

Health and Safety Executive

The Health and Safety of Great Britain

Strategy Consultation



A response by the Association of Personal Injury Lawyers

February 2009

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation whose members help injured people to gain the access to justice they deserve. Membership comprises solicitors, barristers, legal executives and academics, who are all committed to serving the needs of people injured through the negligence of others.

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

We broadly support the goals set out in the Health and Safety Executive (HSE) strategy consultation although we believe that the language used in the paper is vague and unclear. Where health and safety issues are concerned the language used must be clear and precise.

Whilst broadly supporting the goals, however, we believe that the strategy does not go far enough in emphasising that there needs to be a change in culture. The enforcement work of the HSE must promote more robust and effective deterrence to employers so that they understand that a breach of health and safety law is as serious as a breach of the criminal law, and will be treated as such.

We support a society in which people take responsibility for the safety of others and where risk is managed properly to encourage activity, while keeping people safe.

We believe that employers' liability insurance premiums need to reflect the health and safety performance of the employer as well as the risk as this would create an additional incentive for employers to comply with health and safety legislation.

The assessment and management of risk should be part of the national curriculum and be treated as a 'life skill' so that children grow up to be 'risk-aware', both for their own safety and the safety of others.

Public bodies that employ contractors should set high standards in their tender and procurement processes to ensure those contractors are health and safety conscious.

We believe that it is vital to engage with the media, who continue to use 'health and safety' as a synonym for bureaucracy and 'red tape', implying that it is, in some way, 'trivial'.

The HSE and local authorities need to implement rigorous enforcement of health and safety laws by inspection and prosecution. Every breach should be taken seriously and it cannot be acceptable, in our view, for there to be any consideration of what 'burden' the law has placed upon those who have to comply and whether such 'burden' is in any way 'proportionate'.

Over many years, APIL has continually supported the introduction of legislation in order to criminalise health and safety breaches, as well as pushing for a corporate killing law which will more effectively punish the negligent acts of company directors.

In our view, there needs to be a greater emphasis on reaffirming the role of health and safety representatives in workplaces and the HSE should be heavily promoting their use to employers.

The rigorous enforcement of health and safety legislation is the key to improving injuries and illness within the workplace.

Introduction

APIL welcomes the opportunity to respond to the HSE's strategy consultation to help with their mission of preventing death, injury and ill health in Great Britain's workplaces.

Consultation Questions

Question 1: Do you support the goals as set out in the strategy and are there any omissions?

We broadly support the goals set out in the strategy but we believe that the strategy does not go far enough in emphasising that there needs to be a change in culture so

that breaches of health and safety law are seen to be as serious as breaches of the criminal law. Health and safety should be seen as a cornerstone of a civilised society.

We agree with the mission statement set out in the strategy, namely the prevention of death, injury and ill health to those at work and those affected by work activities but the strategy is silent as to how this can be achieved.

In Great Britain in 2007/08, there were 229 workers fatally injured (provisional); 27,976 major injuries to employees; and 108,795 other injuries to employees.¹ In the same period, there were 1,137 prosecutions by the HSE resulting in 839 convictions and an average penalty per conviction of £12,896.² In addition there were 354 prosecutions by local authorities resulting in 334 convictions and an average penalty per conviction of £7,663.³

Based on those figures, whilst accepting that not all fatalities and injuries involve breaches of health and safety laws, the enforcement ratio of prosecutions to fatal and major injuries is approximately 5.28% (and would be considerably lower if the thousands of people who die each year from work-related diseases were included within the figures). The enforcement ratio of prosecutions to *all* workplace injuries, as opposed to just fatal and major injuries, is approximately 1.09%.

In our view, these figures are far too low and the strategy document does not address the issue. The enforcement work of the HSE must promote more robust and effective deterrence to employers so that they understand that a breach of health and safety law is as serious as a breach of the criminal law, and will be treated as such.

¹ National Statistics - Health and Safety Statistics 2007/08 – pages 9 and 10

² Ibid, page 25

³ Ibid, page 26

Question 2: How can you/your organisation help us deliver the goals?

APIL accredited lawyers are dedicated to trying to prevent avoidable injuries by raising awareness of health and safety issues and dangerous products. Our campaigns target MPs, civil servants, local officials, the press and the general public to promote a "safety culture" throughout the UK. We support a society in which people take responsibility for the safety of others and where risk is managed properly to encourage activity, while keeping people safe.

