

Health and Safety Commission Minutes**HSC/06/M09**

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Exemptions:			

Health and Safety Commission**Minutes of a meeting of the Health and Safety Commission, held on 6 December 2005 in the Globe Room, 2 Southwark Bridge, London, SE1 9HS****Present**

Bill Callaghan – Chair
Margaret Burns
Danny Carrigan
Judith Donovan
Joyce Edmond-Smith
Sayeed Khan
Hugh Robertson
Judith Hackitt
John Longworth
Elizabeth Snape

Apologies:

Justin McCracken

Officials Present

Geoffrey Podger
Jonathan Rees
Alex Brett-Holt
Colin Douglas
Vivienne Dews
Susan Mawer
Paul Nicholson
Neal Stone

Other Attendees:

Derek Allen – LACORS (Item 4 only)

1	Minutes of the meeting held on 6 September 2005 (HSC/M08/2005) and matters arising
1.1	The minutes were agreed.
1.2	The paper on the Health, Work and Well Being Programme agreed at paragraph 4.1 would be provided at the January meeting. Jonathan Rees gave a short update on progress following the formal launch of the programme in October by the Chair and Ministers.
2	Urgent Business
2.1	Sayeed Khan drew attention to a new publication from The Royal College of General Practitioners and Faculty of Occupational Medicine and Society of Occupational Medicine, "The Health and Work Handbook", which was a big step forward for primary care. He agreed to arrange for copies to be sent to Commissioners.
3	Chief Executive's Report
3.1	Geoffrey Podger paid tribute to Allan Sefton, HSE's Director of Rail Safety, who had retired on 2 December after 36 years in the Civil Service. The Commission endorsed this and gave a vote of thanks to Dr Sefton for his valuable contribution over the years, including as Director Scotland, Director of the Offshore Division and for his work on leadership.

	<p>The Chief Executive then updated the Commission on two items not covered in his report:</p> <ol style="list-style-type: none"> 1. The Government announcement that it would be setting up a Local Better Regulation Office (LBRO). Information was limited at present but the office would be important to HSE who would seek to be involved in its development; 2. The tragic rail crossing accident at the weekend that had resulted in two fatalities. HSE was investigating but it was too early to draw any conclusions. HSE's position on level crossings was well documented.
3.2	<p>The Commission welcomed the report and asked that a summary of staffing figures, as provided in earlier reports, was included in future. They agreed HSE should pursue working with the LBRO.</p>
4a	<p>Implications of the 2004/05 health and safety statistics (HSC/05/127)</p>
	<p>The Chair welcomed Derek Allen from Local Authorities Coordinators of Regulatory Services (LACORS) who was attending for the discussion on the performance reports.</p>
4.a.1	<p>John Ewins, Head of analytical services division, presented the paper which provided the Commission with a resume of the 04/05 statistics, recent trends and progress against targets.</p> <p>The key points from the 04/05 statistics were set out in Annex 1. Annex 2 looked at trends in major injury rates and showed that in the three main sectors:</p> <ul style="list-style-type: none"> • in Construction the rates were down 25%, • in manufacturing they were down 6%, • in Services they were up 17%. <p>Injury rates for accidents caused by falls, machinery and being hit were all reducing but those due to slips, trips and handling were rising, and accounted for 50% of all major accidents.</p> <p>The Institute for Employment Research (IER) analysis suggested that major injury rates rose during economic upturns and the net effect of this and occupational change since 99/00 was an estimated 1-5% increase in major injury rate.</p> <p>The table in Annex 4 looked at sectors in relation to the injury rate and the numbers employed and could provide a basis for considering priorities.</p> <p>Generally the analysis showed that where HSE had strong interventions these were beginning to show results, and that the identified priorities were broadly right.</p>
4.a.2	<p>The Commission thanked the presenter; the further analysis and the short summary booklet were both useful in helping find out what was</p>

