

UNISON'S RESPONSE TO THE REVIEW OF HEALTH AND SAFETY AT WORK LEGISLATION

UNISON welcomes the opportunity to comment on the review of health and safety legislation that is being carried out by the Government. UNISON is Britain's largest public sector trade union with more than 1.3 million members. Our members work in the public services, for private contractors providing public services, and in the essential utilities. They include staff working full or part-time in local authorities, the NHS, the police service, schools, further and higher education, the electricity, gas and water industries, transport and the voluntary sector.

We were concerned at Lord Young's comments in a recent newspaper article (The Times 19th June 2010). We accept that health and safety can sometimes be used in a frivolous way. However, we believe these examples arise because the health and safety legislation was either misunderstood or used as an excuse for doing nothing and that is what needs to be addressed. In our experience, many employers welcome health and safety legislation and work with safety representatives to ensure that health and safety is addressed in all of their systems of work. Equally, we know that health and safety is important to workers and members of the public and many of the silly stories frequently highlighted are driven by the media. To help to dispel many of these myths the Health and Safety Executive (HSE) has been running a myth of the month section on their web site.

Health and safety may appear to some as a burden on business, but we only need to look at the recent BP disaster to recognise its importance in protecting workers. The cost of cutting corners on health and safety has led to the death of 11 oil rig workers, environmental damage, and threatens the very existence of a multinational company.

We note that the review is also to report on the "rise of the compensation culture over the last decade". However UNISON does not accept such a culture actually exists in relation to the cases we support but rather again relates to a perception that it exists. We will deal with this aspect in more detail below.

As you are no doubt aware the basis of UK health and safety law is that you take reasonably practical measures to tackle reasonably foreseeable situations. By managing risks employers can reduce the number of accidents and injuries that occur, which leads to less expense to the state generally and also reduce the number of compensation claims they face. If there is no health and safety procedure in place to mitigate risk, how can an employer know when they are safely managing the risks they are exposing their workers to? Of course where no significant risks are identified, then an employer need not take any further action. We believe that the number of workers and members of the public who are killed, injured or made ill by work is much higher than the figures quoted by the HSE. Those figures are

compiled from the Reporting of Injury Diseases and Dangerous Occurrences Regulations (RIDDOR) which excludes deaths to members of the public, work related suicide and road traffic accidents whilst driving for work. We also know that some employers do not comply with the regulations and don't report many non fatal accidents. (HSE review of RIDDOR 2005) It is estimated that 1,600 deaths are caused by work related incidents each year. On top of this, it is estimated that there are up to 50,000 deaths from work related illnesses, including cancers, respiratory illnesses and heart disease. (Safety and Health Practitioner December 2008). There is a world of difference between one headmistress who banned children from playing conkers without safety glasses and the hundreds and thousands of workers who are injured, killed or made ill by **totally preventable** incidents each year.

We are not convinced that health and safety legislation has increased. According to the Institute of Occupational Safety and Health legislation has actually been reduced since 1974. However, what existing legislation has tried to do instead is to force employers to prevent accidents and injury by systematically assessing risk and introducing prevention measures rather than failing to do this and so exposing themselves to a potential claim if negligence occurs. You should also be aware that less than one in ten workers made ill, injured or killed receive any compensation at all and that workplace related claims have continued to fall over the last decade, (see below). It is also worth noting that a injured worker, or family with no breadwinner and no compensation means that a welfare claim is more likely.

We understand that you will be examining how local authorities and the Health Service interpret the law. It is not clear what you will be looking at here, but we assume that it relates to how health and safety legislation is enforced. Environmental Health Officers enforce the law in certain workplaces including some areas within the NHS and are totally overstretched. Their duties are wide ranging and include inspections and investigations on compliance with health and safety and food hygiene legislation; monitoring housing standards; maintaining and improving standards in public swimming pools; monitoring animal welfare and issuing licenses for premises including pet shops; monitoring noise, air, land and water pollution levels; initiating legal proceedings and giving evidence in court. Given these duties I am sure that they would welcome guidance on improving delivery of the service and would ask that they are specifically consulted in the review.

