



House of Commons
Work and Pensions Committee

Workplace health and safety: follow-up report

Fourth Report of Session 2008–09

Volume II

Oral and written evidence

*Ordered by the House of Commons
to be printed 8 July 2009*

HC 635-II
(Incorporating HC 187-i)
Published on 16 July 2009
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

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*)
Mark Harper MP (*Conservative, Forest of Dean*)
Oliver Heald MP (*Conservative, Hertfordshire North East*)
John Howell MP (*Conservative, Henley*)
Joan Humble MP (*Labour, Blackpool North and Fleetwood*)
Tom Levitt MP (*Labour, High Peak*)
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.

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. 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).

Contacts

All correspondence should be addressed to the Clerk of the Work and Pensions Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5833; the Committee's email address is workpencom@parliament.uk

Witnesses

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

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

Oral evidence

Taken before the Work and Pensions Committee on Monday 26 January 2009

Members present:

Mr Terry Rooney, in the Chair

Harry Cohen
Michael Jabez Foster

John Howell
Tom Levitt

Witness: Ms Rita Donaghy, Chair, Inquiry into the Underlying Causes of Construction Fatalities, gave evidence.

Q1 Chairman: Good afternoon, everybody, welcome. As you will be aware, the Committee did a health and safety report some five years ago and a further report this year and in both of which we were very concerned about deaths in the construction industry. Indeed, in our report this year we pointed out that things had got worse, not better, since our previous report. We were pleased that the Secretary of State announced this specific inquiry into deaths in the construction industry, we were disappointed it took five months to set it up, but we are where we are. Good afternoon, Rita, welcome.

Ms Donaghy: Good afternoon, Chair.

Q2 Michael Foster: Good afternoon. The terms of reference, are they adequate, are they wide enough to establish the root causes of construction accidents? If not, what do you think they should be?

Ms Donaghy: I think they are. I think that the letter that I had from the Secretary of State, and certainly the meeting I had with him, made it quite clear that I did not have to confine myself to what we might call the narrower issues of health and safety, so I am satisfied that I can poke into all sorts of corners. The work of the academic group, it is hoped, will help with the literature collection, both internally to the health and safety industry and externally to give international comparisons and, if you like, that work will go in parallel with the work that I have already started and have been doing for just over a month. It is a bit like saying was a mortgage good or bad; I could probably tell you at the end of it if it was sufficiently broad. At the moment I am not feeling inhibited in any way whatsoever.

Q3 Michael Foster: In terms of a timetable, the best we have heard so far is what *Construction News* say and they reckon it is going to be available in late spring. Is that a reasonable guess? What did the Secretary of State ask of you in terms of the timetable?

Ms Donaghy: That is absolutely right. I think it is probably important that I stick to that timetable.

Q4 Michael Foster: So we should receive your final report by late spring. I know in parliamentary times spring is a moveable feast, but are you able to be any more precise than that?

Ms Donaghy: I very much hope that it will be in the hands of the Secretary of State by the last day of April. I hope. That is my intention. If it slips I will have to do some explaining, I think.

Q5 Michael Foster: Thank you for that. Tell me, do you have the right resources, budget? What is your budget for this and what sorts of other resources are available to you?

Ms Donaghy: I am delighted to say I do not have a budget. So far everything that I have asked for has been provided. I have members of staff at the Health and Safety Executive and the communications people from the DWP are assisting me, and I have a small office in Rose Court which, as you know, Chair, is the headquarters of the HSE. I am doing quite a lot of work from home and most of my meetings with stakeholders tend to be around London in their own places. That is my preference.

Q6 Michael Foster: Generally, are you getting co-operation from the parties, both sides of the industry?

Ms Donaghy: I have been quite taken aback by the amount of time that people are prepared to give to me. They have been really generous in terms of their time and their commitment. I have still got a lot of meetings to fix up but at the moment I am really very, very pleased. Also, I am pleased with the follow-up afterwards, people sending me things and more information. I have been quite impressed by the level of dedication and commitment of the people I have met.

Q7 Michael Foster: You obviously do not have the powers of a judicial inquiry.

Ms Donaghy: No.

Q8 Michael Foster: But do you have sufficient powers, or perhaps influence, to dig out the information that you require. You say people have been co-operative, but have you yet come across any situation where you would have liked to have powers that would explore areas that you have not really felt able to do so?

Ms Donaghy: No, I have not yet. I have only really started this work. What I have not yet done is think about the implications for other government

26 January 2009 Ms Rita Donaghy

departments because, as you know, there are lots of fingers in this particular pie and I think there will be implications for a number of government departments and I have yet to see what kind of co-operation I will get, but I am optimistic.

Q9 Michael Foster: Do you have specific priorities that you want to see achieved by the end of this or are you just looking and seeing what might happen? If you do have some specific priorities, particular issues that you think are relevant to the purpose of the inquiry, what are they?

Ms Donaghy: First of all, I acknowledge that there is a huge amount of work being done in this area. This is about layers of experience from all of the different interested parties, not least this Committee and certainly the work that it has done has saved me, I suspect, quite a lot of time and effort. I intend to build on the knowledge that exists, I do not see any point in reinventing the wheel. The literature collection and the analysis of existing research will help to back that up. I think it is my job to identify the gaps between intention and reality, to try to find out if it is the lack of regulation or the non-implementation of existing regulation where there is an important gap. It is my job to ensure that the best in the industry are doing their best, that the middle range of the industry who want to do better and could do better are assisted by open access to information and support, and, if you like, the bottom layers of those who do not know and do not care have sufficient sanctions against them to ensure better safety in the future. I think there are different ways of handling these things and it will be part of my job to identify where those gaps are. There seems to be quite a bit of difference between the theory and the reality and, again, it is part of my job to identify that. Equally, although I would not dream of doing the job that you did last year, which was the inquiry on the Health and Safety Executive, I think there may be implications from some of the work that they do, so I see it as my job to look at certain areas, not least the inspectorate, to see if there are any pinch-points and also the reliability of statistics, which is another area that I know your Committee was considerably exercised about, is another area that the academics will also want to do a little bit of work on.

Q10 Michael Foster: Have you any early thoughts about what the end game will be? You have mentioned the issue between theory and reality as something you want to explore further, but has your evidence so far come to any obvious conclusions that could be implemented, like tomorrow?

Ms Donaghy: You are asking me for the recommendations in the report.

Q11 Michael Foster: We can ask and you may say, "You must wait until the end of April". Is that what you are saying?

Ms Donaghy: I do not think I can give you a clue.

Q12 Chairman: Can I just pick up two things there. You mentioned many fingers in the pie and in all these things what used to be DTI, I forget what it is called now—

Ms Donaghy: BERR.

Q13 Chairman: It is in that department that notionally there has been a construction minister, although most of the construction ministers seem to spend very little time on construction. Are you going to be talking to the people in DBERR? Is that on your agenda?

Ms Donaghy: Chair, I do intend to do that. We have certainly invited the construction minister to arrange a meeting with me. Equally, I am quite interested in their agency inspectorate and I am going to try to fix a meeting with them. In some ways, BERR is quite key because I am aware that very often DWP and BERR cover the same subject areas, and I have no doubt the select committees do and, dare I say it, traditionally there are different philosophies that come out of those. It is very important to me to know what government thinking is in the different areas, particularly as there are such pressures possible in the construction industry and where, if today's news is to be believed, there might be pressures on construction and health and education because of lack of finances, it may be that BERR's preoccupation is more on the implications for the industry and I want to make sure that the health and safety angle is prominent in their considerations. I think that BERR is a very important department I should be talking to.

Q14 Chairman: Okay. You mentioned two or three times regulation and the clarion call from the CBI and others constantly goes out that these regulations are just burdens on business, yet the whole health and safety legislation is built on regulations. Have you heard that clarion call in connection with construction? How have you responded to it?

Ms Donaghy: I have not met the CBI yet but I know them well from my ACAS days, so I am not really surprised if that is their approach. As far as I am concerned, I want to know whether the actual regulations are inadequate or whether the implementation of those regulations is inadequate. If you look at Construction (Design and Management) Regulations (CDM regulations), which this Committee will be very familiar with, it was said to me by one of the inspectors, "If all of this was carried out there would not be any problems". I am interested, if you like, in the implementation of regulations and whether there are any weaknesses in their actual outcomes. Burdens on business is a consideration, and I think particularly in the small and medium-sized enterprises, but very often it is a question of people not knowing what they are required to do because the information has not been accessible. That is another interest of mine, that we should ensure whatever information is available is easily readable to the lay person and not wrapped in the kind of language that, I am afraid, you very often

26 January 2009 Ms Rita Donaghy

get when you enter the health and safety world as, in my experience, when you enter the employment world. We had exactly the same experience in ACAS where we were probably giving very good information out but it was simply not understandable to people who wanted to be better but who were not professionals, lawyers or easily able to understand the actual wording of regulation. Accessibility is another interest of mine.

Q15 Harry Cohen: The DWP's press notice of this inquiry said "independent academic peer reviewers with detailed knowledge of the industry" would assist you. Can you tell us who they are and what their qualifications for the role are, who selected them and what will they be doing?

Ms Donaghy: There are three of them: Professor Andrew Hale, David Walters from Cardiff and Sonia McKay from Metropolitan University. Their CVs, I think, are readily available. I do not have them with me. There were one or two who were unable to commit themselves to the time required. This has all been done very, very quickly, it has to be said. There may well have been a frustrating delay, Chair, but we have tried to get this off the ground as quickly as possible, so we did make it very difficult for the academics put in their tenders and satisfy the time requirements. The three involved are steeped in the industry and one in particular, Andrew Hale, has got very, very deep roots in international connections as well, which I think is his main strength. We have had the first meeting of the peer review group and the first phase is well underway. That is to do a peer review of a document that has been produced by the HSE which basically sums up the history of what has been happening in the last ten years in this whole area to decide whether or not that summary is adequate. The second part of that first phase will be to look at case studies for migrant workers. That work is underway and we are meeting again, I think, mid-February to gather our thoughts. We are going to have a schedule of meetings but, of course, a lot of their work will be done away from the meeting rooms, as it were.

Q16 Harry Cohen: Who chose them?

Ms Donaghy: Well, I did.

Q17 Harry Cohen: You chose them from who was available, they were not put on you by the DWP?

Ms Donaghy: Absolutely not, no. I have got the feeling, although that is not always a good thing, that the group is going to gel quite well. They are bringing different things to the party and that is the important thing, very different experiences and attitudes, and that is what you want from an academic group.

Q18 Harry Cohen: The inquiry when it was announced talked about three phases, or have I got that wrong? Can you tell us what they are and where you are at?

Ms Donaghy: To that extent there is going to be some overlap with these. I can describe them to you but I have got them on two sides of A4. Chair, I know that

you do not want to be drowned in paper but I have got enough copies for the Committee if you want it. I have summarised phases one, two and three in there if you want to see them.¹

Q19 Harry Cohen: That is useful.

Ms Donaghy: Rather than read out what is on the paper I can tell you how we are going about it, if that would help.

Q20 Harry Cohen: Yes, please.

Ms Donaghy: Firstly, as I say, the peer reviewers are looking at the comprehensive review as we speak. The peer review of phase two has already commenced its work. Phase two is going to be choosing a university which will carry out an external review of the industry together with international comparisons, any insurance considerations and company evidence about the root causes of construction accidents. In other words, that is going to be an external review done by a university which is separate from those peer reviewers, they have no direct interest in that particular study but they will be selecting that university. That process is starting now. We thought the sooner we asked that university to start that work, the better. To some extent our first meeting discussed both phases. Basically, we are looking at that deadline all the time. We are very, very conscious of the deadline and trying to get that work done on time. Phase three will be when I receive and review the phase one report and the phase two work and review all the work that I have done. In parallel to all of this I am meeting as many stakeholders as I possibly can of all interests within the time, but the Committee will appreciate, given your experience in the construction industry, it is not possible to meet every single organisation and group although I am doing my best to meet as many as possible.

Q21 Harry Cohen: Thank you for this document. *Construction News* reported that the inquiry would "trawl through ten years of HSE reports and closely examine around 50 fatality investigations". Again, in here both your peer group and the phase two external one talks about picking up a number of cases. I think phase two talks about 25 recent construction fatalities that they will be looking at. Just tell me how they will be chosen. Will they be cases chosen other than those presented by the HSE? Clearly all fatalities go to the HSE, I am not getting at that, but will the HSE be saying, "Here are the cases, do your investigation", or will you choose cases at random that may not necessarily be the ones the HSE want you to look at?

Ms Donaghy: Let me split those into two, if I may, Chair. The first ones are the 25 migrant foreign worker fatalities. This stems from a number of bits of work that have been done in this area and we are looking at the 25 cases to see if there is any pattern in these and whether there is an issue of vulnerable workers, in other words those who are not necessarily migrant workers but a wider definition

¹ See Ev

26 January 2009 Ms Rita Donaghy

maybe of vulnerable workers, ie those who are young, under-skilled or in their 60s. The intention of that one is, if you like, a slightly narrower one than the 25 more recent cases. One thing I will say is when looking at the 25 recent construction fatalities we have decided that we are going to look at them if they are not involved in legislation which means that they are not going to be yesterday's cases. When we had a discussion about this we decided that what we wanted to look for, there would not be any difference in the fact that they might be a little bit older as long as they were not tied up with legislation, legal processes, either in the hands of the police or the HSE prosecuting because we thought that might be fraught with difficulty. We are going to choose the cases.

Q22 Chairman: Sorry, can I just clarify this. Are you saying you will look at cases where the legal process has been completed?

Ms Donaghy: Yes.

Q23 Chairman: They are not excluded?

Ms Donaghy: We are not going to look at cases where the legal process is continuing, for obvious reasons.

Q24 Chairman: I can understand that.

Ms Donaghy: In a way it may mean that we are sacrificing "recent" as being really, really up-to-date, but as we met last week we were given the list of the latest ten fatalities since last November and two lines, if you like, of what they were. When you say "random", there is a difficulty about how you define random. We certainly want to select cases that are going to be useful to the inquiry. There are going to be some where if you just picked things at random you may get a case of somebody, and it is no less important, where it is one man on a ladder and the person was found deceased at the bottom of the ladder, no witnesses, no legal cases to pursue, everybody thinks it is fairly obvious what has happened and we are not going to get too much out of that for the inquiry. That is not to say it is not extremely important what happened to that individual and their family. What we want to do is maximise the usefulness of those cases for the inquiry. We are not pretending it is scientific and I think it is important that you should know that. What we do hope is to go into a lot of detail about how the information was collected in these cases, what I might call the recent cases, what questions were asked, how the information was recorded and whether, if you like, the verification and forms and all of that, the background work that the inspectorate do, are fit for purpose. We are going to have a whole day on a couple of cases even within that more to do with how the information is collected and to see if there is anything we can recommend in that area.

Q25 Harry Cohen: That is helpful. I appreciate that selecting appropriate ones to give you more information is better than a random approach.

Ms Donaghy: We are not pretending that either is scientific.

Q26 Harry Cohen: Who influences the selection? I come back to the point I was trying to get to. The concern would be if the HSE make that selection for you or influences that selection when part of the inquiry really is looking at how efficient the HSE is and, increasingly, in recent times the HSE has come under criticism. The second question to ask you is will you look at that criticism of the HSE? Will you be looking at the HSE, whether it is running efficiently, whether it has got enough inspectors in the front line? I have asked several questions there, sorry about that.

Ms Donaghy: That is okay, I think I understand. One is efficiency and one is resources.

Q27 Harry Cohen: And the selection.

Ms Donaghy: The first one is selection. The issue of who selects, I can assure you the academics have got a firm grip on looking at the information that is given by the HSE. It is given by the HSE and, where fatalities are concerned at least, the figures are reliable; the nature of the employment may not be. One of the interesting features we have found already is that the nature of employment is not necessarily something which the HSE would collect in a form that would satisfy everybody.

Q28 Harry Cohen: I am sorry to interrupt you, but can I just stop you there. You said the HSE will provide you with a number of cases and your academics will choose them. What about the possibility of the trade unions suggesting a couple of cases that they think raise particular concerns? Again, your academics could choose them or not. Why has it got to be just the HSE who provide the list you can choose from?

Ms Donaghy: I would have to think about that one. When it comes to efficiency and resources there may be areas where certainly I think it is my job to ask questions and to come up with recommendations. On the issue of the case studies, I think it is important that we do not make too much of them. What we are doing is enriching our experience and our knowledge. If I or the academic peer reviewers think for one minute that this is going to avoid areas of controversy I think we would spell it out very, very quickly. Equally, there is a layer of what you might call straightforward domestic-related fatalities and that goes to a whole different area of the construction industry, what I have been calling "the untouchables" where regulation and enforcement is the answer. With all due respect, spending too much time on them from the academic point of view is not going to get a different answer. I need to think about the comment Mr Cohen has made about receiving requests from others, but I am not sure that is appropriate. My gut instinct is that it is not appropriate. I am satisfied that information will not be hidden from us which might be useful to the inquiry.

26 January 2009 Ms Rita Donaghy

Q29 Chairman: There is just a suspicion that HSE are providing you with cases with the histories of 50 deaths and they are the regulatory body. There is an understandable suspicion that they may have selected cases where they acted perfectly, whereas there could be other instances where part of the contributory factors towards the death was lack of inspection or supervision or regulation by the HSE. Do you see what I mean?

Ms Donaghy: I do.

Q30 Chairman: It is almost like the guilty providing their own evidence, if you like.

Ms Donaghy: I do not think that the purpose of the case studies is about how effectively they were carried out. The purpose of the case studies is to find out how the fatalities took place and whether there are gaps in the behaviour of the industry that might have saved that particular life.

Q31 Chairman: Sorry, can I just turn it around a bit. Have you asked the HSE how and why these 50 cases were chosen? I think it would be interesting to know their rationale for the 50 cases they have chosen.

Ms Donaghy: Their rationale?

Q32 Chairman: Yes.

Ms Donaghy: Their rationale is it is in the terms of reference that they have been asked to provide 25 migrant foreign worker fatalities and 25 recent construction fatalities.

Q33 Chairman: Yes, I understand that. What I am saying is why were the particular groups of 25 chosen and not a different 25 cases in each category?

Ms Donaghy: I understand.

Q34 Chairman: I think that is a question worth asking.

Ms Donaghy: Those questions have been asked. The 25 recent construction fatalities have not been selected. The peer reviewers asked a number of questions about this at their first meeting and we have not got to that stage. I am now very conscious why you and Mr Cohen, Chair, are asking about that particular area and I will add it to my considerations. Thank you very much for that. It is certainly my view that there are strongly held views about the extent and number of inspections done and therefore it would be stupid of me not to ask questions about this. I am having a session with the head of operations. I have already had a session with the chief executive of the HSE. I think there is a number of areas which I want to explore, not least the problem of London which I am already beginning to think will be a bit different. There are strongly held views on different sides on whether there is a correlation between the number of inspections and the incidence of fatalities. Again, I think I have to look into that a bit more. There are strongly held views about how the HSE resources have been diverted away from inspection and into what you might call industry comfortable zones. There are strongly held views on the other side too. No matter how many inspectors you have—you

could treble or quadruple or multiply them by 100—they would still only be a drop in the ocean. There has to be some level at which you say: are there sufficient to be effective? Are they sufficiently experienced and qualified to be effective? Are there gaps between ideal effectiveness and what would be realistic in today's world of public financial constraint? One has to be practical about coming out with recommendations on that. On efficiency, that would be a bit more difficult for me. I am only interested in outcomes. Whether that is because of possible inefficiencies or whether it is because of inappropriate allocation of resources, in a way, that might be secondary. The outcomes are what are important. If it is something which is not happening or not happening enough, I think it would be sufficient for me to say that ought to be happening.

Q35 Harry Cohen: I think the London point is well made and worth looking at. Several things have happened in the corporate manslaughter law on the statute book, but also the change of headquarters. The HSE has changed its headquarters. Will you be having a passing glance to see if that has had any impact on output or is it too soon or is it outside your remit?

Ms Donaghy: This is something I know the Committee is extremely concerned about. You have done work on it in the report which I have read. I will be going to Bootle to one of the board meetings at the end of February so I can certainly ask questions about that but, unless there are gaps that have taken place as a direct result of this, I honestly do not think this ought to be the focus of the inquiry. It may be that things have happened because of the move. It is not something that I want to get involved in. If it has happened, it has to be put right.

Q36 Harry Cohen: In a way, you are the first one to look at it since it was done. I appreciate it is not the focus of the inquiry. That is why I said “a passing glance”.

Ms Donaghy: It might be a passing glance.

Q37 Harry Cohen: You will be aware of the criticism of the trade union UCATT. They called it an internal paper shuffling audit. They were worried that it could be that. That was their phrase. As important as that is that there will be a lot of relatives and loved ones of people who have died. Are they going to have any opportunity for input into your study? How will that work for them?

Ms Donaghy: Definitely. It will work in two ways. The first is that I intend to have two stakeholder groups to meet. It is also my intention to arrange a couple of visits to individual families. That will mean that I will go to their homes. Stakeholder groups are being diaried in at the moment. We are still waiting for some replies from some of the groups before we confirm. They know the dates but we are still waiting on some replies before we go ahead with those dates. I am extremely conscious that that is an angle that I have not covered yet.

Q38 Harry Cohen: You do not think it is an internal paper shuffling audit?

