

Lobbying the Minister

An edited version of a letter sent to Peter Hain following the construction safety forum in September

To: The Rt Hon Peter Hain, MP
Secretary of State at the Department of Work and Pensions

18th September 2007

Dear Mr Hain,

I write to you with some suggestions that I hope may be of interest, if not help.

The debate on the health and safety record of the construction industry has been with us for forever. The problem has not been finding potential solutions – but finding a government that will act on those findings.. I would like to add London Hazards Centre's voice to the debate.

Enforcement

The HSE's construction blitzes show that generally between a third to a half of sites visited have work stopped - and this is after the HSE has gone some way to publicise they are coming, why and when. This shows the poor regard for the inspectorate by employers.

There should be more inspectors with a much tougher enforcement regime. If the inspectorate could visit sites as frequently as parking inspectors and issue tickets on unsafe working at height, say £500.00 per offence, we would see falls from height in construction almost disappear. We certainly do not feel the industry can be trusted to regulate itself.

Crime and punishment

While I understand responsibility for this issue falls to another government department it is essential to mention it. Breaches of health and safety laws are regarded too often as a misdemeanour rather than crimes committed by criminals. While there has been some progress, cases involving fatal incidents are still heard in the lower Magistrates Court, rather than



Peter Hain meets Liliانا Alexa, Battersea Crane Disaster Action Group and Tony O'Brien, Construction Safety Campaign.

PHOTO: LONDON HAZARDS CENTRE

the higher courts. Some cases still receive fines of under £20k, even under £10k, where there has been a loss of life.

There have been larger fines issued by the courts, in the main but drops in the ocean compared to the guilty's turnover or profit. The government's failure to pass manslaughter laws that place clear responsibilities on directors and senior managers that could lead to imprisonment is deeply regrettable. The Health and Safety and Work Act must be strengthened to include prison as a penalty for directors and senior managers who must also face the prospect of large personal fines if convicted. The moral arguments for this are incontrovertible and would make employers much less likely to take risks with other people's lives.

Public contracts

Public contracts have been and are awarded to companies with more than one conviction, sometimes several

convictions. We do not believe companies with poor safety records should be awarded public contracts.

Safety reps

We know they save lives... So it was with great sadness we saw the HSC recently rejected improving their lot following a consultation... We are very pleased to see your commitment to safety reps, and would like to suggest some improvements.

Firstly the Australian system where reps can issue PINs (Provisional Improvement Notices) which initiate a procedure for dealing with disputes between the rep and employer leading to the formal involvement of the enforcement agency. One of the biggest complaints of safety reps is that the employer ignores their concerns.

Secondly to allow for roving safety reps, especially in industries like construction.

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Bus workers demand toilets

Members of the Unite trade union took to the streets in Victoria to demand proper toilet facilities for bus drivers and bus workers. Campaigners said they had started a list of bus routes where there was a lack of toilet facilities but gave up because the list was too long. They were joined in their demands by Ken Livingstone, London's Mayor.

Peter Kavanagh of Unite said: "We know the issue can be good for a laugh, but the lack of facilities for these essential London workers is no joke. It is a disgrace that a workforce who keep this city moving and carry 5.4 million passengers every day are being denied basic facilities. One of our drivers contacted me to say he'd been operating a bus service between North Woolwich and Stratford. There was no toilet at Woolwich, and the unsavory



