



House of Commons  
Work and Pensions Committee

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# Workplace health and safety: follow-up report

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Fourth Report of Session 2008–09

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## The Work and Pensions Committee

The Work and Pensions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

### Current membership

Terry Rooney MP (*Labour, Bradford North*) (Chairman)  
Anne Begg MP (*Labour, Aberdeen South*)  
Harry Cohen MP (*Labour, Leyton and Wanstead*)  
Michael Jabez Foster MP (*Labour, Hastings and Rye*)  
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Greg Mulholland MP (*Liberal Democrat, Leeds North West*)  
Jenny Willott MP (*Liberal Democrat, Cardiff Central*)

The following Members were also Members of the Committee during session 2008-09

John Penrose MP (*Conservative, Weston-Super-Mare*)

### Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/parliamentary\\_committees/work\\_and\\_pensions\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/work_and_pensions_committee.cfm). A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are James Rhys (Clerk), Emma Graham (Second Clerk), Amy Sweeney and Hanna Haas (Committee Specialists), Laura Humble (Committee Media Adviser), John-Paul Flaherty (Senior Committee Assistant), Hannah van Schijndel (Committee Assistant) and Jim Lawford (Committee Support Assistant).

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# 1 Introduction

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1. In April 2008, we undertook an inquiry into the role of the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) in regulating workplace health and safety in Great Britain.<sup>1</sup>

2. We looked at a number of key areas across the regulator's remit, such as the legislative framework for health and safety; prosecution, enforcement and inspections by HSE; and HSE's role in improving standards of occupational health. We also looked at worker engagement and how to improve employers' commitment to good health and safety at work and considered in detail particular health and safety concerns in the construction industry.

3. The Government responded to our report in July 2008 and committed to examining a number of areas of HSE's business where we made recommendations for change. Since the publication of the Government's response, HSE has made progress in implementing some of the Committee's recommendations, including the development of a register for tower cranes in order to improve the safety of tower cranes being used on building sites. **The Committee welcomes the establishment of a tower crane register. This will help to improve the control and management of risks in the use of tower cranes. We ask HSE to keep us informed of progress in the development of this register.**

4. Also in our previous report, we responded to employers' requests that HSE guidance and Codes of Practice should be freely accessible and we are pleased by the recent announcement that more than £1 million of health and safety publications and guidance will now be free to access on the Health and Safety Executive's website.<sup>2</sup>

5. In the short space of 12 months, the HSE has evolved and faces new challenges compared to when we published our report. Since then, HSC and HSE have merged to create a new unitary body that retains the name the "Health and Safety Executive" and has relocated its headquarters to Bootle. The HSE has also recently published a new strategy, which sets out its core goals and how it will work with its partners to achieve them.<sup>3</sup> Further changes are expected if HSE's Nuclear Directorate becomes a statutory corporation, as proposed by the Stone review and endorsed by the Government consultation document published at the end of June 2009.<sup>4</sup>

6. On 8 July 2009, Rita Donaghy's report on deaths in construction, *One Death is too Many: Inquiry into the Underlying Causes of Construction Fatal Accidents* was published.<sup>5</sup> This was on the same day we agreed our report. Rita Donaghy's inquiry undertook an in-

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<sup>1</sup> Work and Pensions Committee, Third Report of Session 2007–08, *The role of the Health and Safety Commission and Health and Safety Executive in Regulating Workplace Health and Safety*, HC246.

<sup>2</sup> "Health and safety guidance to be free online", HSE press release, 3 June 2009. <http://www.hse.gov.uk/news/2009/free-guidance.htm>.

<sup>3</sup> HSE, *The Health and Safety of Great Britain: Be part of the solution*, June 2009.

<sup>4</sup> Department for Work and Pensions and Department for Energy and Climate Change, *A Consultation on the Restructuring of the Health and Safety Executive's Nuclear Directorate*, June 2009.

<sup>5</sup> Rita Donaghy, *One Death is too Many: Inquiry into the Underlying Causes of Construction Fatal Accidents*, July 2009, Page 31.

depth look at the factors contributing to fatal accidents in the industry and recommended ways to improve on-site health and safety. **We welcome Rita Donaghy's report, especially the recommendations to incorporate safety requirements into building regulations and to extend the remit of the Gangmasters Licensing Regulations to include construction. We urge the Government to accept both these recommendations in full.**

7. HSE is operating in a very different climate to a year ago, and as workplaces adapt to cope with the pressures of a recession, HSE must be prepared to respond to these changes in the way it approaches its role as regulator.

8. In light of these changes, the Committee decided to revisit some of the areas we looked at in our previous inquiry, as well as examine further changes in HSE since the publication of our report. To this end, on Monday 18 May 2009 we visited the new headquarters in Bootle and met with staff and union representatives to discuss developments across HSE's business. The visit was followed by a trip to the Olympic Delivery Authority on 9 June 2009 to discuss its approach to onsite health and safety. On 10 June 2009, the Committee held an oral evidence session with the Chair of HSE, Judith Hacker and its Chief Executive, Geoffrey Podger. The Committee would like to thank all those who assisted the Committee in undertaking its valuable visits and meetings.

## 2 HSE going forward

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### HSE's new strategy

9. HSE's new strategy was published on 3 June 2009 and outlined the main aims of the Executive, which are to:

- a) reduce the number of work related fatalities, injuries and causes of ill health;
- b) gain widespread commitment and recognition of what real health and safety is about;
- c) motivate all those in the health and safety system as to how they can contribute to an improved health and safety performance;
- d) ensure that those who fail in their health and safety duties are held to account.<sup>6</sup>

10. The new strategy emphasised the responsibilities of both workers and employers and the need for HSE to successfully engage with both parties in order to improve health and safety in the workplace. There has been broad support for the strategy, although some organisations criticised it when it was published as a consultation document for lacking detail and not taking a more radical approach.<sup>7</sup> HSE has since published its Business Plan for 2009/10, which provides much greater details of how it will achieve its strategic goals.<sup>8</sup>

**11. We welcome HSE's new strategy, particularly its focus on working with others. It is important that HSE has measurable benchmarks and timetables for its work, to allow proper scrutiny of its activities, and we are pleased to see that HSE's Business Plan for 2009/10 provides details of how it will achieve the objectives it sets out in its strategy. We will monitor progress towards these goals over the coming 12 months.**

### Health and safety in a recession

12. Research on behalf of HSE by the Institute of Employment Research (IER) at the University of Warwick, has suggested that the injury and ill health incident rates reported under the Reporting Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) are counter cyclical, with rates decreasing during recessions. The research, which was published in 2005, suggested that in a recession, redundancies tend to be concentrated among those with less experience and those who:

“may be less familiar with equipment and machinery, with the work system and the signals of system failure, and with the work habits and routines of fellow workers. The average job tenure of those remaining in employment will therefore increase leaving a relatively more experienced workforce who are less prone to accidents.”<sup>9</sup>

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<sup>6</sup> HSE, *The Health and Safety of Great Britain: Be part of the solution*, June 2009.

<sup>7</sup> “HSE plan falls short, says IOSH”, IOSH press release, Monday 9 May 2009 and “UCATT Welcomes HSE Promise Of A New Strategy But Far Greater Detail Needed”, UCATT press release, Thursday 4 December 2008.

<sup>8</sup> HSE, *The Health and Safety Executive: Business Plan 2009/10*, June 2009.

<sup>9</sup> *Trends and context to rates of workplace injury* Prepared by Warwick Institute for Employment Research for the Health and Safety Executive 2005, para 2.2.1.