Ms Donaghy: I have already met the general secretary, Alan Ritchie, and Jim Kennedy, who is sitting behind me. They have been extremely generous about the time that they have given me on this inquiry. The proof will be in the pudding, to be honest. Why should I waste a lot of time, your time and their time, saying that I am going to do my best? I will do my best but they are quite understandably angry about what they see as a plateau of fatalities that is not disappearing. I understand that anger and frustration. Whether I share it or not will be a matter for consideration and report. They have made some very strong points to me about the nature of the employment relationship and subcontracting, many of which ring bells. As former chair of ACAS, the nature of employment relationships in any industry is quite important. Whether it inhibits a corporate culture of health and safety is an issue which I will be covering. On paper shuffling, there is a lot of paper. There are a lot of organisations. There are hundreds of acronyms. Getting to know those and the government initiatives that have taken place over the last ten years, of which there are many, is going to need a bit of shuffling of paper to get some coherence in this. I did say to the Strategic Forum last week I wanted to be convinced that there was not just a flurry of activity from leaders of the industry every time government takes an initiative and then it settles down with a sigh of relief before the next initiative takes place. I wanted to be assured that that was not going to be the case.

Q39 John Howell: The three major groups that you are dealing with are the industry, trade unions and the HSE itself. You talked about stakeholder groups as a means of engaging with them. Would you like to say a bit more about how with each of those you are looking at engaging with them and how you can make sure that the people involved there reflect a good balance across particularly the trade unions and the industry?

Ms Donaghy: There are two unions that I have not met, UNISON and GMB. I have a date for GMB. I do not have a date for UNISON, but I have met the other unions already. I have met, dare I say, the two halves of UNITE? Is that allowed? I have met UCATT of course and the TUC. I have made an offer to UCATT that I would very much like to schedule a date with them. We are keeping in touch by telephone. I will be meeting the TUC again. I think I will be meeting the unions again through the Construction Industry Advisory Committee (CONIAC) on which they are represented. I think I will get a balanced view from the trade unions. On the employers' side, I have already been to a meeting of the Strategic Forum and of the health and safety group for the employers. I have had a meeting with John Spanswick, who again was extremely generous and gave me virtually a whole morning on the initiatives that he is trying to get the industry to take. It is my intention to meet the middle layers of construction. What I am intrigued about—we had the same dilemma in the Low Pay Commission—is

how you meet the untouchables. It is something I am trying to get my head round. The ones who do not know and do not care are the ones I am calling the untouchables. I am not sure that I have got my head around that one yet. How do I ensure there is a balance in all the views coming forward? I hope that will be a matter for judgment in the end but I have no doubt at all that there are some people in the industry who are trying very hard indeed to give it a better image. I have equally no doubt that some are rather complacent about the number of fatalities. It will be up to me to tease out where the shoe pinches, if you like, in terms of effort.

Q40 John Howell: Would you say that those were the principal influences so far coming out on this?

Ms Donaghy: No. This is not something I can give you an indication of without looking as if I am pre-empting meetings with the peer reviewers. I have personal reactions from the meetings that I have had. Incidentally, I suppose there is another group. When I referred to stakeholders earlier, I was talking about pressure groups. The other stakeholders will be the professional health and safety people, the Institute of Occupational Safety and Health, the lawyers. The local authority has a particular bearing here, I think. There are lots of groups in the training area, CITB—construction skills. I have already met the construction skills side of it so there are huge implications for competency and significance of carding in the industry, where there seems to be very little relationship between the carding and the level of competence in certain areas of the industry, which again I think is a huge gap. That area of stakeholders I have not had very many meetings with yet but the Construction Forum was extremely useful on Thursday because it enabled me to get invitations from about half a dozen people from different angles, not least the designers and the educators.

Q41 John Howell: What about the construction workers themselves? Are you going on to sites and talking to construction workers?

Ms Donaghy: Yes. I have only had one day but it is our intention to schedule another couple of days visiting sites. It was on 5 January. It was one of the coldest days of the year and I spent the day on Hackney building sites. It was a very interesting day.

Q42 John Howell: At the beginning of this, the relationship between UCATT and the HSE was not particularly good, certainly in terms of the press comments that were flying about all over the place. We heard comments about vested interests being involved and trying to downgrade the inquiry's significance. What is the relationship now as you see it?

Ms Donaghy: I do not think it is my job to worry about the headlines or the relationships between organisations unless it has a bearing on fatalities in the industry. People can say what they like about me. I have probably been around long enough not to worry too much about people's comments.

26 January 2009 Ms Rita Donaghy

Q43 John Howell: I was not so much worried about what they were saying about you but about what they were saying about each other and whether that was going to get in the way of a cooperative inquiry.
Ms Donaghy: I do not believe that it will get in the way. There is a passion about the industry which will overcome that. It will not mean that people are going to like each other afterwards. I can only do so much. Having chaired the fire fighters' dispute and set up a constitution from what were some very poor relationships at the time, I can be optimistic that maybe my role is to try to improve that. I think people have strongly held views and they have an absolute right to give those views. I do not think it should get in the way of working towards a solution.

Q44 Harry Cohen: At the beginning you gave an answer about lack of regulation or non-implementation of regulation that you were going to have a look at. Some would say that regulation has been a failure and as part of that equation the possibility of statutory change should be there as well as part of your considerations. Is that going to be the case or is it just focusing on lack of regulation or non-implementation of regulation?

Ms Donaghy: I hesitate to give any pointers that might look like potential recommendations, but it is an area that I think we have to look at, whether existing regulations are sufficient or whether they are insufficient and whether, if they are sufficient, they are not promulgated in terms of prosecution or they are ignored in a widespread way by the industry. These are areas I have quite a legitimate point of view on. I think it is going to be quite difficult to identify. My guess is that the government's hope that I get the report in by the end of April is intended to give time in the legislative timetable if legislation is recommended, but I do say "if". I am not saying that I will necessarily but I thought that was why the timetable was rather constricted.

Q45 Harry Cohen: Are you able to tell us a little bit about your conversation with the Secretary of State? Did he put any limits on you or did he direct you in any way?

Ms Donaghy: No, he did not. I have no doubt about his sincerity either in the importance of this area.

Q46 Harry Cohen: Did you get the impression that he would be prepared to act on your recommendations?

Ms Donaghy: The proof will be in the pudding. It is my intention to have a regular, keep in touch meeting with Lord Mackenzie while I am doing the work and I have that scheduled in already. I would like to keep this Committee informed of the work as well, Chairman. If it is just to have a meeting with yourself, I would be very happy to do that.

Q47 Harry Cohen: When you have done your report, is that the end of your role or would you see there being some follow-up?

Ms Donaghy: I think it is too soon to say.

Q48 Harry Cohen: What do you see as the success in terms of the report?

Ms Donaghy: Saving one life.

Q49 Tom Levitt: What was your gut reaction before you started as to why you think fatalities are so high in the construction industry?

Ms Donaghy: I think that is a leading question.

Q50 Chairman: Yes.

Ms Donaghy: Let me answer it in terms of my previous experience on the Low Pay Commission and as chair of ACAS. This is not scientific but it is something I have seen as I have gone around. In my experience, there is a correlation between employers who are bad employers from the employment relations angle, who pay below the minimum wage or paid low wages before the minimum wage came in and who have a poor health and safety record. You can usually spot them. I suppose I had a gut reaction that the stubbornness of the fatality rate could, to some extent, be that it is in the group of employers that have consistently bad records in the three areas. In other words, the lower bits of the triangle, if you are looking at the leadership which is represented by the Strategic Forum employers and the middle ranking ones—"We know we are not doing as well as we could but we want to do better"—and then the stubborn layer at the bottom that probably have not changed their practices in donkeys' years. My gut reaction is that that will be an area where significant changes ought to be made.

Q51 Tom Levitt: In bringing about that culture change, do you think sticks are as important as carrots? Do you reckon that sticks are more necessary than carrots or is it a mixture of the two?

Ms Donaghy: The lower down that triangle you get, the more they recognise a stick, I suppose, putting it in crude terms.

Q52 Tom Levitt: We have been here before. There was a construction summit in 2001 and in 2007 there was a plan for action. What impact did those two initiatives have and what can your inquiry achieve which they were unable to?

Ms Donaghy: They are part of the ten year comprehensive review, those initiatives, together with a number of others. It is going to be our job during phase one to look at those. I think they are important government initiatives and certainly the establishment of the Strategic Forum was an important initiative. John Spanswick's efforts to get rid of some of the overlap of effort are an important initiative. Judging whether they have succeeded or failed will be part of our look at this comprehensive review. A number of initiatives have come out. One of the areas that the HSE is least satisfied with is the extent to which the public sector—I am not quoting them; I am quoting me here—can be part of the solution instead of being part of the problem, that they have it within their bailiwick to exert levers to ensure health and safety standards are adhered to.

26 January 2009 Ms Rita Donaghy

Given the pressures on finances, particularly at the moment, it may be tempting to cut corners but the proportion of public works is going to grow, one suspects, and therefore a useful lever would be to ensure that public works have absolutely adequate health and safety standards.

Q53 Tom Levitt: It would also reflect upon the enforcement, judging by the numbers of inspectors available, would it not?

Ms Donaghy: One has to make a judgment to some extent. The HSE has made that judgment. It will be up to me to decide whether I agree with that. As I said earlier, you could multiply by a hundred the number of inspectors and that would still be a drop in the ocean given the number of sites that there are and the frequency with which they all move about on short term builds. Anybody would have to make a judgment. In my view, there is no scientific answer to that.

Q54 Tom Levitt: I would just note that a few months ago I had a visit from a health and safety inspector to my constituency office, reporting on the inspections that have been carried out in my constituency. That is an initiative which I very much welcome. Could I go back to this question of regulation? You talked at the beginning about whether there was enough regulation or whether it was enforced properly. Presumably there is a third element there which is the quality of regulation and whether it is the right regulation that we have. Bearing all those things in mind, we are now in economic downturn. Is it going to be more difficult to justify changing regulations or possibly tightening regulations than it was before the downturn started, or do you have to go ahead irrespective?

Ms Donaghy: That is why I want to speak to BERR, because their business considerations will probably take precedence over other issues. We want to be singing from the same hymn sheet to make sure they are as conscious of the health and safety imperative as they are of keeping businesses open. There is an important lever. If government really has the political will to improve the health and safety record in the construction industry, it will put its regulation where its mouth is and say, "We will not hire you unless you have a certain standard." It may be in that case that imposing existing regulations and making sure they work is sufficient. I have not yet decided if that is true. If there are gaps there, it is an opportunity to use this as a lever and also any fallow periods in the construction industry for extra training and competence, another area that construction and skills feels very strongly about. Let us take advantage of these situations and train where competences are not sufficient.

Tom Levitt: I could not agree more.

Q55 Chairman: A constant refrain in recent years has been the amount of resources that the HSE have and how they apply them. Is that something you will be looking at?

Ms Donaghy: Going back to an earlier question, I have been asked to look at the construction industry. It is not my job to worry about the resources and the other bits of the HSE. That might sound rather narrow but it is my job to look at the adequacy of the construction industry work. Resources will come into it. What has been said to me by a number of people is: "Yes, obviously more inspectors would be a good idea but not at the expense of inspectorates in other parts of the HSE." There is a concern that there might be redeployment at the expense of other areas that the HSE covers. I suppose the overall issue of resources must come into it.

Q56 Chairman: There has been a reduction of something like 40% in the number of inspectors the HSE has over the last five years. That is going back to my question about application of resources as well as the totality of the resources. There was a special pay deal done earlier this year for a nuclear inspectorate because they were having difficulties recruiting. That is a real issue. The totality of resources I think is beyond your inquiry. The application of them and whether there is a deprivation, particularly in the number of inspectors in construction, I assume is something that you will be looking at?

Ms Donaghy: Absolutely. I have asked for a special session with the particular head of department on this.

Q57 Chairman: I think he is sitting behind you.

Ms Donaghy: I am also quite interested in the issue of recruitment.

Q58 Chairman: In our report we made a particular recommendation regarding tower cranes and other plant which was massively resisted by the HSE and the Civil Service and the Department, although it is now going ahead. Where plant is involved, is that an area that you are also looking at?

Ms Donaghy: I am very aware of the important work that has been done by this Committee on that area. The timing is going to be important on this. I am aware that work is being done on the issue of the register. I think you had a particular concern about that, but I think recommendations register on all significant equipment, not just on tower cranes. Concentrating just for a moment on tower cranes, there is work being done by the Strategic Forum and by the HSE. I gather recommendations came to the HSE board on this. At the moment, it is my intention to wait for that to happen, to wait for the HSE board to take a decision. I may then feel that this is something I want to comment on but I do not think there is any point in overlapping the work at this stage. I am up to date on what has happened and I am aware of the difficulties on this. I am equally aware that work is being done and I want to wait for the recommendations to come out.

Q59 Tom Levitt: You are obviously a very experienced person in a number of different fields and much in demand. Are you taking on any other roles at the moment?

26 January 2009 Ms Rita Donaghy

Ms Donaghy: I was already a non-executive director at King's College Hospital Foundation Trust in south London. I have been since November 2005. I did that with my chairing of ACAS for a couple of years. That is all I have. I try to do six days a month on the King's College Hospital board.

Q60 Tom Levitt: Does that mean the rest of the time is available for this inquiry?

Ms Donaghy: I am making as much time as I can available for the inquiry, yes.

Q61 Tom Levitt: What knowledge of regulation do you have should you need to be recommending new legislation?

Ms Donaghy: No direct knowledge of regulation. Obviously ACAS was involved in producing codes of practice and working with lawyers on the production of these. I am clearly aware of current legislation. That is my area. I am not a lawyer but I know where to find them when I need them.

Q62 Tom Levitt: When your appointment was first announced, UCATT expressed some reservations about your perceived lack of expertise in health and safety or construction. Clearly you have kissed and made up to some extent but what was your reaction when it was suggested that you did not have the right background for this?

Ms Donaghy: I think people are entitled to their opinion. I did not react at all. It is not true that I kissed Alan Ritchie or Jim Kennedy.

Q63 Tom Levitt: Once again, the proof is in the pudding?

Ms Donaghy: The proof is in the pudding. Exactly.

Q64 Chairman: I know you are aware of this Committee's passion about this issue. We think the present situation is intolerable. You talked about a plateau. For two years of course there was an increase. One is one too many but when you get an increase in the number year on year that is appalling. We wish you every success. You will understand the Committee has some concerns about this, but we hope that you do get there. You mentioned the two halves of UNITE. I think that might be a case of four quarters. An absolutely key element to making any progress in this industry is empowering the workforce. While you have a cowed workforce—and you talk about the 20%; they do other things as well. They do not pay VAT. They often do not pay all the tax and NI that are deducted from wages—and while you have that, which is almost the worst element of what you see in gang masters, you have a cancer at the bottom of this industry that undermines everything else that goes on. We await your report with interest and thank you very much for sharing your time today. We do appreciate it.

Ms Donaghy: Thank you very much. Just because I have conducted this in a slightly lighthearted way does not mean to say I am not extremely conscious of the seriousness of the subject. I intend to approach it with as much thoroughness as I possibly can.

Memorandum submitted by Rita Donaghy, Chair, Inquiry into the Underlying Causes of Construction Fatalities

EXECUTIVE SUMMARY

1. On 4 December 2008, the Rt Hon James Purnell MP, Secretary of State for Work and Pensions commissioned an inquiry into the underlying causes of construction fatal accidents. Rita Donaghy CBE has been appointed as independent Chair of the inquiry and is to report to the Department for Work and Pensions (DWP) Ministers by the end of April 2009. The Health and Safety Executive provides resources and expertise to the Chair throughout the different stages of the work. A phased approach is being taken to the inquiry, with independent academic peer reviewers with detailed knowledge of the construction industry scrutinising and having oversight of the work. Considerable work has been undertaken to date and work continues to deliver the inquiry.

SUBMISSION

2. Memorandum submitted by Rita Donaghy CBE—Chair of the Inquiry.

3. Rita Donaghy CBE was Chair of ACAS between 2000–07 and has held a number of other public appointments including a Member of the Committee on Standards in Public Life and the Low Pay Commission. Rita was President of the TUC 1999–2000 and a Member of the TUC General Council 1987–2000.

BACKGROUND

4. On 4 December 2008, the Rt Hon James Purnell MP, Secretary of State for Work and Pensions commissioned an inquiry into the underlying causes of construction fatal accidents due to continued concern over the number of fatalities and the consequent need to examine what more could be done to improve health and safety.

5. Rita Donaghy has been appointed as independent Chair of the inquiry and is requested to report to Department of Work and Pensions (DWP) Ministers by the end of April 2009.

6. The Secretary of State has requested that the Health and Safety Executive provides resources and expertise to the Chair throughout the different stages of the work.

TERMS OF REFERENCE

7. The inquiry terms are to review the underlying causes of construction fatal injuries. The eventual recommendations may not be restricted to solely the health and safety system and may reflect wider issues. The recommendations may seek to strengthen existing work or may encourage new developments.

8. A key element, providing rigorous independent assurance whilst enabling personnel with ready access to data and systems to expedite the work, has been to engage respected and authoritative academic peer reviewers with detailed knowledge of the construction industry to scrutinise and have oversight of the work.

9. A phased approach has been adopted for the inquiry:

Phase 1

- (a) Comprehensive review carried out by HSE of recent work to consolidate and summarise existing knowledge of causal factors in construction fatal accidents. The review spans more than 10 years and includes work in 2008 examining the root causes of 25 migrant/foreign worker fatalities.
- (b) Independent peer review of Phase 1, with a report and recommendations for Phase 2. The review is being conducted by three respected independent academics who are providing independence and continuity throughout the work, directing and providing oversight of the conduct of Phase 2.

Phase 2

- (c) Research examining recent fatal accidents in construction and wider sources of evidence:
 - review and analysis of a further 25 recent construction fatalities carried out by HSE with independent oversight; and
 - external review of industry/international/insurer/company/trade union evidence about root causes of construction accidents and levers within and beyond health and safety systems to make further improvements.
- (d) Independent peer reviewers' summary interim report.

Phase 3

- (e) Independent Chair to receive and review Phase 1 report and oversee Phase 2 work.
- (f) Independent Chair to review all work and report to DWP Ministers and the HSE Board by 30 April 2009.

PROGRESS TO DATE

10. The inquiry is proceeding at a rapid pace. Work to date has included:
- Appointment of a team of independent academic peer reviewers.
 - Phase 1 review of recent work to consolidate and summarise existing knowledge of causal factors in construction fatal accidents. A draft report has been prepared for the academic peer reviewers by HSE.
 - A meeting between the Chair and academic peer reviewers to discuss aims and scope of inquiry, next steps and early review of Phase 1 draft report.
 - Series of meetings between the Chair and key stakeholders.
 - Day of construction site visits in London with the Chair accompanying an HM Inspector of Health and Safety.
 - Briefing for the Chair from HSE's Construction and Cross-Cutting Divisions.
 - Planning of Phase 2 work.

PLANNED WORK

11. Immediate next steps include:

- continued series of meetings with key stakeholders; and
- initiation of Phase 2 work.

January 2009

Oral evidence

Taken before the Work and Pensions Committee on Wednesday 10 June 2009

Members present

Mr Terry Rooney, in the Chair

Miss Anne Begg
Mr Oliver Heald

John Howell
Tom Levitt

Witnesses: **Ms Judith Hackitt**, Chair, and **Mr Geoffrey Podger**, Chief Executive, Health and Safety Executive, gave evidence.

Q1 Chairman: Good morning, everybody, and welcome to our evidence session with the HSE. Glad you made it with the travel difficulties. I am going to start. There has been a welcome for the general thrust of the new strategy but there are those who have said it is “sufficiently vague to allow stakeholders little to disagree with”. What is your response to that? Can you give us more detail on how you are going to implement the strategy?

Ms Hackitt: Certainly. I think the first thing to say is that we recognise at the outset that people would want to see detail, and so we tried to make it clear from the time that we launched the new strategy for consultation that we wanted to get agreement on the principles first and then the detail would follow. I think that has been a very important process, that we got people to agree on those principles before we started to flesh out what that means in detail. Having got that support, we have now produced our business plan for HSE for 2009–10, which very clearly shows how we start to adjust our programmes, to deliver parts of the strategy and the new work that we think we need to commission as part of that process, and we are also looking to other organisations to come and talk to us about their contributions, and a number of those discussions are already underway.

Q2 Chairman: How will you monitor the delivery of the strategy? How is that going to be done?

Ms Hackitt: The strategy includes four very clear objectives, one of which is about reduction in the numbers of death, injury and ill-health, and we have stated from the outset that improving the rate of reduction in those statistics was one of the primary motivators for why we embarked upon this strategy in the first place. What we have also said in our objectives is that whilst those numbers around performance are important we also want to measure the increase in the level of engagement of other people and the extent to which they are participating, and the extent to which we get people to understand what our real agenda is about rather than continuing to see us as being the butt of much of the media ridicule that we are currently. What we have made clear is that whatever numerical measures are used to measure our progress they will indeed be

measures not just of HSE’s performance but of the performance of all of the players working together to make this strategy real.

Q3 Chairman: As you may know, the Select Committee paid a visit to the Olympic site yesterday and I think by common consent their health and safety strategy and profile there is extremely good but one thing they did say was that historically, and indeed presently, the health side of health and safety has been sacrificed for safety. That is not to denigrate at all safety. How would you respond to that?

Ms Hackitt: I think we have always acknowledged that the health part of the health and safety agenda is inherently more difficult to manage. The problems manifest themselves later. The inability to distinguish between what is work-related as opposed to what happens outside of work makes it more difficult, so we have always recognised that it is the more difficult part of the agenda to deliver on. We know we have to correct that balance and ensure that in some workplaces where health is probably the bigger risk—and there are some where that may be the case—we need to encourage them to focus on what are the biggest risks in their workplaces.

Q4 Chairman: I think it is called the “fit for work” certificate or whatever, but you have this new system where GPs would be required to record the primary cause of the visit and that is stored in the GP’s computer but not transmitted anywhere. Have you had any discussions about some attempt to collate that information so you have some ability to identify patterns by postcode or whatever? Has anybody talked to you or have you talked to anybody else?

