

Department for Business Enterprise and Regulatory Reform (BERR)

Improving outcomes from health and safety: a call for evidence



A response by the Association of Personal Injury Lawyers

January 2008

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 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.

The aims of the association 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:

Martin Bare – APIL President

Amanda Stevens – APIL Vice-President

Stephen Lawson – APIL Secretary

Karl Tonks – APIL EC Member

Victoria Mortimer-Harvey – APIL EC Member

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

Antony Blackburn-Starza

Researcher- Legal Policy

APIL

11 Castle Quay, Nottingham NG7 1FW

Tel: 0115 958 0585; Fax: 0115 958 0885

e-mail: antony@apil.org.uk

Executive Summary

- APIL is keen for improvements to be made in the communication of employers' duties under the health and safety regime.
- APIL calls for having one independent and authoritative source of information to make it easier for employers to obtain reliable advice. A 'one stop safety shop' will improve understanding and ensure greater compliance.
- APIL believes in a proactive approach towards health and safety. Positive messages and correcting misperceptions will help establish a safety culture in society where workplace injuries are not tolerated.
- APIL proposes that the Government takes a lead role in this.
- APIL firmly supports initiatives to motivate employers to become health and safety compliant.
- A Government-led 'naming and praising' campaign could encourage good risk management amongst employers.
- APIL proposes that the insurance industry offers incentives to employers to reduce risk through linking the cost of premiums to good health and safety management.

Introduction

1. APIL campaigns for the prevention of avoidable injuries. We believe that preventative measures are essential so that injury does not occur in the first place. We believe in a workable health and safety system, which embraces common sense, to ensure risks in the workplace are minimised and workers are protected from injury.
2. The current health and safety regime is not working as effectively as possible and improvements need to be made. Fatal accidents have increased by 11 per cent since 2005-06 and the Health and Safety Executive (HSE) is not on track to meet its targets on reducing levels of ill-health and injury. Employees are still becoming needless victims of preventable accidents in the workplace.¹
3. APIL asserts that a misperception of health and safety duties is threatening to undermine the true objectives and achievements of the regime. We are concerned that misperceptions are detracting attention from the reality of the situation, which is that some employers are still not taking their duties seriously.
4. APIL believes there is a need for greater education to improve understanding of health and safety duties. There is also a need to dispel the myths surrounding the regime. A positive attitude in recognising that health and safety law is enabling and straightforward for employers should be part of this process.

¹ Health and safety statistics 2006/07, Health and Safety Commission and National Statistics, <http://www.hse.gov.uk/statistics/overall/hssh0607.pdf>

5. APIL suggests these proposals could be met by the Government taking a greater role in educating employers about their duties and in correcting misperceptions.
6. We also recognise the need for incentives and positive messages to encourage compliance to come from the insurance industry.

1. Do you believe the British health and safety system achieves the right balance between protecting workers, and the demands it places on employers and others?

7. APIL recognises the gains made in improving health and safety in the workplace and we applaud the efforts of the Health and Safety Executive in reducing the numbers of serious injury and accidents since its establishment in 1974.
8. However, we submit that the current regime is still not adequately protecting workers in places of employment. Many workers are still being put at risk by insufficient standards of health and safety.
9. APIL is very concerned with the latest statistics, which show although non-fatal injuries have continued to decline, the number of fatal accidents in 2006-07 has increased by 11 per cent from the previous year.² In addition, the statistics reveal that working days lost have increased and the number of people reporting work-related ill-health has also increased in 2006-07.³

² Ibid.

³ Ibid.

10. The problem may be compounded by the current financial situation of the Health and Safety Executive, which is undergoing funding cuts as part of reducing costs at the Department for Work and Pensions.

11. We note the evidence Mr Geoffrey Podger, Chief Executive of the HSE, gave to the Work and Pensions Select Committee on Wednesday 28 November 2007: “there clearly could be levels of reduction demanded of us which would not, in our view, leave us in a satisfactory position to deal, even at our present level with the challenges we have.”⁴

12. Whilst we appreciate the Government’s drive to cut back on bureaucracy, we strongly assert that this should not be done at the expense of the welfare of workers. Health and safety standards must be upheld as a priority.

Improving the system for small and low-risk businesses / Ensuring protection for workers

13. By their nature, small businesses may have fewer resources and manpower to conduct research into what is required by them under the health and safety regime. We therefore call for a centralised source of information to assist such businesses to implement health and safety measures with minimal expense.

14. A dedicated, central source of information that is directed towards small and low-risk employers will enable them to obtain independent and authoritative advice quickly and more easily. This source could target specific industry sectors and enable accurate and clear information to be tailored to the individual circumstances of small and low-risk employers.

