

**Bill Callaghan's presentation to
IOSH Yorkshire Branch Modern Practitioner
Seminar
Holiday Inn, Doncaster
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Introduction

My thanks to the Yorkshire Branch of IOSH for the invitation to come and speak to you today as part of the Modern Practitioner seminar. I know from my own contact with IOSH over the past eight years that IOSH members play an important role in raising the profile of health and safety in their workplaces, in their wider contacts and through the activities of branches as yours.

I have been impressed by the dedication and commitment of IOSH and its members and your willingness and enthusiasm to work with HSC/E to the goal of safe and healthy workplaces and a record for Great Britain that leads the world.

Your event today, enabling your members to keep abreast of key health and safety developments as part of your continuing professional development, is an important cog in the machinery we consider essential to our success. Lord McKenzie, Minister for Health and Safety, my HSE colleague Rob Pearce, spoke at meetings of IOSH's London and South West branches earlier this week. We very much welcome the opportunity to engage with IOSH members and to continue to build our partnership.

David Snowball, HSE's Field Director for Yorkshire and the North East is here with me today. We very much look forward to your questions and contributions.

There are a number of key issues that I would like to cover in my presentation :

- First, as background I would like to say a few words about the changes in industrial structure and economic activity in Yorkshire in recent years and the impact this has had on the environment within which you work;
- I then will briefly review the progress that we have made in reducing the incidence of ill health, injury at days lost in the workplace and look forward to the major challenges we face in the sphere of occupational health in particular;
- I also plan to address the importance of the 'Sensible risk' principles and the key messages that we must get over to ensure that health and safety is not seen as trivial nor a bureaucratic burden;
- Finally, I want to say a few words on the European Court's decision announced today concerning the UK's use of the qualifier 'so far as is reasonably practicable' – SFAIRP – in its implementation in domestic legislation of European health and safety law.

Yorkshire – a changing industrial landscape and emerging challenges

I noted that at one time your meetings were held at Kellingley Miners' Welfare before moving to Pontefract. Whilst many of the old industries have disappeared, new industries have developed – major changes in ownership have also taken place. Yorkshire & Humber is a dynamic and vital part of the UK economy :

- With a working age population of just over 3 million
- Of whom almost 2.4 million are economically active
- 1.7 million workers (73%) are employed in the service industries
- 373,000 (16%) are employed in manufacturing
- 202,000 (8.6%) are employed in construction

New industries are emerging, old industries are adapting to survive, for example:

- Chemicals and bioscience
- Digital
- Advanced engineering and metals
- Food and drink
- Environmental technology
- Health technology

These sectors employ around 225,000 workers in Yorkshire and Humber according to the latest ONS survey data – almost 10% of those at work in the region. And thanks to my Commissioner Judith Donovan we shall soon be adding Bollywood to the list.

In thinking about the new we should not forget that we live with the legacy of the past. There are thousands of workers, including many in Yorkshire, who worked in those old industries, or who were exposed to materials as asbestos in their workplaces, and who are still paying the price. Many do not live to enjoy retirement – these workers made ill or killed through exposure to dangerous materials are very much of our present and our future. Let them be a constant reminder of the importance of ensuring risks to health and safety are properly controlled.

Last week the Commission agreed to recommend to the Minister a new regulation on dust in coal mines. We said that if the regulations prevent just one, just one case of bronchitis they will have a net benefit. That says something about the cost of COPD in the mining industry.

A progress report

So we have the legacy problem but how well are we doing ? It is shocking to recall that around 1,000 employees died each year at the end of the 1960s. And that the number of fatal and non-fatal accidents in factories, docks and warehouses and construction was over 300,000 in 1970 compared with 193,000 in 1961.

In contrast, progress since the 1970s has been marked: 160 employees and 52 self-employers were killed at work in 2005/06, the lowest number and the lowest rate on record. Although compositional changes in the workforce can explain some of the improvement, the regulatory regime, proposed by the Commission and enforced by the Executive and local authorities, has been a major contributor.

A cautious estimate is that over 5,000 lives have been saved by the health and safety improvements introduced following the Health and Safety at Work Act 1974 Act. Construction remains a hazardous industry but the number of deaths at work in that sector is a third of the late 1960s level despite the industry employing many more people.