13. However, Judith Hackitt emphasised that this trend will be accompanied by growing cost pressures on businesses and told us that HSE:

“are already getting lots of messages that suggest businesses are attempting to cut back on health and safety as one of the things they can cut back on in terms of cost.”<sup>10</sup>

14. Interestingly, the IER research also found that as workplaces come out of a recession, the risks of accidents increase. We were told that HSE is working with partner organisations, including the Association of British Insurers (ABI), the Trades Union Congress (TUC) and the Confederation of British Industry (CBI) to raise awareness of the need to sustain good health and safety standards during an economic downturn.<sup>11</sup>

**15. We note with interest the findings of research on behalf of HSE, which suggested that the number and rate of accidents and injuries go down in a recession. However, given the cost pressures workplaces face in an economic downturn, we believe it is crucial that HSE continues to provide appropriate advice and support to businesses, especially SMEs, to emphasise the importance of ensuring that health and safety is not compromised during this period. We welcome the work HSE is undertaking with partner organisations to promote the importance of good standards of health and safety and we will continue to monitor HSE’s approach as the economy comes out of recession.**

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<sup>10</sup> Q9

<sup>11</sup> *Ibid.*

## 3 Occupational health

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### Ill health data

16. Concerns about the accuracy of ill health data were raised during our previous inquiry. The Government response to our report confirmed that HSE's ill health figures come from a number of sources; including:

- a) Reporting Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR);
- b) the Labour Force Survey;
- c) statistics from reports of ill health by doctors and specialist physicians gathered in surveillance schemes run by The Health and Occupation Reporting network (THOR);
- d) death certificates and;
- e) surveys of working conditions including employers' and employees' attitudes and behaviours on health and safety matters.<sup>12</sup>

17. Despite the considerable number of data sources, HSE accepted that there are shortcomings with the quality and coverage of its data. Geoffrey Podger told us that HSE is working hard to improve its access to good quality data and said that its Incident Contact Centre, based in Caerphilly, is helping businesses to report under RIDDOR, whilst the THOR project is increasing the amount of GP derived data that HSE has access to.<sup>13</sup>

**18. The quality and coverage of ill-health data remains too low and incomplete. However, HSE acknowledges this fact and appears to be working hard to try and improve this. We welcome HSE's commitment to increasing the accuracy of ill health data and ask that HSE keeps us updated on its efforts to improve this further.**

### Ill health targets

19. HSE's Spending Review 2004 Public Service Agreement (PSA) was to:

“improve health and safety outcomes in Great Britain through progressive improvement in the control of risks in the workplace by 2008.”<sup>14</sup>

20. Progress towards this PSA was measured against six targets, grouped under the two main areas of HSE's work: occupational health and safety and major hazards. The PSA's final assessment in March 2008 confirmed that the working days lost target, whilst improved, was still not being met and the ill health target was not met:

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<sup>12</sup> Work and Pensions Committee, Third Report of Session 2007–08, *The role of the Health and Safety Commission and Health and Safety Executive in Regulating Workplace Health and Safety: Government Response to the Committee's*, HC 837, para 66.

<sup>13</sup> Q22

<sup>14</sup> Spending Review 2004, Health and Safety Public Service Agreement.

**PSA targets for Occupational Health & Safety (incident rate of work-related ill health and working days lost)**

PSA targets	Indicator	Baselines (year)	Target (2007/08)	Results (2007/08)	Final assessment March 2008
Occupational Health and Safety	Incidence rate of work-related ill health per 100,000 workers	1850 (2004-05)	1740 (3% reduction)	1860 (0.5% increase)	Not met
	Number of working days lost from work-related injury and ill health per worker	1.53 (2004-05)	1.39 (9% reduction)	1.41 (8% reduction)	Not met (but moving in a favourable direction)

21. Our previous report concluded that the SR04 PSA target for HSE to reduce the number of working days lost due to work-related injury and ill-health did not provide a realistic and appropriate target for HSE, as many of the factors affecting its achievement were outside its control.<sup>15</sup> The Government responded saying:

“The Government recognises that delivering PSA targets requires action by many different parties in addition to HSE and that there are many external factors and interdependencies which influence the direction and degree of attainment of the targets. The setting of targets by the then Deputy Prime Minister when he launched the Revitalising Health and Safety Strategy in 2000 was a key driver in focussing the efforts of HSE and stakeholders who could influence health and safety on key priorities.”<sup>16</sup>

***The Health and Occupation Reporting network (THOR) project***

22. During our evidence session with HSE on 11 June 2009, we explored this issue further, asking whether the THOR project could be used to connect employers and GPs, so that employers can respond more quickly to workers who may be at risk of leaving the workforce through ill health. We were told that currently there are 270 GP practices participating in the project.<sup>17</sup> HSE’s website gives an overview of the THOR project:

“The Health and Occupation Reporting network (THOR) is a voluntary surveillance scheme for work-related ill health. Under this network specialist doctors undertake to systematically report all new cases that they see in their clinics. These reports are collated and analysed by a multidisciplinary team at the Centre for Occupational and Environmental Health, Manchester University.”<sup>18</sup>

23. This information can then be shared with HSE as aggregated data, rather than giving the name of specific individuals. However, Geoffrey Podger told us that the current level of information that is available is insufficient for HSE to identify patterns of illness, either by

<sup>15</sup> Work and Pensions Committee, Third Report of Session 2007–08, *The role of the Health and Safety Commission and Health and Safety Executive in Regulating Workplace Health and Safety*, HC246 I, para 263.

<sup>16</sup> Work and Pensions Committee, Third Special Report of Session 2007–08, *The role of the Health and Safety Commission and Health and Safety Executive in Regulating Workplace Health and Safety: Government Response to the Committee’s Third Report of Session 2007–08*, HC 837, para 68.

<sup>17</sup> Q21

<sup>18</sup> HSE website ‘Data Sources’: <http://www.hse.gov.uk/statistics/sources.htm#thor>.

geography or by occupation; furthermore, there has been no indication given from Government as to whether this project will be rolled out nationally.<sup>19</sup>

### **Government's response to Working for a Healthier Tomorrow**

24. In response to Dame Carole Black's report, *Working for a Healthier Tomorrow*, the Government committed to improving communication between employers, GPs and individuals by developing a new electronic fit note, which focuses on helping people return to work and is recorded on GP clinical databases. The new note has been tested with over 500 GPs and the Government hope to introduce this later in 2009.<sup>20</sup> Given that both the THOR project and the electronic fit note aim to improve the level of information available on ill health, with the ultimate aim of reducing the incidence rate, there may be scope to utilise the data from both in order to identify patterns and trends.

25. The Government also announced the creation of a "National Centre for Working Age Health and Well-being". A key part of its role will be to gather and analyse data to identify trends in the health of working-age individuals. The Centre will also measure the success of health interventions and initiatives.<sup>21</sup>

**26. We are disappointed that HSE continues to miss its targets for ill health but believe that this is inevitable unless significantly more effort is made by other parts of Government, employers and employees to reduce working days lost and work related ill health.**

**27. As a starting point, data collection and sharing must be improved. We welcome the establishment of a National Centre for Working Age Health and Well-being and urge the Government to ensure that one of the Centre's core aims will be to significantly improve the quality of ill health data.**

**28. We also ask the Government to explore the possibility of improving the level of detail provided in The Health and Occupation Reporting network (THOR) reports to allow HSE to identify patterns of illness. Furthermore, we believe that anonymised data derived from the new electronic fit note must be shared with HSE.**

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<sup>19</sup> Q7

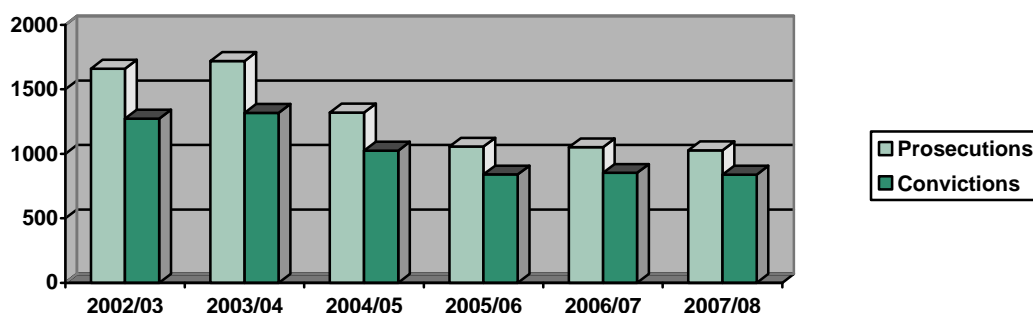
<sup>20</sup> *Improving health and work:: changing lives* The Government's Response to Dame Carol Black's Review of the health of Britain's working-age population, November 2008.