Ms Hackitt: We have been involved throughout in the Dame Carol Black work, and we have been very supportive of the initiative, but we have equally been clear about where our limitations lie in terms of the extent to which we can contribute to that and where we think our roles and responsibilities end. Geoffrey might want to say more about that.

Mr Podger: Just to add to what Judith has said, in trying to improve our data in relation to health, which, as the Committee is aware, is of concern to us, as it is to you, one of the things we have been specifically looking at is using what is called the GP THOR project, which is actually based on a group of general practices, which would then allow us to look

10 June 2009 Ms Judith Hackitt and Mr Geoffrey Podger

at ill-health not simply from the point of view of self-declared ill-health, which is not that unreliable an indicator but has obvious problems, but actually from the point of view of medically determined ill-health. A key point in this, as I am sure the Committee appreciate, is to actually get GPs to properly record the profession that the person has, what they are actually doing and where, and there is some work to be done before GP data generally can be used for the effect you suggest, but certainly we are very interested in using GP data and there are projects which the Department of Health have got off the ground which we are now beginning to tunnel into.

Q5 Chairman: So they are sharing that information?

Mr Podger: Yes.

Q6 Chairman: We have been told previously that would be in the possession of GPs but would not be shared.

Mr Podger: What we are getting is aggregated data from the THOR project. The data does not give specific names of individuals but it would enable you to link, for example, patients to place of employment and type of employment. So it has not gone as far as you have suggested but it is actually, I think, a good beginning.

Q7 Chairman: If you get the primary cause of the health issue, the occupation of the individual, the postcode where that individual lives and the postcode where they work, that surely then gives you a facility, I would hope, to start to identify patterns.

Mr Podger: Yes, and what we would get for the moment is a snapshot from those practices which are participating in this project. As I said, what we do not have at the moment, and we do not have the prospect of it, is that this would be universally rolled out.

Q8 Chairman: How many practices are taking part in this project?

Mr Podger: I cannot tell you offhand. I have a feeling it is about 30 or 40¹, from memory.

Q9 Chairman: What do you see as the main threats to health and safety in a recession and how are you working with employers to address that?

Ms Hackitt: The first thing is that we recognise that it puts businesses under pressure in terms of cost, and therefore we hear and 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. So, rather than wait to see whether that does indeed happen, we have taken a proactive approach of getting the message out there with many partner organisations, including ABI, the TUC, the CBI and so on that say, “Now is not the time to cut back on health and safety, and here is why” and give them some pretty sound business and economic reasons for that. However, having taken that first step, we have then

undertaken some particular reviews of what might happen in a recession, and I think it would be useful for Geoffrey to explain the work that we have had an economist do for us in terms of looking at that.

Mr Podger: We have actually had some work commissioned with the Institute of Employment Research at Warwick as well as using our own economists. It is interesting that their analysis of what is likely to happen in the present recession, based on previous recessions, is entirely mutually consistent, in that they believe that overall there is likely to be a reduction in injury during the recession but that actually masks confounding trends because there is likely to be a trend towards people cutting corners and, therefore, risking workers to a greater extent. As Judith says, we have already been making this point rather strongly in the launch of the strategy. Conversely, where the gain will come is simply because there will be fewer young joiners and, as you know, young joiners, particularly in manufacturing and construction, are very prone, unfortunately, to injury, and also there will be reductions in people’s working days, which therefore means that injuries related to tiredness and so on will reduce. What follows from this, however, which is of concern to us, is that it is actually the period coming out of the recession which can therefore actually be the riskiest, because that is exactly the point in time at which people will take on new workers and may be tempted to expose them to risks which they are not properly trained to manage. That is where there is another, as it were, risk coming up after the recession. On ill-health, the general view is that it is just not possible to define discernible trends. The other point which we have asked specifically, not only internally but with colleagues at Warwick, is whether you can actually quantify what this reduction might be, because, obviously, we are keen to be able to interpret the continuing fatal injury and major injury figures in the light of the recession and what alteration that might bring about, but I am afraid the outcome there is not promising; our academic colleagues say that they do not think you can.

Q10 Chairman: When you are talking about that reduction, is that in the bare numbers or is it in the rate of incidents?

Mr Podger: They would see it as a reduction in the bare numbers certainly. There is certainly the possibility of a reduction in the rate of incidents for the reasons I mentioned, which are that you may have the same number of people but working less hours, and also your workforce will not have the same proportion of new joiners in it, so the likelihood is it would affect both.

Q11 Chairman: There has been a long debate—and I know that in the consultation on the strategy this came up—about controlling the supply chain. Where do you think you have got with that?

Ms Hackitt: I think we are starting to get people to recognise the key role that they can play in that both in the private and public sectors. It does not surprise me at all that people’s focus in the first instance is on

¹ *Note by witness:* This figure was subsequently corrected in discussion to 270 (see Q21).

putting their own house in order, and rightly so, but with a number of the major employers for whom in-house health and safety is now very much built into the fabric, we have already engaged in some very useful conversations about where they can go next in terms of influencing their supply chains up and down, and certainly I think we are in a position to take that forward. The other area where this, I think, has real possibilities and where we intend to pursue with some vigour is in the public sector and in particular with local authorities. In the conversations we are now having with local authorities around the complexity of their role, which extends beyond them being simply co-regulators but also being large employers and, moreover, in relation to this issue, they are major commissioners of services from, often, very small businesses, we see some real opportunities to engage in some projects with local authorities where we will work with them to identify how they get the health and safety message into their supply chains.

Q12 Chairman: I forget the name of it now but there is a Bill going through Parliament that, in and amongst, deals with the payment systems for subcontractors. Have you been consulted at all on that?

Ms Hackitt: Not that I am aware of, no.

Mr Podger: Not that I am aware of.

Q13 Chairman: One cannot help feeling that if somebody is not going to be paid they might be less attentive to things than they would otherwise be.

Ms Hackitt: Yes.

Q14 Chairman: Yet nobody has seen fit to consult with you on that legislation. Coming back to supply chains and local authorities, have you had any discussions with people like building regs officers, particularly looking at house conversions and extensions, about the role they might be able to play in getting more safe systems of operation?

Ms Hackitt: 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. Equally, we are conscious, and I think it has to be said, we know that local authorities, not just in the regulatory arm that we deal with but elsewhere, are going to be under similar cost pressures to many other parts of the public sector, so we will need to think through how that might work and what it might mean in terms of resources. We are aware of it as a suggestion and very willing to explore it with them.

Q15 Chairman: Generally speaking, the applicant pays a fee for that service.

Ms Hackitt: Yes.

Q16 Chairman: So it is not an add-on cost for the local authority.

Ms Hackitt: Not at all, and 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.

Q17 Chairman: One of the major issues, and there will be other questions later on the construction industry; I do not want to get into that, is the almost dysfunctional nature of the construction injury industry and how it is organised. There is a world of difference between the very large companies and the vast majority of companies that just employ four or five people.

Ms Hackitt: Yes.

Q18 Chairman: With bogus employment and all that. That is an arena that you are never going to have the inspection service be able to monitor. You might do the occasional blitz. It strikes me you need to draw in all the tools you can, and one of the duties of building regulations officers is to actually be on site all the way through—not every day all day—and I think that is a tool that perhaps could be much better used than it currently is.

Ms Hackitt: Yes.

Q19 Miss Begg: I have some questions about how you can engage with other aspects of government and local government. Your working days lost target and your work-related ill-health targets were not met and the last time you appeared in front of us it became very clear that meeting these targets are not just in your hands; it is obviously how you interact with local government and other parts of government. What is it you are doing to try and hit those targets in the future?

Mr Podger: We are very heavily engaged in the Health, Work and Wellbeing Project, of which, of course, the Committee is well aware, which is a joint project with the Department for Work and Pensions and the Department of Health. We have been very clear, and it has entirely been accepted by the other parties that, as we described previously to the Committee, our role can only be in the prevention area; it cannot be in the treatment area. Also, very obviously, as we know, much ill-health that is found at work is at least multi-factorial and may have its origins in things which are found in the home and not in the workplace at all. What we are all agreed on is that we will continue to do our bit in the workplace but actually recognise that it is a greater problem and that HSE is not the body that can be looked to to take on these other aspects.

Q20 Miss Begg: You have already in reply to the Chairman's questions mentioned the GPs because that is obviously part of the data collection

Mr Podger: Indeed, and it is very strongly, as you know, part of Dame Carol Black's view as to how the system can actually be improved. It is by tying occupational health into the NHS, not by setting off

10 June 2009 Ms Judith Hackitt and Mr Geoffrey Podger

a separate occupational health service. That, undoubtedly, is a major area which would help the issue.

Q21 Miss Begg: Is there anything else you are doing with business? Obviously, the reporting and your data collection can be quite poor and it is not widespread across all sectors.

Mr Podger: No. The data collection, in fairness, does rely on the Labour Survey. Also, I should say, I have just in fact discovered through looking at my notes the answer to the Chairman's previous question about the number of practices in the THOR project, which is actually 270, if I may be allowed to correct that. I think there is no doubt that general practice is the key to this and it requires providing assistance to general practitioners in the area of occupational health, which is not traditionally one where they have been expert. As the Chairman was saying earlier, it is also about linking people to their workplace because, at the end of the day, we are all a single person; we are not a different person at work than we are at home, and if you do not look at people's health holistically, it seems to me you do not make progress.

Q22 Miss Begg: But are you doing any work with business to improve their reporting to you of work-related incidents and work-related ill-health?

Mr Podger: We already do put quite a lot of effort into that area, as the Committee will know, particularly with the RIDDOR issue. We actually have a system which is up and running at Caerphilly which actually helps businesses report. Let me say, I have myself listened in on calls from business and it is clear that people actually find our approach helpful. It is also clear, I may say, that there is quite a willingness on the part of business to report. I do not think we should take the view that people do not necessarily wish to do this. On the other hand, as I said before, we do have to realise that the RIDDOR system is not as useful as sometimes people think it is from this point of view, and actually the kind of THOR and GP-related data is probably more useful because over three-day absence data, for example, is not used by us for enforcement purposes at all, it is not obvious that it is very significant equally in terms of real health outcomes.

Q23 Miss Begg: What about your relationship with local government? Evidence would suggest that you are perhaps not fully happy with the operation of the new Local Better Regulation Office. Is that fair? If it is, what are your concerns? What do you think needs to happen to improve it?

Ms Hackitt: I think when we last spoke to this Committee the Local Better Regulation Office was new. We were waiting to see how things developed. I think we are now in a position to be able to report that we have had some very constructive conversations with them. The area, if we had any concern, was in relation to the proposal from the LBRO to set up a primary authority system for large multi-location businesses and how that would fit with the activity that we already have in place to

work with large organisations in our Field Operations Directorate. The recent discussions that we have had with the LBRO about how those two systems sit alongside one another and how they might work together have been very positive, and we have an ongoing work plan to bring the two things into harmony so they can sit alongside one another quite satisfactorily. So at this point we do not really have any concerns, and I think it is quite helpful to us to have the LBRO in place looking at all aspects of the many regulations that local authorities cover and for us to be able to feed into them our views on the health and safety aspects of that for them to deal with that broader context.

Q24 Mr Heald: Why has the number of prosecutions by HSE fallen again?

Mr Podger: Our view is that actually prosecutions are, relatively speaking, fairly stable in numbers. We prosecuted 1,028 offences in 2007–08 and that was broadly similar to the previous year.

Q25 Mr Heald: It was down, was it not?

Mr Podger: Yes, it was marginally down, but it would be extremely odd, frankly, if it always came to the same number or did not move up and down.

Q26 Mr Heald: It is the fourth year running that it has fallen.

Mr Podger: Even so, I do not accept at all—if this is your question, Mr Heald—that there is a downward trend which is just going to manifest itself forever. I think you can see that actually from the effort that we put into prosecutions, because, as you know, we ourselves no longer hit the 60/40 division between prevention and enforcement precisely because what we have done is move more effort into enforcement. We are very clear with our staff on the value we place on enforcement and, let me say, they are very clear that they share the same view, so there is no suggestion that the organisation is in some way weak on enforcement; we certainly are not. I think also it is worth saying, as we said to you before, that there is no doubt at all that the actual effort to bring cases is now greater than it was. We find fewer people are, frankly, prepared to plead guilty, which of course is their right but it inherently affects the amount of work that we do. It is also, I think, worth making the point that one of the things we have done of which the Committee was previously aware, and we have just done another one, is audit how close we come in our choice of cases to prosecute to the standard guidance which the Commission gives and which is publicly available. In fact, the audit we recently did showed in fact that we are actually getting closer, we were actually pretty close, I think within seven cases, of actually what a panel would have considered the right cases to actually prosecute and, as you will appreciate with your background, inherently it is a judgement issue and you cannot have absolute certainty in evaluating each individual case. So I think we are quite clear that people actually are prosecuting on the basis set out by the Commission. We are also very clear that a lot of effort is being put into this. Let me say, in looking at the performance

of our individual inspectors, we do consider whether their own pattern of enforcement is a reasonable one given the particular sector and the particular activity they have been engaged in and, clearly, people will have different patterns depending on what they are engaged in. So I think actually the figures are more or less the same. I do not think there is going to be a constant downward trend, what I think is clear is there is actually a trend towards greater emphasis on the effort we put into enforcement.

Q27 Mr Heald: As you know, Parliament takes the view that there should be a greater deterrent against poor health and safety practice. We introduced the Health and Safety Offences Act, which obviously beefs up the penalties.

Mr Podger: Indeed.

Q28 Mr Heald: Certainly for the magistrates' court. Is it that you would expect then that the amount of fines would increase or more people would go to prison as a result of this initiative from Parliament?

Mr Podger: Yes. First of all, as you realise, we very much welcomed the Health and Safety Offences Act. We thought it was an extremely important and helpful piece of legislation. Obviously, as you will appreciate, as a prosecutor it is our duty to seek a penalty which is commensurate with our view of the offence, so we do not just automatically up the tariff for everybody but, having said that, we of course would expect the new powers of sentencing to be used, including both higher fines and imprisonment where that is justified, and we will certainly press for them. So we would look to see overall that that actually increased but, as I say, we still nevertheless, as a prosecutor, would seek to act in a manner which was commensurate with our perception of the offence.

Q29 Mr Heald: Actually, the average penalty has fallen for an HSE conviction in terms of a fine, has it not, for the second year running, and is now down to £12,896 per offence?

Mr Podger: The only thing I would say is that, as will be very obvious to you, the actual range of fines is enormous.

Ms Hackitt: Yes.

Mr Podger: There are huge sums which have been awarded against some companies, there are otherwise smaller fines, and, as we also know and have discussed with this Committee before, in actually setting fines account is taken as to what the consequences on that employer and, therefore, their workers would be, and that is a slightly awkward area, to be honest about it, but it is a fact. So, again, I do not think our perception is that we are finding it more difficult to get to the fines which we believe to be commensurate with the offence. Obviously, in individual cases, quite properly, magistrates and judges may take a different view from us.

Q30 Mr Heald: As you know, in the *Health and Safety Bulletin* what they said was that they felt the new Act was "unlikely to increase either the number or length of imprisonments significantly.

Magistrates have long been able to use prison for serious breaches . . . but have, like judges, been reluctant to do so—and it is hard to envisage them suddenly availing themselves of custodial sentences for lesser offences." Do you take that sort of view, that really, whatever Parliament says, the courts will just go on as ever?

Mr Podger: I think that is a pessimistic view, to be frank. I think actually, particularly, as you know, that in a sense there is a sort of dividing line as to whether you are being prosecuted for some kind of manslaughter or whatever or whether you are being prosecuted under the Health and Safety at Work Act, we will find that with prosecutions that take place under the Health and Safety at Work Act people will be more sympathetic to the use of the higher penalties which are now available. I agree it may take time but, nevertheless, we intend to press for them where they are justified, and we really have no reason at this moment in time to think there will be resistance.

Q31 Mr Heald: We wonder whether you are dispirited, because you are prosecuting less cases, the average penalty is less than it was, Parliament has done its best, introduced this Act and hoped that it would be a better deterrent, but people in the health and safety world do not really think it is going to make any difference. Is that an unfair picture?

Mr Podger: We are not dispirited, I am quite clear on that point. I am very spirited on this point and, let me say, my inspectors are even more so, and rightly so. The organisation is quite clear that actually these powers are available to us, they need to be used in the public interest and the interests of justice, and we intend to do so. You do not find walking around HSE, as you might have found, to be frank with you, four years ago, people saying "Oh well, we can't do anything on enforcement. The people at the top won't support us," or any of that nonsense. Absolutely not. We are very clear that this is a key part of what we do. We must at all times act properly as a prosecutor and not go off on frolics of our own but, within that perfectly proper constraint, we are serious about enforcement and we do not hesitate to put a lot of effort into it, and the data you have shows that clearly.

Q32 Mr Heald: Do you think the Sentencing Advisory Panel has thrown in the towel? The proposal for a guideline on sentencing in this area was December 2007 which seems quite a long time ago. Why are they taking so long?

Mr Podger: First of all, I should say we are engaged with them on this. It is not that in some way we have had the door shut on us. I think the honest answer to your question from our perception is simply that they are under such pressure on a number of fronts, for reasons, again, which will be very obvious to you. I think that is the only reason but, as I say, we are, as prosecutors, well able to highlight the availability of the new powers and their appropriateness, and we do that and we will continue to do that. We will also continue to play our part with the Panel in trying to get these guidelines out as soon as possible.

10 June 2009 Ms Judith Hackitt and Mr Geoffrey Podger

Q33 Mr Heald: So morale is high?

Mr Podger: I think morale is high on the enforcement field and I am very keen that we should continue to be seen as a fair but forceful prosecutor. I think that is a key part of what we do.

Q34 Mr Heald: I think it is particularly important, do you agree, with the recession that we are in, where there is a danger of people cutting corners, that there should be a firm approach?

Ms Hackitt: Yes.

Mr Podger: Indeed, and Judith has made that very clear, that we are not in that game.

Ms Hackitt: Absolutely. I think one of the measures of success of the strategy itself has been the way in which it has been received by our own staff, which, again as Geoffrey says, is not always the case, sometimes our own staff are our greatest critics. I have to say that the way in which they have responded to the principles of the strategy, and in particular the importance we have attached to enforcement and securing justice, has been very positive. It has been welcomed internally as well as externally as a clear statement of what we are about and I think because of that and the lines we have taken in the strategy morale in the organisation is significantly higher than it has been for some time.

Q35 Chairman: Notwithstanding that, and I understand all that you have said and the reasons you have said it but, two things: one, there is fairly concrete evidence of widespread geographical differences in penalties, in the South West you will be fined a lot more than you will in the North East, and something needs to be done to address that. Secondly, do you not think it is ironic—and you can blame Parliament for this; we are blamed for everything else—that it is a maximum fine of £50,000 in the magistrates' court for killing somebody but for anti-competitive activity you can be fined 10% of turnover. Is something out of kilter there?

Ms Hackitt: From a personal perspective, I think that is morally wrong. Equally, I think it is wrong that there is taken a view that a life lost in the workplace somehow counts for less than the life lost of a member of the public. I think both of those things need to be addressed and, yes, I would absolutely agree with you that it is not something on which we should rest where we are but continue to press for more equitable viewing of different offences.

Mr Podger: If I could just add on another point. I think it is also worth making the point that often for companies it is not simply the fine that is the punishment; it is actually the publicity which surrounds it. We in HSE make a lot of effort, not just for retribitional purposes but also because very often we need to publicise the offence that has been committed, so people themselves who might otherwise commit it understand it in time and get some advice or whatever. I think that is very effective. It is noticeable that the most complaints I have had from business in my entire time in HSE has been over the fact that we, as a matter of deliberate policy, advertise convictions on our website, which

means, of course, that if you Google certain companies, including everyday names, their name will come up as having an offence, and we have absolutely maintained—indeed, I reinstated—that we will continue to do this. I hear entirely what is said about the geographical disparity of fines, which I do not think is a problem only in our area but is a more general one, but, again, I think convictions of any kind are quite a punishment and quite a deterrent also for the publicity reasons, and that is an area where we want to try to do more because we want to try and publicise some of these cases nationally as well as regionally and locally.

Q36 Chairman: The concern I have, and Oliver raised the issue around the Sentencing Advisory Panel, is that when these discussions are going on, are you invited to the table or are you seen as a small-scale regulator: “It is up in Bootle so we don't have to worry what they think”? To be brutal.

Mr Podger: No, it is perfectly reasonable to be brutal and let me be brutal back. We are normally invited to the table. On the rare occasions when we are forgotten, we bulldoze our way in.

Q37 John Howell: In your Rivers Lecture you were very pragmatic about how you saw the Board duties playing out within a company in terms of not raising false expectations. What I did not get though was a feel of how you saw the whole thing put together. Do you have a model, an image, of how you see this playing out in terms of best practice in the boardroom?

Ms Hackitt: Absolutely. It is more than a model. It is 20 years of experience of working in business, where I have seen it happen in practice, so I know what it looks like when it happens. That is the reason I was so strong on this whole issue of the credibility gap, because unless you actually act in a way that is consistent with what you say then pretty much all workforces in all workplaces are very smart people and if the words and the actions do not match up then what you say is not believed. I have said to a number of companies, particularly in the private sector, already that I think statements like “Safety is our number one priority” are really less than helpful when it is patently obvious to everybody in the company that is not the case, and probably should not be because they are in business to make money and survive the long term. I am more than happy for safety to be a core value in the business, but that is very different from it being called the number one priority.

Q38 John Howell: If it is not a number one priority or in amongst those top priorities, what happens in your view, or should happen, at the board level in terms of somebody having responsibility for it? How does that actually translate in terms of board action?

