

**HEALTH AND SAFETY EXECUTIVE CONSULTATION**

**REVITALISING HEALTH AND SAFETY IN CONSTRUCTION**

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS**

**DECEMBER 2002**

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 5300 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. APIL does not generate business on behalf of its members.

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## **REVITALISING HEALTH AND SAFETY IN CONSTRUCTION**

1. APIL welcomes this opportunity to contribute to the HSE's efforts in addressing the continuing health and safety problems within the construction industry. Some of our members represent injured construction workers or bereaved families in their claims for compensation and the association's response is based on the experience and insight of those members. As our members are not directly involved in the construction industry, however, we are unable to comment on all of the issues raised.
2. As outlined by the HSE, there are many reasons as to why the construction industry consistently fails to achieve a satisfactory level of health and safety. We agree that this means that we need to address the problem in each and every way we can so that we can prevent the same accidents from happening again and again. We further agree that must involve "the development of imaginative proposals to revitalise the industry's approach to the control and management of health and safety risks" and such proposals are likely to include both voluntary and legal initiatives. Several initiatives are suggested in the discussion document, aimed at the particular characteristics of the construction industry. Whilst we support these initiatives, we believe that they must complement the thorough policing and enforcement of the health and safety legislation that already exists to protect construction workers. It seems inappropriate to spend time and money on developing other initiatives before ensuring that existing protections are afforded to workers as intended by both the Government and the European institutions. In summary, whilst APIL supports most of the initiatives and proposals outlined in the discussion document, we believe health and safety could most effectively be achieved with regular and thorough site inspections and appropriate enforcement of breaches of health and safety legislation.

## **LEADERS AND LEVERS**

### **Leadership and Corporate Responsibility**

3. APIL agrees fully with the HSE when it states that “achieving results, first and foremost, requires effective leadership” and that “such leadership, both within companies and on an industry-wide basis, is an essential ingredient for cultural change in the industry”. We think that health and safety within companies could be greatly improved by imposing legal duties for health and safety on directors. Directors can, and should, play a key role in achieving health and safety within their organisations. They have the financial and organisational powers necessary to direct the implementation of systems to address health and safety and to ensure that health and safety is a priority alongside profits. We do not think that the voluntary nature of the current ‘guidance’ on this issue is sufficient and we believe that more could be achieved if the responsibilities were placed on a statutory footing. It has always been open to directors to implement best practice on health and safety within their organisations. It is likely that those directors that would take note of the voluntary code are already addressing issues of health and safety within their organisations. We fear that the voluntary code will not have much of an impact on those that do not. APIL continues, therefore, to call for the imposition of legal duties on directors for health and safety and believe that such a move could have a positive impact on health and safety within the construction industry.
  
4. The fragmented nature of the construction industry, noted in paragraph 32, and its impact on attitudes towards health and safety mean that it is difficult to achieve a cultural change. As we have outlined above, imposing legal duties on directors would have a significant impact in relation to public bodies and private sector companies, although would not have an impact on small to medium sized enterprises whose health and safety record is of most concern. Initiatives to encourage industry-wide leadership, leadership within businesses and client leadership must all be applauded, as must including health and safety information in annual reports. We are

concerned, however, that again, such initiatives will not reach small to medium sized enterprises. It is our belief that a cultural change will only be achieved through regular site inspections and vigorous enforcement of health and safety law. We expand upon these arguments below.

5. The HSE also raises the issue of employers' liability insurance and the possibility of improving health and safety performance by linking it with the level of premiums paid. Employers liability insurance is, of course, currently the subject of a Government review. We certainly agree that employers' liability could play a much bigger role in improving health and safety in the workplace. There is no reason why employers liability insurance should not operate in the same way as motor insurance – if a firm has a good safety record and assesses risk accurately and responsibly, that firm should have a lower premium.

### **Construction Workers**

6. APIL agrees that the workers have a great deal to contribute to improving health and safety on the sites on which they are working, although we appreciate that with such a transient and temporary workforce it can be difficult to ensure that workers view it as a priority. Having said that, if those in charge of the site take health and safety seriously, then those working for them are more likely to do so the same. In essence, workers are important and have individual responsibility for their health and safety, but we can only expect them to follow the priorities set by those for whom they are working. Even having signs around the site reminding workers to take simple steps to protect themselves can be useful. It would certainly be desirable if schemes were in place to allow employers to assess the competence of their workers more easily and we would support any voluntary initiatives in this regard. We are concerned about the extent to which employers would comply with any such scheme in view of the fact that construction workers are often hired on a casual basis and illegal basis. The same issue would arise even if the scheme was placed on a statutory footing.

