



“Health and safety: reducing the burden” report by Corin Taylor for the Policy Exchange

Feedback comments to Lord Young of Graffham from:

INSTITUTION OF OCCUPATIONAL SAFETY AND HEALTH (IOSH)

Feedback
comments
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Introduction

In providing the following comments about the Policy Exchange report *Health and safety: reducing the burden* (which we will simply refer to throughout as 'the report'), IOSH certainly intends no criticism of the report's author who, we are sure, did his best within the remit, resources and timescales at his disposal. However, we have been asked to provide feedback on any inaccuracies in the report and so would offer the following critique for consideration.

We would like to focus first on what we feel are the major conceptual flaws in the report, before moving on to more detailed analysis of its more obvious minor inaccuracies, though we have not had time to check it all. We hope you are able to utilise these comments in the constructive spirit in which they are intended.

Some of the report's conceptual weaknesses

- It doesn't seem to recognise the role of the media in negative reporting or that the reported crazy decisions relate to public safety (often involving leisure activities and children) and not to workplace safety.
- It fails to fully recognise the benefits of a risk-based, goal-setting system in allowing employers flexibility in how they control their risks and the regulatory system to consider relative risk when enforcing.
- It refers to 'over compliance', not recognising that the reported stories aren't about complying with any legislative requirements, just defensive decisions, based on 'made up rules'.
- It calls for proportionality, apparently not realising that's exactly what health and safety legislation requires now.
- It seems to confuse civil law and criminal law e.g. because of issues over personal injury claims it is suggesting reducing health and safety legislation.
- It asks whether we should be trying to eliminate all risk, not knowing that 'health and safety' certainly isn't trying to do this; risk is part of life and needs to be sensibly managed.
- It calls for clarity on risk assessment, seemingly unaware of all the work that's been done in this area, particularly by the Health and Safety Executive (HSE) with their sample 'good enough' risk assessments aimed at small businesses.
- It opposes additional duties on directors, apparently not understanding that no new duties are being proposed, just making explicit what's already implicit.
- It recognises the success of our current system in terms of our safety record, but fails to acknowledge that better management and more effective enforcement could help further reduce the human and financial toll of health and safety failure, bringing benefits to individuals and their families, businesses and society.

IOSH main points for reducing risk / liability aversion and public confusion:

- Educating society – so that everyone recognises that risk is part of life; knows how to manage it sensibly; and understands personal responsibility.
- Simplifying demands – demystifying the plethora of non-health and safety demands on SMEs, such as insurance requirements, grant application forms, employment law.
- Improving civil litigation – so that everyone knows what's actually required and important legal principles are appropriately tested.

Please also see the 'IOSH 10-point review' plan for further details on this.

Some of the report's inaccuracies

EXECUTIVE SUMMARY

Page 6:

- Last sentence of the 3rd paragraph: the report states "To the extent that health and safety worries discourage volunteers from organising outdoor physical activities, the health and safety culture may be undermining the goal of a healthy society." We think any discouragement is due to fear of being sued and insurance worries and not about real 'health and safety' itself. The health benefits of physical activity have been long and widely known and none more so than within the health and safety profession. A sensible approach to health and safety will enable most activities to go ahead and indeed events such as the London Marathon and 'Race for life' and the work of organisations such as Global Challenge UK (www.globalchallenge.uk.com/index.php) and the Paul Cruddas Foundation are testimony and high-profile examples of this (and there are many others). So, it is simply misleading and inaccurate to present this as "Health and safety becoming dangerous to people's health." In addition, increasingly, employers are becoming aware of the benefits of actively promoting good health and wellbeing among their workers, offering free or subsidised gym membership, cycle to work facilities (parking, showers etc.) and encouraging fun activities such as 'pedometer' challenges. IOSH actively promotes using the workplace to improve health and wellbeing; please see our free guides *A healthy return* and *Working well*, at www.iosh.co.uk/guidance. The IOSH manifesto 'Creating a healthier UK plc' has 4 key themes, including getting 'better health, through better work'.
- 'Excessive regulation and enforcement is not the biggest problem', 1st bullet: in addition to citing numbers of SIs, the report could also have emphasised the importance of those regulations introduced since 1997, for example those covering asbestos, nuclear reactors (environmental impact assessment for decommissioning), offshore safety, major accident hazards, noise at work, export and import of dangerous chemicals etc.

