

**Work and Pensions select committee**

**Inquiry into the work of the Health and Safety Commission and Executive**



**A response by the Association of Personal Injury Lawyers**

**January 2008**

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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## **Executive summary**

- Voluntary health and safety guidance for directors is ineffective as it will be ignored by 'rogue companies' who do not take health and safety seriously.
- Statutory health and safety duties for directors should be introduced so that all companies provide a safe working environment.
- The need for statutory duties is reinforced by the increase in workplace fatalities in 2006-07.
- The Corporate Manslaughter and Corporate Homicide Act 2007 is welcome but was still a missed opportunity to impose individual duties.
- The proposed cuts in the HSE's budget will have an effect on investigation and enforcement and could lead to many negligent directors escaping prosecution altogether.
- There should be an increase in funding for the HSE so more health and safety inspectors can be employed, allowing for more inspections to take place.
- More widespread inspection should also drive up reporting standards leading to more accurate health and safety figures.

## **Are directors' health and safety duties appropriately covered by voluntary guidance?**

1) The association welcomes any guidance which can help directors ensure their organisations maintain the highest levels of health and safety. APIL acknowledges and welcomes the fact that many directors do implement best practice on health and safety. The role of directors in this regard is absolutely crucial. It is imperative, therefore, that any action taken in respect of director's responsibilities will be effective.

2) It is highly likely that those directors that would take note of the voluntary code are already addressing issues of health and safety within their organisations. It is not believed that, realistically, the voluntary code will have any impact upon the 'rogue directors' who would not. This can obviously lead to standards of health and safety

differing markedly from company to company. It cannot be right that some workers face increased risk because their management do not choose to follow, or simply ignore, the voluntary guidance.

3) If, as APIL believes, the code is not effective, more lives will continue to be lost or ruined. For this reason, APIL calls for the imposition of legal duties on directors for health and safety. It is only through the imposition of legal duties that ALL directors will be forced to take responsibilities for health and safety within the organisations of which they are in charge. This is certainly not to create legal duties for the sake of legal duty, to create work for lawyers or to increase the possibility of prosecution. Creating legal duties will require directors to use the powers they have to make health and safety a key consideration within their organisation's activities. It is hoped that the fear of the imposition of sanctions will convince directors that it will be more advantageous to comply with their legal duties than not. The most desirable means of creating such legal duties would be by way of an amendment to the Health and Safety at Work Act 1974.

4) The need for statutory duties has been given unwelcome reinforcement by the fact that 241 people suffered fatal injuries at work in 2006-07, a rise from 217 in the previous year. There were 77 fatalities in the construction industry alone. A further 141,350 injuries were also reported. This is an alarming increase and proves that the voluntary approach will not force negligent directors' to act and deaths at work will continue to remain at unacceptable levels.

5) The fundamental argument in favour of statutory health and safety duties is they will help embed a health and safety culture within every company. Positive duties will motivate directors to take a more proactive approach to all aspects of health and safety within their company. Directors play a critical role in setting the ethos and standards of a company and if leadership is provided at a boardroom level then it will percolate throughout the entire organisation. 'Leadership by example' can only be

good for the business and will lead to increased staff morale and motivation. It can even be argued that directors have a moral duty to ensure the welfare of their workforce. This is not simply about making it easier to prosecute individuals. It is primarily about ensuring the culture of a company is such that health and safety is treated at boardroom level with the same degree of seriousness as, say, financial management. It is about saving people's lives.

6) Part 10, chapter 2 of the Companies Act 2006 imposes a number of duties on company directors. These include 'duty to exercise reasonable care, skill and diligence', to act 'in the interests of the employees', and the directors must have regard to 'the impact of the company's operations on the community and the environment'. There was no specific duty to promote health and safety. The act proves that the Government recognises that directors do have responsibilities for other issues rather than just maximising profits. There can be no excuse, therefore, for arguing that health and safety duties will impose unnecessary and burdensome regulations: duties which help to save lives are, and never will be, unnecessary or burdensome.

7) APIL welcomed the Corporate Manslaughter and Corporate Homicide Bill but was disappointed there was no provision for directors' health and safety duties within the bill. The new offence applies to companies only and secondary liability is specifically excluded. It may well encourage some companies to improve health and safety procedures but culpable individual directors would still be able to hide behind the 'corporate veil'. The act does not, therefore, provide adequate incentive for directors to take full responsibility for health and safety issues.

## **Does the HSE have sufficient resources to fulfil its objectives as the health and safety regulator and meet its PSA targets?**

8) The increase in workplace fatalities coincides with the news that the Department for Work and Pensions (DWP) is expecting the HSE to make cuts of 5 per cent from its spending in each of the next three years. HSE's workforce is also to be reduced to 3,100 by April 2008 from 4,162 in April 2003. The subsequent effect on investigation and enforcement could lead to many negligent directors escaping prosecution altogether.

9) APIL suggests that there needs to be an increase in funding for the HSE so more health and safety inspectors can be employed, allowing for more inspections to take place. It was disturbing to hear Geoffrey Podger, chief executive of the HSE, stated, in his oral evidence to the committee, that prosecutions were increasingly using up the resources spent on inspection. Whilst prosecutions are clearly welcome, it would surely be more cost-effective to concentrate resources on preventative action such as inspections. Mr Podger himself admitted that this has led the HSE to concentrate on reactive rather than proactive work. This will ultimately make inspection and enforcement more effective.

## **Does HSE get the balance right between prevention and enforcement? Are penalties for health and safety offences proportionate?**

10) The best means of ensuring compliance with health and safety law, APIL suggests, is the wholesale adoption of a safety culture both within businesses and society. If health and safety were to be given its proper importance within the corporate agenda, and breaches of health and safety were seen by the public as deserving severe punishment, APIL believes that the amount of ill-health and injuries occurring within

businesses would fall dramatically. This would lead to financial savings in the long term.

11) APIL feels that the use of sanctions and penalties should not be overly constrained by the need for the enforcement to be “proportional to the seriousness of the breach and the risk that the breach creates”. Health and safety law exists to protect both workers and members of the public from death and injury. Every breach of it should be taken seriously. Dealing with breaches proportionately may equate, in some instances, to tolerating breaches. APIL considers this unacceptable. If health and safety in the workplace is to be improved, employers must be aware that consequences will follow a failure to comply with the relevant legislation.

12) HSE statistics show that there were 41,496 inspections in 2006-07, down from 54,717 in the previous year. This equates to an inspection on average every 14.5 years for every HSE enforced workplace. Inspections are obviously not the only method available to the HSE but they are one of the most important and effective. More widespread inspection should also drive up reporting standards leading to more accurate health and safety figures.

13) The fundamental point is that businesses, society and individuals all benefit if health and safety is regarded with the utmost seriousness. Prevention and education are far more desirable, financially and morally, than injury and punishment. Stringent health and safety is not a drain on resources or an excuse to impose red tape; it is one of the hallmarks of a civilised modern society.