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Health and Safety Commission

Minutes of a meeting of the Health and Safety Commission held on 9 May 2006 in the Globe Room, Rose Court, London.

Present

**Bill Callaghan – Chair
Margaret Burns
Judith Donovan
John Spanswick
Sayeed Khan
Hugh Robertson
Danny Carrigan
Elizabeth Snape**

Officials Present

Geoffrey Podger
Justin McCracken
Jonathan Rees
Alex Brett-Holt
Colin Douglas
Vivienne Dews
Susan Mawer
Neal Stone
Peter Jackson
Ann Marie Farmer

Apologies: John Longworth, Sandy Blair and Justin McCracken

Welcome/Introduction

The Chair welcomed John Spanswick who had recently been appointed to the Commission. He also announced the appointment of Sandy Blair who was unable to attend due to existing commitments.

1 Minutes of the meeting held on 14 March 2006 (HSC/M03/2006) and matters arising

1.1 The minutes were agreed.

2 Urgent Business

2.1 None.

3 Chief Executive's Report

3.1 Presenting his report Geoffrey Podger highlighted four issues:

Buncefield – The third report of the investigation into the explosion and fire at Buncefield Oil Storage Depot had been made public by Lord Newton that day. It confirmed that the overfilling of a tank led to an escape of fuel and the formation of a cloud of flammable vapour that subsequently ignited. A key issue for the ongoing investigation was why the precautionary measures had not prevented an overfill.

A criminal investigation was also being undertaken and some details had been excluded from the report to avoid prejudicing possible future legal proceedings.

	<p>Workplace Health Connect – The take up of the service had been lower than anticipated but on the plus side there had been extremely positive feed back from users of the service. The project team had revisited the marketing strategy and reconsidered the ways in which to publicise the service. Updates would be provided in due course.</p> <p>Resources/Current Financial Position – The budget for 2005/06 had been extremely tight and the outlook during the current financial year period to 2008 was level in cash but reduced in real terms. Discussion with DWP had been amicable and constructive and the aim was to agree overall resourcing to 2011 by the end of 2006.</p> <p>Milford Haven – The Chief Executive apologised on behalf of HSE for the error in the documents submitted to the Court describing its role in the planning process. Although the error had been brought to the Court’s attention before judgement, HSE had informed all interested parties. HSE was awaiting any potential further action from the parties or the Court.</p> <p>International Atomic Energy Agency – The review of HSE’s Nuclear Safety Directorate had gone well and had resulted in a very positive report which would be available on HSE’s website.</p> <p>It was with regret that the Chief Executive announced the retirement of Paul Davies, Chief Scientific Officer. He had been highly respected within and outside HSE and the Executive wished to thank him for his contribution and service. Patrick Macdonald had been appointed to replace him after an open competition.</p>
<p>3.2</p>	<p>The Commission welcomed the report and joined the Executive in thanking Paul for his service.</p> <p>The Chair advised that the main report on Buncefield would be presented to the Commission and the Environment Agency in July. The Commission recorded its thanks for the work of the Investigation Board and HSE who had done an excellent job in difficult circumstances.</p>
<p>4</p>	<p>Sensible Risk Management (HSC/06/46)</p>
<p>4.1</p>	<p>Jonathan Rees presented the paper, which detailed the proposals for the next phase of the sensible risk campaign. The broad approach was to focus attention upon health and safety as a means of protecting people from real harm and to tackle misperceptions. It was important to get the tone right: this was not about lowering standards. Risk assessment was an important part of reducing the number of accidents.</p> <p>Research to scope the myths and realities of risk aversion, including stakeholder interviews, a review of media stories, consulting professional bodies and 12 case studies had taken place and the report would be available in June.</p> <p>The initial results confirmed HSE’s view that it should:</p> <ul style="list-style-type: none"> • Continue to rebut stories in the press • Try and explain simply what its approach was (as in Annex A of the