- 'Excessive regulation and enforcement is not the biggest problem', 2nd bullet: IOSH does not have independent figures on this and is not in a position to verify them other than via HSE website and the 2006 Better Regulation Executive (BRE) report *Improving outcomes from health and safety*. The report states that the number of Local Authority Inspectors is said to be approximately 5,500; this is at variance with the BRE Report (*Improving outcomes from health and safety*, August 2008, page 58, para 4.5) figure of 1,100 FTE inspectors. The report has taken the 5,500 figure from the Hampton Review, *Reducing administrative burden: effective inspection and enforcement*, 2005 (page 11, para 1.2); but this is referring to all Local Authority inspection and enforcement work i.e. trading standards; food standards (part of trading standards); food safety; air and environmental pollution; as well as health and safety in non-HSE premises.

Page 7:

- 'The health and safety culture', 1st paragraph: the report states there is confusion about the term 'reasonably practical', whereas the term is actually 'reasonably practicable'. It's also incorrectly used on pages 8, 14, 37, 38 and 43.
- 'The health and safety culture', 2nd bullet: the report states that a ten-day course can lead to an 'industry-respected health and safety certificate'. It isn't clear which industry is referred to here; if it's intended to be the 'health and safety industry', then this level of qualification is only a first step toward a career in health and safety and is considered insufficient to be a fully competent professional or to achieve Chartered status.
- 'The health and safety culture', 2nd bullet: the report states that "Consultants have a clear incentive to inflate the level of risk-mitigation that must be carried out..." IOSH condemns any unscrupulous behaviour, over-selling or exaggeration of the legal requirements. However, regarding any stated 'clear incentive': on the 'flip-side', as the relationship between SMEs and consultants is based on trust and may involve repeat or ongoing business; it seems unlikely that consultants would secure further work or be recommended to fellow SMEs if they exaggerated the requirements, and indeed, they could simply price themselves out of the work if they did this (arguably a disincentive to such behaviour).
- 'The impact of health and safety on the ground', 3rd bullet: refers to 7.2 hours per month being spent by micro-businesses (< 10 employees) on complying with health and safety regulations. This is apparently taken from Forum of Private Business (FPB) data (which the report incorrectly refers to as Forum of Private Businesses), *The cost of compliance on micro, small and medium-sized business employers*, 2009, FPB. The report might also usefully have included the FPB finding that the time spent on health and safety compliance has actually reduced by 21% since their 2007 survey (p.12, figure 13). Also, to provide some context, the report could have explained that the micro businesses who responded spent 7.9 hours per month on employment law.

Given that the FPB study group were its own members and may or may not be typical / representative of the wider SME community, and also that there is no indication of how many micros took part in this survey of 6,000 member companies, it would be useful to compare this finding with that for micro-businesses outside employers' or trade bodies.

- 'The impact of health and safety on the ground', 3rd bullet: this refers only to the costs of compliance, but not to the potential benefits of preventing work-related injury, ill health and death; improving productivity; reducing absence costs; and ensuring staff retention.

Page 8:

- 'Next steps', the report states "But there is considerable scope to align the health and safety regime more closely with proportionality, common sense and to lessen the burdens that it creates." The 'health and safety regime' is already a proportionate one; the author is really referring to 'public perceptions and interpretation'. The closing sentence refers to "...a number of areas where reform is needed"; however, those listed indicate a fundamental misunderstanding of the existing system (see further comments below).
- 'Next steps', 1st bullet: the report calls for greater clarity from HSE on risk assessment, seemingly unaware of the extensive work done by HSE on this, including web pages explaining various terms such as 'reasonably practicable' www.hse.gov.uk/risk/theory/alarpglance.htm, the simple guide '5-steps to risk assessment' and the many examples of sensible risk assessments for a wide range of small firms see www.hse.gov.uk/risk/casestudies/index.htm.
- 'Next steps', 2nd bullet: the report calls for a minimum standard of qualification for health and safety consultants. While we would agree with this, there is also a need for adequate experience, continuing professional development (CPD) and for consultants to be bound by a code of conduct. The report seems unaware that the government (since April 2008) has been calling for the 'accreditation' of health and safety consultants and that IOSH and the Chartered Institute of Environmental Health (CIEH) are working with the HSE to introduce such a scheme, via a free national on-line register. A legal requirement for qualifications, as suggested by the report, would require new legislation in order to make health and safety a legally regulated profession, though this implication is not expressed in it.
- 'Next steps', 3rd bullet: the report argues against adding further duties for directors; but in fact, no new duties are actually being proposed. What is being considered is simply a means of enforcing directors existing (implicit) duties, given their key leadership role, because evidence indicates the current system isn't working.

- 'Next steps', 5th bullet: the report suggests that for the self-employed there shouldn't be any health and safety requirements at all, except for not harming others. As indicated above, the report itself notes the exemptions for small firms. Often, managing risks to protect worker(s) will also protect others. We believe that taking sensible steps to protect yourself, others who you may engage to help you, and the public, is good for the self-employed person, good for their business and good for UK plc. It should be remembered that if, as a self-employed person, you're seriously injured and can't work, this will adversely affect your ability to earn a living and may cause you to permanently lose customers, who may find other suppliers. In addition, people who are injured or are ill will need support from GPs, NHS and possibly social services. So, it makes economic sense all-round for people to take sensible steps to look after themselves at work. It should also be remembered that the average fatal injury rate for the self-employed (2003-4 to 2007-8) was much higher (1.4 per 100,000) compared to that for employees for the same period (0.7 per 100,000).
- 'Next steps', 6th bullet: the report claims that "The current costs of health and safety regulation are too high." However, this point focuses entirely on cost and makes no attempt to compare and balance the cost of compliance with the overall benefits, such as accident / ill health prevention, increased productivity or staff retention. The author also does not acknowledge the role of regulatory impact assessments, which are provided for all new health and safety legislation, nor the HSE's 'simplification plan' and the fact that the number of health and safety regulations has reduced by 50% since the Health and Safety at Work etc. Act 1974. The report also fails to compare compliance costs with that of complying with other laws, such as those for employment.
- 'Next steps', 7th bullet: the report asks the question "...whether we should really try to eliminate all risk, or whether we should try to manage risk effectively." Legislation does not call for all risk to be eliminated, simply that risks are adequately managed. So, again, the emphasis of the report should have been on public perception and interpretation and not the health and safety requirements themselves.

INTRODUCTION: THE IMPORTANCE AND DIFFICULTIES OF HEALTH AND SAFETY

Page 10:

- 2nd paragraph: cites an early example of health and safety legislation to indicate its long history as being that outlawing child chimney sweeps in 1864; however, this is pre-dated by more 60 years by the 'Health and Morals of Apprentices Act 1802', which the report fails to mention at all.

- 5th paragraph: states that health and safety "...is too often preventing people from carrying out activities which are of great benefit to them and their communities." The report fails to recognise that it is not health and safety that is preventing activities, but fear of being sued and/or insurance costs.
- 7th paragraph: refer to "...we wish to eliminate all risk..." and also that health and safety "...undermines the broader goal of a healthier society." 'Health and safety' is not seeking to eliminate all risk, as suggested; risk is part of life and needs to be sensibly managed. Health and safety is certainly not undermining the broader goal of a healthier society, but supporting and encouraging it, please see comments regarding page 6 above.
- 8th paragraph: says "...too much...would not pass a common sense test." Workplace health and safety almost always does pass the 'common sense' test; this is because 'reasonably practicable' applies and good health and safety is done with people, not to them, meaning the workforce is consulted and involved in the process. Once again, the author seems to be mixing up public safety myths with workplace safety reality.