We produce a booklet for the general public entitled 'Accident or Negligence' which is freely available on the APIL website¹ and we are planning a 'PEOPLE first' initiative which is designed to increase the amount of information available to the public and to offer people support when they most need it.

We believe that good health and safety practice benefits everyone. This does involve a consideration of cost and resources but it is important to compare that cost to the 'hidden' cost of poor health and safety practice such as medical treatment, familial destruction and long term dependency on state benefits.

Question 3: Can you help us to identify others who have a role to play in delivering the goals as set out in the strategy?

We believe that the insurance industry have a large role to play. Employers' liability insurance premiums need to reflect the health and safety performance of the employer as well as the risk as this would create an additional incentive for employers to comply with health and safety legislation. In a similar way to dangerous drivers, 'dangerous' employers, as reflected by their claims record, need to be driven out of business as there is no place for them in a civilised society.

¹ <http://www.apil.org.uk/pdf/Campaigns/AccidentOrNegligenceBooklet.pdf>

Education and training providers also have a significant role to play. The assessment and management of risk should be part of the national curriculum and be treated as a 'life skill' so that children grow up to be 'risk-aware', both for their own safety and the safety of others.

We believe that public bodies that employ contractors should set high standards in their tender and procurement processes to ensure those contractors are health and safety conscious.

The Government also has a role to play in ensuring health and safety laws are enforced across the European Union (EU). Many health and safety laws derive from EU directives and with considerable free movement of labour throughout Europe it is vital that there is harmonisation. This also ensures that British businesses are able to compete on a level playing field with businesses across Europe.

Question 4: Who else should HSE and the Local Authorities be engaging with to help deliver the goals in the strategy?

We believe that it is vital to engage with the media, which continues to use 'health and safety' as a synonym for bureaucracy and 'red tape', implying that it is, in some way, 'trivial'. The number of deaths and major injuries in 2007/08 are testament to the fact that health and safety is a serious issue and should be seen as such.

Question 5: What should HSE and Local Authorities do differently to help deliver the goals in the strategy?

The HSE and local authorities need to implement rigorous enforcement of health and safety laws by inspection and prosecution. We are concerned that the strategy document says that '... regulation must be a benefit to those it seeks to protect, not a

disproportionate burden on those who have to comply with it ...'¹ because we do not believe that the use of the word 'burden' is appropriate nor that 'proportionality' has any place in health and safety regulation.

Health and safety laws exist to protect both workers and members of the public from death and injury. Every breach should be taken seriously and it cannot be acceptable, in our view, for there to be any consideration of what 'burden' the law has placed upon those who have to comply and whether such 'burden' is in any way 'proportionate'. 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.

We believe there needs to be a change in culture so that breaches of health and safety laws are seen to be as serious as breaches of the criminal law and that the sanctions for health and safety breaches should be more in tune with the harm and damage they cause. For example, if a driver seriously injures or kills another person whilst driving carelessly he would be charged with a criminal offence and may well serve an appropriate prison sentence. If, by a company's negligent act or omission a worker is similarly injured or killed it is somehow not viewed as such a serious matter yet the effect of the damage caused is the same. Over many years, APIL has continually supported the introduction of legislation in order to criminalise health and safety breaches, as well as pushing for a corporate killing law which will more effectively punish the negligent acts of company directors.

Question 6: What parts of which goals in the strategy are best delivered by others?

In our view, there needs to be a greater emphasis on reaffirming the role of health and safety representatives in workplaces and the HSE should be heavily promoting their

¹ HSE Strategy consultation, page 15

use to employers. HSE Inspectors should be defenders of health and safety representatives and should make them their first port of call, rather than the employer, when visiting any workplace.

The strategy document suggests the need for strong leadership, accountability and responsibility¹ and we would strongly echo those views. We believe the insurance industry has a large part to play here because they can insist on detailed and comprehensive training logs and can carry out audits which are then linked into insurability. Risk assessment cannot simply be a 'tick-box' exercise and employers must be able to comprehensively demonstrate their compliance with health and safety legislation.

Question 7: What can your own and other organisations do differently to help in the delivery of this strategy?

APIL will continue its dedication to trying to prevent avoidable injuries by raising awareness of health and safety issues and dangerous products and maintain our campaigns to promote a "safety culture" throughout the UK.

The rigorous enforcement of health and safety legislation is the key to improving injuries and illness within the workplace and all other initiatives should complement, rather than replace, HSE enforcement activity. Linking employers' liability insurance to an employer's health and safety record should, however, provide employers with an incentive to comply with the law.

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¹ HSE Strategy consultation, page 09