

## Report to Stress Network Steering Group

### CCA Conference, the future of Safety Regulation and Enforcement March 3<sup>rd</sup>, 2006, London

1. This conference had as its main theme the Hampton Report findings on regulation and enforcement in H&S. Attached is a summary of the Conference expectations and a brief digest of the Hampton Report.
2. Speakers were:-
  - a. Lord Hunt of Kings Heath (DWP, Minister for Safety)
  - b. Hugh Robertson, TUC Policy Officer
  - c. Jonathan Rees, Deputy Chief Exec, HSE
  - d. Derek Allen, Local Authorities Coordinators of Regulatory Service (LACORS)
  - e. Jonathan Russell, HSE Deputy head of Business Involvement & Enforcement Division
  - f. Janet Asherson, CBI H&S Advisor
  - g. Courtney Davis, PhD Author of "Making Companies Safe - what works?"
  - h. Gary Fooks, South Bank University
  - i. Prof Chris Clarkson, University of Leicester
  - j. David Bergman, CCA
  - k. Prof Phil James Middlesex University
3. Extracts from speaker notes and presentations:-
  - a. **Lord Hunt**, as in his speech the previous day at Brent Safety Conference, referred to successes achieved through the work of HASAWA since 1974 and that UK has one of the best records worldwide for safety.
  - b. He asserted that there could be no complacency over workplace health and injury records, good as they mostly were, sensible H&S was the cornerstone of civilised society;
  - c. Regulation *proportionate to risks*, through targeted efforts, backed up by enforcement where necessary was capable of delivering the vision and HSC strategy to 2010 and beyond;
  - d. Govt was committed to sustained improvements in the OH challenge;
  - e. Hampton had identified key components for improved regulation:-
    - i. better targeted intervention
    - ii. continuation of enforcement as necessary;
    - iii. lighter touch for rest of business community with reduced admin burden; and
    - iv. high quality easily accessible advice.
  - f. His proposals for simplification emphasised a change in culture and more joined up enforcement.
  - g. Director responsibilities were recognised and HSC is currently reviewing need for change in the law
  - h. Draft Corporate Manslaughter Bill is making progress although no date for enactment is yet known. He referred briefly to the Commons Select Report (see later);
  - i. He recognised the role of all stakeholders, and referred to the key role of TU Safety Reps.
  - j. **Hugh Robertson** concentrated on Directors' Duties and referred briefly to the safety record and statistics form HSE
  - k. He noted that prosecutions had declined by 35% in 2 years; enforcement notices were also down by 25% in 1 year; LA enforcement notices were down by 75% and fines and penalties were far to low;
  - l. In outlining solutions, he called for greater resources for enforcement activity; higher fines and more severe penalties; a greater range of penalties a Corporate Killing Act and new and enforced duties on Directors.

- m. **Jonathan Rees (HSE)** outlined the current HSE overview of enhanced outcomes, risk based approaches and summarised the partnerships of working with other regulatory bodies;
- n. He posited that enforcement should be part of a risk based approach, with penalty reviews to consider tougher responses and alternative approaches;
- o. Advice was an essential part of regulation, quoting a number of major examples, including the Stress Standards;
- p. There was deemed a need for simplification including a sensible risk management approach with reduced bureaucracy and strengthened links with other regulators, and some rationalisation and merging of functions
- q. **Derek Allen** outlined the work of LACORS and their joint work with HSE, and briefly addresses the implications for Hampton – better regulation OR simply reducing burden for business?
- r. **Jonathan Russell** addressed some of the HSE thinking on alternative penalties, confirming that enforcement remained a central tool of action for regulators;
- s. IM and PR Notices were effective tools, but directly punitive, however inclusion in the Notices Database could impact on loss of reputation and business;
- t. prosecution was reserved for the more significant breaches of the law, but fines were accepted as being too low;
- u. Additionally the courts can impose HASAWA S 42 'Court Remedy Orders' and can disqualify Directors;
- v. Alternative penalties must relate to duty-holder behaviour, and be right for the circumstances; a range of options is being considered:-
  - i. fixed, variable and on-the-spot fines;
  - ii. restorative justice orders, where victims (and witnesses) can play a part in determining outcomes; rehabilitation can be helped;
  - iii. conditional cautions and enforceable undertakings as used in some Australian examples and can generate local community benefits as an outcome;
  - iv. adverse publicity orders, where offenders are required to publicise their shortcomings and failures and probation orders for companies and directors
- w. whatever the outcome, enforcement had to remain evidence based, alternative penalties should be effective, satisfy the principles of enforcement and practical, costing no more to run than the value added, and should not undermine current enforcement arrangements.
- x. **Janet Asherson (CBI)** managed to put most people's backs up, not surprisingly with her assertion that personal responsibilities play a significant part in the safety agenda;
- y. CBI wanted, amongst other things:-
  - i. high standards of corporate accountability
  - ii. laws that recognise the realities of authority, control, responsibility and accountability;
  - iii. laws and enforcers which distinguish between negligent organisations and responsible ones;
- z. **Dr Courtney Davis PhD** (University of Sussex) outlined in some tedious detail:-
  - i. analyses of HSE thinking, the lack of sound evidential bases for current and past policy;
  - ii. the Hampton review and the fact that much of its evidence basis was largely anecdotal;
  - iii. differing interpretations of the enforcement burden; the shift away from enforcement;
  - iv. Govt response to the Select Committee recommendations on enforcement;
  - v. HSE responses to the CCA report and the Greenstreet Berman review of enforcement

- aa. **Gary Fooks** (Middlesex University) considered the impact of innovative sanctions and regulation and asserted in general then need for sanctions which moralise accountability and responsibility; facilitate organisational change and recover costs for the state and for victims (and the bereaved).
- bb. **Chris Clarkson** outlined the major differences between the Govt Draft Corporate Manslaughter Bill and the Select Committee's report on it:
  - i. Similarities between the two include reference only at present to killing, not to serious injury;
  - ii. Differences include:-
    1. **Bill** - only corporate bodies count;
    2. **Report** – others outside incorporation should be included;
    3. **Bill** – NO Causation clause
    4. **Report** – should consider extension, but need evidence to support;
    5. **Bill** – refers to civil duty of care only
    6. **Report** – calls for approach from criminal law basis, and asserts that civil law is inappropriate;
    7. **Bill** – refers to 'Senior manager *breach of duty of care*'
    8. **Report** – promotes 'gross management failure' and seeks mechanisms for such attributions;
    9. Crown Immunity exemptions in the Bill
    10. Territorial scope in the **Bill**, refers only to harm or death in England & Wales [*Scotland has its own similar legislation in progress.*]
    11. **Report** wants rest of UK and in EU;
    12. **Bill** has no reference to 'individual liabilities', nor for aiding or abetting;
    13. **Report** includes such liabilities IF there has been consent, connivance or neglect and suggests 14 yr max penalty
  - iii. Government is not happy with report outcomes, Home office does not wish to see civil duty of care removed nor the inclusion of individual criminal liabilities;
  - iv. Further consultation period now just ending

A long day of presentations concluded with short presentation by David Bergman of CCA and a lively summary of the day by Phil James.

Overall a well-attended event, inevitably taken over at times by those with specific and very personal issues, a number of bereaved relatives were in attendance and with GMHC support are hoping to set up a Bereaved Victims advice network to aid all those who become victims with each new tragedy.

Ian Draper, Convener, 04 April 2006