PICTURE BY PETER ARKELL

Unite TGWU section bus workers protest about the lack of breaks

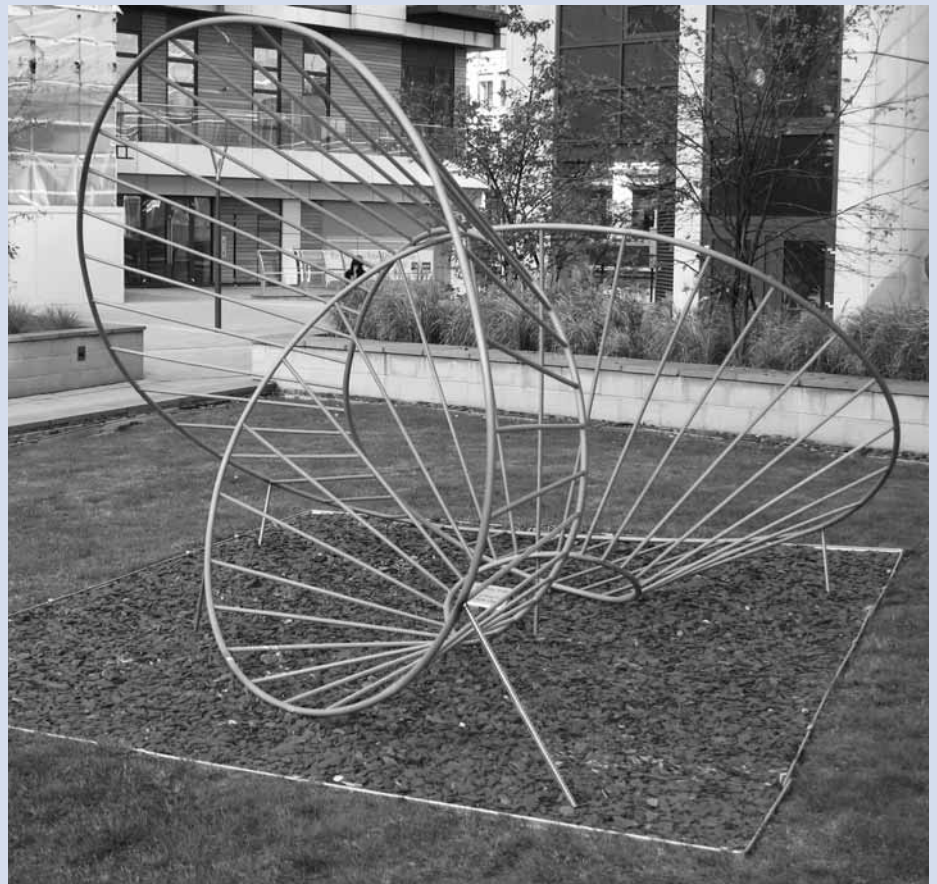
public toilets at Stratford were closed. He arrived at Stratford at midday after being on the bus for more than three hours. He needed to use a toilet, and eventually had to use the facilities at the local shopping centre. When he returned to his bus, his supervisor had reported him for delaying the service. Some drivers have been so desperate for a toilet break they have had to relieve themselves in public places and been arrested."

Transport for London (TfL) said they recognized the problem and were working hard to resolve the issue but Unite threatened a strike ballot if TfL did not speed up their efforts.

Ken Livingstone has backed the union's calls and said he had asked TfL "to do everything in their power to solve this problem as rapidly as possible".

Canary Wharf worker memorial unveiled

Family and friends of Kieron Deeney unveiled a memorial to him at South Quay (pictured). Steel fixer Kieron died in August 2004 when he fell while working on a Laing O'Rourke construction site on Canary Wharf. Kieron's wife, Jennifer, successfully negotiated the placing of the sculpture which is made from steel re-inforcing bars. (See Daily Hazard No. 92).



Safety representatives rebuffed over violence



At the London Bridge JobCentre Plus an as yet unidentified assailant ripped a flat screen monitor from a desk mounting and used it as weapon against a member of staff, this is third such incident in that office.

PCS safety reps reporting to their branch officers in London say, "not a single workplace meeting between PCS reps and the HSE has occurred despite a number of requests. A letter from Principal Inspector Margaret Pretty about the incident implies the HSE has no further role. She says "Any further complaints to my team will be acknowledged but no action will be taken."

The HSE press office said that the person who could assist on the increased Jobcentre Plus violence was "too busy to make a comment".

The Dept. of Work and Pensions, asked to comment on the increasing level of violence in JobCentres, simply said that it was their objective to provide a quality service.

Union blasts detonator storage on the Tube

Rail union TSSA has slammed safety standards of maintenance work on the underground and called for the work to be brought back to the public sector. The latest calls arise from an incident where four detonators in an open box labelled "explosives" were housed in a Tube station storage room usually used for keeping liquids. They were moved following complaints by union reps from Golders Green Underground station to a safer

place. TSSA say the Railway Inspectorate has criticised Tubelines, a private sector maintenance firm, over the incident.