THE HEALTH AND SAFETY REGIME TODAY

Page 11:

- Opening sentence: refers to 7.2 hours per month being spent by micro-businesses (< 10 employees) on complying with health and safety regulations. This is apparently taken from a Forum of Private Business data, though this isn't referenced nor any details provided of which elements of health and safety compliance respondents included. It would be usual to compare such findings with other studies on the subject.
- In the 1st paragraph, though the report refers to the financial costs, it does not refer to the possible financial benefits in the same paragraph, which would make for a more balanced presentation. Benefits were referred to in HSE research report *Cost of compliance with health and safety regulations in SMEs*, RR174, 2003, which the report specifically references and draws on for other purposes.
- 'The UK's record on health and safety': this paragraph refers to the workplace death rate, but makes no reference to annual work-related road deaths or deaths from occupational cancers.

Page 12 / 13:

- The report makes reference to the Davidson Review, providing a discreet, small-font footnote explaining “The Review did, however, note that business representative bodies ‘were relatively unconcerned by the over-implementation’” This review is also referred to in HC 246-1 below, paragraph 42 of which reads “The Davidson Review report did not identify any gold-plating of UK occupational health and safety legislation which required action.” Given this, it’s a little hard to understand why the report affords such prominence to this issue at all; but accepting that it has, it’s difficult to see why the significant footnote is not in the main body of the text. The report should have noted that others have not found evidence of a problem with ‘gold-plating’ e.g.
 - Tim Ambler of the London Business School described this as “...something of a myth...” (House of Commons Regulatory Reform Committee, ‘Themes and Trends in Regulatory Reform’ 9th report July 2009, p.27).
 - House of Commons W&P Committee on ‘The role of the HSC and the HSE in regulating workplace health and safety’, 3rd report , April 2008, p.12 [HC 246-1]
 - The Government’s response, in the HC 387, 3rd special report, June 2008, p.3
- On page 13 (‘How health and safety is enforced’), reference 7 cites page 20 of the W&P Select Committee report, whereas the actual page with the relevant information is found on page 48.

Page 14:

- The 2nd paragraph states “As a result of the confusion, there is often over-compliance with the legislation, as people play it safe.” By citing public safety stories from the media in which people ‘make up their own rules’, it seems the report is confusing these with compliance issues, which they aren’t.
- The last paragraph fails to report on all the work HSE has done on explaining risk assessment, including 5-steps guide, example risk assessments and their risk education programme that has run since 2000, see www.hse.gov.uk/education/index.htm.

Page 15:

- ‘The health and safety industry’, 2nd paragraph, incorrectly said “Today its membership stands closer to 36,000, with at least 3,500 of them working in the UK as dedicated health and safety consultants (both employed and self-employed).” The underlined words are errors; to be correct, this should have said “...probably about 3,500 of them working worldwide as dedicated health and safety consultants.”; as per the cited reference of the W&P Select Committee Inquiry, February

2008. The footnote also incorrectly cites Richard Jones as the 'Chief Executive', this should have said 'Policy and Technical Director' (this error is repeated on page 16 of the report).

- This section should also have made clear that IOSH is a professional body and its members are bound by a code of conduct and must undertake CPD.

Page 16:

- In the paragraph below the bullets, it states that "Health and safety consultants require no accreditation at all." This seems out of touch with developments and fails to report that IOSH has been calling for this for some years; that the Government agreed to progress it in 2008 (following the W&P Committee recommendation, HC 387, 3rd special report, June 2008, p.5, para 15); and that IOSH and CIEH are working on a feasibility study for its introduction.
- The quote beneath this paragraph is only partial and should have been prefixed by "The sad fact is..." and closed "...which we think is wrong." The partial quote included fails to convey the dissatisfaction that IOSH has about this situation and communicated to the Select Committee.
- In the paragraph beneath the quote, it says "It is clear, however, that advice such as this is not always followed by all practitioners in the industry." This sentence is insufficient in isolation and the report needs to also explain that not all 'practitioners' are members of IOSH and so obviously cannot be bound by its code of conduct. Regarding advice for practitioners to gain Chartered status; as health and safety is not a legally regulated profession and IOSH has no statutory powers, again, this can only be advice and is not enforceable. This too, should have been made clear in the report, which seems to misunderstand the situation.
- Footnotes 24 and 25 should have said 'Institution of...' and not 'Institute'.
- The quote at the bottom of the page: the final part of this, the sentence "...Often the sense was that involving a consultant 'ticked the box' of getting a Risk Assessment rather than added value to the workplace." is not from the source stated in the footnote and appears to be the author's own comment? If this is the case, then it should have been differentiated from the quote and the source provided.