	<p>happening and what the figures meant for HSE's use of resources.</p> <p>Issues raised by the Commission during its discussion included:</p> <ul style="list-style-type: none"> • Whether it was possible to correlate the downward trend in ill health figures with HSE interventions • The need for further analysis of rising rates of types of injuries particularly on whether this could be due to increased reporting – which in the case of slips and trips seemed intuitively to be a possibility. This needed to be discussed with the LA Programme. • The increase in the rates in the recycling Industry was worrying as this was a growth industry and impacted on LA's as employers. This would need to be fed in to the LA Forum. • The reduction in the number of fatal accidents was good news • It sought and was given reassurance that the comparisons of major injury figures were on a like for like basis. • Working towards two targets, PSA and RHS, was confusing • More work needed to be done to explore regional variations. There was debate in Scotland over whether the occupational health rates were accurate and over the IEAR analysis. The Scottish Health and Safety Committee had set up a working group to look at this. • Areas where stakeholders had been most involved were beginning to show the most improvement. The model used in industries such as quarries, of employers, unions and HSE working in partnership towards shared targets, worked and should be adopted elsewhere • Targeting induction and training could make a significant impact on the injury rates of new and young and this should be explored further. • Where high risk sectors had trade associations, such as in furniture manufacture, they should be invited to the small trades forum.
<p>4a.3</p>	<p>The Commission agreed that overall the 04/05 statistics were good news and showed that targeted interventions brought results. However not all sectors received that attention and the increase in the services sector, with high employment and low rates, and in the recycling industry, with low employment but high rates, were of concern.</p>
<p>4b</p>	<p>Delivering PSA targets 05/06 – 07/08: Summary performance report – 2nd quarter 2005-06 (HSC/05/125)</p>
<p>4.b.1</p>	<p>Jonathan Rees introduced the paper, which covered July – September 2005.</p> <p>The conventional targets measured performance against milestones, although better data should be available when the various surveys in progress reported. The major hazards programme measured precursors and these were on course.</p> <p>The local authorities enabling programme had been designated amber red because, although milestones have been met and progress was</p>

	<p>being made, the statistics had highlighted the challenge HSE and LA faced in achieving improvements in the services sector, which constitutes 70% of our economy.</p>
4c	A note on the Workplace, Health and Safety Survey (WHASS) Programme.
4.c.1	<p>The Commission had received a supplementary note on the Workplace Health and Safety Survey (WHASS) employer stand-alone survey first findings.</p> <p>John Ewins explained that the purpose of this survey was to look at employers' views of precursors such as awareness, behaviour etc to see how they influenced outcomes. Some of the outcome estimates, e.g. for ill health and days lost, differed substantially from those in our main statistical release.</p> <p>The accident rates derived from employer's perceptions were broadly consistent with RIDDOR. However, employers' estimates of absence due to work related ill health were much lower than those based on the Labour Force Survey, indicating that employers and workers had different perspectives on the scale of work-related ill health.</p>
4.b/c.2	<p>During discussion the Commission stressed the importance of the LA enforced sectors. Local authorities had different priorities for allocation of resources and these should be incorporated into HSC's strategic thinking.</p> <p>Things were happening in the services sector, such as just in time systems, which might affect accident rates, but the largest retailers had seen a fall in rates over the last few years.</p> <p>On WHASS employers' perception of risk correlated with issues such as the extent of their control of risk and was important as it drove so much behaviour.</p> <p>Derek Allen believed that the LA/HSE programme was making progress with elected members and the new governance arrangements would be important. There were examples of good practice on the ground and he was confident that this would lead to an improvement in the efficiency in the LA enforced sector.</p>
4.b/c.3	<p>The Commission thanked the presenters for the useful papers. It agreed that:</p> <ul style="list-style-type: none"> • HSE needed to see what more could be done, for instance in the services sector and in partnership with local authorities • It would like to come back to the issue of reporting and the relationship between major and all injuries • The IER report showing that new entrants to the workforce have disproportionately high rates of injury was of concern • HSE needed to make sure it was addressing priority areas such as the recycling industry