TSSA general secretary Gerry Doherty said the incident revealed 'a worrying slip in safety standards' and called for maintenance work to be brought back into the public sector. 'This had the potential to be a very dangerous situation both for our members and the wider public,' he said.

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Thirdly for full protection against victimisation and the right to re-instatement if found to be unfairly dismissed over a health and safety issue.

While I accept this only covers the tip of the iceberg, taking the steps above would lead to a safer and healthier work environment, save lives and save a huge amount of money in the NHS, benefits, compensation, insurance etc. These issues are all the more urgent now with the disastrous upturn in construction fatalities and the advent of the Olympics project.

yours sincerely,

Mick Holder, for **London Hazards Centre**

Bad Hand Day

On National Hairdressers Day, 21st November, HSE sent out a warning to all hairdressers and their employers that they should do more to avoid dermatitis and other skin complaints. It is estimated that 70% of hairdressers will suffer skin damage of some sort in their careers, and half will get contact dermatitis for which they may be able to obtain compensation.

▲ See London Hazards Centre Factsheet: Dermatitis in the Workplace.

Noisy neighbours taken to the cleaners

Environmental Health Officers for Westminster Council confiscated the steam presses of a drycleaner following dozens of complaints by local residents and after several abatement notices were ignored. There will be a prosecution. EHOs found the machinery was not installed properly and residents described the noise as like "a hammer constantly being banged against a wall."

▲ See: www.cieh.org

Wembley worker memorial unveiled



Mary O'Sullivan and her son John at Wembley Stadium pictured unveiling a memorial to Patrick O'Sullivan, Mary's husband and John's father. Patrick, 54, was killed by a falling platform during the construction of the stadium on 15th January 2004. Also in attendance were members of construction unions, the Construction Safety Campaign and the Battersea Crane Disaster Action Group.

Mary O'Sullivan said: "It is very important to my family that this plaque be a dignified and fitting memorial; not just because it is in tribute to Pat's memory, but to the memory of every man who has made the same sacrifice and every man who continues to lose their life needlessly and in tragic circumstances."

John O'Sullivan said: "It is impossible for others to truly understand the dreadful

effect the loss of my dad has had on my mum and our family.

Getting recognition of his preventable death has been very important to the family and we are pleased to have achieved this with the help of the London Hazards Centre. We hope our father's death can be used in the campaign to prevent other families going through what we have been through."

Asbestos News

Compensation ruled out for Pleural Plaques

The House of Lord's decision to end compensation for the anxiety and psychiatric illness caused by pleural plaques was greeted with anger and dismay by asbestos campaigners. The Law Lords announced their decision on October 15th on an important case (see Daily Hazard 94) up until then compensation had been paid for over 20 years.

Tony Whitson, Chair of the Asbestos Forum says:

"We are calling on MPs of all parties to act swiftly to overturn this unjust decision. As a matter of policy, compensation should be paid for negligent exposure to asbestos which affects the lungs and causes such a heightened risk of a fatal disease and consequent fear and anxiety, and in many cases psychiatric illness."

Victims and their families are urged to write to MPs to urge them to reverse this decision.

▲ SA model letter is available from London Hazards Centre.

St George's Fined

St George's Healthcare NHS Trust, in South West London, was fined £5,000 after pleading guilty to not taking proper precautions.

An HSE investigation found the Trust did not have an effective system to manage asbestos materials at The Groves residential block nor did it control the risk of exposure to asbestos fibre in the building, despite being repeatedly made aware of its presence over a number of years. Asbestos containing materials were present in the building and were regularly damaged by workmen and cleaned up or repaired by Trust employees.

