropriate, sit on or chair Programme Boards.</p>
<p>3.3</p>	<p>The Chair thanked the presenters. He welcomed this clearer focus and was encouraged by HSE efforts to make programme working effective.</p> <p>He welcomed the refocusing of resources to help deliver priorities; He agreed Commissioners should be used to provide a challenge function and in principle that there was a role for HSC to act as ambassadors as well as take on other functions for external audiences, although further work was needed to be done.</p> <p>He asked HSE to look at the key dependencies where Commissioner involvement might help.</p>
<p>4</p>	<p>HSC/05/ 21 Response to the Hampton Report</p>
<p>4.1</p>	<p>Peter Buckley updated the Commission. Since writing the paper several meetings have been organised to look at simplification of regulatory structures, penalties & Local Authorities. The Chair and Jonathan Rees had also met with Philip Hampton on 10 January.</p> <p>From discussions there appear to be some emerging themes centred around reducing the number of regulatory bodies from 59 to five or ten, removing inconsistencies at a local level and introducing structural reform rather than developing a model of partnership working.</p>

	<p>The Commission were invited to comment and agree the recommendations set out in the paper.</p>
4.2	<p>The Commission welcomed this update - they felt the paper correctly identified the main issues and they held a broad discussion around the key areas highlighted in the paper.</p> <p>The Commission were concerned that a single workplace agency responsible for the protection of workers as well as the detection and punishment of workers would not work in practice. It was important to separate the rights of workers from enforcement against workers.</p> <p>The Commission recognised the value of a single point of registration for business and that certain parts of industry thought a set of generic data available to all regulators, would reduce the amount of time they spent providing this information to the different regulators relevant to their industry. However, the Commission were uncomfortable with certain aspects of data sharing and would want to see what the data suite looked like.</p> <p>They welcomed the idea of functions being brought together to allow for better joined up working between bodies. They explored the role of Local Authorities in inspecting larger employers and the issue of consistency. The Commission felt that Local Authorities needed to be able to respond to local needs.</p> <p>The Commission reported that LGA and LACoRS have both been part of the consultation process and have strong views that the arrangement between HSE and LAs has the seeds of a good system and is one, which has the potential to be broadened.</p> <p>In relation to penalties, the views of the Hampton team were in line with HSC's policy. The Commission stressed that part of the problem was the slowness of the justice system.</p>
4.3	<p>The Chair thanked the presenter. He broadly agreed the lines in the submission to Philip Hampton. He wanted to keep in touch with the Hampton team and would meet with them again before the publication of the recommendations. He felt it was still important that the Commission remained well positioned to influence the outcome of the review wherever possible.</p>
5	<p>(HSE/05/11) Working at Heights</p>
5.1	<p>Elizabeth Gibby introduced the paper. The Commission were invited to take decisions on:</p> <ul style="list-style-type: none"> • Regulation or guidance for the 2m rule in relation to construction activities • Regulation or guidance in relation to Regulation 13 • The adventure activity sectors case for an exemption from the

	<p>regulations.</p> <p>HSE presented the results of the consultation exercise and set out the arguments and representations made in relations to these matters.</p>
<p>5.2</p>	<p>The Commission recognised that there were very strong and emotive views about these issues. However they appreciated that it was important to reach a decision as soon as is practical.</p> <p>The Commission's overarching objective was to ensure that any decision did not lead to a lowering of standards but lead to better management of risks and to a reduction in falls from height.</p> <p>The Commission held an in-depth and frank discussion around all the issues</p> <p>2 Metre Rule - the Commission recognised this was a complex and divisive issue. They discussed the results of the consultation exercise and were aware there was roughly a 50:50 split between those who wanted the 2m rule included in legislation and those who preferred a risk assessment approach.</p> <p>There was a similar split in the responses received from those who worked in or represented the construction industry. The Commission noted that the Construction Confederation was in favour of retaining a 2m benchmark.</p> <p>The TUC and the unions who replied were generally in favour of keeping the 2m rule. Equally the Commission recognised that small firms could find a prescriptive rule easier to understand.</p> <p>Those in favour of the risk assessment approach were concerned that a prescriptive approach in regulation undermined the principles of risk assessment and lead to risks below 2m being ignored.</p> <p>Despite the 2m rule there were still a significant number of accidents from falls both above and below 2m and there was a danger of duty holders not adequately assessing the risks of working below 2m if the 2m rule was reintroduced in legislation.</p> <p>The Commission discussed the option of having an ACOP, which sets out the standards to be achieved when working 2m or above. However some thought that an ACOP would delay the regulations further and that duty holders, particularly small firms, did not fully understand the status of ACOPs and guidance.</p> <p>The Commission felt on balance that a risk-based approach, supported by sector specific guidance, which clearly reinforced the existing standards regarding work at height and encourage improvements through risk assessment, in the management of falls from heights below 2m was the best approach.</p>