Ms Hackitt: All too often, board activity tends to be about receiving reports that give them assurance that all is well. So to a large extent it is about asking the right questions, and that does not mean you have to ask highly technical or very devious questions but some very simple questions that assure you that you

are getting good information. Largely, it is about culture, so if the culture of the organisation is one where the board does not want to hear bad news then they will not hear bad news, even when they should. They have to ensure that they ask the right questions and are prepared and willing to take on board bad news when that is what they need to hear so they can take action.

Q39 John Howell: There is surely a quantitative difference between a PLC with a large board and a small company, perhaps with a single owner or a family owner, in terms of how they approach that.

Ms Hackitt: Of course.

Q40 John Howell: How do you see that coming out in terms of the practical approach that a small company might take? What is the difference?

Ms Hackitt: The approach has to be different and, equally, the approach has to be different in different businesses of similar size but in different sectors. You have to find the right approach to suit the workforce, but what I am absolutely sure about is that whether you are in a small business or a large one of any type, the best people to involve are the workforce themselves, because they are the ones who know the problems, and they also, more often than not, have good ideas about what some of the answers should be to some of the problems. So in whatever size or structure, the board cannot manage or lead safety in isolation, they have to get involved and get out on the shop floor, whatever that might look like, and talk to workforce.

Q41 John Howell: Given those differences within different sized companies and even within different sectors, is your view that guidance is going to be better than legislation in terms of getting that duty over?

Ms Hackitt: From our perspective, I think non-prescriptive guidance or legislation will always be the way forward. We cannot be expert on that whole array of businesses that exist out there, nor should we be. What we should do is describe in principle terms and in outline what we want them to do and, moreover, what we want them to achieve, what the outcomes should be. As I have said previously, I think there are numerous other organisations between us and those businesses who can play a very important role in helping them to customise our more generic guidance and advice into something that is more applicable to those types of businesses. Trade associations in particular can play quite an important role in helping them to get to sector-specific guidance that is meaningful, and that applies for me whether you are talking about EEF or whether you are talking about the Federation of Small Businesses (FSB) or, indeed, you are talking about the teachers' union turning this into advice and guidance for what this means for teachers.

Q42 John Howell: Is the absence of those so far part of the reason why your guidance has reached only such a small percentage of board members in terms of their awareness of what is in it?

Ms Hackitt: Yes, yes, it is. Indeed, I was talking only yesterday to the FSB in terms of producing customised guidance now for directors of smaller businesses who do not feel that the guidance we produced with the IoD is quite user-friendly enough for small businesses yet, and that piece of work is already well advanced.

Q43 Chairman: In response to our report last year, where, as you know, we had something to say about directors' duties for about the third time, the Government said it was evaluating the impact of the voluntary approach and the evaluation was due to commence in the latter half of 2009. Do you know who is taking the lead on that?

Mr Podger: In terms of the evaluation? The evaluation is being undertaken basically under a steering committee which is chaired by Patrick McDonald, who is our Chief Scientific Adviser, and it has on it representatives both from the trade union side and the employers' side, and that will produce an input to the ultimate Board discussion.

Q44 Chairman: So you are leading the evaluation, not DTI or whatever?

Mr Podger: Not at all and, as I say, we are intentionally doing it on a tripartite basis to reflect the nature of HSE.

Q45 Chairman: When do you expect that to come out?

Mr Podger: The intention, as I understand it, as you were saying, is to complete that work by the end of 2009, which would then allow a Board discussion in early 2010.

Q46 Chairman: If you were to recommend a statutory code of duties, when might that progress?

Ms Hackitt: It would need to go through the normal process then of us formulating what those proposals would be, putting them out to consultation, taking the debate. If we had the debate in the Board early in 2010, one might expect it to take up to a year from then to come into force.

Q47 Chairman: There is an argument that we have had 35 years of the voluntary approach, and every two or three years a suggestion is made that perhaps this is not working and we need to re-evaluate, and it still is not working. If the voluntary approach has not worked after 35 years, is it ever going to work?

Ms Hackitt: Insofar as it is a voluntary approach, what we are trying to do here is much the same as we do with every other piece of regulation that we have, which is that you have a framework in the legislation, but then through guidance and advice we encourage people to do the right thing, which is the same balance between carrot and stick that we already have in place in most other aspects of the way we regulate. 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

10 June 2009 Ms Judith Hackitt and Mr Geoffrey Podger

and safety offences and levels of penalties in the Corporate Manslaughter and Corporate Homicide Act but the basics of the duties are already there in the Act.

Q48 Chairman: I do not really want to go back down this road, but one of the big arguments in the corporate manslaughter debate was the inability to identify a single individual and, therefore, you could not have individual liability because you do not have a statutory code.

Ms Hackitt: Yes.

Q49 Chairman: If you had a statutory code, you would be able to identify an individual. Anyway, let us move on. To link into that, we in our report last year made a big play about worker engagement, and we are pleased that you have picked that up in your strategy. You have used this phrase “mainstreaming”, but how are you doing that? How are you promoting that? How will you know whether you are succeeding not?

Ms Hackitt: Let me answer the how we are promoting it first. We produced new guidance ahead of the publication of the strategy last year on workforce engagement, worker involvement, which recognised the reality of the many different structures that exist in workplaces, so it covers the whole gamut from fully unionised workplaces through to those that are non-unionised and those which form the majority, which are a mix of unionised and non-unionised, and talked about how to go about engagement in all of those. What we believe is that the areas where this tends to be most difficult are in businesses of 200 employees or less, and 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.

Q50 Chairman: Could we call that the Worker Safety Advisory Scheme?

Mr Podger: I think we could call it part of the inheritance of the Worker Safety Advisory Scheme.

Q51 Chairman: Is there any prospect of that scheme being resurrected? We were told a year ago that you were looking at this. When we met with John Spanswick, he said it had been an outstanding success and he wanted to see funding for its resurrection. Where are we with that?

Mr Podger: There are varying views on this subject, as we have discussed before, and, as we have discussed before, the Health and Safety Commission, I think it was then, did actually discuss the scheme. They did actually take an external academic view of the scheme, but it has to be said

that the overall view of that scheme was that it had not been successful in actually producing innovative thought and it was not generally well regarded. It is true that in the construction industry, hence no doubt John Spanswick’s comment to you it does appear that there was a particular keenness for it, but I think one also has to say that it was intended anyway as a scheme which would basically pump-prime and promote activity. It was not intended, as it were, to run in perpetuity, and I think it would be difficult to make a case for that. I think what we are doing now about worker involvement is certainly legitimately seen as a successor to that exercise.

Ms Hackitt: I think what Geoffrey says about pump-priming is an important principle really, in that HSE’s role is not to fund the training or the provision of worker representatives in private enterprise throughout Great Britain. It is our role to encourage it, it is our role to test out new models to see if they will work and, if they are proven to work, the people who should be taking that forward are the duty-holders in the businesses themselves.

Q52 Chairman: Yes, I understand that, but at the same time you have PSA targets to achieve, you have to have efficient use of your resources, and you have a strategy to deliver and, to achieve those three objectives, spending some money on actually creating and promoting worker involvement will reap its own reward, will it not?

Ms Hackitt: Yes, it will, and that is why we are doing that.

Q53 Chairman: It is partly about that allocation of resources. There is no doubt that the world of work has changed dramatically between 1974 and 2009.

Ms Hackitt: Absolutely.

Q54 Chairman: There is also no doubt that worker involvement in HSE has plummeted. It has plummeted. It was very high on the agenda in 1974; it is very low on the agenda now in most workplaces. I think that is fair comment. How can you promote, develop, encourage, whatever, that greater worker involvement where, as your own strategy says, the greater the worker involvement, the safer the workplace, when we have the incident that came out a couple of months ago about major blacklisting? So when workers do get involved and engaged in the health and safety agenda, they are blacklisted from employment.

Mr Podger: Yes, which, of course, we are totally opposed to. Let us be very clear about that. As Miss Begg will know, this issue has also arisen in the North Sea, where, fortunately, with a lot of HSE involvement, we actually seem to have managed to settle the matter. We are extremely opposed to any activity by anybody which has the result of penalising them because they raise perfectly legitimate health and safety concerns. We are very clear on that point. It is worth making the point that 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. Also, on the ground our inspectors on individual sites will always seek out the workers' representative. If there appears to be non-communication, it is certainly a matter that they would raise with the management, and rightly so. I think we do actually have a variety of levers which we pull in this area. In saying that, we still have to insist on the point that really it is the responsibility of employers to run their workplaces in a safe way, and that inherently means involving their workforce in health and safety matters.

Ms Hackitt: Yes.

Q55 Chairman: The Government consulted on this issue in 1999, again in 2003 and, for whatever reason, they decided to consult again this year, despite the overwhelming evidence that this is happening. Have you responded to that consultation and do you see blacklisting as a health and safety issue?

Mr Podger: We do see blacklisting, if it has as its specific purpose to try and get off site people who raise legitimate concerns about health and safety, as a specific health and safety matter, yes, and that is a view we say now publicly, we have always said this, and it is a view we say within Government as well.

Q56 Chairman: Have you responded?

Mr Podger: That I could not say. I can check but I cannot say. Certainly, if the opportunity arises we will take it, yes, because we also attach the exact importance that this Committee obviously does to that issue.

Q57 Chairman: I am sorry. As I understand it, it is now out to public consultation.

Mr Podger: Yes.

Q58 Chairman: So will you be responding?

Mr Podger: We will respond, certainly.

Chairman: You will respond. That is great. Thank you very much.

Q59 Tom Levitt: I want to turn to the construction industry, first of all, to look at the inspection regime. Can you confirm the number of fixed-term construction inspectors that you are intending to take on, that you have already taken on, and can you say about the level of training which they get for their work, will they be receiving the same training as the permanent inspectors would?

Mr Podger: You will forgive me if I refer to my notes, I do not want to give you the wrong information. 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, as you are obviously aware, Mr Levitt, 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. They will support us for that period and will be available to carry out site inspections, providing advice and, where necessary, taking formal enforcement action. They will have the training that all our inspectors have and need to undertake those functions. We are also expecting a further 10 trainees, permanent trainees, to start in the Construction Division in the autumn.

Q60 Tom Levitt: Thank you. I take it from that they are getting the same training that they would if they were not fixed term but permanent.

Mr Podger: Yes, for what they are going to do. That is an important point. We are clearly not training them to be usable across HSE, but for what they are going to do they will be fully trained.

Q61 Tom Levitt: We were told by the trade unions when we visited Bootle that the fixed-term inspectors would not be involved in investigations as such.

Mr Podger: The intention is to use them essentially on on-site inspection where, as you will appreciate, because they come recently from the construction industry they have a particularly valuable skill for us, but they can be used in enforcement if that should prove necessary.

Q62 Tom Levitt: If you are taking on 24 from mid-June, and it is virtually mid-June now, and you are investing in their training, how long will it take before they are fully-fledged, fully trained and competent to be out in the field?

Mr Podger: Bear in mind that they come to us because they already have a particular degree of knowledge, that is why we have seen a particular advantage in seeking to gain their services in the present period, clearly they do not need to be trained in the rudiments of "this is a construction site and this is what you should look for." What we will do with them, as we would normally do with colleagues who join us, is we will seek to attach them to operational units very quickly and we will do part of their training on the job. We would hope to have them up and running and active in the interests of health and safety pretty quickly.

Q63 Tom Levitt: "Pretty quickly" can be interpreted in a number of ways, particularly if they are only going to be with you for two years. Does "pretty quickly" mean two months?

Mr Podger: No, we will have them attached with colleagues, going out on inspection from a very early point in time, within a week or so of arriving I would imagine would be the normal practice.

Q64 Tom Levitt: Why is it two years? Is that because that takes you to the end of the Spending Review?

10 June 2009 Ms Judith Hackitt and Mr Geoffrey Podger

Mr Podger: Yes, and I make no bones about that. We are presently in a position where we can afford to take on this extra help in a sector where we are all agreed it is under pressure. We are not in a position to make that commitment beyond the spending period.

Q65 Tom Levitt: But you would wish to.

Mr Podger: What we would actually want to do is to review how this initiative has gone and, let me say, how our initiatives on construction generally have gone because it is wrong to concentrate purely on this one initiative. It seems unlikely to me that we are going to want to reduce our effort in the construction sector, not least because of the point I made earlier, which is 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 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.

Q66 Tom Levitt: So at some point quite early on in the next two years you would hopefully be able to tell these 24 people that their jobs may possibly be able to continue after the two-year period?

Mr Podger: Well, we would need to consider with trade union colleagues what we would then do in relation to those particular people, because, as I say, first of all, there is the issue, is taking people temporarily like this seen to have worked. It has been tried before, I may say, and in many people's view was successful. We would need to consider that. Secondly, we would also, of course, have to consider whether we want to continue with these particular colleagues or whether we are looking to do another recruitment, which is another issue. There is also the question of whether those who are recruited on this temporary contract wish to join HSE permanently, in which case they would go through the same recruitment as everybody else. It does not necessarily follow that we would seek to extend these particular contracts beyond two years but it may certainly be the case, and was when this was previously tried, that people will seek to join HSE permanently and, as I understand it, some very successful recruitment was done by that channel.

Q67 Tom Levitt: So, irrespective of whether it is those particular individuals and those particular contracts, nevertheless come the next spending round you would be making a case for a bigger complement of construction inspectors?

Mr Podger: We would be making a case to actually try and keep our current construction industry resources, yes.

Q68 Tom Levitt: Or is there a case for improving that?

Mr Podger: As I said to you, that, I think, is what we will have to look at in the light of what has been achieved. That, as you appreciate, is a perpetual and proper challenge to us.

Q69 Tom Levitt: Let me change the focus slightly. Looking at the area of refurbishment, one in every five sites has failed health and safety checks, according to your inspectors. Would it be helpful if health and safety requirements were incorporated into the Building Regulations so as to capture the refurbishment sector?

Ms Hackitt: As I said earlier, we think that has merits. We have discussed that recently with a number of other people and certainly it is something that we want to look at and look at the practicalities of doing, because, yes, there is a logic to doing it.

Q70 Tom Levitt: UCATT have told us that those workers who work in smaller construction businesses are more at risk of death, considerably more, than those working in larger companies. Is that your inspectors' conclusions as well?

Mr Podger: Yes. There is no doubt that in general the risks are greater in the small sector, though I think we must equally recognise that there are still problems in the large companies, I do not think we should give them a wholly clean bill of health. Certainly people generally in the large end of the construction industry do have systems in place, do understand what they are doing. There is a more serious problem without a doubt in refurbishment which you describe, and, indeed, one of the reasons why we were looking to take on temporary additional construction inspectors was precisely that they could be active in this area.

Q71 Tom Levitt: To continue the issue of fatalities, the Construction Deaths Inquiry, in which I believe you have been involved, was due to have reported by now but I think it may be due to report imminently. Perhaps you could tell us when you think it is going to report and what your involvement has been in that inquiry.

Ms Hackitt: The fatals inquiry was set up by the Secretary of State, not by us. We have indeed provided the secretariat for the fatals inquiry from within HSE staff and a number of us, Geoffrey and I included, have been interviewed by Rita Donaghy and her team and have given them our views and we know that they have talked to a great number of stakeholders in coming to this point. Yes, Rita did ask for an extension to the period that she was originally given to do this. Our understanding is that she will report to the Secretary of State later this month. We have had interim discussions with her about the direction things are taking, but as yet we have not seen the final recommendations and would not expect to see them before the Secretary of State and others see them.

Q72 Tom Levitt: That seems to imply you are satisfied it has been a fully independent inquiry.

Ms Hackitt: Yes.

Q73 Tom Levitt: UCATT have, as you know, put in a number of freedom of information requests about what they regard as flaws in the recording of construction fatalities, particularly insofar as they relate to the Construction Industry Scheme. Do you think that the recording of fatalities as employee deaths, even when people have CIS status, means there is a risk of inadvertently hiding the disproportionate health and safety risks of people who are bogusly self-employed?

Mr Podger: That is not an easy question to answer off the cuff, I think is the answer.

Q74 Chairman: That is why he asked it.

Mr Podger: Yes, indeed. I feel I am going to fail totally in doing so. I think the honest answer is that it is clear that the variety of subcontractors and people of different employment status on building sites is inherently a factor which makes it more difficult to grip what is going on and inherently more difficult to grip what is going on from the point of health and safety, and that has always been our view. What we have tried to do, and, as I say, we have tried to work in harmony with UCATT over this, is get the best data we can and that remains our position. I am not, as you will have gathered, particularly aware of this one issue and I cannot therefore honestly answer your question. As I say, our concern is, I hope, the same as UCATT's, which is to get the best data that we can and we remain ready to co-operate in any exercise to that effect.

Q75 Tom Levitt: But it seems clear that there are cases, and the one that has been drawn to our attention is that of a 20-year old "apprentice" scaffolder who fell to his death in April last year; he died a day later, and was very clearly registered under CIS but his name did not come up on the list of CIS deaths which your figures portrayed. That could be because the data which you have access to is simply not reliable, and if it is that unreliable then should we be looking at reforming the way that CIS registration is administered?

Mr Podger: First of all, a death by definition would become reported to us. People's employment status is completely irrelevant in relation to that, and I think that is a very important point to make. It would become known to us because even if it was not reported to us, as it legally should be, it would become known to us from the emergency services, it would become known to us through trade unions on the site, so there is no reason at all to think that there are deaths which do not become known to us. I think I must make that quite clear.

Q76 Tom Levitt: It was the CIS status that was clearly not known to you in this case.

Mr Podger: Yes, but, with no disrespect to UCATT, the key point from our point of view is irrespective of what people's status is or whether they claim a status which they do not have they are an extremely serious issue if they die and it is desperately important from our point of view to get to the bottom of it and take

whatever action is necessary. So from our perspective, which is perhaps a slightly different one from UCATT's, we would have the data we need and we would act on it.

Q77 Tom Levitt: Looking at the CIS independently, insofar as it impinges on your work and your statistics and the risks that are associated with people who are registered under CIS or otherwise, are there grounds for reforming CIS or simply scrapping your attempts to try and link CIS registration to fatality statistics?

Mr Podger: The honest truth is that it is a scheme which is, as you know, administered by Revenue & Customs; it is not administered by us, and therefore information may come out of it which is of interest, but it is not, as I have said, a fundamental scheme from our point of view and we are not the body that is responsible for it.

Q78 Mr Heald: In terms of your prosecutions and investigations, does it make any difference whether the employee is an employee or simply a worker? Do you see what I mean?

Mr Podger: Yes. There are obviously issues as to whether you technically meet the requirements of the Health and Safety at Work Act, you have to have some responsibility, but within that, no, it normally would not. That is why I say that if we had to take enforcement action in relation to a death, which of course we do very frequently, the precise nature of the employment status is unlikely to be a very relevant factor.

Q79 Tom Levitt: But someone who is bogusly self-employed is at greater risk, even if not of having an accident or a fatality, of being covered and assisted were they or their family to suffer that.

Mr Podger: Sorry; I did not understand the second part of your question.

Q80 Tom Levitt: I am trying to get at the CIS status, the bogus self-employment status, the person who is to all intents and purposes an employee and should have the rights of cover, insurance and everything else, support, but does not have that because they are posing as a self-employed person with, therefore, less cover and less assistance. Were they to become injured or suffer a fatality then clearly that worker is at a greater risk of suffering financial damage, for example, as a result of an accident if they are bogusly self-employed, so is there a health and safety argument for reducing the ability of people to be bogusly self-employed when really they should be treated as employees?

Mr Podger: I think we would say that what there is 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, which is just another way of looking at it. That is where we come from because, with respect, you cannot alter by a magic wand the different employment statuses people now have on construction sites. What we can do, and do, is insist

10 June 2009 Ms Judith Hackitt and Mr Geoffrey Podger

that the people who run these sites have to be fully conscious of all the people who are on their site and take proper responsibility for the running of the site in that light.

Q81 Mr Heald: Of course, if you are the family or dependant of a worker who is killed at work and you want to sue the employer for a poor system of work and safety, et cetera, you would want to be able to establish in your civil action that you were an employee if you could, because obviously it would be a great help legally.

Mr Podger: It would be a great advantage, yes.

Q82 Mr Heald: You would also, I think, hope that the Health and Safety Executive might prosecute the company under the Health and Safety at Work Act because you could then plead that in your action, that there had been a successful prosecution. Do you think these issues affect the way in which your inspectors record these CIS cases in any way at all? They are not trying to be helpful, are they, for the civil action by saying, "He was an employee", or something like that?

Mr Podger: No, and it would be improper for them to do so, for obvious reasons. We are public servants. It is not for our people to falsify data even to help people.

Q83 Mr Heald: No, I am not suggesting there would be a falsification, because if the person had all the badges of employment and this was a bogus arrangement that the employer had put in place then that would be perfectly understandable.

Mr Podger: Our inspectors are under the same obligation we all are as public servants, which is to act properly. That is not to say they will not make a mistake; that, of course, is possible, for the reasons that I have been explaining. It may not be possible to easily determine what the employment status was and they may inadvertently make a mistake but they would not, as it were, do so with a view to influencing any civil action, which I think was your question.

Q84 Mr Heald: It is just something UCATT have said: "Recording a worker under the correct, directly employed status brings an important advantage, being that it then tends to be easier for the dependants to receive compensation".

Mr Podger: As I say, our view is that we have to be objective. I do not say we are error-free but that is our objective, to be objective in how we record it.

Q85 Chairman: Can I jump back briefly to the 24 fixed-term inspectors you have recruited? Is there any common trait in their background?

Mr Podger: Forgive me for saying something which may be obvious, but their background is that they do all come from the construction industry and that was our purpose.