	<p>paper)</p> <ul style="list-style-type: none"> • Relaunch “5 Steps to Risk assessment” to demystify what risk assessment was all about. A draft would be sent to Commissioners for their comments. <p>It was intended to launch the research and guidance as a package in the summer.</p>
4.2	<p>The Commission welcomed the paper and the work that had gone into it. Risk assessment was fundamental to preventing accidents and it was important to tackle the general public understanding of what real risks were and that zero risk was unachievable.</p> <p>It wondered whether HSE could be more proactive in promoting good news stories, whilst recognising the challenges in dealing with the popular press. Demonstrating that health and safety stopped people being killed was a powerful way of combating negative publicity.</p> <p>It welcomed the proposal to relaunch ‘5 Steps’ with more practical examples and greater emphasis on the need to act on risk assessments.</p> <p>There was discussion as to whether risk aversion really existed and the extent to which perception played a part, and whether the emphasis on tackling this detracted from the message about making places safe. Similarly the Commission discussed whether use of the phrase ‘risk management’ underplayed the need to deal with risks or whether it properly reflected the Commission’s aim of protecting people.</p>
4.3	<p>In response the Executive agreed it needed to be combative using positive stories. The stories around the nanny state theme had presented a real challenge to the reputation of health and safety and impacted on HSE’s work in dealing with real risk.</p>
4.4	<p>The Commission:</p> <ul style="list-style-type: none"> • broadly endorsed the draft principles and agreed to provide any drafting it had. There had been some discussion around the principles but there was general support and recognition that the first principle rightly put the emphasis on ensuring citizens were protected; • noted the actions identified in paragraphs 10 and 11 and looked forward to seeing the revised ‘5 Steps’. • identified the need to promote positive messages. There would be an opportunity for the Commission to do this at the Parliamentary reception in July.
5	<p>Results from the Asbestos Consultation – seeking a steer on the way forward for asbestos regulations and an ACoP (HSC/06/49)</p>
5.1	<p>Giles Denham presented the paper, which summarised the responses to the consultation on proposals for revised asbestos regulations.</p> <p>Asbestos was a known and serious hazard with an appalling legacy of uncontrolled exposure to workers in the past. There were around 3,500 deaths from asbestos related cancer each year. HSE had taken a range</p>

	<p>of measures to manage down the risks but understandably this issue provoked strong views. An additional factor was the low but constant background level of asbestos fibres in the air to which everyone was exposed. A key question was therefore around levels of risk and levels of exposure.</p> <p>The driver for the revised regulations was the Asbestos Worker Protection Directive but the opportunity had been taken to consolidate and to review new evidence. The proposals would strengthen the protection of workers with a lower control limit for all work exposures and by emphasising the real dangers of work with asbestos. The responses to the consultation had recognised this and supported the proposals except for: the proposals to de-license asbestos containing textured coatings (TCs); and sporadic and low intensity exposure (S& LI).</p> <p>TC's – New evidence on relative risks meant that HSE needed to review the case for retention in the licensing regime. The HSE advice was that the evidence on low risk remained sound and maintaining TCs within the licensing regime conflicted with HSC's position as a risk-based regulator.</p> <p>S&LI – This was the trigger for the licensing regime. The Directive referred to exposure and not work. HSE's revised proposal sought to give this practical effect by specific definition in an ACoP with clear examples of the types of work that would be within scope.</p>
<p>5.2</p>	<p>The Chair drew the Commission's attention to the advice from the HSC Advisory Committee on Toxic Substances which had been circulated to members. It stated :</p> <p><i>The consensus reached in ACTS was to agree the proposal in the HSC paper that work with textured decorative coatings containing asbestos could be removed from the asbestos licensing regime, provided that the new arrangements for Regulations, ACoP, guidance, training and enforcement, taken as a whole, are as good as, or better than, the current regime. A properly managed transition to any new regime would be important so that standards did not fall during the transition.</i></p> <p><i>The trades unions members said that, while they did not favour textured coatings being brought out of scope of the licensing regime, they could agree to de-licensing if, in line with the consensus view above, the proposals for the new regime, taken as a whole, were to be as good as, or better than, the current regime.</i></p>
<p>5.3</p>	<p>The Commission welcomed the proposals as a whole because they brought better protection for workers. It accepted the proposals on S&LI. However on the issue of TCs its views were strongly divided. The views are summarised below.</p>
<p>5.4</p>	<p>The legacy of asbestos, its history and the impact it had had on people's lives made it difficult to be detached. The directive could be complied with without the removal of TCs from licensing. That issue should be considered separately when the whole licensing arrangements for asbestos could be looked at in totality. The evidence had been challenged</p>

