

**Health and Safety Executive for Northern Ireland**

**Health and Safety at Work: Protecting Lives, Not Stopping Them**



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

**27 September 2010**

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has around 4,500 members in the UK and abroad who represent hundreds of thousands of injured people a year.

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; and
- 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:

Lois Sullivan – Secretary APIL Northern Ireland;

Frank MacElhatton – APIL Northern Ireland member;

Oonagh McClure – Co-ordinator APIL Northern Ireland;

Peter Jack – APIL Northern Ireland member; and

Stephen Grey – APIL Northern Ireland Executive Committee member.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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## **Introduction**

The Association of Personal Injury Lawyers (APIL) welcomes the idea of the Health and Safety Executive for Northern Ireland (HSENI) working with district councils to support a closer strategic partnership between HSENI and local government.

We do, however, have some concerns with various sections of the draft strategy which we will make clear in this consultation response. Firstly, we have set out our general concerns with the strategy and secondly we have explained our concerns with specific sections.

## **Executive Summary**

APIL welcomes the opportunity to respond to the HSENI's consultation regarding the draft strategy for the better regulation of health and safety at work in Northern Ireland.

Throughout this response, APIL makes the following points and suggestions regarding the draft strategy:

- Our main concern is that it is not clear in the strategy that the HSENI will take an overall lead role through the implementation of the strategy, which we believe is key in order to remain strict on health and safety in the workplace in Northern Ireland.
- There is concern that there might appear to be a conflict of interest as there will be one body that provides advice and training on health and safety at work, and then acts as the regulating authority and the prosecuting authority.
- As an organisation, APIL would question whether there is a negative perception of health and safety or if this would be dependent upon external factors such as the media.

- We believe that the word “sensible” should be replaced by “effective” as the use of “sensible” in this context of the paper may have lost its meaning and be construed to mean “cost-effective”, or could give the impression that the focus of the risk assessment should be limited, which is something that APIL would not find acceptable.
- We submit that the HSENI should be actively encouraging businesses in Northern Ireland to seek their help and advice on health and safety at work either from the HSENI or from an approved health and safety consultancy firm.
- We encourage the HSENI to liaise directly with professions regarding the implementation of the strategy and its intentions.

## **Our Response**

### **General Comments**

At first instance, APIL believes that it is a good idea for the HSENI to work with the district councils in Northern Ireland in order to tackle health and safety in the workplace.

However, we also believe that the HSENI should still take the lead role in the regulation and the prosecution of those who do not adhere to the regulations. We are concerned that there will not be the resources to fully implement this strategy once it comes into force.

Furthermore, there is concern that there might appear to be a conflict of interest as there will be one body that provides advice and training on health and safety at work, and then acts as the regulating authority and the prosecuting authority. We submit that there will need to be clear parameters laid out as to which body will be responsible for regulating health and safety at work, and which body will be responsible for prosecuting those that do not adhere to the regulations. We would propose that the HSENI is the prosecuting body and this role is not delegated to the District Councils

### **Specific Comments**

### Setting the Scene, Page 5

At Page 5 paragraph 4<sup>1</sup> it states that there is a need to recognise and address the areas which are not working so well, including the negative perception of health and safety. As an organisation, APIL would question whether there is a negative perception of health and safety or if this is the result of media spin.

### Looking forward, Page 6

We would suggest that, at page 6 of the draft strategy<sup>2</sup> where the mission is set, the use of the word sensible is not appropriate. The reason for this is that the word “sensible”, as it is used in the context of this paper, could be considered to mean something else, such as “cost-effective”, or could give the impression that the focus of the risk assessment should be limited, which is something that APIL would not find acceptable. Similarly, we believe that the elimination of risk, as proposed in Article 1 of the Framework Directive 89/391/EEC<sup>3</sup> below, is not feasible, but that the qualifying level should be “ensured as far as possible”. Article 1 of the Framework Directive 89/391/EEC<sup>4</sup> states that its object is to introduce measures to encourage improvements in the health and safety of workers at work,

*To that end it contains general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, the informing, consultation, balanced participation in accordance with national laws and/or practices and training of workers and their representatives, as well as general guidelines for the implementation of the said principles.*

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<sup>1</sup> *Health and Safety at Work: Protecting Lives, Not Stopping Them*, A HSENI and District Council Strategy for the better regulation of health and safety at work in Northern Ireland, Published 5 July 2010, Page 5 Para 4.

<sup>2</sup> *Health and Safety at Work: Protecting Lives, Not Stopping Them*, A HSENI and District Council Strategy for the better regulation of health and safety at work in Northern Ireland, Published 5 July 2010, Page 6 Para 6.

<sup>3</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

<sup>4</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

Article 2<sup>5</sup> goes on

*In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive.*

We therefore submit that the word “sensible” on page 6 should be replaced with the word “effective”.