So how far have we come since 2000 and what do the 2005/6 health and safety statistics show about our progress towards Revitalising Health and Safety targets?

The most recent two years show good news :

- Fatalities have fallen from 223 in 2004/5 to 212 in 2005/6. Indeed the number of fatalities has fallen progressively since 2000/2001 when there were 292

- Major injuries have also fallen - in 2005/6 major injuries for all workers stood at 29,856 down from 31,702 the previous year;
- However the poor performance in 2003/4 means that we are not yet on track to meet the target for reducing the rate of fatal and major injuries by 10% by 2010.

There is much better news when we look at ill health and days lost :

- A quarter fewer days were lost in Great Britain because of health and safety failures comparing 2005/6 with the start of this decade: from 39.8 million in 2000/2 down to 30.5 million days in 2005/6 – 24 million days absence were caused by stress and msd;
- 3.4 million days were lost in Yorkshire & Humber in 2004/5 due to injury and ill health – an average of 1.8 days per worker.

IOSH and its members have played a leading role in the improvements we have achieved to date – I do hope that you will play a key role to play in the future including through the provision of competent advice.

Failure to prevent ill health, especially that arising from work activities, is expensive. As I'm sure you appreciate there are other costs to be factored in, including the costs to the individual and society, if we do not achieve our goal of healthy and safe workplaces and employee well-being.

In our economy 1 million people a week take sick leave and whilst the majority return to work quickly in an average week 3,000 people are off sick for more than six months and of those 80% will not work again for the next five years. That has major human and economic cost. Some 600,000 new people are flowing on to Incapacity Benefit each year.

Here are the hard facts concerning sickness absence in the UK :

- An estimated 164 million working days are lost each year due to all causes of sickness absence – an average of 7 to 8 days per employee;
- Only 1-in20 absences are long term but these account for at least one-third of working time lost.

Common health problems such as stress and back pain that are largely responsible for work-related ill-health. This is one of the major challenges at the heart of the Government's Health, Work and Well-Being Strategy, launched in Autumn 2005 .

The key themes of the Strategy are :

- To improve the health and well-being of the working age population striking the right balance between prevention, treatment and rehabilitation;
- To influence people to change cultures and behaviours – this will need time and commitment;
- To win the support of key stakeholders including employer groups, trade unions and professional bodies – this is essential;
- Our vision is to gain recognition of work as important and beneficial and to remove institutional barriers to starting, returning or remaining in work.

We know that good work is good for our health and well-being and that being in work can help people recover from both physical and mental health problems.

Keeping people healthy and in employment is crucial if we are to achieve motivated, healthy workforces and more stable, economically viable communities.

I would like to pay tribute to the work of the Sheffield Occupational Health Advisory Service (SOHAS) and their work over many years aimed at preventing

and alleviating the effects of occupational diseases and injury and to enable those with limiting health problems to work. Quite early in my term as HSC Chair I had the opportunity to see at first hand the positive impact that the work of SOHAS was having in tackling work related disease and injury.

Lord McKenzie, the Minister with responsibility for health and safety, paid tribute to the work of SOHAS at an event earlier this year at which he spelt out the Government's plans for the delivery of the Health, Work and Well-being Strategy across the country.

Lord McKenzie stressed the importance of building networks of key stakeholders at a local level citing the work of SOHAS and the partnerships in Leeds and Bradford too

I hope you will agree that the effort and resources devoted by HSC/E over the last two years to the Backs campaigns, including for example the practical workshops and awareness raising events run by HSE colleagues in Yorkshire, have played an important part in promoting the good jobs agenda and will continue to do so.

HSC/E's relationship with IOSH is an important and highly-valued one. We commend the effort and contribution of IOSH and its members through initiatives such as the Occupational Health Toolkit which is aimed to equip health and safety practitioners with the resources to tackle occupational health problems. The toolkit has an important part to play in equipping practitioners with the necessary background to address health issues, also helping them to prevent ill health in the first place and in helping people back to work. I am sure the toolkit will make a significant contribution in tackling occupational ill-health.