<sup>21</sup> *Ibid.*

## 4 Prosecutions and enforcement

29. The number of prosecutions taken by HSE in 2007/08 was 1,028, which was down from 1,141 in 2006/07.<sup>22</sup> The latest health and safety statistics publication shows the numbers of prosecutions and convictions that HSE has taken annually between 2002/03 and 2007/08:

Number of offences prosecuted and convictions - HSE<sup>23</sup>



30. Geoffrey Podger told the Committee that this fall in prosecutions had been marginal and therefore did not represent an overall downward trend:

“Our view is that actually prosecutions are, relatively speaking, fairly stable in numbers. We prosecuted 1,028 offences in 2007-2008 and that was broadly similar to the previous year.”<sup>24</sup>

31. **We do not accept that the fall in prosecutions by HSE is insignificant. In 2003/04 HSE prosecuted 1,720 offences compared to 1,028 in 2007/08 – a reduction of around 40% over four years. The importance of prosecution, both as a response to those who breach health and safety law and as a deterrent to those who might, cannot be underestimated. We call on HSE to explain why there has been such a significant drop in the prosecutions it has taken since 2003/04 and how it will reverse this trend.**

### Health and Safety (Offences) Act 2008

32. The Health and Safety (Offences) Act 2008 gained Royal Assent on 16 October 2008 and came into force in January 2009. The Act increases fines for most existing health and safety offences from £5,000 to £20,000 in the Magistrate Court (they remain unlimited in the Crown Court). In addition, the Act creates the threat of imprisonment for all employees who may have contributed to a health and safety offence by their consent, connivance or neglect.

33. However, according to the industry publication *Health and Safety Bulletin (HSB)*, the Act is:

<sup>22</sup> HSE, *Health and safety statistics 2007/08*, 2008.

<sup>23</sup> *Ibid.*

<sup>24</sup> Q25

“unlikely to increase either the number or length of imprisonments significantly; magistrates have long been able to use prison for more serious breaches – HSW Act general duties and contravening a prohibition notice – but have, like judges, who have greater powers, been reluctant to do so – and it is hard to envisage them suddenly availing themselves of custodial sentences for lesser offences.”<sup>25</sup>

34. We put this to Geoffrey Podger, who disagreed saying:

“I think that is a pessimistic view [...] I agree it may take time but, nevertheless, we intend to press for [higher penalties] where they are justified, and we really have no reason at this moment in time to think there will be resistance.”<sup>26</sup>

**35. We welcome the introduction of the Health and Safety (Offences) Act which will give courts greater powers of sentencing and increase fines for those who breach health and safety legislation. We are encouraged by HSE’s commitment to pressing for higher penalties where they are justified and will monitor its success in doing so.**

### Sentencing Advisory Panel guidelines

36. The Sentencing Advisory Panel (SAP) is in the process of deciding the levels of fines that courts in England and Wales should impose for corporate manslaughter convictions and for the Health and Safety at Work Act 1974 (HSWA) offences that have resulted in death. In May 2009, HSB reported that “progress has slowed” on the proposals that the SAP developed in December 2007 and which it finished consulting on in February 2008.<sup>27</sup> If implemented, the SAP’s proposals would have a significant impact on fines, with a starting point for calculating a fine for a manslaughter conviction of 5% of the offender’s average turnover, and of 2.5% for convictions for HSW Act deaths.<sup>28</sup> Geoffrey Podger told us that HSE had engaged with the SAP on its proposals and is supporting the Panel to ensure that guidelines are published “as soon as possible”.<sup>29</sup>

**37. We are sympathetic to the complex process involved in developing the sentencing guidelines for corporate manslaughter convictions. However, we are disappointed that 18 months after the Sentencing Advisory Panel’s first proposals, the final guidelines are still not available. We ask the Government to confirm the publication date for the guidelines before the end of this parliamentary session.**

### Directors’ duties

38. HSE’s recently published new strategy emphasised the importance of strong leadership, at a senior level, in order to ensure that health and safety is prioritised by business.

“Health and safety leadership must start at the top. Whatever the nature of the organisation, whether in the public, private or not-for-profit sector, members of the

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<sup>25</sup> Health and Safety Bulletin, *Deterrent, what deterrent?*, April 2009, 377, page 17.

<sup>26</sup> Q30

<sup>27</sup> Health and Safety Bulletin, *State-Play-Table*, May 2009, 378, page 16.

<sup>28</sup> Sentencing Advisory Panel, *Corporate Manslaughter: Consultation document*, 2007.

<sup>29</sup> Q32

board have both collective and individual responsibility for health and safety. As such, the need is for people of board level status to champion health and safety and be held accountable for its delivery.”<sup>30</sup>

39. However, HSE’s own research has shown that only a quarter of organisations with five or more employees have board level awareness of official guidance for directors. The HSE released the research shortly before its Chair, Judith Hackitt, accused directors who claim safety as their main priority of creating a “credibility gap”.<sup>31</sup>

40. The HSE and Institute of Directors (IoD) issued their joint guidance in October 2007. As part of the HSE’s ongoing evaluation of its voluntary approach, market research firm, Databuild, surveyed board members in 1,600 organisations in Britain with fewer than five employees, and then weighted the results to provide a representative picture. The Databuild research showed that by September 2008, board level awareness of the guidance was higher in the public (38%) than private (24%) and voluntary (27%) sectors. Awareness was at its highest among directors of large public sector organisations (250+ employees) and higher in organisations based in Scotland (32%) and Wales (30%), than in England (24%).<sup>32</sup>

41. Directors of large public sector organisations (48%) are most likely to have used the guidance, with directors of small voluntary organisations (10%) least likely. In the private sector, more than one third of large organisations use the guidance; only 12% of those with fewer than 20 employees do so.<sup>33</sup>

42. Our previous report on HSE considered the issue of director duties and recommended that HSE should revisit the issue after three years, if voluntary guidance and existing legislation proved inadequate. The Government responded that it was:

“committed to revisit[ing] the question of director duties following a timely, thorough and independent evaluation of the impact of the voluntary approach. This evaluation is due to commence in the latter half of 2009 [...]The findings of the evaluation and other relevant evidence offered by stakeholders will be made available to HSE’s Board in early 2010.”<sup>34</sup>

43. In light of the research findings highlighted above, we asked Judith Hackitt whether the case for introducing statutory director duties had been strengthened. She said:

“There are already duties on directors within the Health and Safety at Work Act. We can argue about and discuss how often those have been used in prosecutions but, nonetheless, there are duties already there. They have been reinforced, we believe, by the raising of the health and safety offences and levels of penalties in the Corporate

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<sup>30</sup> HSE, *The Health and Safety of Great Britain: Be part of the solution*, June 2009, page 9.

<sup>31</sup> Judith Hackitt speaking at the Annual Rivers Lecture on 18 March 2009.

<sup>32</sup> HSE, *RR695: Evaluation of guidance for directors and board members*, 2009.

<sup>33</sup> *Ibid.*

<sup>34</sup> Work and Pensions Committee, Third Special Report of Session 2007–08, *The role of the Health and Safety Commission and Health and Safety Executive in Regulating Workplace Health and Safety: Government Response to the Committee’s Third Report of Session 2007–08*, HC 837, para 11.

Manslaughter and Corporate Homicide Act but the basics of the duties are already there in the Act.”<sup>35</sup>

44. However, Rita Donaghy’s recently published report on construction fatalities concluded that, whilst the courts have the power to disqualify directors, they very rarely use it. Despite the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 and the Health and Safety (Offences) Act, she concluded that, without a specific legal duty on directors, the legislation’s “impact will be adversely affected.” Rita Donaghy recommended that:

“there should be positive duties on directors to ensure good health and safety management through a framework of planning, delivering, monitoring and reviewing.”<sup>36</sup>

**45. The findings of recent research suggest that director level awareness of guidance on health and safety legislation is unacceptably low. Furthermore, Rita Donaghy’s recent inquiry into fatal accidents in the construction industry recommended that positive duties should be introduced for directors. We await the findings of HSE’s evaluation of its voluntary guidance for directors with interest and maintain that if this approach is proving unsuccessful, statutory duties should be introduced.**

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<sup>35</sup> Q47

<sup>36</sup> Rita Donaghy’s report to the Secretary of State for Work and Pensions, *One Death is too Many: Inquiry into the Underlying Causes of Construction Fatal Accidents*, July 2009, Page 31.

## 5 Worker engagement

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### Improving worker engagement

46. On 14 October 2008, HSE launched guidance aimed at improving the quality and quantity of worker consultation and involvement in health and safety.<sup>37</sup> HSE aims to mainstream worker engagement, particularly in construction and the public sector; promote worker involvement with HSE and local authority field staff; and work with others to encourage worker engagement.