#### Goal 1 Working together, Page 8

We believe that it is not clear in this section of the draft if the HSENI is intending to rationalise in order to increase efficiency. We believe that, *value for money within the health and safety regulatory system*<sup>6</sup>, gives the impression that the HSENI is seeking to give economic health and safety, whereas we submit that this is an area which requires much more investment. If the intention is to rationalise, we submit that the savings made through rationalisation should be ring-fenced and reallocated within HSENI to historically under-resourced areas such as the enforcement of health and safety regulations.

#### Goal 2 Sensible risk management, Page 9

Again, we believe that the word “sensible” should be replaced by the word “effective” for the same reason as those set out above at Looking forward, Page 6, and as explained in paragraph 4, the concept of “reasonably practicable” balances the risk against the cost without introducing another qualification with “sensible”. A further concern we have with this section is that it merely mentions money and cost and that there is no declaration of investment in terms of time. We believe that this is especially important in this section as risk management goes to the core of what health and safety is about.

#### Goal 4 Building capacity, Page 11

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<sup>5</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

<sup>6</sup> *Health and Safety at Work: Protecting Lives, Not Stopping Them*, A HSENI and District Council Strategy for the better regulation of health and safety at work in Northern Ireland, Published 5 July 2010, Page 8 Para 5.

APIL is concerned that the HSENI is willing to use intermediaries in order to offer health and safety advice to businesses in Northern Ireland. We believe that this advice should come from the HSENI direct as much as possible as it is currently possible for any firm to set up and practice business as health and safety consultants. As stated in paragraph 8 of this section,

*There are others, however, that are less professional in their approach and who do not add any real value to businesses' capacity to manage health and safety risks.<sup>7</sup>*

We submit that the HSENI should be actively encouraging businesses in Northern Ireland to seek their help and advice on health and safety at work either from the HSENI or from an accredited health and safety consultancy firm. While there are undoubtedly many well-experienced, well-qualified advisers helping businesses understand how to deal with health and safety regulations, there is currently no real way for employers to judge the knowledge or experience of a potential adviser. APIL is committed to providing the public with clarity about the quality of legal services through a robust accreditation scheme. It is equally important that those companies who are relying on others to provide them with accurate health and safety advice are able to rely on a similar system of accreditation, supported by the continuing professional development of health and safety advisers.

#### Goal 6 Targeted intervention and enforcement, Page 13

APIL believes that lack of prosecution when a breach has occurred allows businesses to think that they have escaped liability and continue to operate as they have previously, which could then lead to a further incident. A further concern is that collective inspection resources are to be split between the HSENI and the district councils whereas we believe it is more appropriate for the HSENI to retain inspection rights as it will always be independent of the investigated organisation. This will also ensure that the HSENI is seen as the overarching body in terms of health and safety and will avoid duplication.

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<sup>7</sup> *Health and Safety at Work: Protecting Lives, Not Stopping Them*, A HSENI and District Council Strategy for the better regulation of health and safety at work in Northern Ireland, Published 5 July 2010, Page 11 Para 8.

We agree that all regulators should have access to a flexible and proportionate enforcement toolkit providing that this operates at no detriment to enforcement. We also agree that the HSENI should continue to robustly recommend prosecution for serious breaches, however, we also believe that less serious breaches should not be ignored, which is not made clear in this section of the draft strategy.

Goal 8 The wider perspective, Page 15

We suggest that it needs to be made clear in this section who the HSENI are and exactly what their tasks involve, including the prosecution of organisations that do not adhere to the regulations by acting as the leading authority for criminal proceedings in health and safety.

Goal 9 Leadership, Page 16

Paragraph 2 Goal 9 appears to very much focus on the negative aspects of health and safety. We submit that if this negative aspect is to be included, then there should also be a paragraph detailing the positive aspects.

We welcome the notion that all stakeholders should be encouraged to use their influence to reduce the unhelpful influence of 'risk mongers' and the proliferation of contrary messages distorting perceptions of risk and its complexity. APIL has been reducing the unhelpful influence of risk mongers and the proliferation of contrary messages distorting perceptions of risk and its complexity for years by calling for better education about risk management.

Driving change through better regulation, Page 18

This section states that the aim of the strategy is



*To achieve a safer and healthier working environment for everyone in Northern Ireland in a cost effective, customer focused and holistic way.<sup>8</sup>*

APIL believes that holistic is not appropriate in these circumstances and that this word should be removed. We would also question who the customer is? Is this the person who has suffered injury or death in the workplace? Or the organisation who may have failed to implement health and safety regulations? We believe that this needs to be made clear in this section.

Furthermore, even though regulation is mentioned in the title of this section, it is then not mentioned further throughout the body of the text.

#### **Further comment**

On the whole, APIL agrees with the document and the need for a strategy to be put in place. We would like to ask the HSENI if there are any plans to engage with professions directly about this document in order to fully explain its meaning and what it will entail. APIL suggests that it would be a good opportunity for the HSENI to directly engage with professions about the strategy, prior to its implementation.

- Ends -

## **Association of Personal Injury Lawyers**

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<sup>8</sup> *Health and Safety at Work: Protecting Lives, Not Stopping Them*, A HSENI and District Council Strategy for the better regulation of health and safety at work in Northern Ireland, Published 5 July 2010, Page 18 Para 1.