Sensible risk

According to some stories, health and safety is a millstone around the neck of Britain, concentrating on trivial risks and petty bureaucracy to the detriment of citizens. It bans simple everything from doormats to Christmas decorations, whilst making trapeze artists wear hard hats and children enjoying a game of conkers wear goggles.

You and I see a rather different side of health and safety, the one that has saved the lives of more than 5,000 workers since the 1974 Act was passed and that every day protects people from ill health and injury. It concerns me greatly that the image of health and safety as petty bureaucracy will damage our ability to make a practical difference on the real risks.

So what is behind the stories? They seem to split into 3 basic categories.

Firstly there are the simple myths with no basis in fact at all. Whether its trapeze artists being made to wear hard hats or the banning of firemen's poles from fire stations, they are utter rubbish. HSE is now running a 'myth of the month' cartoon feature on its web site to tackle some of the most popular myths – well worth a look.

Secondly there are stories that contain a grain of truth – someone, somewhere really has gone beyond what the law and common sense dictate. Perhaps the most infamous is the head teacher who made children wear goggles to play conkers – a crazy decision, but one that has apparently now been copied elsewhere.

And thirdly there are the times where health and safety is used as a false excuse to justify a decision made for other – usually financial reasons. The closure of leisure facilities is a classic example.

The great majority of popular stories misrepresent what the law – either criminal or civil actually expects. However, behind many is a grain of truth – someone, somewhere really has made the decision described and usually with the best of intentions. It is clear that we need to tackle both the myths and the realities.

You are I hope already aware that we have based our response around a set of principles of sensible risk management that set out what we believe sensible risk management is – and perhaps most importantly is not – about. We have had broad support for the principles from all sorts of stakeholders and I'm pleased to say that IOSH have been at the forefront of that support.

Let me re-cap what HSC considers sensible risk management is about :

- Ensuring that workers and the public are properly protected;
- Providing overall benefit to society by balancing benefits and risks, with a focus on reducing real risks – both those which arise more often and those with serious consequences;
- Enabling innovation and learning, not stifling them;
- Ensuring that those who create risks manage them responsibly and understand that failure to manage real risks responsibly is likely to lead to robust action; and
- Enabling individuals to understand that as well as the right to protection, they also have to exercise responsibility.

Sensible risk management is not about :

- Creating a totally risk free society;
- Generating useless paperwork mountains;
- Scaring people by exaggerating or publicising trivial risks;
- Stopping important recreational and learning activities for individuals where the risks are managed; and
- Reducing protection of people from risks that cause real harm and suffering.

Now that we have launched the principles, what are the specific issues on which we need to concentrate our efforts? The analysis, research and consultation indicate two clear priorities: unnecessary paperwork and public safety.

There is a clear concern amongst business people at health and safety becoming a bureaucratic, rather than a practical exercise. I share that concern, not just because bureaucracy stifles the efficiency and flexibility of businesses, but also because of the simple fact that on its own paperwork never saved a life. It is only ever a means to an end, not an end in itself. I am sure that you as IOSH members recognize that reality and I would urge you to demonstrate your professionalism through the quality of your work, not the quantity of paper involved.

The other area of concern is public safety. It is very telling that the vast majority of popular stories are not about the health and safety of workers at all. With the odd exception, there appears to be a reassuring understanding of the need to protect people at work. The concern seems to revolve around interventions that nanny people in their everyday lives, preventing them from enjoying activities they take for granted or imposing frustrating and unsightly restrictions upon them. In legal terms, it is the section 3 issues where we all need to be thinking carefully and creatively. That applies to the vast number of leisure facilities operated by councils, but also to the more mundane situations, such as people visiting factories, shops or offices.

The principles of sensible risk management can help inform our approach. Sensible risk is not about: creating a totally risk free society; stopping important recreational and learning activities for individuals where the risks are managed.

In dealing with public risks, the focus needs to be firmly on finding ways to make activities safe enough – not stopping them happening. To use a sound bite:

health and safety needs to be about saving lives, not stopping people living. Our mindset needs to be: how do I make this work?

Starting from that premise, the next question has to be: what controls are appropriate? Again the principles can provide some help.

Sensible risk management is about: providing overall benefit to society by balancing benefits and risks, with a focus on reducing real risks – both those which arise more often and those with serious consequences; enabling individual to understand that as well as the right to protection, they also have to exercise responsibility.

