

ADDRESS

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The Health and Safety Commission consulted police service stakeholders in January 2003 about proposals to treat police authorities, instead of Chief Constables as now, as the employer of police officers for purposes of the Health and Safety at Work etc Act 1974. Following the end of the twelve week consultation period, the Commission has now had the opportunity to consider the views expressed by the organisations or individuals who responded. I am writing on behalf of the Commission to thank you for your comments; to set out briefly how the Commission interprets the balance of views expressed, and what the Commission sees as the way ahead.

Parliament has decided that serious health and safety breaches should be dealt with under the criminal law. Under the Commission's Enforcement Policy Statement, the health and safety enforcing authorities bring prosecutions for health and safety offences only when it is proportionate to do so. The vast majority of such prosecutions are against organisations, and only a few against individuals. In organisations, failures to comply with health and safety law are usually the result of a chain of decisions and not mainly the fault of an individual.

The Commission considers unsatisfactory the present position whereby Chief Constables are liable personally for prosecution and conviction for health and safety offences resulting from wider organisational failures. Prosecutions should be brought against an individual only when the alleged offence is due to their personal acts or defaults, or if they have knowingly allowed it to continue, or have encouraged it. This should be the case for Chief Constables in the same way as for a top manager or director in a different kind of organisation.

The Police Reform Act section 95 would transfer to police authorities the Chief Constable's present duties, for safeguarding the health and safety of their police officers. At the same time police legislation would continue to give Chief Constables and not police authorities direction and control of police officers.

The Commission has a statutory responsibility to consider whether such a change would improve arrangements for police health and safety, or at least maintain them, and to be assured that any such change will not be to the detriment of health and safety.

The Commission considers that the central question is whether police authorities would be able to exercise effectively their new duties to ensure that the law is complied with, given the widely accepted need for Chief Constable's operational independence.

The most significant risks to police officers' health and safety arise in front line operations. Police authorities would need to know what was being done to assess and prevent or control risks, and be able to ensure that everything reasonably practicable in the context of operational policing was being done. Sometimes this would mean acting to ensure compliance with the requirements of an Improvement or Prohibition Notice issued by an inspector. I will return to the question of what is reasonably practicable below.

A summary of respondents' views is attached. The Commission considers that the balance of views reveals considerable doubt as to whether the approach enabled by section 95 would be workable.

The Commission notes the views of HM Inspectorate of Constabulary for England and Wales, the Association of Chief Police Officers, and the Scottish Boards who responded, who believe that police authorities would be unable to carry out the new role without restricting operational independence. In policing as in other fields health and safety management is really just one aspect of the management discipline as a whole, so decisions on health and safety cannot be separated artificially from wider operational decision-making.

The Police Federation considered that transferring the employer's duty to police authorities would be detrimental to police officer health and safety, and questioned whether police authorities would have the resources or specific expertise to carry out a detailed role which is different to their general one of strategic oversight of policing. The Police Superintendent's Association saw the change as necessary.

Responses from police authorities were varied. Of six responses from individual authorities in E and W, the Metropolitan Police Authority were strongly in favour of taking on the employer duty, and two others were content to do so; three expressed concern about section 95, including concern about impinging on police operational independence. The APA considered that it was too early to conclude that section 95 was unworkable, while it acknowledged that workability depends on the drafting of a satisfactory code. The three Scottish Boards who responded were firmly against section 95, expressing especially about undermining the constitution of the police service, and operational independence.

However, the Commission also notes the strong contention of the Metropolitan Police Service that police authorities and police forces working together could manage health and safety effectively while broadly remaining within the boundaries of their wider policing roles. The Metropolitan Police Service has proposed a scheme for oversight

and liaison which they consider would achieve the necessary lines of police authority management control while respecting operational independence. The Commission is grateful for the thought which has gone into this and other responses.

The Metropolitan Police proposal includes provision whereby if a disagreement arose, the Chief Constable might decide that the interests of effective policing demanded action contrary to what the police authority considers to be best health and safety advice. Police authority advice would then be overridden. The Commission considers this illustrates the limitations of giving police authorities a responsibility they could not fulfill in all circumstances. HSE would then have to consider taking enforcement action against someone other than the notional employer, perhaps the Chief Constable or some other officer personally. This would defeat the object of section 95, and create confusion about who is really responsible and accountable for police officer health and safety.

Section 95 might enable and encourage police authorities to act more firmly as an advocate for health and safety improvement. But the Commission considers there is no evidence that section 95 or a possible code would provide for the firm grip on the management of work activity which police authorities would need in order to fulfill the employer's duties under HSWA. Police forces already appoint health and safety advisers to assist them.

The scope for confusion could be reduced by the development of guidance, in the context of operational policing, on what is and is not reasonably practicable, or general principles to aid such judgments, by Chief Constables and by inspectors and others. Such guidance would be a valuable addition to the advice which HSE offered to the police service in the context of their recent involvement in firefighting operations.

However, Chief Constables are still best placed to make the decision as the employer and in the circumstances at the time what they believe to be reasonably practicable. The Commission believes that accountability for this and other facets of their decisions should remain with Chief Constables.

In summary, the Commission considers that the most straightforward way to allocate responsibility for police officer health and safety is for the Chief Constable to retain the employer's duties, and accountability. This sits well with Chief Constable direction and control. At the same time Chief Constables should not be personally liable for failings for which in other circumstances enforcement action would be taken against an employer. Such personal liability should only be a possibility in circumstances in which inspectors would consider prosecuting a senior manager in other kinds of organisation.

The Commission understands that the Home Office is examining ways to achieve this position, in consultation with HSE and police service stakeholders, which the Commission welcomes.

A full set of consultees' responses is available on the HSE website.

Thank you again for taking the time to respond to the consultation.



Commission Secretary