

**HEALTH AND SAFETY EXECUTIVE CONSULTATION**

**STRATEGIC THINKING – WORK IN PROGRESS**

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

**AUGUST 2003**

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 4700 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.

APIL's executive committee would like to thank Colin Ettinger, vice-president of APIL for contributing to the formulation of this response.

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

1. APIL welcomes this opportunity to comment on the HSE's strategic thinking for the next 10 years. We agree that the health and safety strategy needs to keep evolving in order to maintain pace with the changing work environment. We further agree that the HSE has identified the main issues that are likely to affect health and safety and the management of it in the future.
  
2. We particularly welcome the recognition of occupational ill health as a problem area and the acknowledgement that the management of health and safety must respond to the "changing economy in a changing world". Examining external influences and predicting how workplaces will change in the future will help both the HSE and policymakers to prevent, rather than respond to, new health and safety issues. The reference to rehabilitation is also encouraging. For some time, APIL has sought to promote rehabilitation in the context of personal injury claims. We believe, however, that the provision of rehabilitation should be increased for the ill and the injured, whether they have a personal injury claim or not.
  
3. We also support the following underlying assumptions noted in the consultation paper, that is:
  - The involvement of worker representatives;
  - Promoting risk assessment; and
  - Improving the role of insurance

Research conducted by academics in Northern Ireland and Ireland demonstrated that safety representatives have a significant impact on health and safety.<sup>1</sup> The appointment of, and consultation with, worker

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<sup>1</sup> Safety Behaviour in the Construction Sector, Nick MacDonald and Victor Hrymak, 2002

representatives should, therefore be encouraged. Promoting detailed risk assessment is also vital, as the assessment of risk underpins the management of health and safety in the UK. Unless employers assess the risks of ill health and accidents occurring, they cannot hope to prevent them.

4. The role of insurance has recently been examined by the Department for Work and Pensions. In the context of its review of employers' liability insurance, APIL called for premiums to reflect an employers' health and safety performance, as this would create an additional incentive for employers to comply with health and safety legislation. APIL will be involved in the DWP's working group on this issue, which will examine how risk-related premiums can be developed.
5. The HSE also mentions that the HSC enforcement policy will remain essentially unchanged. We have, on several occasions, expressed our concern about this enforcement policy, which is based on the DTI's enforcement concordat. This concordat seeks to promote "proportionate" enforcement. It states that "action should be proportionate to the seriousness and persistence of the breach and should be the minimum necessary to secure future compliance." APIL does not believe that enforcement should be 'proportionate' when it comes to issues of health and safety.
6. 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 equates, in our view, to tolerating breaches and this cannot be acceptable. 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. Proportionate enforcement fails to secure this message. The seriousness and persistence of the breach should not be relevant to the issue of enforcement. Those subjective issues should instead

be considered when deciding on the appropriate punishment for the breach.

7. We would like to see the HSE's budget increased to allow for the adequate enforcement of health and safety legislation. We appreciate, however, that the HSE has to work within the budget provided to it and, as such, will have to target its work. In short, even if the HSE's budget were increased, it would still be finite and would still need to be enforced. Due to the nature of our members' expertise, however, it is difficult for us to comment on the areas in which the HSC/E and local authorities should reduce their involvement.
8. On a final point, the HSE asks what mechanisms could be put in place to maintain standards in areas in which the HSC/E and local authorities have reduced their involvement. As we have made clear, we see the enforcement of health and safety legislation as they key to improving health and safety. Other initiatives should complement, rather than replace, HSE enforcement activity. Linking employers' liability insurance to an employers' health and safety record should, however, provide employers with an incentive to comply with the law. We would also like to see legal duties for health and safety imposed on company directors, although we note the HSE's comment that it does not envisage any major new legislative programmes.