⁴ House of Commons Work and Pensions Select Committee, uncorrected evidence, Wednesday 28 November 2007, <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmworpen/uc117-i/uc11702.htm>

Initiatives to improve outcomes and reduce burdens

15. APIL firmly believes in encouraging a sense of collective responsibility in society to protect workers from avoidable injury.
16. Safety-conscious employers will be more likely to take measures to protect the welfare of their workers of their own accord. If employers look out for their workers, if workers look out for one another, then workplace risks will be identified before accidents happen.
17. Absolutely central to improving health and safety outcomes is to put across the message that the whole idea of risk assessment is that it is reasonable and proportionate to the risk at the time. In many cases, identifying hazards involves a certain degree of common sense.
18. Health and safety is not some amorphous, high-minded concept, that rains regulation on employers, but it is rooted in a real everyday common sense approach. Of course, the health and safety duties of high-risk sectors, such as nuclear power, will be more extensive than those imposed on low-risk businesses, but these too will involve a certain degree of common sense. A risk assessment must be proportionate to the risk to adequately protect workers from injury.
19. We call for the Government to be more pragmatic about health and safety and to help embed a safety culture in society. A simple notion of good citizenship can go a long way in the health and safety debate. We believe that if the above proactive approach is advocated, then the regulatory demands placed on employers will be more efficiently met and a more effective health and safety regime will be enforced.

2. Are legal duties applying to the community and voluntary sectors sufficiently clear to support community and voluntary activities whilst protecting the people affected by them?

20. The legal duties under the health and safety regime are generally clearly defined at source but there is a problem with access to a precise and reliable interpretation of the rules. The resulting confusion means that organisations in the voluntary and community sector are not adequately supported in meeting their health and safety obligations, and volunteers and workers may be put at risk.
21. We call for the creation of a centralised source of information to help clear understanding of legal duties and a more widespread linkage of good health and safety management with insurance premiums to encourage compliance.

A central source of information specific to the sector

22. A consolidated central source of information targeted at the voluntary and community sector will make it easier for organisations to understand their legal duties under the health and safety regime.
23. We recognise that some organisations in this sector may have limited resources. It is therefore essential that such information is given free of charge to ensure it reaches the widest audience.

Insurance premiums in the voluntary and community sector

24. Concern has been expressed over the declining number of volunteers in recent reports. Some reports have given fear of litigation as a contributing factor. Such

reasoning, we submit, is incorrect and, as identified in Katharine Gaskin's report for Volunteering England, "there has *not* been an overwhelming number of legal actions launched against nonprofit organisations."⁵

25. We agree with Gaskin's assertion that there are other reasons beyond a fear of litigation that may be contributing to this concern- namely, a lack of insurance cover. There are a limited number of insurance companies who offer specific policies to the voluntary and community sector. This lack of availability of insurance cover may be preventing some organisations from performing certain activities.

26. Insurance companies should reward good health and safety practices by linking them to lower premiums. This encourages proper risk assessments which may improve the confidence of volunteers under their care enabling them to undertake activities safely.

3. Do you think the way the health and safety system is perceived by employers, workers and the wider public in Britain has a significant impact, e.g. on accident rates, or on the way employers act?

27. It is unfortunate that negative perceptions of health and safety are still widely reported. The story of the Health and Safety Executive banning conkers in schools is becoming a classic example of a much repeated news item with no element of truth behind it. Unfortunately, misperceptions can have serious implications that undermine the health and safety regime, and we call upon the Government to intervene in this area.

⁵ Gaskin, K. 'Getting a Grip: Risk, risk management and volunteering- A review of the literature,' October 2005. Page 18.

28. The often comical line taken in 'elf and safety' reporting, as recently seen over the latest Christmas period, masks the seriousness behind the issue. This Christmas, many media reports mocked decisions to remove decorations in public areas blaming health and safety for spoiling the fun. However, one woman received head injuries and a broken collar bone caused by a falling decoration that was not adequately secured.⁶ Behind the humour often lie tragic cases of lives shattered through serious injury or death at work. The trauma caused to a victim and their family is often lost in such reports.
29. APIL is very concerned that such misperceptions may be causing some employers to be underestimating the importance of the health and safety regime, placing their workers at risk of serious injury or even death.
30. Some employers are still viewing risk assessment as a paper exercise and may not actually taking practical steps to prevent accidents or even checking for risks in the first place. The misperception of health and safety as a high regulatory hurdle is as damaging to employers as it is to their workers.
31. Misperceptions also severely undermine the purpose and effectiveness of the health and safety regime if employers wrongly consider the regulation too onerous to implement.
32. We therefore call upon the Government to take the lead in correcting misperceptions by rebutting inaccurate media reporting and engaging in the wider debate – health and safety is good for society.