Q86 Chairman: The construction industry is everything from a junior apprentice to—

Mr Podger: Let me say first of all, and it may be helpful to the Committee, that we did actually have hundreds of people applying for these posts and, as you will appreciate, we have taken 24. My colleagues who were involved in the selection, who obviously are the people who come from this background, have clearly sought out the people who they think by virtue of what their experience is will be of most use to us in terms of enforcing on sites and inspecting sites. As I understand it, there is within that quite a wide range of people.

Q87 Chairman: Just to be really naughty, do you know if any of them have ever been blacklisted?

Mr Podger: I do not.

Q88 Chairman: Can we move on to the Nuclear Directorate? There has been a problem here for a long time, has there not, but we go back to when Tim Stone was commissioned last year to look at this. We have now got a situation where a legislative reform order is being used to create the statutory corporation rather than primary legislation. Is there a particular reason for that, do you know?

Mr Podger: First of all I should say that it is, as I understand it, still a matter for ultimate ministerial decision how they choose to proceed. My understanding at the moment is the same as yours, Chairman, which is that they propose to proceed by legislative reform order. I think the reason for doing that is that the proposals are not perceived as contentious and are perceived as continuing with all the best aspects and the independence of the regulation that we currently have, but moving to a status which will have some advantages in the new nuclear build climate, so I think it is a matter that it has not been perceived, assuming ministers continue this course, as controversial enough to warrant primary legislation.

Q89 Chairman: I am not trying to create a problem where there is not one, but one of the dangers when there is no contention is that the detail gets missed. Let us just do it bit-by-bit. What will change in terms of the Government's arrangements for the Nuclear Inspectorate?

Mr Podger: Again, I should say that final decisions have not been taken by ministers but I am quite prepared to share with the Committee, if you are happy, what my understanding is of what ministers are likely to agree. In essence, what would happen under the legislative reform order which is currently being considered is that there would be a separate body which might have the status of a statutory corporation, and the Civil Aviation Authority is an analogous such body in the regulatory field which is well established and works well, I think, to everyone's general feeling. The new body would be, as the HSE Board is, tripartite in nature but it would also have some executive staff on it. Basically, what it would do would be to be able to give the level of attention which civil nuclear new build will need from a wider group of public-spirited and properly recruited individuals by way of governance. It would be, we think, likely to be entirely financially

10 June 2009 Ms Judith Hackitt and Mr Geoffrey Podger

independent. It would look after matters relating to efficiency, but it would operate in terms of safety and safety regulation within the overall framework of the Health and Safety Executive, so we would not see a splitting off in some way of nuclear safety policy, and there would be likely to be a degree of intermingling between the HSE Board and this body. Those are essentially the proposals which are currently being discussed.

Q90 Chairman: But you do envisage that there will be a separate board?

Mr Podger: Yes, we do.

Q91 Chairman: Would HSE be represented on that board?

Mr Podger: Yes, that is what we envisage, and vice versa.

Q92 Chairman: As always, there is an issue about the status of employees.

Mr Podger: Indeed.

Q93 Chairman: Are they going to remain as civil servants?

Mr Podger: 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.

Q94 Chairman: In some ways I suppose you could say that the staff want it both ways but in this total remuneration package one of the attractions is, of course, the Civil Service pension scheme.

Mr Podger: Indeed.

Q95 Chairman: Is it the case that on the model you are envisaging they would no longer be entitled to be in that, or would the new body have to establish a comparable scheme and if it does the costs will go through the roof because of the costs of establishing as against maintaining what is already there, and is the industry prepared to fund that cost?

Mr Podger: These are indeed all rather important questions which we are considering internally at the moment.

Q96 Chairman: All questions the Select Committee Chairman asks are important.

Mr Podger: Indeed, absolutely, Chairman, but this one is peculiarly important and topical. I can say quite genuinely we are engaged in that discussion. There is as yet no outcome, but there will be an outcome.

Q97 Chairman: What sort of timescale do you think we are in for bringing this to a conclusion?

Mr Podger: In terms of specifically the pensions issue?

Q98 Chairman: No.

Mr Podger: Overall?

Ms Hackitt: Setting up the new organisation.

Mr Podger: I think probably the Government would wish to have a consultative paper fairly soon on the LRO. This month or next would seem the likely timeframe for that. Obviously, then we have to wait and see what the reaction is to that, and while the principles are being consulted on the technical but very important issues about pensions which you have just raised we shall continue to discuss with colleagues within Government and with our HSE trade union colleagues.

Q99 Chairman: At some appropriate time in the future do you think you will be able to drop us a line and say how all these things are starting to come together?

Mr Podger: Indeed. We would welcome doing that.

Q100 Chairman: As I say, when you think the time is right.

Mr Podger: Yes.

Chairman: Okay. Thank you very much. It has been a lively session as always. You will understand the Committee's ongoing interest and concern in this and the dialogue will continue. Thank you very much for today.

Memorandum submitted by the Trades Union Congress

The Trades Union Congress (TUC) represents around 7 million employed people in 70 trade unions. It campaigns for fairness and decent standards at work and promotes partnership with the employers and Government to secure stable industrial relations, growth and prosperity.

The TUC welcomes the opportunity to make a written submission to the inquiry of the Select Committee. We previously gave evidence to the Committee in 2008 and we will not repeat the points that were made then. Instead we wish only to give a short indication of those issues that we hope that the Committee will deal with in its session, and which have developed since the last report of the Committee.

The TUC is a strong supporter of the work of the HSE and sees itself as a partner in providing safe and healthy workplaces. We have a shared mission and trade unions, through their 150,000 volunteer health and safety representatives contribute greatly to reducing the level of injury and ill-health in the workplace. The trade unions, and the members these unions represent, would want the TUC to place on record our enormous regard for the organisation.

The TUC believes that the HSE provides an excellent service and its staff are of an extremely high standard.

The proposed merger between the Commission and Executive was broadly supported by the TUC, who believed that, this would allow the Board to have a more strategic overview of the work of the Executive and also provide a structure more in keeping with the 21st century. We believe that this has broadly been achieved.

In June 2009 the HSE is to launch a new strategy. This was the subject of a wide consultation exercise, and trade unions were a part of that process. We made a detailed response which broadly welcomed the strategy and committed the TUC to working with the HSE in its implementation.

The new strategy represents a welcome clarification from the HSE of the direction it wants to take in the coming years. We strongly support the commitment to safety regulation and enforcement, as well as the recognition of the role unions and health and safety representatives can play in improving the safety culture of UK workplaces. But the main detail of what the new strategy will mean in practice is yet to be developed and we look forward to working with the HSE in supporting the work of the HSE and its staff and ensuring that health and safety are not compromised during the present recession.

The TUC also notes that the HSE intends concentrating on what it does best and not getting involved in wider issues that go beyond the issue of prevention. We welcome that but would wish to be assured that any areas that the HSE is doing work on, that it decides are no longer a priority, will be picked up by other bodies.

It is important that the HSE develop an early work plan on how it will implement its new strategy to show what it will mean in practice and the TUC would wish to be involved in the development of that programme.

We hope that the HSE will be given the support from all stakeholders, including professional bodies, employers and political parties of all persuasion to implement this strategy.

In our evidence to the Select Committee in 2008, the TUC emphasised the need for a long-term commitment to growth in the HSE budget. The Select Committee report recognised many of the resource difficulties the HSE had. Despite the difficult economic situation the Government faces we will continue to call for additional funding for both the HSE and local authorities to allow them to fulfill their function.

We are concerned that the HSE will only achieve its objectives if it is given the resources to carry the work forward in the long-term. The TUC is concerned that the HSE does not currently have the level of staff at both inspector and policy level to fully implement the strategy. We are also concerned that local authorities have, in the past, not given sufficient priority to workplace health and safety and believe that considerable resources need to be devoted to increasing inspector numbers over the coming years.

Since the last session, where we expressed concern over the media treatment of health and safety, there has been some noticeable improvement. Recent press reports have been more likely to emphasise the importance of a strong health and safety culture, while still being willing to criticise those who use health and safety as an excuse. We believe that this is, in part due to a greater awareness of the failings of many employers and the effect that it has had on the lives and health of those at work. It is also a reflection of the success of some of the recent campaigns that the HSE has run, in particular on asbestos and agriculture.

We believe that there are still major problems in some areas such as construction and waste, and we were pleased to see these recognised in the HSE strategy. Any work to improve the safety record of these sectors will only be successful if linked to a strong enforcement programme.

We hope that the Select Committee will recognise the strong and overwhelming support for the new strategy that has come from trade unions, employers, professional bodies and others, including the all-party parliamentary group on occupational health and safety. We believe that the HSE should be given the opportunity to implement this strategy before any further changes of direction are called for. We also hope the Select Committee will seek assurances that the commitment to safety regulation and enforcement will be implemented throughout the organisation (and by local authorities), and lead to a stronger presence in the workplace. We also hope that the Select Committee will emphasise to Government the importance of long term stability in the funding of the HSE.

May 2009

Memorandum submitted by the Union of Construction, Allied Trades and Technicians

DIRECTORS DUTIES/THE FAILURE OF VOLUNTARY GUIDANCE

There is strong evidence that the voluntary code for directors on health and safety, as published by HSE and the Institute of Directors in the autumn of 2007, is not adequate to improve health and safety on construction sites.

The HSE is currently assessing the effectiveness of the code, however doubts need to be cast on the accuracy of the methods used for this and therefore also the findings of the survey. This is the case because the survey only targets medium and large companies with five or more employees, findings will therefore not reflect an authentic picture of all companies, bearing in mind that over 90% of the 186,000 construction firms employ fewer than 10 workers.

However it is exactly those small firms which often put the lives of the workers at risk. Last month UCATT published a new report *Small isn't Beautiful. Construction worker deaths 2007/08: Employer size and circumstance*, which examines whether construction workers working for smaller firms are at a greater risk of suffering fatal injury than those working for larger companies. The report's findings are very significant, providing evidence that the level of construction deaths is disproportionately high for workers working for small companies. It was found that:

- over half (51%) of the construction workers killed in 2007/08 worked for companies with fewer than 50 employees. However only 34% of the overall construction workforce works for companies of that size; and
- almost half of these deaths occurred in companies which employed five or fewer workers.

Apart from excluding small firms from the survey also some findings of HSE's survey into the guidance are very disconcerting. While the survey found that 70% of directors in construction were aware of changes in legislation affecting their responsibilities, only 33% were aware of the guidance. Worryingly, the percentage of awareness of the guidance amongst construction directors was even the second highest figure in comparison to the other industry sectors, with for example an awareness in the hotels and catering sectors of as little as 19%.

Awareness of the guidance however does not necessarily translate into action: Of the 33% of construction directors who were aware of the document only 13% went on to actually use it.

Taking the above into account there remains no doubt that publishing a voluntary guidance document has completely failed to improve health and safety action in construction workplaces.

HSE STRATEGY

UCATT has some reservations about HSE's draft strategy *The Health and Safety of Great Britain: Be part of the solution*, which it recently consulted on. The strategy document contains extremely little information and was far too general for stakeholders to be able to provide valuable comments. HSE also provided no direction as to how it wants to achieve the improvements it acknowledges are necessary.

With regard to the strategy's goal to "continue investigating work related accidents and ill health and taking enforcement action . . ." HSE should not only do that but rather aim to greatly increase the levels of investigations and enforcement. HSE should apply a four-fold approach for this, increasing the levels of firstly pro-active inspections, secondly accident and ill health investigations, thirdly enforcement action, and fourthly prosecutions of law-breaking companies.

It is to be welcomed that HSE recognises the role of unions and their safety representatives and the importance of worker involvement. Bearing this in mind HSE should actively support an increase in the rights of union safety reps (mainly the introduction of Provisional Improvement Notices) and in the number of roving safety representatives. It should also provide funding for the reintroduction of the Worker Safety Adviser scheme which was very successful to improve worker involvement on construction sites.

Due to the strategy's lack of detail as a next step HSE should present and consult on the workplan by which it hopes to transform its aims into action.

ADDITIONAL HSE CONSTRUCTION INSPECTORS

Bearing in mind the consistently low levels of inspections, enforcement, prosecutions carried out by the HSE, it is to be welcomed that HSE has decided to increase the number of inspectors in HSE's construction division. With a current number of 125 inspectors, HSE has recruited 19 new trainee inspectors, and is looking to employ up to 30 additional inspectors on two-year fixed term contracts.

It is lamentable that HSE does not see the necessity of employing the 30 additional inspectors on a permanent rather short-term timescale. It might take several months before the new inspectors are up to speed with their tasks, reducing the time of their efficient contribution even further. HSE should therefore retain the inspectors after the end of the two-year contracts.

CONSTRUCTION INQUIRY/HSE APPROACH TO BLACKLISTING

The Government's inquiry into construction fatalities has announced that it will delay its final report by two months submitting it to the Secretary of State for Work and Pensions at the end of June. It would be of interest to know what caused the delay, in addition to the "heavy workload". When the inquiry was formally launched in December 2008, UCATT warned that given the complexity of the issues involved the inquiry it was operating under a very tight deadline.

However, at that time it was not yet known that the issue of blacklisting, through the discoveries by the Information Commissioner concerning *The Consulting Association*, would emerge. It would be fully understandable if the Construction Inquiry was delayed due to the eruption of the blacklisting story. There is a strong feeling that neither the persons conducting the Inquiry nor the HSE sufficiently acknowledge the strong impact blacklisting has on health and safety.

HSE seems to think that blacklisting mainly concerns the issue of general employment rights of individuals (eg discrimination on the grounds of trade union membership, ethnicity, race, sexual orientation, etc). However, blacklisting does have strong repercussions on health and safety on sites, leading to a large-scale decrease of health and safety standards.

Often workers get involved on their site in order to reduce deaths and injuries on sites, often supporting companies with inside knowledge and support. It is a known fact that a large percentage of actively engaged workers are trade union members. A substantial number of those could have been victimised and dismissed after pointing out hazards or shortcomings in a company's health and safety system, or if unsuccessful reporting or whistleblowing about the concern or incident. After this their employment was blocked when they were included in the blacklist.

This is even more so the case for trade union health and safety representatives, who have received extensive training in detecting health and safety hazards and how to remedy those hazards. The majority of safety reps have years of experience on site, which further complements their theoretical knowledge and training. It is believed that health and safety representatives have been a particular target of blacklists. Barring experienced safety representatives from sites therefore has direct adverse effects on health and safety standards.

The knowledge that blacklists exist – and the one just discovered is unlikely to be the only one in operation — induces a climate of fear on sites, which inhibits workers and safety representatives alike to raise health and safety concerns, hazards and near misses, which is crucial for preventing an accident before it takes place.

Similarly, the construction sector is already characterised by large-scale bogus self-employment and agency work where workers have to reapply for work on an ongoing basis. In view of this situation it is not difficult to grasp that many workers will not raise concerns, as they juxtapose a safer site with the possibility of being barred from future work.

TOWER CRANES

It is excellent news that HSE has finally put forward plans to set up a first voluntary and then statutory tower crane register. This is a complete reversal of previous (still recent) statements where it was claimed that such register would be too difficult to administer, too costly in comparison with the benefits, etc.

Several aspects of the policy paper discussed at the recent HSE Board meeting are positive, including that the register will be fully accessible and not mediated by HSE.

However, contrary to HSE's proposal UCATT maintains that all tower cranes should be included in the register, ie assisted-erected and self-erected. Also self-erected cranes operate at height, carrying heavy loads, and the fact that so far all fatal accidents were related to assisted-erected cranes is not a sufficient argument for excluding self-erected ones from the register. It is clear though that assisted-erected cranes require an even higher level of examination due to their nature of being assembled, re-assembled etc at regular intervals. In case it will be decided that initially only assisted-erected tower cranes will be included, a fixed time period should be set after which self-erected cranes would be added to the register (eg one year after the register becoming mandatory, which gives time to gain experience with handling the register).

UCATT also maintains that the following issues need to be included in the register:

- The register must contain comprehensive data, including the owner of the tower crane, manufacturer, age, principle contractor, sub-contracting chain, date of examinations. It also needs to include the qualifications of the tower crane operator, qualification of erectors and dismantlers, qualifications of examiners, plant registration codes etc.
- All plant should carry a unique code so as to track and trace under the register. While there may be many sections to a tower crane there are key sections and at the very least these must carry a code.
- Should the crane configuration change after testing then this must be subject to another test prior to use, which also needs to be logged in the register. While the re-testing should happen already at the moment, there is not data to check if this is done, and it is suspected that such checks currently do not take place in many cases.

FOI

Despite having raised the issue in the past it continues to be difficult to obtain information from HSE. Often UCATT has to send in a Freedom of Information request to obtain an answer to a straightforward question. HSE then tends to send out the answer to the question in the last days of the stipulated period for response of 20 working days.

June 2009

**Letter dated 15 December 2008 from Rt Hon James Purnell MP, Secretary of State
for Work and Pensions**

FOLLOW UP TO COMMITTEE QUESTIONS ON THE WORK OF THE HEALTH AND SAFETY EXECUTIVE

I am pleased to enclose the additional information on the work of the Health and Safety Executive which I promised during my appearance, along with my Permanent Secretary, at your evidence session on 9 July.

I would like firstly to stress the importance that both the Department and I place on health and safety at work. HSE has been very successful in helping Britain achieve some of the safest workplaces in Europe, indeed our record on work-related fatalities is the best in Europe and I want to make sure we build on this success.

I am very grateful for the support the Committee gives to health and safety, your report into the work of HSC/E is testament to this. The report provided both the Department and HSE with clear conclusions and recommendations on a broad range of issues. I can assure you that these have been taken seriously and the following demonstrates some of the actions taken following publication of your report:

- In July I commissioned HSE to publish a review of progress on the offshore oil and gas industry's response to the issues identified by HSE's Asset Integrity programme (KP3) covering leadership, process safety management and worker involvement.
- On 4 December I announced an inquiry into the underlying causes of construction fatal injuries. There are still an unacceptable number of fatal accidents in the construction industry and I want to see what more can be done to reduce this. The inquiry will be carried out by an individual who is independent from HSE and I have asked Rita Donaghy, former Chair of Advisory, Conciliation and Arbitration Service (ACAS), to carry out this work.
- A number of discussions have taken place on tower crane safety. We have asked HSE to bring forward proposals early in the new year to improve the use of this equipment, as well as enhancing the operation and transparency of the current system, particularly so that assurance can be provided to workers and members of the public. We have asked that this work includes proposals for the development of a tower crane register, as recommended by the Committee.
- A roundtable meeting involving the key health and safety professional bodies was convened in July by Lord McKenzie to discuss accreditation of health and safety professionals. A further meeting to review progress will take place early next year.
- In October the Risk and Regulation Advisory Council held a risk forum on "Health and Safety in Small Organisations", this event is the start of a process to reduce uncertainty and improve health and outcomes in small businesses. Support was given to both Keith Hill MP and Lord Bruce Grocott to ensure the Health and Safety Offences Bill had a smooth passage through both Houses. The Bill recently received Royal Assent and will come into force on 16 January 2009.
- New guidance for involving employees in managing workplace health and safety was recently published by HSE. The guidance has been brought right up-to-date to reflect the current diversity of working arrangements.

HSE recently published statistics for 2007–08. These show that reported major injuries at work fell by around 9% since the start of the decade and this trend continues. Work-related ill-health has also fallen across the period, although the rate of improvement here is not as great as hoped. Workplace deaths also fell by around 5% to 229 compared to 247 workers in 2006–07. Across the EU, Great Britain one of the lowest rates of work-related fatalities and injuries. Whilst I welcome the headline decrease, can I assure there is absolutely no room for complacency, hence my desire to see what more can be done in the construction industry, for example.

I was asked a number of questions on HSE's work during the session. These are recorded in Qs 73–93 of the transcript. I responded at the time and also said, because there were a number of detailed points, to address these in writing. Annex 1 provides the detail I agreed to send on inspection rates; slips trips and falls; construction issues; RIDDOR; and recruitment and retention of inspectors.

You are aware that HSE's Board has developed a fresh strategy for health and safety in Great Britain which was launched on 3 December for consultation. This is welcomed by the Government. I understand

you recently had a very helpful meeting with Judith Hackitt, HSE's Chair to discuss how the strategy will address a number of the Committee's conclusions and recommendations. I hope the meeting reassured you on HSE's direction of travel and their proposed priorities for the future.

Annex 1

ADDITIONAL INFORMATION FOR THE COMMITTEE

INSPECTION RATES AND HEALTH AND SAFETY STANDARDS

1. The UK has an excellent health and safety regime, one of the best in the world, but it remains very important to continue to improve its record in this field. Even though the regime has led to the lowest rate of work-related fatal injuries across the EU, we are not complacent. HSE has set targets in its business plans to reduce the incidence rates for workers killed, injured and made ill by their work, and the resulting overall working days lost. We are currently on track to meet the fatality and injury targets but need to do more to meet our ill health and overall working days lost targets.

2. DWP's Departmental Strategic Objective 3 maintains our commitment to delivering the targets for reducing work-related injuries and ill health that were set under "Revitalising Health and Safety". As a condition of its Spending Review settlement HSE has been asked to maintain the number of frontline inspectors and to ensure that there will be no dilution of its Enforcement Policy.

3. The proportionate use of range of enforcement measures underpins and amplifies HSE's other activities to deliver a sustainable, long term reduction in occupational injury and ill health. HSE is well aware that some employers are "bad or negligent" and it will not hesitate to take formal action—to improve standards and hold failing duty holders to account. HSE will continue to target resources based on risk and risk management to maximise delivery of improvements in health and safety. This includes engaging in multi-agency operations, where they can contribute effectively to tackle negligent employers and to deliver justice and secure safe working environments for exploited workers. It does and will continue to press for severe penalties for blatant and deliberate offences.

4. The introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 and forthcoming Health and Safety (Offences) Act 2008 will also act as a further deterrent to duty holders.