	<p>by some people. To proceed would damage HSE's reputation with a major and important group of stakeholders. The TU members on ACTS had strongly opposed delicensing, although they had agreed what would be necessary if HSC decided to go ahead. The timing could not be worse; the decision would be seen as pulling back protection from workers. Licensing was an important way of ensuring enforcement and removing it was removing a level of protection.</p>
5.5	<p>Whatever decision was made people would be upset. The Commission had asked for further research to show what exposure levels were like in real life and the results showed that they were low. It had a reputation to maintain as a risk based organisation and the evidence on this was clear. There were other areas of asbestos work where the risks were greater which warranted more attention than TC. It was important to consider the views of housing associations and local authorities that the costs of licensing were considerable and not justified by the risks.</p>
5.6	<p>In response to a question from the Chair HSE explained that the likely exposure levels from work with TC were below the agreed S&LI trigger level. This meant that the draft regulations would need to be rewritten if TCs were removed from the scope of the licensing.</p>
5.7	<p>The Chair felt the test must be that set out by ACTS, that the new arrangements - Regulations, guidance, ACoP, training and enforcement - should be as good or better than the current regime, and what would best achieve that. Concentration on TCs at the expense of higher risk areas would not achieve a proper protection of workers. He considered the evidence to be clear and that the Commission had to recognise the importance of taking a risk based approach. The Commission had previously agreed that licensing should be used only for the most hazardous processes and he believed they should not depart from that approach.</p>
5.8	<p>The Commission:</p> <ul style="list-style-type: none"> • agreed the proposals on S&LI • noted responses to the TC proposals • agreed that asbestos licensing should be risk based • asked officials to prepare a paper for the July meeting with a working assumption that TCs would be delicensed. This did not imply any commitment to this action. This should be accompanied by a paper on the asbestos licensing regime setting out information on relative risks and what else was being done to protect workers • the Chair would talk to the Chair of ACTS about whether there was a range of expert views within ACTS which could be presented to HSC.
6	<p>Delivering the PSA: Summary Performance Report For Quarter 4 (2005/06) (HSC/06/51)</p>
6.1	<p>Jonathan Rees and Vivienne Dews presented the paper, which covered two related issues: The Quarter 4 PSA performance report and the Annual Review of progress against HSC's 2005/06 Business Plan.</p> <p>Subject to comments from the Commission the quarterly performance report as detailed in annex A would be submitted to the Minister. Overall the message was broadly positive. All the Strategic Programmes reported good progress leading to an overall marking of Amber/Green.</p>

	<p>However current evidence suggested that major injuries rates remained flat and we would need to continue to work on that.</p> <p>The Annual Review had been produced in response to the Commission's request to be able to look at progress against all the objectives published in the 05/06 Business Plan. Overall it had been a good year and HSE had been successful in carrying out planned activities.</p> <p>The 2004/05 statistics showed progress on ill health and working days lost. Big communication campaigns, Backs and Watch your Step, had shown good results from evaluation but results from the Better Business campaign were disappointing. HSE had just received an award for best government website. The information in the paper could be produced bi-annually if the Commission found it useful.</p>
6.2	<p>The Commission congratulated the HSE on the website achievement. The Annual Review reminded HSC how much work was being done and a 6 monthly report would be useful.</p> <p>It recognised the difficulty in linking to outcomes but welcomed the efforts being made to develop this and to consider the development of leading indicators. It thought that the provision of costings would be helpful in enabling it to satisfy itself that resources were being allocated to its strategic priorities.</p> <p>The Commission noted that because HSE was a lean and efficient organisation unexpected additional work could put a strain on resources, particularly in the high hazards sectors and advised that the Executive needed to monitor this.</p>
6.3	<p>The Commission thanked officials for preparing a helpful report. It agreed the summary performance report could be submitted to the Minister and looked forward to six monthly reviews as part of its iterative process.</p>
7	<p>Directors' role in improving health and safety performance – possible legislative options (HSC/06/44)</p>
7.1	<p>Jonathan Rees presented the paper, which followed up the discussion at the December meeting. The starting point was that Director leadership was good for health and safety. The work should be seen within the context of other work in related areas which were outside HSE's direct control: Company Law Reform; Corporate Manslaughter; and Penalties.</p> <p>The process HSE had taken, which had been cleared with the Chair in January, had been to:</p> <ul style="list-style-type: none"> • look at the full range of options to deliver potential improved health and safety performance. This included the legislative options of: amending section 37; placing specific duties on individual directors; and a free standing general duty. • expose the options to scrutiny by external stakeholders to see if the right options had been identified.