⁶ 'Woman is injured by falling Christmas tree', The Guardian, 30/11/07.

4. How can good health and safety management best be encouraged and recognised?

33. APIL fundamentally believes that prevention and education is better than injury and prosecution. We therefore suggest proactive measures to encourage and recognise good health and safety management. These include a centralisation of information, an uptake of positive messages, and offering incentives for employers to become good risk managers.
34. Employers are best placed to deal with health and safety requirements and it should make business sense to be compliant. Good health and safety management should reduce the number of working days lost through injury and ill-health, which, in turn, improves business productivity. In 2006-07, 36 million working days were lost due to work-related ill-health and workplace injury.⁷ It is estimated this costs British employers between £3.3 billion and £6.5 billion each year.⁸
35. APIL strongly believes in the 'polluter pays' principle. If an employer needlessly exposes his workforce to risk, then he should be responsible for any loss that ensues. When an employer avoids responsibility, the costs of bad health and safety management are often picked up by the injured individuals and society in general. The onus lies upon employers to act to improve standards of health and safety.

⁷ Health and safety statistics 2006/07, Health and Safety Commission and National Statistics, <http://www.hse.gov.uk/statistics/overall/hssh0607.pdf>

⁸ HSE Ready Reckoner – Costs Overview – See http://www.hse.gov.uk/costs/costs_overview/costs_overview.asp

Centralisation of information

36. An accessible and reliable source of information employers can turn to in seeking health and safety advice is absolutely essential in raising levels of awareness and understanding of the law. APIL fully supports any measures that make it easier for employers to obtain accurate and practical information so that they will be more likely to implement health and safety measures.
37. We recognise that the HSE website contains a great deal of information for employers, but this format relies upon employers knowing where to look and what to look for. A centralised source of information promoted by the Government is the only way to break the cycle of employers not seeking health and safety advice because they do not realise they need advice in the first place. For such employers, any misperceptions they may hold cannot be corrected. This, of course, undermines the effectiveness of the health and safety regime.
38. APIL believes that employers should be able to understand their duties by themselves. Information should be offered freely to enable and encourage all employers to seek advice. The option of outsourcing the role of advisor to health and safety consultants is therefore not an appropriate solution either. These consultants may not be seen as independent and it is in their financial interests to give employers the impression *professional* advice on health and safety is needed. They would also charge a fee for their services.

Motivating employers to act

39. A very good way of ensuring health and safety compliance is to offer incentives for employers to be good risk managers.

40. APIL welcomes the practice where businesses bidding for contracts through public procurement exercises are often required to provide evidence to show they are good health and safety managers. The Government can play a very important role here in encouraging good health and safety management.
41. Other sectors are also in a position to help drive home good health and safety management. A fundamental proposal in our response to this paper is that the insurance industry should link the cost of premiums to good risk management. If an employer takes positive steps to reduce risk in the workplace by performing reasonable risk assessments and reduce avoidable injury, then such proactive behaviour should be rewarded with lower insurance premiums.
42. We fail to understand why the practice of linking premium prices with risk assessments is not more widespread. We note with concern the point made in the call for evidence that “while large firms have benefited from premium reductions, small firms rarely receive these because insurers have not found a reliable way of determining an employer’s performance without visiting them.”⁹
43. This is surprising for two reasons. First, smaller firms are set to benefit most from premium reductions. As we highlighted above, in the voluntary sector some organisations’ activities are being affected by a lack of availability of insurance cover. High premium prices are also cited as a reason for organisations not performing certain risky activities, as indicated in the Gaskin report.¹⁰

⁹ Department for Business Enterprise and Regulatory Reform, ‘Improving Outcomes from Health and Safety: A Call for Evidence’, November 2007. Page 23, para. 44.

¹⁰ Gaskin, K. ‘Getting a Grip: Risk, risk management and volunteering- A review of the literature,’ October 2005. Pages 20 to 21.

44. Second, we contend that risk assessments actually reduce the need for insurers having to visit employers. An insurer can conduct desktop enquiries to obtain background information on applicants. This saves the insurer costs that could be passed on to customers.

Positive attitudes

45. A concurrent theme in our response is to assert the absolute need for a positive approach towards health and safety. As the HSE rightly states: "Risk management is about practical steps to protect people from real harm and suffering – not bureaucratic back covering."¹¹ It is about positive messages to encourage employers to take a proactive approach in protecting their workers.