Page 17:

- Box 1.2 The NEBOSH qualifications: though we appreciate that the report is citing information from the NEBOSH website and that this level of qualification can indeed lead to entry to Chartered membership, it would be more accurate to also add that qualifications alone aren't sufficient for Chartered membership, experience and evidence of practice are also required.

There are many other qualifications offered by universities and other providers that can also lead to Chartered membership.

- The report states “In the evidence sessions for the recent Work and Pensions Select Committee inquiry, health and safety consultants admitted that the poor quality advice from some among them was forcing businesses to undertake overly bureaucratic activity. IOSH itself has had informal discussions with the HSE over the “*credibility of the evidence used by some consultants to form the basis of risk assessments*”.” This account misunderstands and misrepresents the evidence sessions; IOSH was not ‘admitting’ to anything here, we were simply reporting knowledge of HSE concerns about the quality of some consultants’ advice and informal discussions with them on this. However, HSE had not been in a position to tell us whether the consultants concerned were IOSH members or whether they had any relevant qualifications / experience. Our evidence on the UK system to this and a previous Committee Inquiry was to explain that, unfortunately, anyone can set up as a health and safety consultant in the UK, without any qualifications or experience at all.
- The report footnote reference ‘31’ is to the oral evidence Q221; however, the text it’s intended to support seems to actually be from the ‘Report, together with formal minutes’ April 2008 (pp.19 and 20 of HC246-1).

Page 18:

- The reference to the Risk and Regulation Advisory Council (RRAC) work at the top of the page, should also have included reference to its report ‘Health and safety in small organisations’ (July 2009. p.12) in which it supports an accreditation scheme for health and safety consultants, such as that being developed by IOSH and CIEH.
- Reference 40, should refer to page 21 and not 20.

Page 19:

- The paragraph beneath the quote says that businesses and others are encouraged to “...do all that they can to minimise, if not eliminate, risk.” Again, this is not correct, as the requirement is based on what is ‘reasonably practicable’.

Page 20:

- The 1st paragraph refers to the rationale for making ‘out of court’ settlements; however, it does not consider the possibility that organisations may find it more economic to settle unfounded cases than to defend them, meaning important legal principles about negligence are not appropriately

tested. This should have been included in the report. We note that the RRAC 2009 report *Judges, courts, the legal profession and public risk* (www.berr.gov.uk/files/file53398.doc), refers to this on page 23, para 7.1.

- The 2nd paragraph refers to the role of 'expert opinion'; however, in the RRAC report above, the legal profession explains that 'expert' opinion is only one type of evidence and that the courts consider a broad range. 'Expert' opinion can also be called on 'both sides' in such cases and so provide different viewpoints. The legal representatives also explain that the standards used are usually ones in law, rather than non-legislative standards. All of these important points are missing and should have been made in the report.
- The 5th paragraph refers to the need to consider the benefits from certain activities; the report should consider and make reference to the efficacy of the Compensation Act 2006. We also note that the RRAC 2009 report includes the Act's role in allowing courts to consider the 'desirability' of an activity. RRAC found the effect of the Act on courts' appreciation of public risk to be unknown and was not aware of relevant parts being cited in judgements.

Page 21:

- 'Insurance and its impact on health and safety management': while the report focuses on the role of the insurer, it does not report that insurers tend to employ their own 'experts' and it does not consider the case of the self-insured (e.g. some local authorities and government departments) or those organisations that carry very large 'excesses' and so don't tend to claim on their insurance. For further comment on the role of the insurer, please see below regarding page 37.