7. As recognised by the HSE, construction workers have first hand experience of the actual conditions of work and are often the first to identify potential problems. It is very important, therefore, that channels of communication exist between workers and site or project managers. In view of the fact that many construction workplaces are not unionised, we would support fully the introduction of equivalent provisions to those in place in Ireland in respect of site safety representatives.

### **Working Better Together**

8. If health and safety is to improve, it must be considered from the outset of a project, i.e. at the design stage, and at regular intervals throughout. Health and safety legislation already exists to require employers to assess risks on a regular basis once the project is underway and improvements could be achieved if the HSE took increased action to ensure that employers complied with their obligations in this regard. As recognised by the HSE, however, many designers show little interest in, or understanding of, the health and safety implications of constructing or using their designs. In addition, various employers with health and safety responsibilities may be involved in any one project and the culture of the industry is to 'transfer' responsibility between the parties as much as possible and to the most vulnerable who are least able to manage the risks involved. We agree with the HSE that we "need to move to a situation where all employers take responsibility for managing health and safety risks within their control irrespective of the behaviour of the parties." Co-operation and communication between the various parties are vital and we think this could most effectively be achieved by making one party involved responsible for ensuring that health and safety is a priority at both the design and construction phase and that the various companies and individuals involved along the way are complying with their obligations. It may be appropriate for this party to be the lead designer at the design stage and the principal contractor during the construction phase.

## **Tackling Health in Construction**

9. APIL agrees that in tackling health in the construction industry, the following must be achieved:

- prevention of work-related ill-health;
- promotion of general good health and healthier lifestyles;
- rehabilitation.

This is, of course, easier said than done and we believe that a lot could be learned from other European jurisdictions whose construction industries have to comply with the same health and safety obligations. It would be useful, for example, to see how other jurisdictions ensure that small to medium sized enterprises comply with their health and safety obligations.

10. As we have indicated above, however, the key to improving health and safety within the construction industry lies in the existing health and safety legal framework. Compliance with this health and safety law must be monitored regularly and effectively and breaches of it should be taken much more seriously than at present. We are concerned that the HSE views this as an 'historical' argument. We are also concerned that the HSE takes a 'proportionate' approach to enforcement, whereby the HSE takes account of the extent to which someone has fallen short of what the law requires and the extent of the resulting risks. It is noted in the discussion document that the same risks keep arising, the same accidents keep happening and that most of the accidents are "foreseeable and preventable". Whilst we recognise that some statutory amendments are required, construction workers should essentially be adequately protected by existing health and safety law and they would be so protected if employers within the construction industry complied with it. The problem is that compliance rates are low. This is demonstrated by the example provided in paragraph 10 where after a concentrated inspection initiative in London earlier this year, the inspection of 223 sites resulted in 110 prohibition notices, 11 improvement notices

and the cessation of work altogether on four sites. What we must do, if there is to be any chance of improving health and safety on construction sites, is to ensure that needless injuries and deaths are prevented through compliance monitoring. Clear messages should also be sent to the industry that breaches of health and safety law will not be tolerated. This can only be achieved if the HSE is seen as a force to be reckoned with and if enforcement action is taken in most instances. We realise that both inspection and enforcement would require the command of increased resources. Alternatively, it may be worth considering whether local authority inspectors could assist or subsume this role in relation to construction sites as they already have an on-site presence in enforcing the building regulations. Whichever route is adopted, breaches of the law should not be ignored and the relevant enforcing authority should not, in our view, take a subjective approach to enforcement on the basis of 'proportionality'.

11. When lawyers or legal associations attempt to stress the importance of compliance with the law through effective monitoring and enforcement, there is always a risk that the arguments will be viewed as narrow-minded or self-interested. This is not the case. We agree that we should seek to 'revitalise' health and safety within the construction industry in any and every way we can. Other initiatives should, however, complement and not replace the thorough policing and enforcement of the health and safety legislation that already exists to protect construction workers.