47. In 2003, HSE launched the Workers' Safety Adviser Challenge Fund to try to stimulate partnership working between workers and employers on health and safety matters in small businesses and organizations that lack union representation. The fund provided £1m a year for three financial years 2004/5, 2005/6, and 2006/7 with grants of up to £100,000 for each project. Workers' Safety Advisers visited non-unionised workplaces, with the agreement of employers, to discuss health and safety issues with the employees. Our 2007/08 report on HSE concluded that:

“worker involvement is a means of improving health and safety standards in non-unionised workplaces, benefiting employers and employees alike, and we call on HSE to work with industry to explore models for the future funding of such projects.”<sup>38</sup>

### *Olympic Development Authority (ODA)*

48. The Committee visited the ODA on 9 June 2009 and met with Lawrence Waterman, Head of Health and Safety and Dr Marianne Dyer, the onsite Medical Director. We were impressed with the excellent health and safety record at ODA and were told that the ODA's worker involvement initiatives had been integral to ensuring high standards of health and safety.

49. On every project there is a set of arrangements for worker consultation including a Health and Safety Committee with worker representatives, and a Project Leadership Team which maintains worker engagement under review (it represents one of the priorities for the Leadership programme). Furthermore, regular meetings take place with trades union representatives and senior ODA/Delivery Partner staff to review worker engagement and any other issues on the programme.

50. We were told that, at least annually, a Climate Survey is conducted ascertaining the views of over 50% of the workforce by questionnaire and the ODA also operates a privacy-

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<sup>37</sup> Guidance includes: Involving your workforce in health and safety: Good practice for all workplaces HSG263; Involving your workers in health and safety: A guide for small businesses WEB35; Consulting workers on health and safety: Safety Representatives and Safety Committees Regulations 1977 (as amended) and the Health and Safety (Consultation with Employees) Regulations 1996 (as amended) - Approved Codes of Practice and guidance[11]; Consulting employees on health and safety - a brief guide to the law INDG 232.

<sup>38</sup> Work and Pensions Committee, Third Report of Session 2007–08, *The role of the Health and Safety Commission and Health and Safety Executive in Regulating Workplace Health and Safety*, HC246 I, para 218.

protected telephone hotline for any issues any worker wishes to raise, including health and safety matters.

**51. We were very impressed with the efforts the Olympic Development Authority has made to encourage worker engagement in health and safety. For example, we commend the operation of a private hotline for workers who wish to raise health and safety issues. We hope HSE disseminates the practices of ODA to other organisations, as an example of how to develop a positive health and safety culture in the workplace.**

### ***New worker engagement pilots***

52. Geoffrey Podger said that HSE had identified businesses of 200 employees or less as those in which worker engagement is most difficult to mainstream. In order to address this, he told us that:

“one of the first activities that is already in our business plan for next year is to initiate some pilot projects that will look at improving training for safety representatives among smaller businesses and encourage workforce members and first-line managers to work together on health and safety problem-solving. We are running those as pilots and we are already talking to organisations like EEF and FSB about how they will work with us to find small businesses to act as "guinea pigs" to go through that process with a view to them becoming case studies that we will promulgate with other businesses.”<sup>39</sup>

53. We were told that the new pilots were “part of the inheritance of the Worker Safety Advisory Scheme”, which was meant to “pump prime” worker involvement, rather than “run in perpetuity”.<sup>40</sup>

**54. We welcome HSE’s plans to pilot approaches aimed at improving worker engagement. If the pilots prove successful, we urge HSE to invest in a worker engagement scheme on a permanent basis. We accept that there are many pressures on HSE’s resources; however, increasing worker involvement in health and safety is an investment that will reap its own rewards in the long term if health and safety standards are improved and accidents avoided.**

### **Blacklisting**

55. In March 2009, the Information Commissioner Office (ICO) reported that a company called the Consulting Association had provided 44 construction companies with details of construction workers who had raised health and safety concerns and/or were union members. Subscribers included companies such as Amec building, Amec Construction, Amec Facilities, Balfour Beatty, Emcor Rail, Kier and Sir Robert McAlpine. The ICO contacted all 44 companies that had subscribed to the database to establish the extent of their involvement and “determine what, if any, action may be appropriate.”<sup>41</sup>

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<sup>39</sup> Q49

<sup>40</sup> Q51

<sup>41</sup> Information Commissioner’s Office website:  
[http://www.ico.gov.uk/for\\_the\\_public/topic\\_specific\\_guides/consulting\\_association.aspx](http://www.ico.gov.uk/for_the_public/topic_specific_guides/consulting_association.aspx).

56. The Consulting Association's companies database was found to contain details of 3,213 construction workers, including their names, dates of birth, national insurance numbers, locations and trades and notes on their union activity, employment history and conduct, industrial relations "threats" and personal relationships.

57. On Wednesday 27 May 2009, the owner of the Consulting Association, Mr Kerr, was tried by Macclesfield Magistrates Court. He pleaded guilty but failed to attend in person. The case has now been transferred to the Crown Court where Mr Kerr could face an unlimited fine.<sup>42</sup>

58. The threat of blacklisting could act as a disincentive to worker involvement. Geoffrey Podger emphasised that HSE is "totally opposed" to blacklisting:

"we have a variety of ways of intervening in this area, and we do, because part of what HSE rightly does is to spend a lot of time actually talking with and to large companies, and that is an area where they are very well aware of our views on the importance of worker involvement. We have the specific initiative we have been discussing, which we are spending £4 million on in the next two years, and there is the option to spend more if we find it is successful and we still have the resources to do so."<sup>43</sup>

59. The Employment Relations Act 1999 included provisions to outlaw blacklisting but these were never enacted. However, in May 2009, the Government launched a consultation document seeking views on proposals to revise the regulations and ban blacklisting, which it hopes to introduce in autumn.

**60. Blacklisting is a reprehensible practice, which acts to discourage and undermine worker involvement and accordingly threaten health and safety standards in the workplace. We welcome the Government's intention to introduce regulations to ban blacklisting and ask for assurances that it will ensure this practice is eradicated completely. We look forward to receiving further information about the initiatives HSE are undertaking to address the issue.**

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<sup>42</sup> Information Commissioner's Office Statement 27 May 2009:  
[http://www.ico.gov.uk/upload/documents/pressreleases/2009/ico\\_statement\\_ca\\_guilty\\_plea.pdf](http://www.ico.gov.uk/upload/documents/pressreleases/2009/ico_statement_ca_guilty_plea.pdf).

<sup>43</sup> Q54

## 6 Construction industry

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### Fixed term inspectors

61. With 2.2 million people working in the construction industry, it is one of the largest employment sectors in the UK. HSE figures show that it is also one of the most dangerous; in the last 25 years, over 2,800 people have died from injuries they received as a result of construction work.<sup>44</sup> Provisional figures for 2008/09 indicate that there were 53 fatal injuries, with a rate of 2.4 deaths per 100,000 construction industry workers.<sup>45</sup>

62. Our last report on HSE concluded that that its Construction Inspectorate was under-resourced. During our visit to HSE's headquarters in Bootle in May 2009, we were told that HSE has recruited a number of fixed term inspectors to increase its complement of construction inspectors. In oral evidence, Geoffrey Podger provided us with a breakdown of the numbers and types of inspectors in HSE's Construction Division:

“As at 31 March of this year we actually had in post 137 full-time equivalent operational construction inspectors and they visit sites on a day-to-day basis. That figure includes 28 trainee inspectors whom we recruited in 2008 and 2009. They are managed by a further 20 people who are their managers but are also inspectors. In addition, we have 20 specialist construction inspectors, and we have 16 who work in the sector and policy areas. We also have 23 health and safety awareness officers. We are [...] additionally recruiting 24 construction inspectors with a construction industry background who will be on two-year fixed contracts, and they are expected to join us in mid-June.”<sup>46</sup>

63. The 24 fixed term inspectors will be appointed from industry and will be warranted; therefore they will be able to issue prosecution and enforcement notices but they will not undertake investigations.

64. We also met with Prospect during our visit to Bootle, who explained that their members are concerned that whilst these appointments will increase the number of frontline inspectors, because the appointees will not be involved in investigations, there is a danger that they will not be held in as high regard by industry as permanent inspectors. Prospect emphasised that these recruits may at best provide a temporary sticking plaster and will not solve the long-term problem of insufficient, permanent inspectors in the construction field.

65. We asked Geoffrey Podger whether HSE intends to make these appointments permanent and he said:

“when we come out of recession, construction, along with manufacturing industry, is a particular area which is likely to become very stressed in terms of taking on young staff who are potentially rather at risk and where, as we know, there can be rather

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<sup>44</sup> HSE website: <http://www.hse.gov.uk/construction>.

<sup>45</sup> HSE, Fatal injury statistic 2008/09, released June 2009.