	<ul style="list-style-type: none"> work up the details on the leading option and expose it to public scrutiny. <p>The current position was that we had a broad understanding of what the current law involves, summarised in Annex 2. A more consistent enforcement policy had been set out and a new operational circular was being issued to staff. If the Commission agreed that there was a need for authoritative guidance, the Institute of Directors would be happy to sponsor this. Discussions with stakeholders on the legislative options had shown support, if a decision was taken to go down this route, for a general duty. Work had started on a Regulatory Impact Assessment, although this was dependent on a number of assumptions.</p> <p>Stakeholders remained strongly divergent on whether the law should be changed. Employer representatives believed that any change would add to the burden of 'good' employers and not tackle the 'bad'. Employees representatives felt that it would make it easier to prosecute, which would change behaviour, and would introduce accountability.</p>
7.2	<p>The Commission thanked the officials for the work they had done.</p> <p>It had differing views on the legislative options. Comments supporting a legislative approach included:</p> <ul style="list-style-type: none"> legislative change would have a greater impact on large firms in changing behaviour than guidance the voluntary approach had been tried and had only a limited effect the current situation discriminated against small firms although large firms were prosecuted no individual was held accountable, and it was in the public interest to have a general duty whilst a broad package of measures was needed to achieve change, this should include legislation to be effective. This also ensured that those not influenced by other means were brought to justice waiting to see what emerged from other areas such as Company law would delay the process too long.
7.3	<p>Views favouring other options included:</p> <ul style="list-style-type: none"> legislation was not guaranteed to change behaviour and any change would be likely to impact more on small firms which did not have the capacity to set up defensive arrangements the construction industry had demonstrated that it was possible to change culture without new legislation. Leadership and setting the right example changed behaviour not legislation. was the purpose of new legislation improved health and safety or retribution. The former was more likely to be achieved through leadership, worker involvement, and competent advice. 50% of accidents were caused through inadequate risk assessments. Unless there was engagement in these areas there would not be an impact. The first step should be to see how proposals interacted with developments on Corporate Manslaughter, Company Law and the Better Regulation Executive led work on developing alternative penalties.