Hazel McCallum, HSE Inspector, said: "It is disappointing when large organisations such as the Trust put people at risk....the measures required to control it [asbestos] are easily achievable. The magistrate commented "that this was a serious offence. There was a lack of communication and a lack of action by the defendant. However, credit was given for the early guilty plea and this was the reason for not committing the case to the Crown Court"



PICTURE: MARK ALLEN

Schoolkids dreaming of the Olympics found Crystal Palace closed because of asbestos

Crystal Palace Closed

Young swimmers were unable to hold trials for the National Schools Swimming Championships at Crystal Palace on 18th September, as it was closed for emergency removal of asbestos ahead of planned closure for refurbishment.

Scotland to overturn Law Lords

Scottish Justice Secretary Kenny MacAskill of the SNP government in Scotland, where health issues are devolved to Holyrood, announced they will bring forward legislation to ensure that in Scotland they will bring forward legislation to ensure workers with pleural plaques who can prove negligent exposure to asbestos, can continue to sue the companies and insurers for damages.

▲ BBC News 29th November 2007

London Asbestos Support Groups

▲ **ELMS**, East London Mesothelioma Support, held a successful launch meeting in the House of Commons on 26th November. Eileen Beadle runs a free telephone advice line between 5 and 10pm on 08008766722.

▲ **BAD Asbestos** will hold a public meeting in Barking Town Hall in February to mark National Mesothelioma Day. Details from Mick Connolly 02085545192.

Camden Council admits they are guilty following two Inquests

Camden Housing Director, Neil Litherland, admitted liability for the death of scaffolder Ralph Kennedy, aged 24 and father of three, better known as Barney, when he was electrocuted after touching a faulty light fitting on the Mayford estate, Somers Town September 2006. [see Daily Hazard 93].

In a separate inquest into the death of two year old Saurav Ghai crushed when a boundary wall on the Wendling estate in Southampton Road, Gospel Oak, during gale force winds in January this year. The coroner said the collapse was

"an accident waiting to happen" because of defects in the wall. Saurav's parents, Vinay and Desiree, issued a statement: "We hope that in future Camden ensures satisfactory controls are put in place to ensure the structural integrity of their properties." In the six months prior to the collapse a visual inspection of the wall had been carried out for the council, but not a full structural survey. The council has said they will not challenge the Inquest verdict.

▲ See Camden New Journal 15 November 2007.

2008 Workers Memorial Day Organising Committee

The Construction Safety Campaign and London Hazards Centre have set up a committee to plan and organise next year's Workers Memorial Day events in London and involve more trade unions. It is open to all safety representatives, relatives of those killed, and campaign groups.

Contact Mick Holder at London Hazards Centre to find out how to help.

Japanese Campaigner visits



On a recent visit to London, Sugio Furuya of the Japan Occupational Health Resource Centre (JOSHRC) was presented by Mick Holder of the London Hazards Centre with a gift of a copy of the "Ragged Trousered Philanthropists" a famous socialist book by Robert Tressell. The book is dedicated to Sugio's daughter, Koharu, by John Flanagan of Merseyside Victims of Asbestos and Reg Johnson of the Robert Tressell Family Papers, the keepers of Robert Tressell's legacy. Sugio was given the book in recognition of the work he has done on occupational health and safety in Japan, notably his work towards a ban on the import and use of asbestos.

▲ For more information on JOSHRC:
www.jca.apc.org/joshrc/index_e.html

Compensation for Pleural Plaque Victims

Lobby of Parliament called by GMB Heat & Frost Insulation Craft Branch

Tuesday 29th January 2008

Houses of Parliament

1pm protest opposite Parliament

GMB contact Jimmy Parish 07753448496

Ask your MP to meet you in room 14 from 2pm onwards.

Lets change the law as the SNP are doing in Scotland.

London Hazards Advice Line

Free advice and support for Londoners on health and safety at work and in the community. We aim especially to work with local groups such as tenants/residents organisations, black and minority ethnic networks, union branches, etc. We'll provide the level of support you need, from a single phone call to long-term support for a local campaign.

020 7794 5999 Mon, Tues, Thurs, Fri, 10-12 and 2-5

USING THE
CENTRE

Health and safety training

The London Hazards Centre (LHC) provides training on workplace health and safety which is suitable for managers and employees alike. The training is participative and will cover the problems encountered at the workplace, what to do to ensure controls are in place and that the law is complied with.