Page 23:

- 'Health and safety on the ground: problems with the current regime'. The opening paragraph talks about the 'principal problems' and refers to these problems existing "Despite the fact that workplace inspections are generally infrequent."; incorrectly implying that over-caution is a workplace issue. The examples reported both in the report itself and in the media generally relate to public / child safety and leisure / pastimes and not to workplace health and safety, where reasonable practicability applies and workers and bosses agree sensible controls. The report should also have made reference to HSE research report *Evidence-based evaluation of the scale of disproportionate risk decisions on risk assessment and risk management* (RR536, 2008), which found that decision-makers themselves felt the top two solutions to preventing 'over-caution' were definitive guidance and access to professional health and safety advice.

- The report says that "...health and safety defenders are too quick to dismiss these concerns as 'myths'." Any concerns are not 'dismissed' as myths; but once investigated and found to be such, need to be identified so that the public understands they're not reporting what the law actually requires. They are myths in that they either didn't happen at all (which can be the case) or if they did happen, it wasn't because of health and safety regulations. Though, of course, it's fully appreciated that perception is how people perceive reality – wherever there's a significant discrepancy, it does need to be differentiated from reality (i.e. the myths debunked). The report's argument that reality should be changed (e.g. lowering health and safety requirements) in response to fictional (mythological) requirements is obviously flawed. The logic also fails in another fundamental way; as the 'unwanted behaviours / decisions' aren't based on reality – changing reality won't necessarily address them. What is needed instead is better education, so that we have a 'risk intelligent' society in which people operate effectively and happily in a risk-based system. The author may be interested in a recent paper in 'Journal of Law and Society', by Dr Paul Almond (University of Reading), *The dangers of hanging baskets: 'Regulatory myths' and media representation of health and safety regulation*, which examines these issues.

- The report goes on to talk about insurance for organisers of events, stating that "...the law does require organisers to have insurance." This implies public liability insurance is mandatory and is inconsistent with the report's own reference source, Business Link, whose website states:

"Businesses which must take out the insurance

Generally speaking, PL insurance is not compulsory; however, horse riding establishments are required to have PL cover. You will also find that many of your customers or potential customers require proof of adequate insurance before they will allow you to work for them."

It's also inconsistent with what the report says previously (on page 21), i.e. "Although not compulsory (but frequently required by contract), *Public Liability Insurance* is highly recommended by regulators for all those organisations that have regular dealings with the public, including local authorities." The Risk and Regulatory Advisory Council's 2009 report 'Insurers and public risk' (p.9) also refers to the non-compulsory nature of public liability insurance.

- 'Health and safety on the ground 2: volunteering: the report starts by saying that "Twenty million people get involved with charities and volunteer groups..."", the reference source provided does not actually contain this figure; the supporting reference should be given.

- Though the 2nd sentence briefly acknowledges that cost figures don't account for any benefits; the section then makes no attempt to suggest or assess what these might be, nor does it indicate

the estimated financial burden on society of work-related accidents and ill health, which has been put at up to £31 billion per year. The report also fails to include any case studies providing examples of positive benefit-cost ratios for health and safety interventions. There are many examples for both small and large employers (private and public sector) on the HSE website, see www.hse.gov.uk/business/sme-case-studies.htm and www.hse.gov.uk/business/casestudy.htm.

Page 29:

- In the paragraph beneath Table 2.1, the report refers to the costs of complying with ‘just one set’ of health and safety regulations. However, the HSE Research Report RR174 referred to for this figure is estimating the total average spend on health and safety by organisation size, not just for complying with one set of regulations. Incidentally, RR174 also gives the average total cost of health and safety per employee in medium-sized companies as £166.38 (not £177, as stated in the report). The £177 figure relates to the average spend per employee in medium-sized companies for complying with the Management of Health and Safety at Work Regulations. These regulations are extensive and contain the legal requirements for managing health and safety within organisations covering wide-ranging activities, such as management arrangements, risk assessment, implementing controls, training and consultation.
- Table 2.2: the title of this incorrectly indicates that it is only showing ‘Cost of compliance with the Management of Health and Safety at Work Regulations’. While the first column of costs (average spend per employee) does relate to this; again, the second column of costs (average mean spend per annum) is referring to the total average spend on health and safety by organisation size. The report refers to the BRE report as the source for these figures, whereas the primary source is RR174.