5. However, enforcement alone will not achieve the levels of improvements needed to reach our goals. Whilst there are some employers who will only respond to formal enforcement to fulfil their duties, there are others who make up the majority, that with advice, support and an explanation of the case for properly managing health and safety will comply with their duties and in some cases go beyond it. HSE has found that the prime factor which governs whether there are fatalities, injuries or ill health at work is the motivation of the employer. Changes in employer motivation cannot solely be achieved through increased inspections. Part of HSE's role and expertise is to assess which type of intervention will be most effective with different employers. HSE must continue to influence employers in many different ways; including the provision of advice and guidance, and interventions through inspection, campaigns and blitzes, as well as formal enforcement. HSE regularly reviews and revisits the impact of its interventions on health and safety outcomes. It is already developing further research that assesses the impact of inspection and associated activities on health and safety outcomes, over and above the influence of other factors.

FIT3 AND SLIPS, TRIPS AND FALLS

6. *Progress and Strategy on Slips and Trips*: The paper to the (then) HSC in December 2006 reflected the progress on injury reduction up to that date. It correctly noted that HSE had yet to make any real impact in relation to slips and trips, reflecting the fact that attitudes to slips and trips are particularly resistant to change. However, the paper also predicted that HSE would meet the PSA 3% target as progress in other topics, especially workplace transport and falls from height, was more positive and work was planned to re-focus efforts in relation to slips and trips.

7. Since then, HSE's Fit3 Programme has continued to work hard to reduce injuries relating to slips and trips. The highly successful "Shattered Lives" Campaign has raised awareness of the issue, and particular industrial sectors where the rates of injury are high, such as industrial cleaning, food and catering, have been targeted. As a result HSE now has evidence that attitudes are changing. In the specific sectors targeted, reduced numbers of injuries are being reported, and specific case studies demonstrate, for example, that relatively small changes to the way floors are cleaned can reduce both the number of people being injured and costs. Through analysis of this work, HSE's plans have been refreshed to include re-running "Shattered Lives" later this year; targeting further industries where HSE knows they can make a difference; working with key stakeholders in the flooring and footwear industry to raise standards; and developing an interactive on-line one stop shop on slips and trips.

8. *Measuring Progress:* HSE's Fit3 programme has a number of monitoring systems in place to measure performance against targets. It monitors reported injuries using RIDDOR, data from the Labour Force Survey (LFS) and data shared with various stakeholder groups, including industry. HSE reports fatal injury statistics every three months on its web site, and in autumn each year publishes detailed injury statistics, including an assessment of progress against the 3% target to reduce major and fatal injuries.

9. Monitoring ill-health and days lost data is more complicated and relies almost exclusively on analysing LFS, as well as some bespoke surveys for specific types of ill-health. It is further complicated by the fact that much of HSE's attention is directed at long latency conditions such as occupational cancer, or noise induced deafness, where remedial efforts can take many years to show any impact. Leading indicators for asbestos, respiratory disease and skin disease are all showing positive signs that messages are getting through and attitudes are changing but, for the reasons described, the benefits of this work may not show in terms of reduced numbers of reported cases of ill-health for some time.

10. In addition, the days lost statistics and conditions like stress and musculo skeletal problems can be heavily influenced by other factors within the overall economy and are thus outside HSE's control. Analysis of 2007–08 data suggested HSE was unlikely to meet its ill-health target.

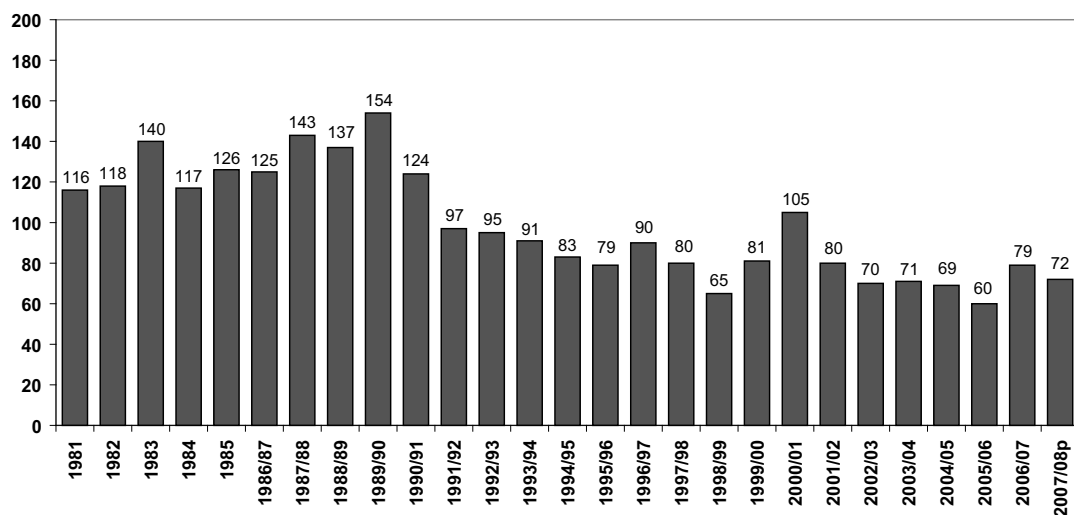
CONSTRUCTION—RESOURCES

11. Before entering into the discussion about the significance of fatal injury statistics in the construction industry I want to stress the fact that the number of fatalities is unacceptably high.

12. To view recent fatality figures in context, the chart below shows the numbers for each year since 1981. Statistical analysis shows that the number of fatalities for 2006–07 (79) and the most recent provisional figures for 2007–08 (72) are in line with the significant reduction in numbers of fatalities since the 1980s, albeit with a levelling off of this long-term trend in the last five years or so.

13. To take account of changing levels of employment in the industry, the picture can be presented in terms of the rate of fatalities per 100,000 workers in the industry. However, the picture looks similar. The rate for 2006–07 was 3.9 while the provisional rate for 2007–08 is 3.4. This compares with rates, for instance, in the first half of the 1990s of between 6.6 (1990–91) and 5.0 (1994–95). So broadly our conclusion is that there has been a significant downward movement over the longer term but the trend over the last five years has become static with an average yearly rate of 3.6 per 100,000 workers.

Fatal Injuries to Workers in Construction Jan 1981 to March 2008



Injury figures for 1996/7 cannot be compared directly with previous year's figures because of the introduction of RIDDOR 95

14. These figures provide context for the main issue, namely the resources available to HSE's Construction Division (CD) and the extent to which inspector numbers can be directly related to the performance of the sector. To clarify the position HSE is committed to maintaining its frontline inspector numbers over the period covered by the current financial settlement—that is until the end of 2010–11—and this commitment obviously includes CD.

15. The CD staff plan for 2008–09 is to maintain an average of 145 Full Time Equivalent (FTE) operational inspectors, split between 125 who visit sites on a day-to-day basis and 20 line managers who are also inspectors. The number working in CD in October is 143, very close to the intended level. In addition to front line operational inspectors, HSE has Health and Safety Awareness Officers (HSAOs), 24 of whom work in CD, and assist inspectors in the delivery of important health and safety messages. As regards

London specifically, CD is flexible enough to reallocate Inspectors to address such large scale developments as the Olympics and Crossrail. These major projects have long lead-in periods which allow such reallocations to be organised in a measured way as project work levels increase. HSE has also recently announced a structural change at senior level in London which is aimed at increasing its capacity for dealing with the Olympics.

CONSTRUCTION—TOWER CRANE SAFETY

16. The other area of discussion on construction safety was the Committee's recommendation that HSE should bring forward proposals which would promote greater levels of safety in the operation of tower cranes and other plant such as the introduction of a national register.

17. Firstly, I should stress that we share a common objective which is to improve health and safety on construction sites and to reduce the number of serious incidents involving tower cranes. The question is how to achieve that in a proportionate way.

18. A number of actions have been taken by both HSE and the industry over the last few years which have contributed to improved safety in this area. The HSE has published three safety alerts, drawing the industry's attention to matters which need careful management by those responsible for ensuring safety. HSE has also visited the head offices of all the tower crane suppliers to ensure safety is being managed properly and it is following up these visits with a series of inspections to check standards are being met on the ground. HSE has also taken the results of these findings back to the key stakeholders in the industry so that lessons may be learned.

19. Following their investigation into the tragic incident at Liverpool in 2007, HSE published its technical report into the likely causes so that industry could learn from the event and put in place measures to prevent a recurrence. HSE also wrote to all suppliers and other stakeholders asking for confirmation that where necessary, remedial precautions have been taken. HSE will continue to follow up this work and is raising in Europe areas where it is considered the relevant international standard could be strengthened and improved. HSE has also been active in both disseminating the lessons across Europe and beyond as well as engaging with other countries like America and Hong Kong who have suffered similar tragic incidents so as to learn what lessons there are for the UK industry.

20. Industry has also been active. John Spanswick, Chair of the Strategic Forum's health and safety group, recently outlined to you and other members of the Committee the work of the Strategic Forum's Tower Crane Working Group. This group includes a broad range of stakeholders including the trade unions and the Battersea Crane Action Disaster Group. They are taking forward a range of initiatives and have most recently published a suite of widely welcomed guidance, endorsed by all stakeholders in the sector and HSE's Chief Inspector of Construction. I was also pleased to provide supporting comments to this important work. I understand that Mr Spanswick has offered to keep you updated on developments.

21. The Construction Plant Hire Association (CPA) has also been active, working in collaboration with HSE to produce guidance on thorough examination and testing procedures along with publication of a series of Technical Information Notes (TINs) on various aspects of tower crane safety. Following release of HSE's technical report in to the cause of the Liverpool incident, the CPA produced 3 TINs to guide industry in its review of issues drawn to their attention.

22. The Committee should be assured that the existing regulatory regime (The Lifting Operations and Lifting Equipment Regulations 1998) does provide a comprehensive set of controls covering lifting plant safety, including suitability, maintenance, examination and operation for use on construction sites. The Regulations requires that a crane must be thoroughly examined by a competent person after erection and before use on site; provides for subsequent examinations at either six or 12 month periods; and for any safety critical defects identified as part of such examinations to be reported to HSE. A competent person must provide records certifying to the employer that these examinations have been carried out.

23. The work carried out to date is part of an ongoing process of continuous improvement in achieving higher standards in this area as well as providing a greater degree of assurance about the standards in place. In recent discussions with stakeholders—including yourself—it has been possible to identify further areas for action that build on the current legislative regime. I can confirm that in the New Year, HSE will be bringing forward further proposals to strengthen and enhance tower crane safety. I have asked that this work includes proposals for the development of a tower crane database, as recommended by the Committee.

24. Whilst much is known about the operation of tower cranes in the UK, it is clear that we would benefit from research to examine the cause of incidents across the globe and technical developments which might improve further the safety of this equipment. HSE will be commissioning such research.

25. Finally, in order to ensure that industry is benefiting from and adopting the excellent guidance that is already available, HSE inspectors will in 2009–10 be targeting this area in its inspection programme next year.

26. I hope this summary gives you an indication that the matter is high on the agendas of both Government and the industry.

 RIDDOR—REPORTING OF INJURIES, DISEASES AND DANGEROUS OCCURRENCES REGULATIONS

27. The starting point for considering the effectiveness of RIDDOR is to be clear about the best available information on reporting levels. Table 1 summarises reporting levels for RIDDOR reportable injuries to employees in the last decade.

Table 1

OVERALL RIDDOR REPORTING LEVELS FOR REPORTABLE INJURIES TO EMPLOYEES 1998–99 TO 2006–07 BASED ON 3-YEAR AVERAGED LFS RATES OF REPORTABLE NON-FATAL INJURY, SHOWING CENTRAL ESTIMATE AND UPPER AND LOWER 95% CONFIDENCE LIMITS

	<i>1998–99 to 2000–01</i>	<i>2001–02 to 2003–04</i>	<i>2004–05 to 2006–07 (p)</i>
Central	45%	43%	52%
Lower	43%	41%	49%
Upper	47%	45%	54%

28. The figure of 5% mentioned by Harry Cohen MP on 9 July relates to the reporting by the self employed of their own injuries. As can be seen from the Table, reporting of employee injuries by employers is around 50%. As regards fatalities, HSE is confident it becomes aware of almost all of them, if not from the employer then through coroners, the police or other emergency services.

29. Obviously, it would be desirable if a higher proportion than 50% of injuries were reported, but the additional effort by HSE in enforcing the reporting requirements would inevitably reduce enforcement effort on other matters. Nevertheless, as explained in the Government Response, HSE does prosecute employers for failing to report incidents. Often the seriousness of the breach of health and safety law that caused the death, injury or ill health is the focus of the case and so, in line with the principles set out in HSE's Enforcement Policy Statement and the wider standards that govern Crown Prosecutors, no separate charge for failure to report under RIDDOR is made. In such circumstances though, the defendant's failure to report the incident can be raised by the prosecution as an aggravating feature for the court to consider when sentencing.

30. The Government's Response described the various sources of data used for collecting information on ill health in addition to RIDDOR. These include the Labour Force Survey, THOR¹ medical surveillance schemes, death certificates and, from surveys of working conditions including employers' and employees' attitudes and behaviours on health and safety matters. For those categories of disease which are compensatable under the industrial injuries scheme, the statistics of compensation cases are also analysed.

31. Evidence from all these sources is drawn on by HSE for field intelligence and developing its policies on ill health. The Government Response acknowledged that this data set is incomplete and has limitations. This will always be the case, but it does not mean that the resulting intelligence and policies are flawed, provided the limitations are openly recognised and that adequate steps are being taken to draw on other sources of information.

RECRUITMENT AND RETENTION OF STAFF

32. Concern was expressed that HSE's commitment to maintain frontline inspector numbers arising from its Spending Review 2007 settlement would be undermined if it did not have appropriate policies and procedures in place regarding recruitment and retention. HSE is alert to this situation, and has recently analysed its workforce and external labour market trends against future business needs. It has identified a number of future workforce issues, developed proposals to deal with them, and is taking forward a number of actions to maintain inspector numbers.

33. HSE needs a wide range of professionally qualified people—often to chartered status—with significant industrial experience to work across a number of sectors, such as petrochemicals, nuclear and construction. External research shows that many employers find it difficult to recruit such staff; face issues about the age profile of their workforces; and have retention problems.

34. Since January this year HSE has significantly expanded its recruitment activity and is introducing a number of improvement initiatives, including making better use of web-based technology and external recruitment agencies. HSE recruited 40 trainee inspectors in April. More recently it has recruited 13 specialist inspectors for the Hazardous Installations Directorate and 15 for the Nuclear Directorate in disciplines that have traditionally been difficult to fill. Currently there are further major recruitment campaigns underway for trainee general and specialist inspectors. Although there remain challenges to recruitment in certain specialist disciplines, this ongoing recruitment activity is expected to enable HSE to meet and then maintain its commitment to frontline inspector numbers.

¹ THOR is the Health and Occupation Reporting Network of specialists and general practitioners run by Manchester University.

35. HSE finds that, whatever the difficulties in recruiting the staff it needs, it tends to retain most of them once recruited. Over the last three years, the annual turnover rate for inspectors has been about 5.4%, which compares well with many other organisations. In 2007–08, 20 out of 604 general inspectors resigned, with a median length of service for this group of 6½ years. This gives HSE a reasonable if not a fully satisfactory return on its initial investment.

36. HSE does not expect there to be any significant changes in the overall number of inspectors leaving over the next three years. Based on the last three years, its workforce planning assumptions are that about 50 inspectors will resign and 25 inspectors will retire each year. Its recruitment plans exceed this number in order to build up numbers; allow for unanticipated variations in leaving rates; and to factor in career development and succession planning—for example, promotion to senior management positions.

37. Building and maintaining inspector numbers is HSE’s top workforce priority. The current recruitment drive is showing early signs of being successful, but HSE is aware that the position can quickly change so the Executive Board and Senior Management Team review progress every month.

Supplementary memorandum submitted by the Union of Construction, Allied Trades and Technicians

**HSE RECORDING PROCEDURES OF CIS STATUS OF FATALLY INJURED
CONSTRUCTION WORKERS**

INTRODUCTION

For a long time UCATT has had serious concerns about the effects on the health and safety of construction workers registered as self-employed under the Construction Industry Scheme (CIS). UCATT maintains that bogus self-employed CIS workers tend to be at a higher risk to suffer from accident and injury than workers in a direct employment relationship. Reasons for this include:

- Bogus self-employed workers tend to operate on unorganised sites that have far lower levels of health and safety.
- Bogus self-employment inevitably leads to fragmentation of the working structures. Safety imperatives get weakened or lost as they get passed down the work chains.
- Contractors avoid providing safety training to (bogus) self-employed workers.
- Bogus self-employed workers are much more likely not to be provided with essential Personal Protective Equipment (PPE).
- Bogus self-employed workers often change sites, which increases their risk because it has been found that accidents often happen early on after starting on a new site.
- Bogus self-employed workers do not need to comply with legal working time limits, making them much more likely to work overtime, and working when exhausted.
- Bogus self-employed workers can lose their work at any moment, making them more likely not to object to any unsafe working practices.

UCATT has been trying to prove the increased risks faced by bogus self-employed workers, by showing that there is a disproportionate share of bogus self-employed workers amongst the construction fatalities. This feeling got intensified when it transpired that in their fatality investigations HSE would record bogus self-employed workers, registered under the CIS regime, as employees in their statistics.

It seems that the reason why HSE inspectors reclassify the employment status is that they try to record the correct employment status a worker should have had rather than the status the worker had on paper. Recording a worker under the correct directly employed status brings an important advantage, being that it then tends to be easier for the dependents to receive compensation. However, on the other hand, the approach to record the correct employment status means that the percentage of the fatally injured workers working “self-employed” under CIS is not reflected accurately in the statistics, but considerably lower.

Following UCATT pressure that this situation must be monitored more accurately, in October 2007 HSE started to record the CIS status in all construction fatality investigations.

Since 30 June 2008 UCATT attempted to receive the data of CIS recording in fatal injuries cases from HSE. Unfortunately, between June 2008 and January 2009 UCATT did not receive the data.

As a consequence, on 28 January 2009 UCATT submitted a Freedom of Information (FOI) request into the matter to the HSE. By doing so UCATT sought clarity as to how many fatally injured workers worked on a (bogus) self-employed basis under CIS, while having been recorded as direct employees, a process which decreases the percentage of self-employed in the HSE fatality statistics.

FOI REQUEST 1: CIS RECORDING FROM 1 OCTOBER 2007 TO 31 MARCH 2008

On 28 January 2009, UCATT submitted the following questions to HSE, asking for CIS data from October 2007, when CIS recording should have started.

FOI submitted on 28 January 2009:

1. How many construction workers who were fatally injured between 1 October 2007 and 31 March 2008 were working under the Construction Industry Scheme (CIS)?
2. In how many cases was it not possible to establish with certainty whether a worker was working under CIS?
3. In each of the cases where it was found that the worker was working under CIS, under which employment status was s/he recorded by HSE?

Response received on 25 February 2009:

“Your request was received on 28 January 2009 and I am dealing with it under the terms of the Freedom of Information Act 2000 (the Act).

With regard to questions 1–3, I can confirm that HSE holds no information relating to whether construction workers who suffered a fatal injury at work were working under the Construction Industry Scheme (CIS) for the period requested.

Following concerns expressed by UCATT, HSE asked inspectors to record on the initial fatality notification whether the deceased was covered by the CIS. These notifications are completed as soon as possible, often on the day of the accident itself, and the inspector includes any information that is available at that time.

The attempt to collect CIS data at the time of notification was abandoned shortly after it started (around October 2007) as it was found that the information was not available at the time of the notification and no information was collected or held. However, since April 2008, the Corporate Operational Information System (COIN) used to record inspectors’ work was modified so that this information could be collected for all investigated construction accidents from this date.”

UCATT believes that the above information is inaccurate, and that HSE does hold the information on CIS status during that period. In late November 2008 UCATT was in communication with HSE Statistics department concerning the fatal accident of a worker in January 2008 in Swansea. UCATT was informed that the deceased worker held a CIS card, but was recorded as an employee because it was considered that he was not genuinely self-employed.

The fatal accident took place in January 2008, allegedly the time for which HSE “holds no information relating to whether construction workers who suffered a fatal injury at work were working under the Construction Industry Scheme (CIS) . . .”

However, HSE was aware that the person in fact worked under CIS, but took the decision to record the case as an employee because it was found that the person was not genuinely self-employed. It can therefore only be assumed that the statement in HSE’s FOI response is not correct. In fact, this case shows exactly what UCATT is trying to demonstrate, ie that the proportion of (falsely) self-employed workers amongst the construction fatalities is much higher than currently reflected in the statistics, being the result of HSE recording fatalities under the correct employment status rather than the status held on paper.

FOI 2: CIS RECORDING FROM 1 APRIL 2008 TO 31 DECEMBER 2008

UCATT then submitted a second FOI into the matter, with the aim to find out about HSE’s CIS recording between April and December 2008, a period for which HSE said it has recorded the data.

FOI submitted on 25 February 2009:

1. How many construction workers who were fatally injured between 1 April 2008 and 31 December 2008 were working under the Construction Industry Scheme (CIS)?
2. In how many cases was it not possible to establish with certainty whether a worker was working under CIS?
3. In each of the cases where it was found that the worker was working under CIS, under which employment status was s/he recorded by HSE?

Response received on 25 March 2009

“I can confirm that the Health and Safety Executive holds information relating to your request as follows:

There are two construction workers fatally injured between 1 April and 31 December 2008 identified on HSE’s operational information system as working under the Construction Industry Scheme (CIS). One is recorded as an employee and the other as self employed.

There are four construction workers fatally injured between 1 April and 31 December 2008 for which it is recorded that it was not possible to establish with certainty whether they were working under the Construction Industry Scheme (CIS).