Our training is provided in two ways, either by running courses as a consultant or alternatively by people attending our in-house courses held in Islington.

TRAINING CONSULTANCY

We will train up to 16 people per day for £550.00. We provide the trainer and course which is delivered at a venue organised by our client.

Our training is activity based and the timetable is from 10am to 4pm.

IN-HOUSE TRAINING COURSES

We will be booking new training courses in the spring of 2008.

Should you wish more information or to discuss any of the above or other training courses we may be able to provide please call LHC on 020 7794 5999.

Sick pay and sickness absence policies

Sickness absence policies are common particularly in the public sector and generally focus on reducing absence from work and cutting costs to employers. Recent reports for trade unions show that there is no evidence of an alarming increase in the amount of time taken of work because of sicknessⁱ with a Workplace Employment Relations survey showing the average rate of absenteeism fairly steady at approximately 5% of working days per establishment for the last ten yearsⁱⁱ, although the TUC did find worrying evidence that 75% of workers struggle into work when they are too ill.

The Advisory, Conciliation and Arbitration Service (ACAS) in a discussion paper published this year says; "there are too many 'unhealthy' workplaces and high absence levels can often be caused by deeper organisational issues."ⁱⁱⁱ This paper points out that the Health and Safety Executive has evidence that small employers, especially in the private sector, do not record all absences, so the figures are unreliable. ACAS also says employers should try to investigate underlying root causes of sickness absence and that "If dissatisfaction with particular work issues such as poor job design, work overload, relationship conflict, ineffective line management or bullying – is the real reason for the absence, it is vital that these are teased out and discussed with the employee".

Many workers do not know their basic entitlements to sick pay and sickness benefits. This factsheet covers some basic points including information on benefits available for workplace

injuries and diseases which many fail to claim.

Sick Pay

Your entitlement to sick pay should be given in your **written statement** of employment particulars. This should be provided within two months of starting work. The details do not have to be in your contract, but you should be shown it and able to read it at work; eg in the staff handbook.

Statutory Sick Pay

Do you earn an average of £87 per week^{iv}?

- ▲ If so you should be paid statutory sick pay (SSP) in the same way you are paid wages. 2007/08 the rate is set at £72.55 for a maximum of 28 weeks. After this you may be eligible for other benefits.
- ▲ The first three days of sickness absence are "waiting days" and are unpaid.
- ▲ SSP is only paid for days you would normally work.
- ▲ To start claiming you have to be off sick four days in a row and this includes weekends and bank holidays.
- ▲ If you are off sick again within eight weeks, and off for four or more days, the two periods of sickness absence are linked and you do not have to go through the unpaid waiting days again.

To make a claim you or someone on your behalf has to notify your employer. Note that:

- ▲ Employers cannot insist you notify them in person.
- ▲ Cannot insist on a doctor's certificate to cover the first seven days' absence for the purpose of SSP.
- ▲ Pregnant women getting Statutory Maternity Pay or Maternity Allowance cannot claim SSP at the same time. But they can claim SSP in the earlier stages of pregnancy before they are eligible for these benefits.

Occupational sick pay

Employer or company sick pay schemes are better than the statutory scheme and form part of your contractual rights. In the public sector the schemes typically increase the period sick pay will be paid – according to length of service:

First year of employment

one month's full pay, and two months half pay after 4 months

After five years service

Six months' full pay followed by six months' half pay

In the private sector some companies follow similar schemes with additional sick pay being given according to length of service. This does not necessarily go against the new age equality regulations - although these say any age discrimination must be "justified" – benefits based on length of service up to and including 5 years are exempt from this legislation.

Although some employers are trying to reduce sick pay benefits for those with longer service to comply with age equality regulations, some trade unions have negotiated a reduction on the qualifying service for maximum sick pay. Labour Research Department have examples of this.

If the employer **refuses to pay sick pay**, they must have a clear contractual right to do this and the circumstances should be stated clearly: for example failing to provide a medical certificate where required.

If your doctor says you are fit to return but your employer wants further medical checks, you must be paid your full wages while these are carried out.