Page 31:

- Beneath the quote it says “Moreover, the overwhelming anecdotal impression is that the administrative burden of health and safety regulation is increasing not decreasing.” However, the Forum of Private Business 2009 survey *The cost of compliance on micro, small and medium-sized business employers*, found that respondents reported that the time spent on health and safety compliance has reduced by 21% since their 2007 survey (p.12, fig 13), which could have been included in the report.

Page 33:

- The end paragraph reads, “From cancelled school trips to fenced-off puddles, health and safety has made many public authorities excessively risk-averse.” We would describe these sorts of

decisions as possible examples of 'liability aversion'; as we believe they are often due to a fear of being sued.

Page 34:

- The 1st paragraph (beneath box 2.7) repeats the same error as occurred on page 29, i.e. it incorrectly says the average spend is for compliance with one set of regulations, when the source report (RR174) explains that this is the total average spend on health and safety.

Page 35:

- In the paragraph above Table 2.5, the report says, "...a clear financial incentive exists for public authorities to go above and beyond the 'reasonably practicable' principle." This shouldn't really be the case, as they don't need to do more than is reasonable to defend against negligence claims. In any event, it's likely that most of these cases are settled out of court, to reduce possible litigation costs; the majority of personal injury claims settle before trial (*Review of civil litigation costs*, Lord Justice Jackson, December 2009, para 4.1).

Page 36:

- The opening paragraph refers to 'banned science experiments' in the context of what it calls the 'pernicious influence of health and safety'. This gives a very misleading impression. The recent Science Learning Centres survey (March 2010) of 1,300 science teachers found that the main reasons cited for the reduction in practical experiments were: pressure on the curriculum (66%); demands of testing and marking (40%); pupils behaviour (29%); and that only 10% felt health and safety was an issue <http://news.bbc.co.uk/1/hi/education/8587984.stm>.
- Importantly, in the 2nd paragraph, the report fails to mention the excellent work that has been done between the HSE and the emergency services. A 'striking the balance' agreement (September 2009) has been reached with the police service and more recently, extended to the fire and rescue services, covering any concerns there might be between balancing public protection risk and health and safety requirements www.hse.gov.uk/services/police/duties.pdf.

NEXT STEPS

Page 37:

- The 4th bullet, 'The insurance industry': states that insurance companies rely on the generally conservative views of health and safety experts. However, in the RRAC report, *Insurers and*

public risk, the insurers themselves feel that the greatest influence on them comes from the law (courts, judges, lawyers, the law commission and others). Next they cite politicians and civil servants; standards (mandatory or voluntary); commercial interests; and industry bodies and other insurers. RRAC (p.17) felt the strongest interactions were with commercial interests; standard setters; the courts; and public opinion.

- The 5th bullet, 'No win, no fee': we think TV and other advertising for this has increased awareness and fear of being sued, but understand that cases have not increased. Regarding the implied criticism of 'expert' health and safety opinion; it should be noted that experts are only one source of evidence in litigation cases and that they can be brought for both the claimant and the defendant, presenting different viewpoints. Again, an important point that is being missed here is that in many cases, the legal principles simply aren't being tested in courts, because unfounded cases can be settled before trial.

Page 38:

- 'Does the law need clarifying', the 2nd bullet seems unaware of HSE's work in this specific area (see previous comments regarding page 8).
- In the paragraph beneath the bullets, once again the report seems to confuse public safety and associated civil litigation with workplace health and safety advice provided by consultants.
- The report's suggestion that business owners would understand what's required to avoid being found negligent for health and safety failures, but not what's required under health and safety law, seems illogical and without basis. The justification that this would then mean common sense precautions, instead of eliminating all risk, simply repeats the author's fundamental misunderstanding about what is currently required by health and safety law, which is only what's reasonable.
- 'Does the health and safety industry need regulating?': once again, the report seems completely out of touch with developments in this area (see previous comments regarding page 16).
- 'Are proposed further legal liabilities for health and safety really helpful?': the report refers to "...additional duties..."; however, no additional duties are being proposed, merely making existing implicit ones, enforceable. This is because research (HSE Research Report 695, 2009, Evaluation of guidance for directors and board members, Databuild Ltd) indicates that the voluntary guidance hasn't had the desired effect.
- 'Should certain health and safety requirements be lifted from micro and low-risk business?': the report itself highlights the exemptions for employers with less than 5 employees (page 40, Table