	<ul style="list-style-type: none"> • It requested more detail on the RHS and PSA baselines • A paper should be provided in March with the full picture of the completed WHASS surveys • Overall the figures indicated that where HSE was targeting intelligently and engaging with stakeholders, the outcomes had been positive. The Commission thanked all its colleagues in the health and safety system for delivering improvements.
5	Directors Responsibilities for health and safety – proposed report to the Government (HSC/05/90)
5.1	<p>Jonathan Rees presented the paper, which asked the Commission to decide on the advice to be given to Ministers on the way to proceed. The issue was a complex one and aroused strong feelings. There was a commitment to advise Ministers by the end of the year.</p> <p>Two related issues on timing were the prospective legislation on corporate manslaughter and company law reform, which was going through Parliament.</p> <p>HSE had reviewed the substantial evidence base but this was not conclusive. Fear of prosecution could be a driver but other factors were also influential such as reputation, peer pressure and business benefits. Peer reviews had also concluded that the evidence was not conclusive.</p> <p>Stakeholders' views were mixed with strong views on both sides. The principles underlying the paper were that leadership at the top of the office provided a positive impact; there was a minority of rogue organisations who needed stronger enforcement action; there should be a level playing field across the public and private sectors.</p> <p>Accordingly the HSE, had tried to set out some key building blocks for the Commission's consideration:</p> <ol style="list-style-type: none"> a) More authoritative, explicit guidance; an ACoP would require legislative change; b) More effective and consistent enforcement using Section 37 and director disqualification; c) Exploiting the potential of post Hampton work to secure higher fines and new approaches on restorative justice; <p>If new legislation was required this should be through the Health and Safety at work Act, not the Companies Act.</p> <p>Although there were legitimate views on both sides, HSE advised that it considered that the case for significant amendment of Section 37 or creating positive duties on directors had not yet been made.</p>
5.2	<p>The Commission thought the paper provided a good summary of a very complex issue. During its discussion the Commission made the following points:</p>

- There was support for a stronger regulatory approach, although it was not the only approach
- There was a relative lack of action against directors, which suggested that section 37 was not working. The issue was not just about changing the culture in the boardroom but also being able to penalise directors acting criminally. The perception was that the need to show that a breach of the relevant statutory requirements was because of the consent, connivance or neglect of an individual director made it difficult to use section 37 against large companies.
- There was a perception that some directors were using a legal loophole and getting away with it;
- Agreement with the HSE's building blocks, the need for more authoritative guidance and more enforcement but not the conclusions
- There had been 111 actions and those had disproportionately impacted on small firms
- Sub-contracting by large organisations made a legislative approach more difficult. An extension or clarification of S37, targeted on health and safety, in line with product safety requirements, with a proper defence on the level of diligence, should be considered.
- What were we trying to achieve and how would it be measured. The aim should be to change behaviours and not just penalise when things go wrong. It was not sufficient just to measure failure.
- Needed to be careful that any legislative change did not lead to unplanned behaviours. For example, a nominated health and safety director would not help drive forward the principle that all directors should be responsible for health and safety
- Better guidance was needed which would make the link to wider approaches to risk management and to reflect the changing world of work e.g. the extent to which firms outsourced work. It should be developed with stakeholders, including key players on corporate governance and deal with both public and private sectors. It should clearly set out what individual directors should do, and the role of non-executive directors and the collective entity of boards
- An ACoP would be overly bureaucratic.
- Previous attempts to introduce directors duties had failed because of concerns around risk aversion and resulting economic detriment. In particular there had been criticism if clear defences were not available within the proposed legislation and they didn't apply beyond the private sector
- Large organisations reported on all aspects of risk, including health and safety, to the board. The majority of companies had proper systems to ensure health and safety and the statistics had shown that major injuries and fatalities were falling. In privately owned companies the director's responsibility for