Investigations and inspections carried out by the HSE have declined significantly. For example, in 2001/02 on average, each HSE inspected workplace could expect an inspection every 8.4 years, which was woefully inadequate, however, by 2009; the frequency had dropped to once every 38.4 years! (Hazards Magazine April/June 2010). Resources within the HSE have been stretched so thinly that most regulatory activity is now focussed on the safety of workers who are exposed to sudden injury or dangerous occurrences, rather than exposure to hazardous substances or repetitive practices and other types of injury that either make workers sick or kill them over a long period of time. (Steve Tombs and Dave Whyte 2010)

You have been quoted as asking “do you know anything dangerous in offices?” Well the answer is yes. There are 500,000 sufferers of work related upper limb disorders. (HSE) A condition caused by a lack of variety in repetitive movements, awkward grip or positions, too fast or excessive workloads, long hours, overuse or poor working environments, 420,000 individuals in Britain today who believe they were experiencing work-related stress in 2007/8 at a level that was making them ill and thousands of workers suffering from back injury caused by manual handling, many of whom work in offices. More than a third of all over-three-day injuries reported each year to the HSE and local authorities are caused by manual handling - the transporting or supporting of loads by hand or by bodily force. (HSE labour force survey 2007/08).

Workers are still being exposed to hazardous substances including asbestos, many more have been injured by slips, trips and falls incidents and even more suffer work related verbal abuse, threats and actual violence on a regular basis. Workers in offices have been made ill, injured or have died as a result. Workers exposed to hazardous substances can suffer ill health for many years and in the case of asbestos will suffer anxiety for several years before the onset of serious and life threatening illness.

It is time to recognise that Britain’s safety performance is not one of the best but is in fact in decline. According to the Health and Safety Risk Index (HSRI), published by risk analysts Maplecroft in January 2010 the UK came 30th out of 176 for occupational health and safety performance, whilst among the OECD nations, the UK came 20th.

It would be dangerous to exclude the emergency services from health and safety legislation. Those who work in the emergency services know their job entails risk. However health and safety legislation allows them to be able to manage that risk, and take proportionate measures to ensure their safety. For example ambulance workers have all too often been the victim of violent attacks from the public. However health and safety legislation has provided a framework under which staff can continue to do their jobs whilst at the same time managing that risk, through for example close working with the police service. If you took away that framework ambulance workers would have even less confidence when working in high risk environments.

Excluding the emergency services from health and safety legislation would lead to a two tier system of protection within the health service with groups of workers working alongside each other, some with the protection of health and safety laws and others where the laws wouldn’t apply. Violence for example, against hospital staff working within A&E departments, ambulance workers and those working in the community has risen alarmingly. Existing figures inevitably suffer from under-reporting and often exclude "routine" verbal abuse, threats or insulting behaviour, which invariably increase stress on staff that do an already difficult job.

Police support staff who work alongside police officers, also face health and safety risks. Police community support officers, front enquiry desk clerks, scenes of crime officers, detention officers and others, all encounter danger as part of their role. The Government claims that health and safety rules discourage the police from tackling crime. However the HSE has recognised this is not the case in its 'Striking the Balance' guidance on the interplay between operational and health and safety duties in the police service. They accept that, although the Police Service is rightly subject to the Health and Safety at Work Act, in doing their duty police staff may occasionally put themselves at risk 'in acts of true heroism'. In such circumstances, the HSE has confirmed that it would not seek to prosecute either police force or the member of staff. Removing the legislative back up to police force health and safety duties would damage the effectiveness of forces and put police staff in needless danger.

We are especially concerned at proposals to bar inspectors entering many workplaces and voluntary systems of compliance. Tens of thousands of workers are injured, made ill or killed each year because of the lack of inspection and enforcement of existing health and safety legislation. Any review should look at the cost of this and examine the massive burden borne by workers, their families and society rather than the mythical burden on businesses.

A vital part of the health and safety process is trade union health and safety representatives: statutory volunteers who seek to work with employers to improve work and working conditions and prevent death, ill health and injury within work places. Numerous studies have shown their effectiveness within workplaces. For example, a DTI paper published in January 2007, *Workplace representatives: A review of their facilities and facility time*, estimates that safety representatives at 2004 prices saved society between £181 million and £578 million each year. The HSE supported this view and produced a declaration on worker involvement that states that "trade union safety representatives, through their empowered role for purposes of consultation, often lead to higher levels of compliance and better health and safety performance than in non trade union workplaces..

Despite such stellar work from health and safety representatives, it is our view that better enforcement of existing health and safety legislation is needed. Given the decline in enforcement action we would also argue that these representatives should be given more powers so that they can help employers improve health and safety practice and avoid its misapplication.

It is interesting to note that despite their value in the workplace the work of trade union safety representatives is never mentioned or included in any media story about health and safety at work.