There are a couple of points you should be aware of regarding this information.

1. The information provided includes those fatalities which have been reported to HSE as the Enforcing Authority and have been recorded as “reportable” under RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations). Providing these numbers relatively close to the incident date means that many cases are still under investigation. Consequently these data are highly provisional and may be subject to revision as more relevant information becomes available. This may result in the identification of fatalities which HSE consider are non-reportable. In addition there may be changes in other parameters for some of these fatalities when this information is finalised.
2. RIDDOR does not require whether a worker is working under the CIS to be recorded. The available data has been compiled from coded information HSE holds in its operational database.”

INQUIRY 3 (NOT OFFICIAL FOI): NAMES OF DECEASED WORKERS WHO DEFINITELY OR POSSIBLY WORKED UNDER CIS (FATAL ACCIDENT BETWEEN 1 APRIL TO 31 DECEMBER 2008)

Being aware that HSE classifies fatally injured workers according to the employment status they should have had, UCATT wanted to examine under which employment status Sonny Holland, a 20-year old “apprentice” scaffolder, who fell to his death in April last 2008, was recorded. Sonny suffered from an accident on 24 April 2008, and died one day later on 25 April 2008. Clearly, he therefore falls in the timeframe 1 April to 31 December 2008 for which HSE has recorded the names of workers who definitely or possibly worked under CIS.

Question submitted on 27 April 2009:

On 27 April 2009, UCATT asked HSE for the names of the two construction workers who were identified as having worked under CIS, as well as the names of the four workers where it was not possible to establish with certainty whether they were working under the CIS.

Response received on 20 May 2009:

“The two construction workers who were identified as having worked under CIS are Mr Hugues Makambila and Mr Ioan Boboc.

The names of the four workers where it was not possible to establish whether they were working under CIS are Mr Radu Bors, Mr Andrzej Freitag, Mr Altin Balla and Mr Ondej Hladik.”

Having been provided with these names reinforces UCATT’s fear about the accuracy of information provided and/or the accuracy of HSE’s recording procedures. As apparent from the above FOI response, HSE did not record Sonny as having worked under CIS. The fact that he did work under CIS was clearly known by his family. On the day of his death Sonny received a tax rebate under the Construction Industry Scheme.

CONCLUSIONS

Overall all this leads to a number of major questions and concerns, in particular as regards the accuracy of information contained in HSE Freedom of Information responses, as well as the accuracy and reliability of HSE’s recording procedures concerning employment status.

The above also reveals that there are major questions to pose, and changes to make, concerning the working of the Construction Industry Scheme, which facilitates mass-scale bogus self-employment, with major ramifications for the health and safety of the construction workforce.

Taking this into account it would be in the interest of the HSE (as well as the industry as a whole) to largely reform or abolish CIS in order to improve health and safety on construction sites.

June 2009

Memorandum submitted by GMB Union

1. GMB is Britain's third largest Trade Union, with over 600,000 members working across all sectors of the UK economy.
2. GMB welcomes the opportunity to submit evidence to the committee on the work of the Health and Safety Executive (HSE). GMB strongly supports the work of HSE and Local Authority Environmental Health Departments, and aims to work in partnership with employers and regulators to create and sustain workplaces that are safe and healthy for our members.
3. Our officers and lay representatives are active on many HSE Industrial Advisory Committees and Fora, and the efforts of GMB members across the British economy have made a significant contribution to improving health and safety performance in many key, poor performing sectors.
4. As we are sure the Committee will recall, GMB provided written evidence to their previous enquiries into the work of HSE in 2003–04 and 2007–08, and provided oral evidence before the Committee in February 2008. We were pleased with the conclusions and recommendations that the Committee published in their Third Special Report in June 2008, and were deeply disappointed by the paucity of the Government's response to those recommendations.
5. The Committee has not outlined particular topics for consideration, so we shall limit the contents of this submission to those areas of greatest current concern to our membership. We shall address our comments primarily on the work of HSE, but will reference the work of Environmental Health Departments where this is germane.

(I) HSE STRATEGY: "THE HEALTH AND SAFETY OF GREAT BRITAIN: BE PART OF THE SOLUTION"

6. GMB formally responded to the consultation exercise on the draft HSE strategy in January 2009.² Whilst there was little in the strategy that we would find objectionable, the strategy on the whole was highly aspirational and was worryingly light on detail for implementation, even for a high-level document such as this.
7. In spite of these reservations, we welcomed the draft strategy when it was published in December 2008 and will work in partnership to deliver it, though it sets an overall tone of "motherhood and apple pie".
8. GMB has concerns that the focus on "working with and through others" is tacit acceptance that HSE no longer possess the core expertise and resources to successfully deliver their statutory functions and remit. We suspect that this is why the consultation exercise on the draft strategy focussed on the future implementation of the strategy, rather than giving respondents a genuine opportunity to shape the content and direction of the strategy itself.
9. Our analysis is that the draft document provides a good overview strategy for the future direction of health and safety in Great Britain. While generally the draft strategy is clear and to the point, we were surprised by the tone of the document in some cases, particularly the usage of buzz phrases such as "common sense", which lack a widely accepted meaning and are therefore likely to be misinterpreted. We hope such terms will be clarified in the final published strategy, though we are not encouraged by reports from within HSE that the final copy will bear little difference to the draft.
10. The draft strategy did however incorporate a number of objectives that GMB has been highlighting for many years. Accordingly, GMB's activities on health and safety; in campaigning; and providing information, support, advice and training, at both regional and national level, already complement and support the work of HSE.
11. GMB is especially pleased to see the strong commitment to worker involvement and the central role of union health and safety representatives. However, in order to ensure this is given meaning, HSE must continue to integrate positive worker involvement messages into its range of guidance publications and media; and Inspectors and Environmental Health Officers (EHO) must ensure that workplace consultation arrangements are assessed during inspections, with enforcement action taken if required.
12. We also welcome the support for the role of enforcement action and the rejection of the concept of "self-regulation", which we would assert has proven utterly ineffective in improving health and safety outcomes.
13. GMB is committed to working with HSE to develop and deliver the strategy, and will provide assistance whenever possible. We will certainly continue to campaign on workplace health and safety issues, and for the provision of greater resources for both HSE and Environmental Health Departments.
14. The development of the new strategy gives the opportunity to reshape the work of the Health and Safety Executive and Local Authority Environmental Health Departments to address the changing industrial landscape in Great Britain, primarily by ensuring sufficient resources for health and safety law to be effectively enforced. That stakeholders have not been consulted in the development of the strategy itself represents a significant missed opportunity.

² <http://www.gmb.org.uk/files/97614/FileName/GMBResponsetoPleuralPlaquesConsultationDocument14.pdf>

15. This said, GMB recognises that the current document represents only a broad outline of the path the HSE wishes to take. We believe the strategy, as it stands, could present a significant shift in policy in several areas. However, the actual effectiveness of the new strategy is dependent on two factors not presented or detailed to date.

16. Firstly, the work programmes developed to implement the strategy. These will determine the priorities areas for action, and the resources required for successful delivery. GMB strongly sought to be involved in planning and developing these programmes, but has received no feedback on this request to date.

17. Secondly, HSE can only improve health and safety performance if it receives the resources and retains the expertise to deliver consistently over the lifetime of the strategy. GMB is concerned that, due to recent budgetary issues and the closure of the Rose Court HQ, HSE currently does not possess the requisite number of staff across the Inspectorate and within policy functions to successfully deliver the strategy.

18. As such, we will continue to call for additional funding for both HSE and Local Authorities to allow them to deliver their remit in line with the new strategy. We believe that this lack of resources and experience, combined with the direction of the new strategy, sets the parameters for HSE activity over the next five years and beyond. In the next sections we present some thoughts on the key areas of activity for HSE, and how these twin constraints will impact on their performance.

(II) INSPECTION, INVESTIGATION AND ENFORCEMENT ACTIVITY

19. HSE and Local Authorities have historically been strongly criticised by the labour movement for low levels of enforcement action. The restated commitment to enforcement in the draft strategy is therefore very welcome.

20. We believe there is a real opportunity to re-evaluate the enforcement policy, role and activities of both HSE and Local Authority Environmental Health Departments, and that this must extend beyond the provision of a seat for LACORS on the HSE Board.

21. GMB does not wish to see Inspectors spending all their time in court, and we acknowledge the importance of balancing enforcement activity with the provision of guidance and advice through workplace inspections. However, there has been a seismic change in the landscape of British industry over the past twenty-five years, but no corresponding rebalancing of enforcement roles.

22. GMB also believes that HSE and Local Authorities should make more use of constructive, targeted enforcement activity, particularly with regard to occupational health within the health services sector.

23. There is evidence that a well publicised intervention in a sector can have considerable effect throughout that sector, such as the enforcement notices for stress management which had a transformative impact in the NHS; and the high profile case against the Metropolitan Police, which led to significant improvements in health and safety management practice within the Force. These were bold enforcement decisions, and GMB wishes to see more action taken in this vein.

24. GMB believes both HSE and Local Authorities should concentrate their resources on core occupational health and safety issues, and withdraw from wider areas such as health promotion, “wellbeing”, and domestic/residential safety.

25. We are also concerned that Local Authorities continue to prioritise food safety and noise abatement over workplace health and safety, and believe that considerable resources need to be devoted to increasing EHO Inspector numbers over the coming years. One way to combat this would be to designate one Councillor as “health and safety champion” in each Local Authority, preferably by statute, to ensure that workplace health and safety does not fall foul of local political considerations.

26. There are a number of areas which only tangentially concern workplace health and safety for HSE is the regulator. These include domestic gas safety, and the health and safety of residents or patients in care homes, residential homes and hospitals. HSE does not have sufficient resources to take an active role in investigating and enforcing on such issues, and GMB would prefer that other organisations that are better placed to make a difference take on these roles. This is not to say that HSE should not retain policy oversight, but that resources would be better served by a clear focus on core workplace health and safety, with this work being picked up by Capita and Health Inspectors respectively.

27. As stated above, GMB believes that there is an urgent need for HSE and Local Authorities to revise their enforcement strategy to ensure that more enforcement happens, and that it is more effective. We also believe that existing methods of workplace intelligence, such as complaints from workers and communication from Safety Representatives, could be better utilised to secure compliance by formal investigation rather than bureaucratic system-based responses.

28. GMB welcomes the recent words of Judith Hackitt, at the strategy launch and subsequent consultation events, that ultimate responsibility for the prevention of injury and ill-health lies with employers, rather than regulators. This principle must form the cornerstone of the delivery of the strategy, and negligent employers must be held to account for their failings.

29. In particular, we welcome her honesty in admitting that the 229 officially recorded fatalities are merely the tip of the iceberg in terms of work-related deaths in Great Britain.³ As the 10,293 official work-related deaths for 2007–08 show, many employers neglect their responsibilities without deterrents being in place and enforced. It is critical that when prosecutions occur, particularly for very serious offences, those held responsible face stringent sentences that will both alter behaviour in those found guilty, and acts as a warning to others.

30. The current level of inspection and enforcement does not provide a realistic deterrent to those employers who are breaking the law, and there is an urgent need for an extension of this work. We are therefore disappointed that HSE intends to continue the current regime rather than strengthen it.

31. Sentences against companies for health and safety offences are substantially lighter than those currently being spotlighted for financial offences, even though health and safety failings have resulted in substantial human cost. Even with the enactment of the recent Health and Safety Offences Bill, sentences are on a par with those for relatively trivial offences, such fly-tipping.

32. As such, there is a clear need for HSE policymakers to better engage with and advise the Judiciary and the Crown Prosecution Service, to ensure that the public interest is served in bringing cases to court, and that any subsequent sentences are genuinely reflective of the severity of the offences.

33. To this end, GMB strongly advocates that a seat on the HSE Executive Board should be reserved for a representative of Victims Support Group, such as Families Against Corporate Killers (FACK), or one of the many Asbestos Support Groups. This will ensure that all policy decisions endorsed by the Board to enact the strategy will adequately consider the consequences of negligence at work.

(III) SPECIFIC LEGAL DUTIES FOR DIRECTORS OF ORGANISATIONS AND BUSINESSES

34. The draft strategy reflects the long-running GMB campaign for employers to provide strong leadership on health and safety matters. The recent evaluation⁴ of the guidance developed jointly by HSE and the Institute of Directors (IoD), disappointingly revealed that only 25% of company directors are aware of the voluntary approach espoused by the publication.

35. The subsequent reaction from the IoD,⁵ that Trades Unions are responsible for this by failing to promote the guidance, stretches credibility to breaking point and re-emphasises the widely-held conviction that corporate bodies will not accept their responsibilities unless required to do so by law.

36. We hope that, as part of the implementation of the strategy, HSE will re-evaluate the case for a specific duty on directors in respect of health and safety, and make a positive recommendation to the Government to this end as soon as possible.

(IV) COMPETENCE

37. GMB trains thousands of union health and safety representatives across a wide variety of industries in both the public and private sectors every year. This education is both accredited and practical, as it focuses on risk assessment and the prioritisation of actions that flows from there. GMB is also training health and safety representatives in specialist occupational health, safety and environmental issues.

38. GMB is eager to ensure that union health and safety representatives use the excellent resources and materials that HSE produces. Health and safety representatives are unpaid volunteers, and many do not have internet access, either at work or at home. It would therefore greatly assist them if HSE were to make this material, much of which is only available in expensive priced publications, freely available.

39. As a result of this training union workplace representatives are, in general, better trained and more competent on health and safety matters than their line managers. GMB is therefore pleased to note the renewed focus on competence within the strategy. GMB strongly believes that basic health and safety understanding and competence should be a pre-requisite for any managerial appointment. We also wish to see a far stronger enforcement line taken against bogus consultants, who proffer health and safety advice without any requirement for formal qualifications, nor accreditation.

40. We strongly agree with the intention to promote joint training for manager and health and safety representatives within the strategy. GMB believes such measures can only enhance consultation and partnership working in the workplace, and we would be willing to explore more detailed proposals with HSE. However, any joint training should be additional to separate training of safety representatives and managers, and not instead of this.

³ <http://www.hse.gov.uk/aboutus/speeches/transcripts/hackitt0509expo.htm>

⁴ <http://www.hse.gov.uk/research/rrhtm/rr695.htm>

⁵ <http://www.morningstaronline.co.uk/index.php/news/layout/set/print/layout/set/print/content/view/full/71765>

41. We understand the inherent problems in enhancing the abilities and knowledge of Representatives of Employees Safety in workplaces where trade unions are not recognised, We believe such problems are not insurmountable, and believe that there would be real merit in HSE working with the union to explore ways of delivering accredited independent training, possibly through a similar model to the Workers' Safety Adviser scheme.

42. Trade union health and safety representatives can also assist HSE through their workplace activities. Health and safety representatives can play a key role in alerting both local authority and HSE inspectors of issues of real concern within the workplace. This does however require such concerns to be handled sensitively and respectfully, and not disregarded as trivia simply because of the source of the complaint.

(V) STAKEHOLDER ENGAGEMENT

43. HSE has made it abundantly clear that its strategy must be delivered in partnership with both employers and workers if it is to succeed. If this is to have meaning, then the tripartite nature of the Health and Safety Commission, and subsequently the Executive Board, must be reflected in all HSE and Local Authority activities and publications, with specific consideration given to communicating with workers, and the impact on the labour force of initiatives, actions and the implications of shifting resources.

44. In particular, the formal methods of consultations and partnership working must be revived. It is highly contradictory for HSE to espouse the virtues of delivering through social partners whilst concurrently reducing the number of tripartite Industry Advisory Committees (IACs), and replacing these with voluntary Sector fora. If HSE wishes to pursue genuine partnership and delivery through its partners, it must reconstitute many of the former IACS, and protect the structures that best allow consultation and involvement.

45. GMB is heavily involved in supporting HSE through our membership of various advisory committees and other forums. We are participating in the current review of the role of advisory committees, and welcome the opportunity to make these even more effective by ensuring that each one has a work programme that relates to the implementation of the strategy.

46. We repeat a request made on numerous occasions for more and better intergovernmental working on health and safety issues, outside of Health, Work and Well-being, which we consider elsewhere in this response. In particular, GMB would like to see greater co-operation between the Police, Ministry of Justice, Department of Transport and HSE on the investigation and official recording of work-related road traffic incidents.

47. One consistent omission from the wide range of HSE stakeholders seems to have been victim support groups and those campaigning for improvements in the governance of HSE, such as FACK, the Centre for Corporate Accountability and the Hazards Campaign.

48. The recent inclusion of a representative from Asbestos Support Groups in the working group overseeing the development of HSE's Asbestos Campaign has resulted in improved media opportunities and a higher profile for the campaign, leading to better recognition and take-up of materials and guidance. This should act as a template, with victim's groups involved in initiatives whenever possible.

49. GMB believes these groups have legitimate voices airing reasonable and informed viewpoints, and there would be real benefits from closer HSE engagement, both at operational and policy level.

50. There is also a strong need to better recognise the crucial role that regulation can play at a European level. GMB hopes that HSE will engage more positively in the EU legislative programme over the lifetime of the new strategy.

51. Recent changes to EU law, resulting in a more flexible labour market across Europe, have resulted in a greater proportion of the British economy becoming reliant on migrant workers than in the past. HSE have taken a leading role in developing Governmental approaches to protecting vulnerable migrant workers, but there is much more to be done, particularly with regard to stakeholder engagement at the national level, and in ensuring that the assumptions on which policy is formulated are as sound for migrant workers as for the indigenous workforce.

52. GMB also believes that HSE should engage more with its counterparts and social partners in Europe and internationally. There are a number of key policy areas likely to create emerging future risks, primarily those from nanotechnology, new forms of energy production and the changes likely to occur as a result of climate change. These challenges require a co-ordinated international response, engaging with politicians, policymakers, campaigners and the media to share research, understanding and emergent best practice.

(VI) OCCUPATIONAL HEALTH

53. GMB has consistently expressed some concern over the effectiveness of HSE's occupational health agenda. There has been some excellent work done on slips and trips, falls from heights and asbestos. However we note that this has had little effect in reducing the high number of musculoskeletal disorders or stress related conditions which make up over 70% of work-related ill-health. There is a need for strong

enforcement-led campaigns on both stress and MSDs (both manual handling and RSI/WRULD), backed by an urgent expansion of EMAS to both provide expert occupational health advice and to fulfil HSE's statutory remit.

54. GMB has also, in the past, been critical of HSE's initiatives on workplace carcinogens. We would welcome more work in this area, particularly with regard to research into workplace cancers, and the potential health effects of the widespread adoption of nanotechnology.

55. We are therefore pleased to note the emphasis within the strategy on HSE prioritising workplace prevention issues. We agree that HSE should review its areas of strategic interest and current programmes of activity, and seek other partners to deliver these goals.

56. This primarily concerns the Health, Work and Well-being (HWWB) agenda. HSE has taken a leading role in this initiative in recent times, but GMB would contend that concepts such as "fit notes" miss the fundamental point of the sheer scale of industrial ill-health and injury in Great Britain, most of it caused by poor or negligent management.

57. Most of the HWWB agenda is best left with the Department for Work and Pensions and the National Health Service. The more progressive elements of HWWB, such initiatives on sickness absence, return to work and rehabilitation, are of great importance, but can be delivered better by other partners, and HSE should not be wasting valuable resources in taking the lead role in this field.

58. Perhaps most importantly, there is an urgent need to bring the British media back "onside" with regard to workplace health and safety risks. The media approach to "elf 'n' safety", typified by the Channel 4 Cutting Edge Documentary "The Fun Police" broadcast in December 2008, and more recently Quentin Letts April 2009 Panorama special "May Contain Nuts", has been to trivialise risk, portray health and safety management as red tape, and blame risk assessment and control for countless wider social problems.

59. HSE must seek right to reply when such stories arise, and issue the strongest possible rebuttal backed by evidence. From here, the lessons from the recent HSE Asbestos Campaign must be learned in terms of using celebrity endorsement to alter public opinion. The involvement of Ian Wright helped to challenge negative perceptions of health and safety, and the use of similar champions for all campaigns both locally and regionally must be enacted.

(VI) CONCLUSION

60. GMB generally supports the direction of the new draft HSE strategy. We strongly support the restated commitment to safety regulation and enforcement, as well as the recognition of the role unions and health and safety representatives can play in improving the safety culture of UK workplaces.

61. However, we retain significant concerns that in the current economic climate, there will be a tendency for employers to neglect their duties to cut costs, and that central and local government may ease up on inspection and enforcement as a result. We hope that the delivery of the strategy will ensure that this is not permitted to happen.

62. Finally, we call on the Committee to ensure that those charged with leading the Health and Safety Executive are sufficiently scrutinised with regard to the future capability, resourcing and envisaged role for the organisation.

63. HSE is staffed by conscientious, hard-working, intelligent civil servants. Inspectors, policymakers, specialists and scientists. A world away from useless pen pushers or faceless bureaucrats. These are the people who investigate every workplace death, and ensure that we don't have a Buncefield incident every other week.

64. GMB contends that the Government doesn't see it quite like this, however, as evidenced by the weak response to the Committee's Third Report last year.

65. The Government has instead treated health and safety regulation as a burden on business. Inspectors have been directed to concentrate on voluntary measures, advice and guidance, rather than prosecution. HSE headquarters in London has effectively closed, with posts moved away from the policy hub of Westminster to Bootle. Since 2001, dozens upon dozens of Inspectors have left the organisation. There are now more traffic wardens employed in London than HSE Inspectors to cover the millions of workplaces in Great Britain. The loss of expertise and sheer manpower has been savage.

66. The new HSE strategy provides a genuine opportunity to detail how HSE will fulfil its remit over the next five years. GMB looks forward to working in partnership with HSE and Local Authorities to improve future health and safety performance, but it does not expect to have to fill gaps where HSE lacks resources. We trust the Committee will continue its excellent job of holding HSE Senior Management to account, and will vigorously pursue assurances that HSE will be strongly resourced to meet its future challenges.