	health and safety was part of the job specification.
5.3	<p>The Chair thanked the presenter. It had been a useful and wide ranging debate and the Commission agreed:</p> <ul style="list-style-type: none"> • HSE should explore the possibilities of a duty on directors and/or changes to section 37 and provide a paper to the Commission in April on the options, their implications, what the legislation might look like and timescales; • There was a need to produce authoritative guidance which had widespread stakeholder buy in. Work on this should not start until a decision on how to amend the legislation is made.
6	Report on Emerging findings of the Consultation on Proposals to revise the Construction (Design & Management) Regulations 1994 and the Construction (Health Safety & Welfare) Regulations 1996 (HSC/05/123)
6.1	<p>Stephen Wright presented the paper which asked the Commission to note the emerging findings from the consultation. The paper also alerted it to recent correspondence from the European Commission (EC) regarding the UK implementation of the Temporary or Mobile Construction Sites Directive (TMCS) and the possible impact on CDM/CHSW timetable.</p> <p>The consultation exercise had included informal consultation at a series of 25 events, which 2500 people had attended. There had been 420 responses, the majority supportive, and analysis of the responses was continuing.</p> <p>The emerging issues were detailed in paras 7-13 of the paper and included a clear wish by a majority of respondents for an ACoP.</p> <p>HSE was therefore proposing a short ACoP, with industry-produced guidance and was seeking the Commission's views on that.</p>
6.2	<p>The Commission congratulated the presenter on a good paper and commented that improved performance in the Construction Industry reflected the hard work of HSE's Construction division.</p> <p>It recognised the industry's preference for ACoPs and thought that industry produced guidance was a step forward. Although ACoPs were seen by some as legislation by the backdoor, safety representatives found them very helpful because of their statutory basis. An ACoP was an appropriate instrument for construction and there was a consensus in the industry for this approach.</p> <p>The Commission also asked about the proposal to continue to exempt demolition sites from notification. HSE responded that increased notification would not necessarily result in improved standards. The draft regulations do require all demolition to be properly planned and managed and for the method of work to be set out in writing.</p>
6.3	The Commission agreed the paper and that option d in paragraph 13: regulations and ACoP with industry-produced guidance, was appropriate in this case.

	<p>It noted the consultation's emerging findings and the impact on the CDM/CHSW timetable due to the EC's correspondence on the TMCS Directive.</p>
7	HSC/E Revised Race Equality Scheme 2005-2008 (HSC/05/117)
7.1	<p>Colin Douglas & Vivienne Dews presented the paper which sought the Commission's approval of the scheme and advised on future priority actions on diversity.</p> <p>They outlined what was happening internally on diversity including the setting up of MAGNET, HSE's race diversity network.</p> <p>Board members had set out their own personal diversity objectives and Commissioners were invited to consider whether any of them wished to have their own objectives.</p>
7.2	<p>The Commission congratulated the Board on the paper and the launch of MAGNET and during its discussion raised the following points:</p> <ul style="list-style-type: none"> • The terms race and diversity were used interchangeably in the document; • As an enforcer it was important that HSE was a diverse organisation including at regional level; • The paper was light on action. It would like to see targets and a regular report back on progress. • The plan did not include anything on recruitment. There were lessons to be learnt from local authorities • We needed to be proactive in considering how our policies impacted on black and ethnic communities. • The words on business benefit should be amended to make clear the greater effectiveness and credibility resulting from an HSE workforce which reflected the community
7.3	<p>The Commission approved the plan subject to modifications. It noted the feedback from consultation and considered that the external impact of HSE's policies should be a future priority.</p> <p>It wanted to see progress against targets monitored and to receive a yearly report.</p> <p>The Chair had a commitment to diversity, both internally and externally and suggested individual Commissioners should reflect on how they were able to influence stakeholders such as in relation to representation on IACs.</p>
8	HSE's Regulation of the Offshore Oil and Gas Industry
8.1	<p>Kevin Myers introduced the presentation which was the first in a series on the work of the Hazardous Industries Division.</p> <p>The presentation was given by Taf Powell Head of Offshore Division. Highlights included:</p>

