

10 September 2004

Mr Philip Hampton
The Hampton review of regulatory inspection and enforcement
Zone 4/ E1
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Dear Mr Hampton,

Regulatory Inspection and Enforcement Review

APIL welcomes the opportunity to respond to the Regulatory Inspection and Enforcement Review. APIL is a membership organisation which campaigns on behalf of personal injury victims. We currently have a membership of around 5,000, comprising solicitors, barristers, legal executives and academics. Our response is restricted to issues which fall within the area of expertise of APIL members, and in particular to inspection and enforcement policies in the context of health and safety. We are unable to respond to the specific questions listed, but offer our views on the general efficiency of current HSC, HSE and LA inspection and enforcement regimes.

In summary,

- APIL believes that the enforcement of health and safety legislation is the key to improving injuries and illnesses in the workplace;
- APIL is concerned that resources for inspections are currently inadequate;
- APIL believes that the penalties available for breaches of health and safety law are insufficient.

Inspection

APIL members have commented on the inefficiency of the current system of inspection, whereby inspectors are responsible for both providing advice and for prosecuting companies. Resources are currently insufficient to support this dual

function and it is felt that the two roles cannot be effectively carried out simultaneously.

APIL feels that the HSE's budget is woefully inadequate to allow for sufficient enforcement of health and safety legislation. The fact that the HSE's budget has been frozen from 2003-06 equals to a 10 per cent cut in real terms, while the current year's budget of £260 million is already thought to be too low to allow for adequate inspections. In July 2004, the Department of Work and Pensions Select Committee on 'The work of the Health and Safety Commission and Executive' recommended a doubling of the number of inspectors. In addition, a recent report by Professor Andy Watterson of Stirling University reveals that high risk workplaces are often not inspected, and that fewer than one in five major injuries are investigated.

Enforcement

APIL supports stronger penalties for employers who breach health and safety regulations. Currently, directors of large firms are able to hide in anonymity and escape penalty for breaching health and safety law in a way that directors of small firms can not. Imposing legal duties upon directors will make it easier to identify those who have breached the law, and allow directors of large firms to be penalised in the same way as directors of smaller firms. In addition, this will give directors greater incentive to address the issue of health and safety and to adopt good health and safety practice within their company.

Penalties for breaching health and safety regulations often do not reflect the seriousness of the incident, and are too minor to act as a deterrent for possible offenders. APIL believes that health and safety law should attract the same resources as the criminal system, and that breaches of health and safety regulations should be criminalised so that a company whose negligent act results in the serious injury of a worker be charged with a criminal offence in the same way as someone who injures someone else outside of the workplace. Similarly, we are concerned with the current HSE enforcement policy, based on the Department of Trade and Industry's enforcement concordat, which promotes 'proportionate' enforcement. This states that action should be proportionate to the seriousness and persistence of the breach, and that this should be the minimum necessary to secure further compliance. In our view, however, this equates to tolerating breaches. Every breach should be taken seriously.

Fines are often not high enough to deter breaches of health and safety law. APIL supports the introduction of a new law to ensure that fines are proportionate to either a company's annual turnover and/or its assets. This will in effect mean the larger the company, and the more serious the breach, the larger the fine. In addition, penalties for individuals should be toughened to include fines, disqualification from acting as a director, and imprisonment. The DWP Select

Committee on the work of the HSC and HSE supports the idea of increased maximum penalties for health and safety breaches, and recommends the introduction of a Bill to this effect at the next session of parliament. It is crucial that there is strict and consistent enforcement of health and safety sanctions to ensure that they act as a true deterrent to possible offenders.

We hope that these comments are helpful but please do not hesitate to contact us if you need any further clarification or information.

Yours sincerely,

Lorraine Gwinnutt
Head of Legal and Public Affairs