<sup>46</sup> Q59

unfortunate economic incentives to rush things along in a way which can put people's lives ultimately at risk. So we are certainly not looking to downscale our investment in construction if it is at all avoidable.”<sup>47</sup>

**66. We welcome the appointment of 24 fixed term inspectors to HSE’s construction division and see this as a useful response to the disproportionate numbers of fatalities in this sector. We agree that HSE should not downscale its investment in construction and believe it is important that the regulator has the resources it needs to sustain this increase in inspectors on a permanent basis.**

## Construction Deaths inquiry

67. On 4 December 2008, the Secretary of State announced an inquiry into the underlying causes of construction fatalities. The inquiry was led by Rita Donaghy, former chair of the Advisory, Conciliation and Arbitration Services, and was undertaken in three phases; firstly a comprehensive review of existing work to consolidate the understanding of fatal injuries in the construction industry with specific reference to vulnerability. Secondly, a deeper analysis of underlying causes including factors outside the health and safety system, and thirdly, a report of the findings to Ministers and HSE’s Board.

68. Rita Donaghy’s report examined key areas of the construction industry and made recommendations aimed at reducing the number of deaths in the sector. Many of the report’s recommendations concur with conclusions we reached in our previous inquiry and others support the conclusions of this report.

**69. We welcome the publication of Rita Donaghy’s report on fatal accidents in the construction industry, which provides a comprehensive overview of the challenges to lowering fatalities in the sector. We are pleased that the conclusions of the inquiry support a number of recommendations from our previous reports and we await the Government’s response with interest.**

## Refurbishment sector

70. HSE figures show that in 2007/08, 52% of the workers who died on construction sites worked in refurbishment, repair and maintenance.<sup>48</sup> On 2 March 2009, HSE announced that throughout the month it aimed to inspect 1500 refurbishment sites across Great Britain, to tackle poor health and safety standards. As part of its *Shattered Lives* and *Hidden Killer* campaigns, HSE’s inspectors targeted principal contractors to examine their management of:

- Working at height safely;
- Good order on site; and
- The risks associated with exposure to asbestos.

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<sup>47</sup> Q65

<sup>48</sup> “1500 Refurbishment sites targeted”, HSE press release, 2 March 2009.

71. The targeted inspections found that one in five construction sites failed health and safety checks. The inspection initiative saw 1759 sites visited during March 2009, with the work of 2145 contractors being inspected. On 348 sites sufficiently serious risks were discovered to warrant enforcement action being taken – either stopping work immediately or ordering improvements to be made. Almost 500 enforcement notices were issued.<sup>49</sup> HSE said that improvements had been witnessed by its inspectors in certain parts of the country since last year – when inspectors had to take enforcement action on 30% of the sites visited.<sup>50</sup>

72. In April 2009, research for the Union of Construction, Allied Trades and Technicians (UCATT) by the Centre for Corporate Accountability (CCA) concluded that workers employed by smaller construction businesses are at higher risk of dying than those who work for large companies. Whilst 34% of workers in the construction sector work for businesses with between 1-49 employees, 51% of the deaths worked for this category of business. CCA concluded that this “raises significant issues about the need for improved regulation of small sized companies – those employing under 50 people.”<sup>51</sup>

### **Building regulations**

73. During our visit to Bootle, we discussed the possibility of incorporating safety requirements into building regulations with Chief Construction Inspector, Phillip White, as a means of improving site safety. We explored this further with Judith Hackitt who said:

“Certainly it is a possibility, and it is one that we have heard from a number of sources as something that we need to think about, and certainly we are quite prepared to explore that as part of this work that we are now doing with local authorities [...]we think there is a sound logic to the notion that says not only should this extension be built to last and not put at risk the people who are going to live in it, but that it should be built in a way that does not put at risk those who have to build it in the first place. It is a logical extension of the process.”<sup>52</sup>

74. Rita Donaghy’s report, also considered how building controls could be used to improve health and safety. She proposed that:

“there should be a Building Regulation or an amendment to an existing Regulation, imposing a duty of care on persons carrying out work to do so safely. This Regulation would be enforced by Building Control Surveyors (or Officers). This would extend their enforcement from the safety of what is built to include the safety of the building process.”<sup>53</sup>

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<sup>49</sup> “One in five construction sites fail health and safety checks”, HSE press release, 12 May 2009.

<sup>50</sup> *Ibid.*

<sup>51</sup> UCATT, Centre for Corporate Accountability, *Small isn't Beautiful, Construction worker deaths 2007/08: Employer size and circumstance*, April 2009, page 11.

<sup>52</sup> Q14; Q16

<sup>53</sup> Rita Donaghy’s report to the Secretary of State for Work and Pensions, *One Death is too Many: Inquiry into the Underlying Causes of Construction Fatal Accidents*, July 2009, Page 26.

75. HSE's recent inspection blitz in the refurbishment sector has highlighted the persistently poor health and safety records of many companies within it. We commend HSE's targeted approach to enforcement in this area but believe more must be done to address the sector's high levels of accidents and fatalities, particularly among those working for SMEs. We fully endorse Rita Donaghy's conclusion that building controls could provide a mechanism for improving site safety and we therefore recommend that the Government incorporates safety requirements into building regulations.

### ***Bogus self-employment***

76. During our last inquiry into health and safety, UCATT highlighted the fact that, within the construction industry, there are high levels of "bogus self-employment" i.e. individuals who are contracted and work under the Construction Industry Scheme, when they should in fact be classified as employees.

77. The Construction Industry Scheme (CIS) sets out the rules for how payments to subcontractors for construction work must be handled by contractors in the construction industry. The scheme applies mainly to contractors and subcontractors in mainstream construction work. According to UCATT, bogus self-employment occurs when a worker who has all the characteristics of an employee is classified as self-employed for tax purposes. The vast majority of bogus self-employed workers operate under the Construction Industry Tax Scheme. Workers are taxed at source (20%) like a normal employee, pay lower national insurance contributions and are entitled to make an annual tax return. As the workers are classed as self-employed, employers do not pay any national insurance contributions and the worker pays a lower rate than a PAYE employer.

78. UCATT has argued that the "safety imperative is obviously reduced when you do not have a directly employed workforce" and has been trying to prove the increased risks faced by the bogus self-employed, by showing that there is a disproportionate number of these workers amongst construction fatalities.<sup>54</sup> Their concerns have grown further since learning that in their fatality investigations, HSE would record "bogus self-employed" workers (registered under the CIS regime), as employees in their statistics.

79. UCATT have suggested that the reason why HSE inspectors reclassify the employment status is that they aim to record the employment status that a worker should have had rather than the status that they may have been given. Recording a worker under the correct, directly employed status makes it easier for dependents to receive compensation.<sup>55</sup> However, this also means that the percentage of fatally injured workers working "self-employed" under CIS is not reflected accurately in the statistics.<sup>56</sup>

80. UCATT highlighted the case of a 22 year old man, who was supposed to be an apprentice at the time of his death, and yet was working under CIS and therefore would have been classified as self-employed. HSE did not record the man as worked under the

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<sup>54</sup> Work and Pensions Committee, Third Report of Session 2007–08, *The role of the Health and Safety Commission and Health and Safety Executive in Regulating Workplace Health and Safety*, HC 246-II, Ev 42, Q92.

<sup>55</sup> Ev 26

<sup>56</sup> *Ibid.*

CIS scheme but his self-employed status was confirmed when his family received a tax rebate from CIS on the day of his death.<sup>57</sup>

81. We asked Geoffrey Podger whether HSE believed lowering levels of bogus self-employment would reduce health and safety risks, he said:

“there is a very strong health and safety argument, which is that the people who are running construction sites have to have control over the totality of the people who are there irrespective of what their technical employment status is.”<sup>58</sup>

82. Rita Donaghy’s recently published report on deaths in the construction industry condemned bogus self-employment and concluded that:

“If the political will existed and enforcement mechanisms were properly resourced it is probably the single most important step which could be taken to signal to the industry, and its workers, that society expects standards to be improved and obligations fulfilled.”<sup>59</sup>

**83. We note the concerns of UCATT that bogus self-employment may make workers more vulnerable to health and safety risks. HSE efforts to correct and reclassify the employment status of fatally injured workers are useful for ensuring that family members are able to claim for compensation. However, we are concerned that the Construction Industry Scheme (CIS) may provide the loop hole that allows bogus self-employment in the first place. We ask the Government to examine whether this is the case. In the meantime, Revenue and Customs should ensure that it communicates the risks of bogus-self employment to those participating in the CIS.**

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<sup>57</sup> *Ibid.*

<sup>58</sup> Q80

<sup>59</sup> Rita Donaghy’s report to the Secretary of State for Work and Pensions, *One Death is too Many: Inquiry into the Underlying Causes of Construction Fatal Accidents*, July 2009, Page 36.