It is time that we moved away from the message that good health and safety is a burden on business. The real burden is borne by those who are made ill, injured and killed, their families, colleagues, friends and society as a whole. All government

departments should be encouraged to promote good health and safety management as a bonus rather than a burden to business. In addition we would like to see the following suggestions considered as part of the review:

- The introduction of explicit health and safety duties on company directors and their equivalents.
- Improvement to the enforcement of existing health and safety duties on employers, e.g. risk assessment, accident and incident investigation, inspections.
- Enforcement of safety representatives' rights.
- Greater enforcement of the Consultation regulations.
- In certain circumstances extension of safety representatives rights to act outside their immediate workplace or employer.
- The use of trade union safety representatives as a driving force behind the improvement of workplace health and safety.
- Improvement in the delivery of justice to the victims of health and safety failures.
- Introduction of new laws to require the early release of basic health and safety information following a death at work
- A duty on employers to respond to issues raised by safety representatives.

Compensation Culture

In 2004 the Better Regulation Taskforce an independent advisory group confirmed its findings on the personal injury compensation system in the UK. It concluded there was no compensation culture, although there was a perception of compensation culture that needed to be dealt with. This perception had been fuelled by the media and coincided with the advent of claims management companies. At that time it was apparent that many claims management companies, capturing claims to sell them onto solicitors having already signed them up to a package of insurance, were using high pressure selling and aggressive marketing, misleading sometimes vulnerable consumers into pursuing weak or even non-existent claims. UNISON therefore welcomed the steps taken to address that matter. The regulation brought in through the Compensation Act 2006 to regulate claims management companies having now been in force for some years has been of some assistance. However we are still concerned about the actions of claims management companies including where they continue to promote the idea, that we note is of concern to you, that behind every accident someone must pay. It is also the case that insurers

through their practice of third party capture may be playing a part too. This is a process where the insurance company approached by their insured following an accident captures the claim and offers to pursue a personal injury case for those involved in the accident, thereafter representing those individuals despite the fact there is we believe a conflict of interest in them doing so. Consequently we would welcome further action to deal with such matters.

In addition the Compensation Act also clarified the existing common-law position on negligence to try and reduce risk adverse behaviour that may prevent “desirable activities” by giving an assurance to those concerned about possible litigation, such as volunteers, teachers and local authorities. This tried to reflect the judgment in Tomlinson v Congleton BC – and effectively seeks to avoid other concerns, again raised in the press coverage of your review, for example where village fetes are cancelled because of the fear of litigation. It is still early days to assess the impact of this change and we submit now is not the time to make any more change. Further if at some point there is a need to revisit this matter then any proposals must follow further investigation to establish by way of clear evidence whether there are in fact any specific areas of concern, so that any future recommendation can be appropriately focussed to have the desired effect and not any wider detrimental impact.

This is a world apart from cutting health and safety or extending legal protection (on the basis the current position is a burden to public services – which as outlined above we do not accept). Such far reaching action to deal with a few isolated cases (i.e. where pupils wear goggles to play conkers) blown out of all proportion by the media and often based on a complete misunderstanding of the legislation could lead to dire unintended consequences – such as heavy satellite litigation where defences are brought to circumvent legitimate employer liability claims, and crucially potentially restrict access to justice, leading to a windfall for insurers to the severe detriment of innocent injured claimants. In our view what would be most effective and constructive in dealing with the issues raised which led to this review would be a public legal education campaign to deal with such perceptions and misinterpretations.

One of UNISON’S key aims is to work with others to secure the health and safety of our members at work because as we have pointed out earlier regrettably each year many thousands of workers including thousands of UNISON members suffer injury or ill health through their work. Health and safety laws are essential to save and protect lives and most workplace accidents could be avoided and many people protected from harm if health and safety laws were better enforced. UNISON is therefore at the forefront of major campaigns on issues such as violence at work, workplace stress, work related upper limb disorders and back injury. This is particularly important because of the make-up of our membership and the type of work they do which means that the health and safety legislation in place is far from burdensome playing a very necessary role within public services. Related to the

above aim and as a benefit of membership UNISON operates a legal assistance scheme for our members and their family members. This includes free advice, assistance and representation for personal injury claims from our independent, specialist solicitors. This union legal service is very different from the claims management model outlined above. We are a not for profit organisation, UNISON does not receive case referral fees. We have ongoing links to the claimant throughout the case and we have in place high standards of service that our lawyers have to adhere to and carry out regular client care surveys. We are not in the business of encouraging frivolous or vexatious claims. Our branches and regions also act as further filters in this respect giving guidance to members and our lawyers immediately assess their instructions and know we will only support cases with merits of 50% or more.