	<p>The Commission said the impact of this decision should be monitored and they wanted to see a full review in 2 years.</p> <p>Regulation 13 - the Commission explored the varying views regarding the inclusion of Regulation 13 in the Working at Height Regulations.</p> <p>The proposed regulation could generate unnecessary paperwork through a misunderstanding of what was required. The regulation would be difficult to enforce if the “check” did not need to be recorded. However the Commission felt that to carryout a visual check before starting work was a sensible, common sense precaution.</p> <p>Following debate the Commission reached a consensus that if a specific regulation made a real difference and enhanced the level of protection offered, then in this case it may be appropriate to enshrine a common sense proposal in regulation.</p> <p>The Commission stressed the importance of proactively and effectively communicating the reasoning for their decisions on these two issues</p> <p>The adventure activity sector – the Commission considered a proposed way forward and agreed to put this forward to the Minister for her consideration as part of the ongoing process of internal policy development on this issue.</p>
5.3	<p>The Chair said that the 2m rule had clearly not delivered improved performance. He had a duty to proceed with the package and he saw the proposals as strengthening the overall regulatory framework. He thanked the Commission for their efforts to reach a consensus.</p> <p>He agreed that:</p> <ul style="list-style-type: none"> • The 2 Metre rule should not be retained. Strong sector specific guidance underpinned by a clear enforcement statement should be provided, rather than retaining the 2m rule. The impact of this would be reviewed. • Regulation 13 should stand as drafted • HSE should consider the communications issue <p>The proposal in the paper regarding Adventure Activity providers should be pursued.</p>
6	(HSC/05/04) Progress Report on Migrant Workers
6.1	John Furlong introduced the paper. HSE reported that steady progress had been made. HSE invited the Commission to note the work done to date and endorse next steps as set out in the paper.
6.2	The Commission felt this was an excellent piece of work and was encouraged by the progress made by HSE. The Commission passed on the TUC’s positive comments regarding the recent issued multi-lingual leaflet on basic health and safety rights and responsibilities.

6.3	<p>The Commission were concerned that for a multi-agency joint enforcement mechanism to be effective in serving health and safety objectives, it must separate out functions concerned with protection of migrant workers safety from those concerned with detection of other illegal practices (for example, illegal immigration and benefit fraud).</p> <p>The Commission recognised there were still serious challenges to overcome, particularly around work stream 1, issues around under-reporting and how best to tap into the information held by Local Authorities. This was an area where it was very difficult to get hold of information, and work streams should not be held up because of this.</p>
6.4	<p>The Chair thanked the presenter. He welcomed the progress made and endorsed the next steps. He looked forward to seeing these work streams developed and also encouraged the cross-government working.</p>
7	<p>Informal discussion on handling Commission Business</p>
7.1	<p>Jonathan Rees introduced this item. There were a number of practical issues, which needed to be discussed, and decisions taken in relation to the open meetings. He invited comments from the Commission.</p>
7.2	<p>The Commission held a short discussion around the issues. They confirmed their commitment towards holding all meeting from April in public.</p>
7.3	<p>The Chair agreed that a small group of Commissioners and officials should be set up to explore the options and make recommendations for Commissions consideration at the next meeting.</p>
8	<p>Below the Line Papers:</p>
9	<p>(HSC/05/17) Small firms allowance scheme</p>
9.1	<p>The Commission noted the overall recommendation, that HSE should NOT move forward with a national grant scheme directed to small businesses until it can target the scheme more effectively.</p>
	<p>(HSC/05/12) Legal Advice on enforcement – Section 3 HSAW Act (an update- substantive paper to be presented at 8 February meeting)</p>
	<p>The Commission noted Counsels' Advice.</p>