## 7 Nuclear Directorate

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84. In the Nuclear White Paper (January 2008), the Government announced it would be working with the regulators of the nuclear industry to explore ways of enhancing further the transparency and efficiency of the regulatory regime, without diminishing its effectiveness in dealing with the challenges of new nuclear power stations. Subsequently, Dr Tim Stone was appointed to carry out a review of the current nuclear regulatory environment. The focus of the review was on HSE's Nuclear Directorate (ND), of which the Nuclear Installations Inspectorate (NII) is the major part. Interim recommendations were delivered to the Government in June 2008.<sup>60</sup>

85. In the short term, Stone recommended that “the pay and other critical compensation elements of current and prospective NII staff must be adjusted rapidly to enable recruitment of the full complement of staff needed.”<sup>61</sup>

86. In the medium term, he emphasised the need for the Nuclear Directorate to be able to recruit and retain sufficient suitably qualified and skilled staff through having flexibility over its own remuneration and employment terms and conditions, as well as governance and location. He argued that this was necessary to compete with the private sector for the specialist resources it needs to operate to world-class standards and to meet business needs, both in the immediate term and on a permanently sustainable basis.

87. Prospect welcomed Stone's recommendation that pay and compensation for Nuclear Installations Inspectorate staff should be adjusted rapidly to enable recruitment of the full complement of staff needed. In a press release it said:

“The NII has 170 inspectors and needs an additional 20 for current work, as well as 30 more to meet nuclear new build needs. Also 50 inspectors are due to retire in the next five years.

“Tim Stone's findings vindicate Prospect's long and determined campaign for change. We welcome his calls to find a long-term pay solution that recognises the skills shortage within the industry and the difficulty of recruiting suitably qualified and skilled inspectors in competition with the private sector.”<sup>62</sup>

88. Prospect also welcomed proposed changes to the NII structure, including creation of satellite NII offices in London and Cheltenham, alongside the Bootle headquarters.<sup>63</sup>

89. The Government plans to legislate to establish the Nuclear Directorate as a statutory corporation. This would create an autonomous body, but one that would retain HSE's overall governance. The Government expects this change to be implemented through a Legislative Reform Order (LRO) and to be established in autumn 2010 and hopes that

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<sup>60</sup> Tim Stone, Senior Advisor to the Secretary of State for Energy and Climate Change and to the Chief Secretary to the Treasury, *Nuclear Regulatory Review, Summary Recommendations*, December 2008

<sup>61</sup> *Ibid.*

<sup>62</sup> “Nuclear inspectors welcome call for pay boost”, Prospect press release, 28 January 2009

<sup>63</sup> *Ibid.*

shadow arrangements could be put in place before then.<sup>64</sup> In June 2009, the Government published a consultation document which outlined its plans to create a:

“new sector-specific independent regulator, with a predominantly non-executive board, which reports to: (i) Ministers in respect of its regulatory functions; and (ii) Ministers and the HSE in respect of strategies and business planning”.<sup>65</sup>

90. During our visit to HSE’s headquarters in Bootle, we were told by HSE that the new organisation would remain within the public sector but would have greater flexibility to respond to the challenges it faces (including recruitment and retention difficulties).

91. We also met with Prospect representatives, who said that Nuclear Inspectors generally agreed that the decision to create a statutory corporation was the right one. However, this would be dependent on appropriate governance structures and assurances that Nuclear Inspectors terms and conditions of employment including pension entitlement would be consistent with the current position.

92. We asked Geoffrey Podger to clarify governance arrangements and the impact of the transfer on employees’ benefits. He explained that final decisions have not yet been taken by Ministers; however, he expected there would be separate board, on which HSE would be represented. In terms of status of employees with the Directorate, he said:

“The view is taken that those nuclear inspectors who will transfer to the new body will not remain civil servants. It is important to understand, as is part of Dr Stone’s review, the need to be able to pay comparable salaries to those which are available elsewhere in the nuclear industry, and it is certainly thought that this will be facilitated by those people no longer remaining civil servants. We are in discussions with HSE trade union colleagues in relation to the status of other staff. We certainly envisage that in relation to HSE administrative and clerical staff, who will initially move to the Authority, that they will be secondees and, therefore, they will ultimately have a choice over time as to whether they wish to join the new body permanently or return to us in HSE. There are some other specialist staff who are very important but who are not nuclear inspectors whose status we need to further consider with our trade union colleagues, and those discussions are going on at the moment.”<sup>66</sup>

**93. We welcome proposals to change the structure of the Nuclear Directorate on the basis that it enhances the transparency and efficiency of the regulatory regime and should resolve the recruitment difficulties it has experienced in the past.**

**94. We are pleased that the new body will have a separate board from HSE and we recommend that the Government consults on the governance arrangements before appointing board members. We ask the Government to keep us updated on progress towards the development of the new structure and we will return to this issue again as necessary.**

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<sup>64</sup> HSE website, *Proposed changes to Nuclear Directorate*, <http://www.hse.gov.uk/nuclear/ndchanges.htm>

<sup>65</sup> Department for Work and Pensions and Department for Energy and Climate Change, *A Consultation on the Restructuring of the Health and Safety Executive’s Nuclear Directorate*, June 2009

<sup>66</sup> Q93

**95. For those staff who are permanently transferred to the new body it is imperative that their rights under TUPE legislation are protected. We ask HSE to provide further information on the implications of this transfer and to ensure that the move does not impact negatively on those affected.**

# Conclusions and recommendations

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## Introduction

1. The Committee welcomes the establishment of a tower crane register. This will help to improve the control and management of risks in the use of tower cranes. We ask HSE to keep us informed of progress in the development of this register. (Paragraph 3)
2. We welcome Rita Donaghy's report, especially the recommendations to incorporate safety requirements into building regulations and to extend the remit of the Gangmasters Licensing Regulations to include construction. We urge the Government to accept both these recommendations in full. (Paragraph 6)

## HSE going forward

3. We welcome HSE's new strategy, particularly its focus on working with others. It is important that HSE has measurable benchmarks and timetables for its work, to allow proper scrutiny of its activities, and we are pleased to see that HSE's Business Plan for 2009/10 provides details of how it will achieve the objectives it sets out in its strategy. We will monitor progress towards these goals over the coming 12 months. (Paragraph 11)
4. We note with interest the findings of research on behalf of HSE, which suggested that the number and rate of accidents and injuries go down in a recession. However, given the cost pressures workplaces face in an economic downturn, we believe it is crucial that HSE continues to provide appropriate advice and support to businesses, especially SMEs, to emphasise the importance of ensuring that health and safety is not compromised during this period. We welcome the work HSE is undertaking with partner organisations to promote the importance of good standards of health and safety and we will continue to monitor HSE's approach as the economy comes out of recession. (Paragraph 15)

## Occupational health

5. The quality and coverage of ill-health data remains too low and incomplete. However, HSE acknowledges this fact and appears to be working hard to try and improve this. We welcome HSE's commitment to increasing the accuracy of ill health data and ask that HSE keeps us updated on its efforts to improve this further. (Paragraph 18)
6. We are disappointed that HSE continues to miss its targets for ill health but believe that this is inevitable unless significantly more effort is made by other parts of Government, employers and employees to reduce working days lost and work related ill health. (Paragraph 26)
7. As a starting point, data collection and sharing must be improved. We welcome the establishment of a National Centre for Working Age Health and Well-being and

urge the Government to ensure that one of the Centre's core aims will be to significantly improve the quality of ill health data. (Paragraph 27)

8. We also ask the Government to explore the possibility of improving the level of detail provided in The Health and Occupation Reporting network (THOR) reports to allow HSE to identify patterns of illness. Furthermore, we believe that anonymised data derived from the new electronic fit note must be shared with HSE. (Paragraph 28)