Memorandum submitted by the Federation of Master Builders

EXECUTIVE SUMMARY

1. The FMB supports, and has given oral evidence to the Donaghy Inquiry into Construction deaths.
2. Construction is an industry dominated by SMEs with 93% employing fewer than 14 people.
3. The reporting of accidents under RIDDOR 1995 may mask the number of incidents involving SMEs that occur on large sites while they are sub contracting.
4. The domestic refurbishment sector has the least informed clients, the lowest barriers to entry, and is the primary target for dangerous rogue traders as a result.
5. Well informed clients and trade associations can have a positive influence on health and safety practices in SMEs.
6. Directors' duties are comprehensive; the issue is ensuring that they are discharged consistently and effectively.
7. All parties in a supply chain have responsibility for health and safety.
8. The public sector procures approximately 40% of all construction, and has a responsibility to lead on health and safety as the industry's single biggest client.
9. The failure of the public sector to agree a single prequalification system has led to enormous bureaucracy and created a barrier to SMEs accessing the sector, with the potential benefits in terms of uplift in health and safety standards being lost as a result.
10. The public sector must reform and streamline its prequalification procedures as a matter of urgency, with a single route to prequalification on health and safety based on the Construction Design and Management Regulations 2007, at its core.

INTRODUCTION

1. We are writing in response to Press Notice 17 from the House of Commons Work and Pensions Select Committee, announcing its one-off evidence session on the Health and Safety Executive (HSE), to be held on 10 June.
2. The Federation of Master Builders (FMB) is the largest employers' body for small and medium sized firms in the construction industry, and with 12,000 members is the recognised voice of small and medium sized builders. FMB is committed to promoting excellent standards in craftsmanship and assisting builders to improve levels of building performance and customer service. It is also committed to improving standards in health and safety, to which end it works very closely with the HSE at many levels.
3. This submission will briefly introduce the UK construction sector, before addressing the three areas that the committee intends to look at during this one-off session. Namely:
 - Construction Fatalities.
 - Directors Duties.
 - Health and Safety Management and Responsibilities in Supply Chains.
4. A more wide ranging statement of FMB views on health and safety in construction was published in the House of Commons' Work and Pensions Committee's Third Report of Session 2007–08.⁶

THE UK CONSTRUCTION SECTOR

5. According to the Department for Business, Enterprise and Regulatory Reform (DBERR), the UK construction industry has 250,000 firms employing 2.1 million people, and contributes 9.2% of the nation's Gross Value Added (GVA). Construction companies provide employment for every skill level from labourers to architects, as well as providing the opportunity to work for every size of firm from family run businesses to major contractors. Its efficient operation and competitiveness is essential to the fulfilment of the Government's commitment to improve public services and infrastructure. The delivery of new schools, hospitals, affordable housing, eco homes, all depend on the success of the construction sector to deliver, and deliver safely.

⁶ House of Commons Work and Pensions Committee, *The Role of the Health and Safety Commission and the Health and Safety Executive in work place health and safety: Third Report of Session 2007–08 Volume II. Ev 260–264 and Ev 325–326.*

 CONSTRUCTION FATALITIES

6. This section is comprised of three parts:
- (a) Rita Donaghy's Report.
 - (b) SMEs.
 - (c) The Refurbishment sector.

Part a: The Donaghy Inquiry into Construction Deaths

7. The FMB welcomes this inquiry into the causes of construction fatalities, and has met with Rita Donaghy to assist on a number of occasions.

8. The FMB is of the view that a better understanding of the causal factors would better enable the industry to focus increasingly scarce resources on the true causes of fatalities. The FMB would also like to see the inquiry make an assessment of whether incidents were genuinely and reasonably preventable or were simple accidents which could not have been avoided with any sensible or proportionate precaution.

9. In terms of the messages given to the inquiry on the causes of fatalities, the FMB broadly said the following:

- 9.1 *The industry is inherently dangerous*: It has a potentially lethal combination of heavy machinery, powerful tools, dangerous chemicals, temporary structures, deep excavations, and work at height, all in a fast moving environment where momentary loss of concentration can cost life or limb.
- 9.2 *Human Fallibility*: People make mistakes and errors of judgment in all walks of life. The difference in construction is that mistakes, misjudgments, or a moment's loss of concentration can be fatal or result in horrific and permanent injury. These mistakes can be due to lack of leadership, lack of planning, lack of supervision, lack of training, lack of personal responsibility, lack of concentration, a combination of these, or simply tragic misfortune.
- 9.3 *Regulatory Overload*: The quantity and complexity of health and safety regulation alone, is sufficient to overwhelm most small firms. We estimate that there are around 26 pieces of health and safety legislation which can directly or indirectly place duties and or impose punishments on, construction firms. In addition to this, government also expects their compliance with their legal obligations on tax, employment, the environment, and the 14 parts of the building regulations. 93% of construction firms employ fewer than 14 people and can be regarded as genuinely small firms that struggle with resource. This often forces firms to rely on external consultants, and can lead to the emphasis shifting to the paper requirements of health and safety rather than the onsite improvements they are supposed to produce.
- 9.4 *Failure to tackle the informal economy*: The greater the government imposed burden of taxation and regulation on legitimate business, the greater the competitive advantage of the informal economy. There is a general perception that the authorities consider these offenders to be too difficult to enforce against, and hence they focus their activities on legitimate firms who are doing their best to comply, because they are an easier target. This undermines compliance culture.
- 9.5 *Lack of client drivers*: The private domestic sector is almost entirely driven by price. This is the bottom line for house holders, and they very rarely ask about compliance with legal obligations. Public ignorance of the legal obligations on a builder can even lead to suspicions that the legitimate builder is trying to "rip off" the customer by selling them unnecessary services. The typical example would be that of a legitimate firm pricing up roof work and factoring in scaffolding costs, only to lose the job to a rogue who is happy to carry out the work from a ladder and for cash. In the public sector, the failure of what is the procurer of around 40% of all construction output to agree a common standard and a common approach to prequalification is effectively pushing more and more small firms out of bidding for this type of work. This means that the draw of public contracts as an incentive to improve health and safety performance standards is increasingly being lost.
- 9.6 *Communications Failure*: In the HSE's recently launched strategy, Judith Hackitt expressly states that "Health and safety is being used increasingly as a synonym for unnecessary bureaucracy and excuse for not doing things." In our view, the health and safety regime is too complex to communicate simply, and the communication of what is required is inadequate. As a result, bureaucracy is generated through misunderstanding and fear of legal repercussions. No win no fee compensation/blame culture is a significant driver, with fear of the legal and financial ramifications of being considered to be "to blame", diverting focus from on site practical health and safety, to courtroom orientated paperwork and buck passing.

9.7 *Falls and Machinery*: In terms of the specifics, the FMB analysis of the 75 construction fatalities in 2007–08, suggests that the vast majority of fatalities involve falling off or through surfaces when working at height, or the loss of control of heavy machinery/vehicles/plant or its load. In broad terms this would suggest issues with work planning, risk assessment, and precautions for work at height. It is more difficult to make similarly broad generalisations on those fatalities involving machinery/vehicles/plant and loads, but issues with training and subsequent execution may play a part.

Part b: Small and Medium Sized Enterprises (SMEs)

10. When considering the relationship between fatalities and size of firm, it is important to remember that the construction industry is an SME dominated industry.

11. According to the Construction Statistics Annual 2008, published by the Department for Business, Enterprise and Regulatory Reform⁷ (BERR), the number of private contracting firms in Great Britain was just over 192,000. Of these 86% employ fewer than 8, and can be regarded as micro firms. If employing 250 employees is taken as the boundary below which a firm is regarded as an SME, then the fact that 93% of construction SMEs employ fewer than 14, and 99% employ fewer than 60, demonstrates the extent of small firm domination. (More exact figures appear at Annex A).

12. As well as making up the majority of the firms, SMEs employ the majority of the work force. The figures derived from the same source show that, of the near 1.3 million people employed by contractors in Great Britain, nearly 38% are employed by firms employing 13 or fewer and nearly 61% are engaged by firms employing fewer than 60. (More exact figures appear at Annex B).

13. It is also worth noting that, when an accident occurs that is reportable under the provisions of RIDDOR (the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995) it is the responsibility of the employer to report the incident to the HSE. Therefore, if an accident occurs involving the employee of a small firm subcontracting on a large site, the incident is reportable by the small firm as the employer, not the principal contractor in charge of the site. As such, and given the extensive use of subcontract arrangements in the industry, the fatality and major injury statistics may mask the number of SME related incidents that actually occur on larger, principal contractor controlled sites.

Part c: The Refurbishment Sector

14. Within the refurbishment sector, domestic refurbishment has been the focus of much attention as it has the least well informed clients and the lowest barriers to entry as a result. This makes the sector the easiest market for rogue traders to operate in, and these firms can use the commercial advantage created by evading VAT and ignoring health and safety legislation, to considerably undercut legitimate firms. To the often ill-informed domestic customer price is usually the dominant, and often only, factor when choosing a builder. As a result those pricing to undertake works safely are at a considerable disadvantage compared to rogue traders who are prepared to take more risks.

15. Many thousands of small firms trade exclusively in the domestic sector where client influence of health and safety practices is almost completely absent as the client has little or no reputational risk to consider, and there are no legal duties placed upon the person commissioning the work. In these circumstances we find that health and safety standards often fall well short of the required standard.

16. During private domestic, and small business refurbishments, SME firms' services are usually procured in a casual way without formal tender documentation and very often with little or no paperwork involved. Given the informality of business practice in the sector, expectations that the majority of SMEs should embark upon producing written health and safety documentation and work with auditable systems for implementation are unrealistic.

17. Of the many solutions that have been suggested as to how SMEs could be influenced, influencing through Local Authority Building Control has been seen as one of the most promising due to their informed on site presence. However, although contacts through this route could reach some SMEs, it has to be remembered that millions of construction works take place quite legitimately without the requirement to inform building control.

18. The influence of trade associations is also limited as relatively few construction SMEs belong to associations that fully interact with the HSE. They also lack the formal powers to be able to impose standards as a member wishing to deviate from such standards need only resign their association membership. As such it is not possible to audit members' performance in every day terms as the reality is that the imposition of an audit system would reduce membership substantially, pushing even more SMEs into the sector of the industry which is outside of formal communications channels.

⁷ The latest figures covered in the Department for Business, Enterprise and Regulatory Reform's Construction Statistics Annual 2008, are those for 2007.

19. However, trade associations such as the FMB can promote good practice, assist members with compliance issues, and try to educate. To this end the FMB:

- Provides assistance to members to aid compliance.
- Provides informative articles through the in-house magazine.
- Provides online and telephone help services for members specific queries and problems.
- Provides information and links to information through websites.
- Distributes hard copies of HSE and industry advisory publications to members.
- Informs members through meetings and seminars.
- Maintains active monitoring of health and safety issues and debate through committees contributed to by members particularly interested in health and safety.
- Arranges member participation in practical schemes. eg the Worker Safety Advisor Scheme.
- Encourages members to maintain good practice in their own firms and their supply chain.

20. In terms of influencing SMEs, no one agency, organisation or communication route can have universal coverage and paperwork based solutions are not a realistic way forward. Personal interaction such as was made possible through the Worker Safety Advisor Scheme is a high impact method of engaging with people running small construction businesses, reminding them of their responsibilities, and inspiring improvement. As such, reinstatement of the scheme should be considered a priority.

DIRECTORS' DUTIES

21. The FMB view is that section 37 of the Health and Safety at Work Act 1974, the Disqualification of Directors Act 1986, the Corporate Manslaughter and Homicide Act 2007, and the Health and Safety (Offences) Act 2008, combined with the extensive suite of health and safety regulation, provide an adequate legal framework for establishing directors' duties, and punishing transgressions.

22. It is the FMB view that Directors' moral duties with regard to health and safety are undeniable and inescapable, and that the challenge is to ensure that these duties are performed consistently across the industry. We do not feel that adding to the already considerable weight of regulation already in place, would add anything of value towards achieving this.

HEALTH AND SAFETY MANAGEMENT AND RESPONSIBILITIES IN SUPPLY CHAINS

23. The FMB believes that everyone involved in a supply chain has health and safety duties. Clients have the responsibility to provide adequate funding to ensure that the work is undertaken safely, and that systems are put in place to ensure this in practice. Principal/main contractors have a responsibility to set on site standards and ensure subcontractor adherence to those standards, and individuals have a personal responsibility for their own safety and that of those around them.

24. A firm's health and safety regime and performance is undoubtedly influenced when working as a sub contractor for a large company, and or working for a large client company as large businesses will have a formalised management structure, formalised policies and a formal structure for implementation of those policies. It is rare and highly unlikely that very small firms will have formal and auditable systems in place and as such client demands, experience and resources can and do have an influence on a smaller firms which otherwise might not work to such high standards.

25. The main tool for ensuring that these standards are met is the prequalification regime. This will require a firm wishing to undertake work directly for a client, or as part of a supply chain, to undertake competency assessment and audit of their health and safety procedures, meet the required standard, and pass annual re accreditation.

26. This system has tremendous potential as a mechanism for using public sector and large private contracts to incentivise improvements in health and safety standards, particularly amongst smaller firms. However, maximisation of this potential is severely inhibited by the duplication and bureaucracy created by the lack of a single prequalification mechanism. In its absence, an entire competency accreditation industry of competing assessors has been created. While it is essential that clients continue to drive health and safety standards on site, the prequalification procedures which are now in place are becoming increasingly bureaucratic, disproportionate, and counterproductive. They have three key flaws:

- 26.1 *Duplication*: The plethora of competency accreditation schemes requiring broadly similar information in different formats, results in the unnecessary duplication of administrative work and concomitant waste of firm's resources and clients' money. This duplication is highly inefficient and is of no benefit to on site health and safety. During the 2007–08 session, the House of Commons Business and Enterprise Committee undertook an inquiry into the construction industry. During this session, the Association for Consultancy and Engineering (ACE) reported that “companies being asked to sign up to four schemes can be paying more

than £8,000 in fees. This could cost UK firms around £40 million.”⁸ The committee further heard evidence from the Specialist Engineering Contractors’ (SEC) Group that “SMEs report that they have to pre-qualify under 30 (or more) schemes in order to obtain work.”⁹ This is not acceptable.

26.2 *Complexity*: As the requirements on procurement to deliver government policy objectives increase, so does the complexity and scope of the schemes offered by the prequalification industry. As this growth market expands in response to demand, accreditation providers compete on the rigour of their vetting. This competition results in the schemes becoming ever more complex, bureaucratic, difficult to comply with, and expensive. As a result, the cost of compliance with schemes, and the value of the work that may possibly be won as a result of prequalifying for them, is becoming disproportionate for an increasing number of contracts.

26.3 *Disproportionality*: The requirements and disproportionality of prequalification act as a barrier to an increasing number of SME firms accessing work where prequalification is a requirement. This is likely to result in the failure of government to achieve its goal of SMEs fulfilling 30% of all public sector contracts. More worryingly, this barrier forces the migration of small firms into the domestic RMI sector where client drivers for health and safety are virtually nonexistent. As such, the failure of prequalification regimes to remain proportionate and attainable effectively undermines their ability to raise health and safety standards in the industry.

27. The FMB sees prequalification schemes as a major, and an ever increasing barrier to SMEs bidding for public contracts and benefitting from the client support for health and safety. We see this as being expressed in the increasing migration of FMB members to private sector work as they are forced out of the public sector.

28. The most recent of the FMB’s bi-annual membership surveys states that:

There has been a significant change in sub-sector involvement, more than ever now mostly work in the private sector (75%) with fewer than ever now mostly involved with the commercial (10%) or public sectors (6%).

Two fifths overall have some public sector involvement and almost half of these report difficulties obtaining such work due to recent changes in local authority purchasing policies.

29. This is backed up by anecdotal evidence from members attesting to the increasing complexity and bureaucracy of prequalification, and news of individual firms giving up on public sector work because “it’s not worth the hassle.”

30. The industry is becoming increasingly frustrated with the public sector’s failure to address the inefficiencies in its prequalification practices, and particularly those relating to health and safety. It is the FMB’s view that the work of Safety Schemes In Construction (SSIP) should be used to identify those schemes which are deemed to satisfy the core competency criteria set out in the Construction Design Management Regulations 2007, and that membership of any individual scheme on this list should be deemed to prequalify a firm for all public sector contracts for health and safety purposes, with any more specific health and safety issues to be dealt with at tender stage. Only in this way can the trend towards forcing SMEs out of public sector construction, with concomitant loss of influence over health and safety practices, be reversed.

June 2009

Annex A

DEPARTMENT FOR BUSINESS, ENTERPRISE AND REGULATORY REFORM (BERR) CONSTRUCTION STATISTICS ANNUAL 2008—FIGURES FOR THE YEAR 2007 (LATEST AVAILABLE)

Numbers of private contracting firms in Great Britain

- Total 192,199.
- 86% (166,452) employ fewer than 8.
- 93% (179,121) employ fewer than 14.
- 99% (190,238) employ fewer than 60.

⁸ House of Commons Business and Enterprise Committee, “Construction Matters: Ninth Report of Session 2007–08 Volume II. Ev 160, Paragraph 27.

⁹ House of Commons Business and Enterprise Committee, “Construction Matters: Ninth Report of Session 2007–08 Volume II. Ev 325, Paragraph 4.9.

Numbers of employed by contractors in Great Britain, (percentages are rounded)

- Total: 1,286,300.
- 38% (486,200) are engaged by firms employing fewer than 14.
- 61% (780,800) are engaged by firms employing fewer than 60.
- 76% (979,900) are engaged by firms employing fewer than 300.

Memorandum submitted by the Olympic Delivery Authority

WORKER ENGAGEMENT AT LONDON 2012

The arrangements for worker engagement across London 2012 projects shows a degree of variability as:

- A. Different Tier 1 (Principal) Contractors have different modes of engagement.
- B. The level of trades union membership and representation is not high, but also displays a degree of variability.

However, there are some general statements that may be made with a high degree of confidence:

1. The ODA HSE (Health, Safety and Environment) Standard reinforces the requirements under law for contractors to engage with the workforce (the relevant section is appended below). This is a contractual requirement, cited in Works Instructions under ODA issued contracts.
2. On every project there is a set of arrangements for worker consultation including an HS&E Committee with worker representatives, and a Project Leadership Team which maintains worker engagement under review (it represents one of the priorities for our Leadership programme).
3. Every Olympic Park worker, on arrival at work, receives an Olympic Park Site Introduction and subsequently an induction onto the relevant project. The briefings include opportunities to engage, ask questions, etc.
4. Every worker on site receives a Daily Activity Briefing and periodic Tool Box Talks and site-wide briefings such as “Take Time for Safety”. In each case, there is encouragement to question and discuss.
5. Every project now operates a behavioural safety programme designed to engage the workforce directly in making the site and the work as healthy and safe as possible.
6. At least annually, a Climate Survey is conducted ascertaining the views of over 50% of the workforce by questionnaire.
7. There is a privacy-protected telephone hotline for any issues any worker wishes to raise, including health and safety matters.
8. Regular meetings (Programme Review Group) take place with Trades Union representatives and senior ODA/Delivery Partner staff to review worker engagement and any other issues on the programme.

SECTION 5.8 FROM ODA HSE STANDARD JULY 2008

Worker involvement

The ODA is committed to encouraging positive engagement with the workforce on HS&E. It recognises that in addition to meeting H&S legal obligations, effective consultation and engagement is a fundamental mechanism for achieving high standards of HS&E. Each supplier is required to develop effective mechanisms for engaging their site personnel in the development and implementation of effective HS&E policies and procedures. Each Principal Contractor is required to make appropriate arrangements, and to advise the Delivery Partner, of worker engagement initiated on each of their projects based on the following:

- compliance with statutory requirements;
- construction personnel understanding that they are permitted to stop work if they feel at risk;
- advising personnel of the mechanisms for reporting health, safety and environmental issues within the supplier’s team;
- taking no negative, critical action against any worker for raising a health, safety or environmental issue;
- ensuring that all personnel are addressed in a civil manner by all other personnel;
- include in every “toolbox talk” an opportunity for personnel to ask questions and make comments;

-
- operating a consultation mechanism, and bringing this to the attention of all personnel in the Principal Contractor controlled area;
 - where applicable, establishing arrangements for the recognition of trades unions and their engagement at an appropriate representative level in forums for reviewing and developing health, safety and environmental arrangements;
 - respecting appointment arrangements established amongst the personnel, specifically the appointment of safety representatives. The latter shall be afforded the normal rights to be directly involved, on behalf of their members, in all aspects of health and safety planning and implementation; and
 - forwarding minutes of any formal consultation meetings held at project level to the Delivery Partner, so that issues relevant beyond the project may be identified and addressed.

June 2009

Letter dated 2 July from Judith Hackitt CBE, Chair, Health and Safety Executive

During our recent evidence session with the W&PSC you asked Geoffrey and I about the status of proposals to establish a Nuclear Statutory Corporation. We indicated to you that a consultation document was imminent and you may already be aware that DECC/DWP issued the joint proposal for consultation on 30 June.

The document may be found at: http://decc.gov.uk/en/content/cms/consultations/hse_restruct/hse_restruct.aspx and the consultation period runs until 22 September 2009. The consultation document does not contain the draft legislative reform order which will be drafted by Parliamentary Counsel.

You indicated that you might want to discuss the proposal with us in more detail, once details were published. I am conscious that timing is short given the impending Parliamentary Summer recess but Geoffrey and I along with other HSE officials will be more than happy to answer any questions you may have and would be happy to meet with you to discuss should you so wish.