46. We call upon the Government to act in this regard. We suggest it should consider introducing a 'naming and praising' system to report examples of good health and safety management. Such a system would reward those employers who are good managers with publicity and encourage others to be 'praised'.

47. The use of the 'naming and *shaming*' technique in Canada has proved successful in punishing offending employers and cultivating a culture of community responsibility. Once an organisation has been 'shamed,' its name is published in newspapers and magazines. This affects its image and reputation and may lead to a loss of trust amongst consumers. We contend that a 'naming and *praising*' system would improve an employer's image and reputation, which may also benefit his business. It would also give rise to a sense of community responsibility as it too would involve members of the local community in health and safety issues.

¹¹ <http://www.hse.gov.uk/index.htm>

Enforcement

48. Regrettably, there will always be a small proportion of rogue employers who deliberately do not follow health and safety guidelines, needlessly exposing their workforce to risk. For these scenarios, we are campaigning for stringent enforcement of health and safety law and for penalties for failings to be made comparable to the severity of infringement.

5. Do you believe fear of compensation claims has any influence on the way in which health and safety is managed? If so, how?

49. Any fear of litigation is based upon a false perception of a 'compensation culture' in the UK. There is no evidence to support the argument that society is increasingly litigious and the total number of claims is, in fact, decreasing. The Department for Business Enterprise and Regulatory Reform itself asserts in this call for evidence that, "the UK does not have a compensation culture" and that the "Government responses have argued strongly that there is no compensation culture."¹²

50. APIL believes that good health and safety management is founded upon an employer's own belief in protecting the welfare of his workers. It is this appreciation of risk that we feel needs to be fostered amongst employers. A health and safety system that operates in a 'climate of fear' is not one best suited to adequately protect workers from the risk of injury or death.

¹² Department for Business Enterprise and Regulatory Reform, 'Improving Outcomes from Health and Safety: A Call for Evidence', November 2007. Page 24, paras. 49-50.

51. An employer who implements health and safety requirements because he cares about his workforce is more likely to meet the standard required by the law. He is also more likely to seek information and more accurately understand what is required by him under the law.
52. An employer who simply attempts to meet health and safety requirements because he fears claims being made against him will not be acting in his employees' best interests. If financial considerations are considered a priority over the welfare of the workers, then this may cause some large organisations to calculate it to be cheaper to choose to defend claims than to implement health and safety measures. APIL has heard anecdotal evidence to suggest such practices do exist.
53. We recognise the logic in the argument that a fear of being sued may be greater for small business with fewer resources available to defend actions made against them, but there is little evidence to suggest this is the case. As Gaskin's report revealed, in the voluntary and community sector it was in fact a lack of availability of insurance cover that was the most significant factor for organisations refraining from certain risky activities.
54. Finally, there are many factors which influence the behaviour of employers. A chemicals plant, for example, is likely to be more concerned about the financial consequences of a shut down following a health and safety incident. Businesses may also be concerned about the affect health and safety failing may have on their reputation. This creates a deterrent effect which encourages employers to take measures to improve health and safety in the workplace.

6. What more, if anything, do you believe Government should do to ensure employers have access to affordable, authoritative information and advice on health and safety?

55. It is one of APIL's fundamental messages in this response that the Government should take a leading role in the accurate presentation of information to employers on health and safety. Throughout this paper we have focussed on the need for greater education and easier access to information. We call upon the Government to:

Create a centralised source of information that will make it easier for employers to access reliable advice on health and safety.

56. APIL proposes that the Government actively promotes an HSE-run 'one stop safety shop' where employers can obtain independent and authoritative advice.

57. Please refer to our previous comments at question four that fully explain our position on this.

Encourage positive messages and correct misperceptions of the health and safety regime.

58. APIL believes the Government is in the best position to rebut inaccurate media reporting of health and safety issues. It may consider doing this either directly through contacting the press, or through an awareness campaign. We note the success of Government campaigning on issues such as drink driving or tax returns, and we would like to see something similar done for health and safety. Health and safety is about saving lives and preventing injuries. Every risk

assessment carried out reduces the probability of an injury from occurring, and saves a family the trauma of a member's injury or death.

59. APIL believes it is the role of the Government to engage in the wider debate surrounding health and safety in emphasising that a safe working environment is good for society as a whole. This would provide an opportunity to add calm and reason to the health and safety debate.

60. APIL is, and will continue to play its part in the need for education. Our 'Accident and Negligence?' booklet, for example, is aimed at improving a real and common-sense understanding of the difference between an accident and negligence in an attempt to clear up common misperceptions.¹³

¹³ Please see <http://www.apil.org.uk/pdf/Campaigns/AccidentOrNegligenceBooklet.pdf>.