### Prosecutions and enforcement

9. We do not accept that the fall in prosecutions by HSE is insignificant. In 2003/04 HSE prosecuted 1,720 offences compared to 1,028 in 2007/08 – a reduction of around 40% over four years. The importance of prosecution, both as a response to those who breach health and safety law and as a deterrent to those who might, cannot be underestimated. We call on HSE to explain why there has been such a significant drop in the prosecutions it has taken since 2003/04 and how it will reverse this trend. (Paragraph 31)
10. We welcome the introduction of the Health and Safety (Offences) Act which will give courts greater powers of sentencing and increase fines for those who breach health and safety legislation. We are encouraged by HSE's commitment to pressing for higher penalties where they are justified and will monitor its success in doing so. (Paragraph 35)
11. We are sympathetic to the complex process involved in developing the sentencing guidelines for corporate manslaughter convictions. However, we are disappointed that 18 months after the Sentencing Advisory Panel's first proposals, the final guidelines are still not available. We ask the Government to confirm the publication date for the guidelines before the end of this parliamentary session. (Paragraph 37)
12. The findings of recent research suggest that director level awareness of guidance on health and safety legislation is unacceptably low. Furthermore, Rita Donaghy's recent inquiry into fatal accidents in the construction industry recommended that positive duties should be introduced for directors. We await the findings of HSE's evaluation of its voluntary guidance for directors with interest and maintain that if this approach is proving unsuccessful, statutory duties should be **introduced**. (Paragraph 45)

### Worker engagement

13. We were very impressed with the efforts the Olympic Development Authority has made to encourage worker engagement in health and safety. For example, we commend the operation of a private hotline for workers who wish to raise health and safety issues. We hope HSE disseminates the practices of ODA to other organisations, as an example of how to develop a positive health and safety culture in the workplace. (Paragraph 51)

14. We welcome HSE's plans to pilot approaches aimed at improving worker engagement. If the pilots prove successful, we urge HSE to invest in a worker engagement scheme on a permanent basis. We accept that there are many pressures on HSE's resources; however, increasing worker involvement in health and safety is an investment that will reap its own rewards in the long term if health and safety standards are improved and accidents avoided. (Paragraph 54)
15. Blacklisting is a reprehensible practice, which acts to discourage and undermine worker involvement and accordingly threaten health and safety standards in the workplace. We welcome the Government's intention to introduce regulations to ban blacklisting and ask for assurances that it will ensure this practice is eradicated completely. We look forward to receiving further information about the initiatives HSE are undertaking to address the issue. (Paragraph 60)
16. We welcome the appointment of 24 fixed term inspectors to HSE's construction division and see this as a useful response to the disproportionate numbers of fatalities in this sector. We agree that HSE should not downscale its investment in construction and believe it is important that the regulator has the resources it needs to sustain this increase in inspectors on a permanent basis. (Paragraph 66)
17. We welcome the publication of Rita Donaghy's report on fatal accidents in the construction industry, which provides a comprehensive overview of the challenges to lowering fatalities in the sector. We are pleased that the conclusions of the inquiry support a number of recommendations from our previous reports and we await the Government's response with interest. (Paragraph 69)
18. HSE's recent inspection blitz in the refurbishment sector has highlighted the persistently poor health and safety records of many companies within it. We commend HSE's targeted approach to enforcement in this area but believe more must be done to address the sector's high levels of accidents and fatalities, particularly among those working for SMEs. We fully endorse Rita Donaghy's conclusion that building controls could provide a mechanism for improving site safety and we therefore recommend that the Government incorporates safety requirements into building regulations. (Paragraph 75)
19. We note the concerns of UCATT that bogus self-employment may make workers more vulnerable to health and safety risks. HSE efforts to correct and reclassify the employment status of fatally injured workers are useful for ensuring that family members are able to claim for compensation. However, we are concerned that the Construction Industry Scheme (CIS) may provide the loop hole that allows bogus self-employment in the first place. We ask the Government to examine whether this is the case. In the meantime, Revenue and Customs should ensure that it communicates the risks of bogus-self employment to those participating in the CIS. (Paragraph 83)

## **Nuclear Directorate**

20. We welcome proposals to change the structure of the Nuclear Directorate on the basis that it enhances the transparency and efficiency of the regulatory regime and

should resolve the recruitment difficulties it has experienced in the past. (Paragraph 93)

21. We are pleased that the new body will have a separate board from HSE and we recommend that the Government consults on the governance arrangements before appointing board members. We ask the Government to keep us updated on progress towards the development of the new structure and we will return to this issue again as necessary. (Paragraph 94)
22. For those staff who are permanently transferred to the new body it is imperative that their rights under TUPE legislation are protected. We ask HSE to provide further information on the implications of this transfer and to ensure that the move does not impact negatively on those affected. (Paragraph 95)

# Annex: Committee Visit Notes

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## Committee visit to Health and Safety Executive, Redgrave Court Bootle 18 May 2009

### 1. Construction

#### Fatalities

- There has been a decrease in fatal accidents in the construction industry. It will be challenging for HSE to maintain this or to decrease the fatality rate further, as many easy wins have already been achieved.
- By working closely with industry, HSE has almost completely eradicated fatal accidents in commercial roofing.

#### Resources

- There are 157 frontline inspectors – 22% of whom are in the Field Operations Division (FOD).
- HSE is recruiting 24 fixed term inspectors on two-year contracts. The appointments will be made from industry (e.g. site managers, senior engineers). The fixed term inspectors will be executive officers; they will be warranted and will therefore be able to issue prosecution and enforcement notices but they will not undertake investigations.
- Concerns were raised by Prospect about the scope of the fixed term inspectors' work and how they would be perceived by industry; however, Prospect did welcome the increase in frontline resources that the appointments will create.
- Inspectors' salaries were increased in the last pay round, which means they are less likely to leave as a result of low pay. However, frustrations with the lack of opportunities for promotion is an issue in the retention of existing staff.

#### Leadership

- The Construction Summit was key to challenging the industry. A public declaration was made on targets to hold industry to account. The summit raised the profile of health and safety in the industry and galvanised stakeholder involvement.
- HSE has established a national lead inspector initiative – where inspectors contact company boards to discuss health and safety awareness at board level.

#### Involving the workforce

- The “worker engagement decision tool” has been developed to measure the success of worker engagement in health and safety by employers.
- HSE has been doing a large amount of outreach work to ensure that vulnerable workers are also engaged. For example, HSE has developed relationships with the Polish Embassy aimed at improving health and safety awareness among Polish migrants.

#### Small to medium enterprises (SMEs)

- HSE has signed an accord with local authorities with the aim of improving the notification of the health and safety concerns of SMEs to HSE.
- There is a disproportionately high number of health and safety incidents in organisations employing less than five people and this is a particular problem in the refurbishment sector.
- HSE needs to work much closer with insurance companies to ensure that their clients are aware of health and safety risks. There is also scope for building societies to do more to raise awareness among home owners, who take loans for refurbishment, of the need to ensure that their contractors operate safely.
- The importance of those at the fringe of the refurbishment sector is key to improving standards of health and safety – for example there may be scope for incorporating health and safety requirements into building regulations.

#### Blacklisting

- HSE was aware of the blacklisting case brought by the Information. HSE has emphasised that, where workers felt that they cannot raise health and safety concerns onsite in the usual way, they can contact HSE directly and the case will be treated in confidence.

#### 2. HSE resources and expenditure

- HSE is now in a position to recruit more inspectors. The appointment of the fixed-term construction inspectors will protect and enhance its FOD and HSE will monitor the impact of these appointments on health and safety in the sector.
- Prosecution case work in HSE has become more complex. Litigation teams now do some of the work, rather than just inspectors.
- A complaints handling team has been set up to deal with 90% of complaints to HSE. Staff will be Grade 5 executive officers, specially trained to respond to a range of complaints. The most difficult 10% of calls will be passed to inspectors.

#### Review of incident selection criteria

- HSE is examining whether inspectors select investigations ruthlessly enough and whether HSE is disengaging quickly enough if it is found that an incident does not merit prolonged investigation.

#### Sentencing and penalties

- HSE is pushing for more proportionate penalties and accepts that there is inconsistency of sentencing around the country. Progress towards the development of sentencing guidelines has slowed but HSE hopes that, once they are in place, they will improve regional consistency.

#### 3. Offshore Division (OSD)

- Positive progress has been made on installation integrity, although performance is still variable. Cross-industry learning must be improved to address this.
- There had not been a fatal accident in the offshore industry for two years. There were 30 major injuries last year but this is the lowest since 1992, when HSE took on oversight of the industry.
- There has been a significant fall in reported major hydrocarbon releases, with just one in the last twelve months, compared to around 10 – 15 in previous years.
- HSE has held two events aimed at improving workforce involvement, one in Edinburgh and one in Norwich. A further event was being held in June in Aberdeen and had been heavily oversubscribed. The events focus on risk control and awareness. There is also a workforce involvement group, which works with the Secretary of State to produce a separate report on installation integrity.
- “Step change in safety” has also set up a workforce involvement group to look at what stimulates good workforce involvement. This initiative is industry-led.