3.2). It should also be noted that 'Perceptions of the health and safety regime' (Summary report by Vanilla Research for the Better Regulation Executive, March 2008, page 3), though a small study; found that current levels of compliance in small firms resulted in "...health and safety largely not being seen as overly burdensome." The researchers had conducted qualitative research, using face-to-face, in-depth interviews with small firms, including some small charities. Incidentally, this research (p.19) also found that duty holders would welcome advisory visits from HSE Inspectors.

Page 40:

- 'Do the self-employed need any health and safety requirements at all?': the Davidson review cited by the report, did not find any problem with 'gold-plating' and the application of legislation to the self-employed (see our previous comments regarding pages 12 / 13 above). This should have been included in the report.

Page 41 / 42:

- 'What's the best way to reduce the cost of health and safety regulation?': *Removing individual regulations* – the HSE already has a 'simplification plan' in place for existing legislation and new health and safety regulations are subject to regulatory impact assessments and public consultation. *Reducing the number of regulatory requirements* – see comments to previous point. As the problems the report is trying to address are based on misinterpretation of health and safety requirements; it would not be logical to change them. However, there is obviously scope for reviewing non-health and safety regulatory requirements for possible simplification (see the IOSH '10-point review plan', point 2). *Introducing regulatory budgets* – see previous points. *Carrying out better regulatory reviews* – see previous points. The regulatory impact assessments that accompany draft health and safety regulations do already identify and estimate the potential benefits.
- 'Should we really try to eliminate all risk?': as has been previously explained, 'health and safety' does not seek to do this. Risk is part of life and needs to be sensibly managed.
- In the paragraph beneath the bullets it says, "...health and safety appears to have strayed beyond these boundaries...", going on to say that if it restricts physical activity, this undermines good health. As previously explained, health and safety doesn't restrict physical activity, it enables it to happen in a 'safe enough' way (see also comments regarding page 6).
- The penultimate paragraph refers to whether "...we have already crossed this point..." in terms of effort to reduce risk. As previously explained, we believe the liability-averse decisions and media stories are about misguided people seeking to avoid the possibility of being sued (or needing to

pay for insurance against this perceived threat); they're not about reducing serious health and safety risks.

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'Conclusion': we would strongly disagree that the culture of health and safety is the problem here; rather we believe it is 'liability fear and aversion' and misunderstanding of what's actually required by law. We think it's a pity that the report has focused exclusively on the reported 'health and safety gone mad' stories and not balanced this by mentioning the many thousands of good, sensible risk decisions taken in UK workplaces every single day.

The report goes on to say that its reforms would reassure people that "...only proportionate, common-sense and practical health and safety steps" are needed; this is what the law and guidance do now. As previously explained, the issue is with incorrect media reporting of non-health and safety decisions as if they were 'real' health and safety decisions; commentators confusing public safety with workplace safety; and people's fear of being sued, while not understanding what the law requires (possibly exacerbated by the out-of-court settlement of unfounded civil claims), all of which naturally cause public confusion. We note that decision-makers themselves feel that definitive guidance and access to professional health and safety advice would be their top two solutions to preventing over-cautious decisions.

The main IOSH points for reducing risk / liability aversion and public confusion are:

- Educating society – so that everyone recognises that risk is part of life; knows how to manage it sensibly; and understands personal responsibility.
- Simplifying demands – demystifying the plethora of non-health and safety demands on SMEs, such as insurance requirements, grant application forms, employment law.
- Improving civil litigation – so that everyone knows what's actually required and important legal principles are appropriately tested.

For the 'IOSH 10-point review' plan and further details on this, contact: richard.jones@iosh.co.uk