	<ul style="list-style-type: none"> • There were questions around the workability of the legislative options which it was felt hadn't been fully explored in the paper. There were differences and confusions over the titles and functions of directors and senior managers, which would need to be addressed. Support for a legal obligation depended on it working and achieving change.
7.4	<p>The Chair considered that there was no firm view on legislative options on which he could advise Ministers. He thought this was an issue the Commission should return to without too much delay. The Executive responded that it might be in a position to come back to the Commission by July or September, depending on developments on corporate manslaughter and penalties.</p> <p>He thought that the development of clear and credible guidance, which the Commission supported, might give a better understanding on which interventions changed behaviour.</p>
7.5	<p>The Commission:</p> <ul style="list-style-type: none"> • Noted the work done • Noted the amendment to inspectors' operational guidance and looked forward to seeing a copy • Emphasised the importance of guidance. All key stakeholders should be involved in its development • Asked the Executive to return at the appropriate time when there would be more information on Corporate Manslaughter and penalties • Agreed the Chair should feed into the Cabinet Office the important message that Ministers were in a key position to influence the procurement chain.
8	Communications Update
8.1	<p>Colin Douglas presented the update, and summarised key developments since December 2005. There had been 3 key successes:</p> <ul style="list-style-type: none"> • The latest Mori findings indicated that health and safety was received positively and our campaigns impacted on awareness and attitudes. • COI had carried out an audit of the reputation of HSE among its 30 corporate stakeholders and HSE was seen as highly professional and committed to partnership working. However, our organisational structure was seen as complex; • There had been progress with internal communications. <p>He outlined steps that were being taken to build on these.</p>
8.2	<p>The Commission congratulated everyone concerned on the MORI trends. The use of advertising to communicate issues was working, although further work was needed to effectively target SMEs. It acknowledged the importance of improving internal communications.</p> <p>The Commission commended the staff magazine 'Express' and asked if there could be more articles and information on the work of the Commission.</p>

8.3	The Commission noted the progress made and looked forward to further reports.
	Below the line
9	HSC Co-ordinated programme of Nuclear Safety Research for 2006/07 (HSC/06/32)
9.1	The Commission approved the the proposed outlined NSR programme.
10	HSC Co-ordinated programme of Nuclear Safety Research: Advice from NuSAC on programme for 2006/07(HSC/06/33)
10.1	The Commission approved the HSC Co-ordinated Programme of Nuclear Research for 2006/07.
11	HSC Co-ordinated programme of Nuclear Safety Research Evaluation report for 2004/05 (HSC/06/34)
11.1	The Commission noted the paper
12	First Annual Report on implementation of HSC Science Strategy 2005 – 2008 (HSC/06/43)
12.1	The Commission noted the progress to implement the HSC Science Strategy
13	Consultation on Implementation of the EC's 2nd Directive on Indicative Occupational Exposure Limit Values (HSC/06/05)
13.1	The Commission agreed that the Consultative Document be published.
14	Publication of a new Code of Practice for Using Plant Protection Products in Scotland (HSC/06/35)
14.1	The Commission approved the actions required in paragraph 19.
15	Managing Workplace Transport Risk – A Route Map (HSC/06/37)
15.1	The Commission approved the publication of the draft consultative document
16	Waste and Recycling industry strategy (HSC/06/50)
16.1	The Commission noted the current workplan.
17	Public Reporting (HSC/06/39)
17.1	The Commission agreed the approach to public reporting.
18	Proposal submitted by the Health & Safety Executive to the Department for Environment, Food and Rural Affairs for “Inspection and Enforcement of Legislation Relating to the Environmental Aspects of Contained Use of Larger Genetically Modified Organisms (LGMOs) and Deliberate Releases into the Environment of GMOs Used in Clinical Application” (HSC/06/41)
18.1	The Commission agreed that HSE should submit the revised agreement
	The following Paper is Fully Closed
→19	Better Regulation: Update on the administrative burden measurement exercise (HSC/06/42)
19.1	The Commission noted the findings of the administrative burden measurement exercise. ←
20	HSE's Hampton Programme: HSE's nomination as the Adventure Licensing Authority (HSC/06/47)
20.1	The Commission agreed to nominate HSE as the AALA.
	MISC Papers
21	Energy Review – Scope of HSE Report(MISC/06/03)
21.1	The Commission noted the information in the paper

22	Corporate Manslaughter – Government’s Reply to the Select Committee’s Report (MISC/06/04)
22.1	The Commission noted the present position
23	Implications for HSE of the DTI Strategy “Success at work: protecting vulnerable workers, supporting good employers” (MISC/06/07)
23.1	The Commission noted the publication of the strategy, and arrangements for HSE response.
24	Height Aware Campaign May / June 2006 (MISC/06/09)
24.1	The Commission noted the information
25	HSC’s Workplace Strategy: Second Year Report to the Minister (MISC/06/08)
25.1	The Commission noted the draft report.