#### Recruitment and retention of OSD inspectors

- It is a continuing challenge for HSE to recruit OSD inspectors in a very competitive market, although it has negotiated a better pay settlement for inspectors with the Treasury.
- A particular problem for the OSD is its ageing workforce. To address this, the OSD has just started a major recruitment campaign and HSE hope this will be more successful than previous rounds.

#### Role of Oil & Gas UK / Step Change in Safety

- Oil and Gas UK (OGUK) is a powerful voice in the industry, which took the “Step Change in Safety” programme under its wing and aims to improve health and safety through this sector-wide programme. HSE has had considerably more access to the board of OGUK than previously and this has led to greater sharing of accident and injury data across the industry so that companies know how well they are performing against their peers.

- There are key performance indicators (KPIs) for three areas: hydrocarbon releases; backlog of maintenance; and overdue work identified by verification bodies. The KPIs will provide information that can be used to produce benchmarking tools.

#### Key future challenges

- Economic downturn and the impact on oil prices;
- Conditions of infrastructure;
- Loss / shortage of skills;
- Changing patterns of ownership;
- Innovation / costs saving technologies;
- Decommissioning / reuse of infrastructure

#### 4. Relocation of HSE from Rose Court, London to Redgrave Court, Bootle

- Over £2 million has been spent on recruitment and the re-appointment of London-based staff.
- HSE will save £5.6 million per annum when it eventually gives up Rose Court.
- Overall savings from the move are expected to reach £52 million over 10 years.
- 350 employees decided not to relocate, of these only 31 do not have a planned exit.
- 144 new posts have been created in the new head office, Redgrave Court in Bootle. 85 of these have already been filled.

#### Meeting with Prospect representatives

##### 1. Nuclear inspectorate

- In 2004, a new process was brought in based on four criteria which would be used to determine the pay deal of nuclear inspectors: recruitment date; retention date, marker rates and business needs.
- Nuclear inspector salaries had been uncompetitive for a considerable time but in 2007/08, salaries were increased by 15.7% and 14% respectively. Prospect welcomed the increase, which should allow HSE to recruit the inspectors it needs.
- Nuclear inspectors generally agreed that the Government's proposals to create a statutory corporation are the right ones. However, three issues are seen as crucial to the success of the new organisation:
  - Governance – a new board should be established that is representative of the industry. Prospect members would be deeply uncomfortable if the current HSE board was involved in the governance of the new corporation.
  - Organisation – inspectors are currently rotated and therefore do not inspect the same company for more than three years. The new body must set out clearly whether it plans to retain the method of rotation currently used in the Directorate.
  - Benefits – Inspectors should not be excluded from civil servants' benefits (e.g. pensions).

##### 2. General and construction inspectors

- General inspectors' salary increases look favourable when compared to other civil servants – but these salaries should be pegged to industry equivalents, not the civil service as a whole. Pay increases for general inspectors were on the back of below inflation increases for the last two years.
- The appointment of 24 fixed term inspectors has responded to concerns about a lack of inspectors but has raised new issues. There is a danger that there will be a drift towards the fixed term inspectors concentrating on proactive work, whilst permanent inspectors do all the long-term investigations.
- Prospect fears that the industry may see those on fixed term appointments as “second rate” inspectors. The new inspectors are a response to political pressure to increase the capacity

of the inspectorate and it is important that a long term solution is found, rather than just resorting to a temporary “sticking plaster”.

### **Notes from the committee’s visit to the Olympic Development Authority (ODA)**

**9 June 2009**

#### **Lawrence Waterman, Head of Health and Safety, ODA**

The ODA believe it is crucial that health and safety is considered in the context of legacy in the construction of the Olympic site. Many buildings onsite are designed to be removed, so deconstruction is a key part of the health and safety considerations.

There are currently 4,500 workers on the site (which is approximately 60% of the expected peak workforce). The ODA predict that the peak numbers may actually be lower than planned but they still expect building to be completed ahead of schedule.

Electricity on site – A 13 kilometre tunnel has been built to lay the electrics for the park. Only 6 accidents were reported during the building of the tunnel, none of which led to a permanent disability. The construction team has been extremely vigilant; work stopped for one month after they hit contaminated ground.

Soil cleaning plant – 90% of materials on-site are reused. Soil is categorised into three groups for re-usage, depending on its cleanliness.

Velodrome – The principal contractor on this building was undertaken by ISG, who have made an exceptional start from a health and safety perspective. They meet with their subcontractors once a month to discuss health and safety results on site.

#### **Challenges**

The scale of the project and the time scale in which it must be delivered present significant challenges to the ODA. The Olympic site is the equivalent of building two Terminal 5s in half the time. Usually more speed leads to more health and safety incidents but the ODA was reported to be “class leading” in this area. This is because the health and safety programme on site goes through a very specific process and contractors know exactly what is expected of them. Prior to contracts being awarded, there was a six-week period where the ODA made their expectations clear to all potential contractors.

The ODA ensures that principal contractors take full responsibility for the subcontractors’ work. As far as the ODA is concerned, outsourcing practical delivery should not equate to an outsourcing of responsibility. When there are “near misses” in health and safety, the ODA will discuss how these situations can be avoided in the future with principal contractors.

#### **Worker involvement**

The ODA operates a telephone hotline, independent from any contractor, which workers can call if they have health and safety concerns. Calls are treated in confidence and the ODA follows up all incidents reported.

The ODA stipulates that contractors must ensure that migrant workers are fully aware of health and safety standards on site. Some contractors operate buddy schemes for those who speak little English and there are multi-lingual signs throughout the site.

The ODA is about to hold its awards ceremony to highlight the importance of health and safety. Adjudication has been undertaken by the bodies outside ODA, such as the Institute for Occupational Safety and Health (IOSH).

**Dr Marianne Dyer, On site Medical Director**

The ODA operates an on site occupational health (OH) service, which is free to all staff. Some contractors also offer their own OH service.

All new workers go through an induction before commencing work on site. This includes a medical assessment and then potentially an interview with a nurse. Those working in “safety critical” roles must see a nurse. Approximately a third of safety critical workers are found to have a medical issue and about 50 % of those did not previously know they had a problem. The role of the OH staff is to try and find a way to keep individuals in work and support those who need time out to return as quickly as possible. So far, all safety critical workers that have been prevented from work due to a health issue have returned to employment once their medical complaint had been addressed.

A full range of clinical services are available in the Olympic park, including an emergency response unit – which includes an ambulance and fully trained accident and emergency (A&E) nurses. The unit has a five minute response target, which has so far been met. Of the 44 A&E calls taken, only 25% have required a call a to the London ambulance service. The average waiting time to see an on site nurse is just 7 minutes. The ODA also operates a visiting GP service.

A condition of employment, which is supported by trade unions, is that all workers on site must undertake drug and alcohol testing. 4% of these tests have come back as positive and a refusal to take the test is counted as a positive result. Where someone is found positive for drugs or alcohol, their site pass is revoked.

# Formal Minutes

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**Wednesday 8 July 2009**

Members present:

Mr Terry Rooney, in the Chair

Miss Anne Begg  
Mr Oliver Heald  
Mr John Howell

Mrs Joan Humble  
Mr Tom Levitt

Draft Report, Workplace health and safety: follow-up report, proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 95 read and agreed to.

*Resolved*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Monday 13 July at 4 p.m.]

## Witnesses

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### Monday 26 January 2009

*Page*

**Rita Donaghy**, Chair, Inquiry into the Underlying Causes of Construction Fatalities Ev 1

### Wednesday 10 June 2009

*Page*

**Judith Hackitt** and **Geoffrey Podger**, Health and Safety Executive Ev 12

## List of written evidence

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1	Rita Donaghy, Chair, Inquiry into the Underlying Causes of Construction Fatalities	Ev 9
2	Trades Union Congress	Ev 24
3	Union of Construction, Allied Trades and Technicians	Ev 26, 33
4	Department for Work and Pensions	Ev 28
5	GMB Union	Ev 36
6	Federation of Master Builders	Ev 41
7	Olympic Delivery Authority	Ev 46
8	Health and Safety Executive	Ev 47