Under our scheme we support just under 8000 personal injury cases per annum. The majority are employer liability claims where our members have suffered a work related injury/illness. This is a crucial safety net to ensure if our members are injured because of the negligence of their employers they can access specialist lawyers to claim compensation, not least because the majority of our members (many of whom are women) are low paid - the bulk of our members earn under £14,000pa. Our legal assistance scheme gives them effective access to justice and compensation for their legitimate claims from the negligent party when they most need it.

And the pursuit of such claims not only compensates them, to the extent you can try in monetary terms to put them back into the position they were in before the injury occurred, but also as stated above acts as a catalyst to employers to take effective safety measures to safeguard their employees in the future. This process therefore assists in securing better working practices and in turn reduces accidents in the workplace reducing the burden on the state (by way of lost productivity, medical care and benefits etc). In a telephone survey carried out in 2007 involving 850 UNISON members over 80% of the participants said that a reason for bringing their claim was to help prevent a similar accident or injury occurring to someone else. Around 65% of respondents to the survey indicated that bringing that case did actually make a difference to the health and safety practices at their workplace. A recent example of this is where our member a PCSO was assaulted while working in the early hours of the morning by some drunken youths leading to the introduction of stab resistant vests. This case will hopefully prevent other serious injuries occurring and may well save lives. Or the case of a paramedic working alone who on attending to a drug addict in a derelict building was assaulted by two other drug addicts which led to guidance on early assessment of who to deploy to best respond to specific emergency situations. So again cutting health and safety legislation, particularly for the emergency services, is not only going to put our members at serious risk, which cannot be right, but will also be financially counterproductive for the government when this reduction in protection leads to unsafe workplaces and work practices and a resultant increase in injuries/illness.

In relation to our legal assistance scheme we have not seen evidence of a compensation culture in our midst. Many of our members accept very difficult circumstances at work, being subjected to for example abuse and assaults, as simply being part and parcel of the job. When you analyse the numbers of claims referred to our solicitors over the last 8 years this shows no evidence of a compensation culture (our case referral figures were 9,848 for the year 2002/2003 and now stand at some 7,967 for 2009/2010 – a decrease of 20%). The number of cases submitted has in fact significantly decreased. This is not unsurprising to us and echoes the Government's own figures as the majority of our claims are employer liability cases.

Nationally the total number of personal injury accident and disease claims brought as a result of negligence in the Government's Compensation Recovery Unit figures (CRU figures for the total number of claims registered (accident and disease) 2000/2001 – 2009/2010) for the last ten years show clinical negligence and public liability claims have fluctuated, but remained largely unchanged in numbers and more importantly employer liability cases have consistently, significantly decreased. In addition if you take into account the HSE's figures (from the Labour Force Survey 2008/2009) showing just under 900,000 people being made ill (over 550,000) are injured (over 240,000) through their job the picture you see is that only a small percentage then go on to make a claim, with only just over 86,000 (which in fact reduces further in 2009/2010 to 78,744) employer liability claims being registered in that year (CRU figures for 2008/2009).

It is only in relation to road traffic accidents that there has been a rise in claims yet these are not the type of cases generally referred to when raising the issue of any "compensation culture", which is also reflected in the cases highlighted in the coverage of your review. Therefore looking at the total number of claims over the last ten years and concluding that there has been a rise in compensation culture does not paint a true picture. In all other types of personal injury claims other than motor claims, there has been no such rise. This is exacerbated further by the fact that motor claims represent a very large proportion, in the order of 78% (CRU figures for 2009/2010) of all personal injury cases.

It is also of importance, and relevant to what you will be considering as stated in your letter of the 17th June, that in relation to the only sector of rising claims (i.e. RTA cases) fundamental and significant changes to the associated litigation process have recently been implemented. The RTA claims process was introduced on the 30th April this year and is expected to encompass in the order of 75% (i.e. 500,000 of the currently 674,997 cases 2009/2010 as recorded by CRU) of all RTA claims. The process streamlines the litigation. Detailed information is given to the insurers electronically so that they can admit liability early (within 15 days). Thereafter the process for serving evidence and negotiating settlement has also been streamlined. The intention is to make the process much more efficient (with claimants receiving

their compensation earlier), and cost-effective for defendants/insurers with an agreed fixed costs regime applying.

Consequently we believe time needs to be given to allow this new system to bed down and when combined with further action as outlined above (ie curtailing the problems in relation to claims and insurance companies and undertaking public legal education) could in our view simply and effectively deal with the concerns being raised which have led to the current review you are undertaking.

Once again thank you for giving UNISON the opportunity to comment on your review. We hope this response will be of assistance and due to the very wide terms of reference and timescale given for submissions in your letter of the 17th June UNISON would be more than happy to submit further details or expand on any of the matters we have raised here should that prove useful to you.