Accidents and illness caused by work

The numbers claiming industrial injuries benefits from what is now the Department of Work and Pensions (DWP) has steadily fallen over the last 10 years.

In 1997-1998 there were 93,700 new claims, but this fell to 49,000 for 2005/06. Also, in 2005/06 9,260 claims were subject to clawback by the Compensation Recovery Unit.^v The numbers claiming benefits for industrial accidents and diseases have always been lower than the numbers suffering from work related conditions. Seek advice from your union, a welfare rights worker, Citizens Advice, disability charities such as Disability alliance or, if you are making a claim for compensation for damages and loss of earnings, from a personal injury lawyer. In addition to basic disablement benefits there are also benefits to cover reduced earnings and the need for constant attendance.

Industrial Injuries Disablement

Benefit for accidents at work. This is dealt with by Jobcentre Plus. Claim this benefit if you are disabled because of an accident at work, after you have been off work for two months. The amount you receive depends on how serious the disability is. You may be asked to go to a medical carried out by a doctor acting for the DWP. This is to assess your level of disability and how long it is likely to last. Take along a welfare rights adviser, a trade union representative or a friend. If deemed eligible for this benefit guideline weekly payments range from £127.10 a week if assessed at 100% disabled down to £25.42 a week if 20% disabled, but with under 18s with no dependents receiving less.

Industrial Injuries Disablement

Benefit for diseases including deafness caused by work.

The disease must be on the list of prescribed industrial diseases and often must be linked to a particular industry or job. The list of prescribed industrial diseases is divided into:

- A Conditions due to physical agents: for example noise or vibration
- B Conditions due to biological agents: for example leptospirosis
- C Conditions due to chemical agents: for example asthma, cancer, dermatitis
- D Miscellaneous conditions

The full list can be viewed on the Industrial Injuries Advisory Council website: www.iiac.org.uk

If assessed as being eligible for this benefit the weekly payments are the same as for accidents and range from £127.10 for 100% disabled down to £25.42 a week if 20% disabled, again with under 18s with no dependents receiving less.

The numbers of new claims for many common diseases is falling: HSE say that there are around 1,000 new claims a year for vibration white finger and for carpal tunnel syndrome.

Some other state benefits

Some accident and disease victims will be eligible for constant attendance allowance which is paid at different rates:

Exceptional	£101.80
Intermediate	£76.35
Normal Maximum	£50.90
Part-time	£25.45

For some cases there is also an exceptionally severe disablement allowance of £56.90 and an unemployment supplement of £78.50.

Sickness Absence Policies and Agreements

These concern employer policies and procedures to monitor and manage sickness absence and often the aim of the employer is to use sickness, be it

lots of frequent absences or long term sickness, to get rid of an employee under "capabilities". UNISON has produced a guide for safety reps and others Making us better:sickness absence agreements. This can be downloaded from www.unison.org.uk Some points to note:

- ▲ Monitoring and review procedures should not be used to penalise someone when they are ill
- ▲ Policies should support sick workers – focusing on welfare not disciplinary action.
- ▲ Financial incentives should not be used to reduce sickness absence.
- ▲ For long term illness the employer has an obligation to keep in touch and to make it as easy as possible for the worker to return to work. But contact should not be intrusive and they should have the worker's consent before visiting them at home.
- ▲ Return to work interviews are not disciplinary hearings and their focus should be rehabilitation, considering things like: a phased return to work; changes in hours (by mutual consent); adaptations to equipment or to the workplace; transport arrangements.
- ▲ Ongoing treatments may need to be discussed/provided by the employer: counselling, physiotherapy and access to occupational health, possibly outside the organisation

- i See Labour Research Department, *Sickness absence and sick pay*, September 2007 and the TUC report *Sicknote Britain? 2005*.
- ii Workplace Employment Relations Survey, 2004.
- iii ACAS, *Health work and wellbeing: rising to the public sector attendance management challenge*, May 2007.
- iv 2007/2008
- v Jim Murrey, Hansard 14.3.2007 column 372w

Factsheets online www.lhc.org.uk London advice 020 7794 5999



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