	<ul style="list-style-type: none"> • HSE maximises impact through alignment of its resources and priorities with the key drivers in the offshore sector because sustainable best economic performance is dependent on the highest standards of safety performance; • The legacy from challenges of competition and economic pressures which have led to downsizing lack of investment, ageing plant and infrastructure; • The dependence of the industry on contractors and massive reductions in numbers of people working directly for oil companies. It is no longer considered attractive employment and this has resulted in a workforce with an average age of 48; <p>HSE was instrumental in securing the UK Industry's goal of being the safest offshore sector in the world by 2010. Since then HSE has joined with leaders and key stakeholders to agree what are the priorities and to better align resources with key industry drivers through programme working.</p> <p>The Offshore strategic programme comprises; 3 regulatory programmes – asset integrity, risk management and occupational health; and 3 enabling programmes – regulatory review, workforce involvement and global leverage.</p>
8.2	<p>The Commission explored the challenges raised by an ageing workforce and asked if there was a role for the Commission to play. The general decline in numbers of engineering based students is a factor of national interest, but the offshore industry faces strong competition from other employment sectors and offshore operators must give the greatest leadership in this regard. The international work that OSD was doing, in particular the recent conference involving regulators from around the world, was very productive and contributed to improving worldwide standards and HSE's reputation. Recognising that the industry had improved over the last 10 years the Commission questioned whether the perception of the sub culture in the industry for unfair treatment of workers who challenged conditions offshore (so-called 'not required back' culture) had changed. OSD said there is no evidence of a widespread culture victimisation.</p>
8.3	<p>The Commission thanked the presenter for a fascinating account. There were major challenges to be faced. It noted the improvement in the rate of days lost due to injuries but that there was some way to go to meet the goal.</p>
9	HSC/E Fundamental Review 2006 (HSC/05/129)
9.1	<p>Vivienne Dews presented the paper which put forward proposals for and sought the Commission's endorsement of a fundamental review of the way HSE used resources. This was in anticipation of the Treasury's comprehensive spending review (CSR).</p>

	<p>Two separate issues were linked to the proposed fundamental review:</p> <ul style="list-style-type: none"> • How HSE raised its money, in the light of government expectations for increased self funding; and • How HSE was managed and led. <p>A communications plan was being developed and the unions would be involved.</p> <p>The initial meeting would take place in January so that the Minister could be involved. A Fundamental Review Oversight Group (FROG) which would include Bill Callaghan, Judith Hackitt, Elizabeth Snape and the Executive had been set up. It was proposed that the review should be led by someone from outside HSE to provide independence.</p>
9.2	<p>The Commission felt that it needed to be kept informed via regular reports and updates. It thought the separation of income issues needed careful handling.</p> <p>The Commission probed the need to have the review led by someone from outside HSE but accepted this would provide external credibility.</p> <p>It asked that the wording of paragraph 10 was looked at to make sure it did not imply that enforcement would be reduced.</p>
9.3	<p>The Commission agreed that it wished to be kept in touch on the review. The next meeting of the oversight group should not be too delayed. Income was a key factor and would have to be addressed. On that basis it endorsed the need for the review and the arrangements to take this forward. The Commission looked forward to the first of regular reports from FROG.</p>
	Below the line Papers
10	Linkages between the New European System for Supply and use of Chemicals (REACH)(HSC/05/126)
10.1	<ul style="list-style-type: none"> • The Commission deferred this paper until 17 January 2006.
11	The third Report to the European Commission on the Practical Implementation of the Temporary or Mobile Construction Sites Directive (HSC/05/110)
11.1	The Commission agreed that the report should be sent to the Minister
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12.1	←
13	Recommendations Following a Review of HSC's Advisory Committee on Dangerous Substances (ACDS) (HSC/05/84)
13.1	The Commission deferred this paper until 17 January 2006.

14	Review of reporting Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) – Results of the discussion document and the way forward (HSC/05/95)
14.1	The Commission noted the analysis of the discussion exercise, the next steps and the proposal to return to the Commission in Summer 2006.
15	Channel Tunnel Safety Authority Appointment of Myles Sibley to CTSA (HSC/05/128)
15.1	The Commission approved the appointment of Myles Sibley, from the Railway Inspectorate, to the UK Delegation of the CTSA, as a successor to Dr Derek Hill.
	Miscellaneous Papers
16.	Gas Safety Policy (MISC/05/150)
16.1	The Commission noted the Information in the paper.
17	Channel Tunnel Safety Authority (CTSA) Annual Report for 2004-2005 (MISC/05/19)
17.1	The Commission noted that the report was published on 14 October 2005.
18	Proposed new ILO instruments on a promotional framework for Occupational Health and safety (MISC/05/21)
18.1	The Commission noted the report, HSE's responses and the texts of the proposed Convention and recommendation.
19	Ministerial Task Force force Health, Safety and Productivity – One Year On Report (MISC/05/22)
19.1	The Commission noted the report and the progress being made in improving attendance management in the public sector.
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