Managing health and safety is not about absolutes, but rather a balance needs to be struck. Section 3 of the Act is qualified by 'reasonably practicable'. As you know that is a legal test that dates right back to *Edwards v NCB* in 1948 where the quantum of risk must be weighed against the quantum of sacrifice – in terms of time, trouble and money. Duty holders do not need to go beyond a point where the sacrifice is grossly disproportionate to the risk.

When we are dealing with risks to the public, there will be circumstances where measures to control the risk of very serious injury – even death – are not reasonably practicable. Sometimes the probability is very low indeed and the cost of the control measures extremely large. Sadly every year some people drown in Britain's inland waterways, but it does not follow that we should fence off every stretch of water. Quite apart from the environmental affect, the cost would be astronomical, and out of all proportion to the relatively low risk – it would not be reasonably practicable. The hard fact is we cannot prevent all deaths; rather we need to assess particular circumstances, weigh the risks and the sacrifice and come to a conclusion accordingly.

But decisions about public safety are not purely theoretical and technical. Early engagement with the people who use the facility as well as some creative thinking can very often find a way forward that provides an acceptable level of safety without ruining aesthetic or amenity value. I don't subscribe to the stereotypical view that people working in health and safety are unimaginative box tickers; I see plenty of creative thinking about me and I'd urge you to use it. Dealing with risks to the public is not just a technical exercise. I believe that an ability to recognise and work with the social dimension will become an increasingly important skill for health and safety professionals over the years to come.

In dealing with Section 2 issues HSC/E benefits from along tradition of employee involvement and consultation between managers and workers. There is for the most part an understanding of what is practicable, what makes sense. We need to find appropriate ways of discussing Section 3 issues.

I know there have been local examples that have presented tricky challenges, in particular some involving water hazards. There was the removal of stepping stones from parkland because some children slipped on them. There was also a lengthy controversy about fencing off a length of very beautiful river to prevent someone falling in and being carried into a dangerous weir downstream. Now, I am not privy to all the details, but it does strike me that in these kinds of instances it is possible to find alternative ways forward that manage the risk sufficiently, but which recognise aesthetics and public amenity. Whatever the outcome, good, early engagement with those who use the amenities is essential.

I don't have all the answers to these difficult questions, but I do hope that provides some food for thought. If we are to turn the tide, we must – all of us – make sure we are above reproach. We must concentrate on saving lives, not stopping people living. The Commission, HSE and our partners remain

committed to this agenda and I hope I can rely on your active and enthusiastic support.

'So far as is reasonably practicable' - SFAIRP

Of course, not all has been plain sailing with regard to the UK's approach to health and safety as seen by the EU, or more particularly, by the European Commission. I am sure you will be aware of the infraction proceedings against us taken by the EC regarding our use of the term 'so far as is reasonably practicable' in our legislation. Alleging that by its use the UK has not properly implemented the EU Framework Directive on health and safety at work.

I haven't sufficient time, now, to go into the details of the case, for and against. However, I can say that we, at last, have reached the end of the proceedings because, this very day, we have received the ruling from the European Court of Justice.

Today the European Court of Justice (ECJ) upheld one of the key elements of British health and safety law – the use of the key phrase “*so far as is reasonably practicable*”. I am pleased by this outcome. The Court has rejected the European Commissions claim that the use of “so far as is reasonably practicable” does not implement the directive. Quite clearly we have been effective in this as currently we have the best occupational safety record in Europe. Our fatal injuries incident rate, at 1.1 per 100,000 workers, although still high, is less than half the EU average, that is, the average for the 15 Member States prior to enlargement in 2004.

We continue to believe that the right way forward is a proportionate and risk-based approach protecting employees and others effectively, whilst allowing commonsense to be applied when deciding on what protective measures to adopt.

Conclusion

I have covered a lot of ground – a reflection of the challenges we face if we are to achieve our targets on reducing injury, ill-health and days lost in the workplace. Whilst the evidence shows that improvements are being made in some areas, for example the on-going reduction in days lost, we must not lose sight of the task ahead including in preventing fatalities and major injuries.