

The de-regulated Chancellor

In May, Gordon Brown, Chancellor of the Exchequer, gave a speech to business leaders that promised an even more de-regulated employment market than the one we currently have. It also raised the spectre of even less inspections and enforcement from the UK's safety police than the dismally inadequate regime currently in place. HM Treasury called this event the launch of 'a Better Regulation Action Plan to boost flexibility and enterprise.'

Mr Brown himself referred to a risk based approach to regulation. He said: 'In a risk based approach there is no inspection without justification, no form filling without justification, and no information requirements without justification. Not just a light touch but a limited touch. Instead of routine regulation attempting to cover all, we adopt a risk based approach which targets only the necessary few.'

Mr Brown also said: 'Under the old regulatory model – which started in Victorian times – the implicit principle has been to inspect all premises, procedures and practices, irrespective of known risks or past results. Under this model, everyone was inspected continuously, information demanded wholesale, and forms filled in at all times, the only barrier being a lack of regulatory resources.'

Business support

The business world supported the Chancellor but demanded more. The Institute of Directors (IoD) said its members would be able to supply plenty of candidates for the Government's cull of regulations, but that a more root-and-branch approach was required. James

Walsh, Head of Regulatory Affairs at the IoD, said: 'The Chancellor should be using an axe rather than a scalpel as he sets about his task of cutting up red tape.'

CBI Deputy Director-General John Cridland said: 'The Government must stem the red tape tide and make the regulatory environment more business-friendly. There is a pressing need for regulations to be cut-back and simplified.'

Already limited

But with closer inspection the model given by Mr Brown of the 'old way' bears little resemblance to what has really been going on in Britain's workplaces. The reality is that most workplaces have not been inspected by the Health and Safety Executive (HSE) or the local authority's Environmental Health Department – ever. Nor are they likely to be, even if there has been a reportable incident there. With the current inspections rates meaning the likelihood of an inspector turning up once every 15-20 years and accident rates remaining persistently high it's difficult to see where the 'burden on business' really lies. On top of that, recent HSE 'blitzes' have been criticised because inspectors have been inspecting on one topic, such as falls from height. Safety Reps have also criticised the enforcement of paperwork and not what is going on in the workplace by the authorities.

Stress

As to Mr Brown's 'risk based approach', the number one workplace health concern is stress, with masses of evidence to back up the damage this is causing workers and the economy. A 'risk based approach' would ensure that regulations were in place and active enforcement was happening. This clearly didn't happen when the Health and Safety Commission (HSC) had the chance to do so recently. Instead we see the HSE doing everything but regulate and enforce.

Construction

Or take construction, a 'risk based approach' would see large numbers of inspectors enforcing the law in one of our most dangerous industries rather than the pitifully few, overworked number we currently have working to an increasingly weakened enforcement regime.

Or should a 'risk based approach' to improving very many aspects of occupational health and safety mean the revitalising of the points made in government's now mainly shelved 'Revitalising health and safety' project? This looks ever more unlikely.

It is difficult to see what more is going on here than adopting the rabid rhetoric of business to justify actions that in reality are not those that should be taken but those that suit the business agenda. Professor Michael Porter's study for the Department of Trade and Industry has already pointed out that the UK has the lowest level of product and labour market regulations in the OECD.

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Workers Memorial Day 2005.
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Waste firm fined over worker death

World's End Waste (Investments) Ltd, was fined £100,000 at the Old Bailey in May following the death of 32-year-old tipper truck driver Sam Boothman at their waste transfer site at Pensbury Place, Wandsworth on 1 June 2004.

Sam had discharged his truck's load at the site's transfer shed and had moved the truck to another part of the site to secure it's tailgate, when he was hit from behind by the bucket of a shovel truck driven by another employee. He suffered severe multiple crushing injuries and died shortly after.

Speaking after the case, HSE Principal Inspector Margaret Pretty, said: 'The case shows everyone in the waste transfer industry the importance of planning for workplace transport and having safe systems of work in place. A one-way traffic system, the use of a banksman and

designated pedestrian walkways, all of which were subsequently introduced by the company, may have prevented this fatality.'

The presiding judge, His Honour Judge Focke QC, said: 'It is a very dangerous practice to drive a shovel truck with the bucket raised a few feet off the ground, so that the driver's forward vision is obscured. The penalty should reflect public concern at an unnecessary loss of life. Companies must be deterred from operating in a slack way.'

World's End Waste Ltd pleaded guilty to a charge that they had failed to ensure the safety of their employees, including Mr Boothman, so far as reasonably practicable.

This was the second major incident at the site within a year and the court was told of yet another. On 11 January 2000 a worker who was relieving himself against a truck was hit by a vehicle. On 16 June 2003 Lee Wells was hit by a shovel truck and suffered a broken leg. Lee subsequently needed four operations and spent five weeks in hospital.

Geoff Martin, Senior Manager Battersea and Wandsworth TUC, said: 'This case highlights the need for local trade union safety reps to have a statutory right to visit and inspect premises. We went down to Worlds End Waste to do just that and were told in no uncertain terms to f*** off. If we had statutory powers to inspect non-union companies lives like that of Sam Boothman could be saved.'

Battersea and Wandsworth TUC have also made approaches to Wandsworth Council to ensure World's End Waste are not being used as a contractor by the authority and to ensure they will not be included in the future.

There is also the matter of the licence under which World's End Waste are allowed to work. This licence to deal with waste is issued by the Environment Agency but it is unclear as to whether, following these incidents and the successful prosecution, either the Environment Agency or the HSE has the right, or the will, to revoke World's End Waste's licence.

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Trade unions

Trade unions were quick to reply to the Chancellor and the de-regulators with the TUC calling business arguments about red tape a red-herring.

Dai Hudd, assistant general secretary of HSE union Prospect, said the regulation review must not turn into a 'cowboy's charter.' He said: 'Injuries and deaths at work increased last year and we fear this trend will accelerate that process. The government must respect the experience and expertise of staff in the frontline and not follow a slavish employer-driven agenda. Effective regulation is not just about being nice to business, it is about maintaining standards.'

Paul Kenny, acting general secretary of the union GMB said: 'Any suggestion that we can build trust with employers who put profit and cutting corners before the rights and safety of workers is complete and utter nonsense. The road to

the current legislation, which is totally inadequate, is littered with the broken bones, the blood and the bodies of workers killed by company negligence.' Kenny added: 'Mr Brown should go and talk to the widows and children and widowers of people killed and maimed by company mismanagement, by gross negligence of employers on health and safety'.

Bob Crow, general secretary of rail union RMT said: 'Gordon Brown is wrong in his neo-conservative belief that unregulated business will act responsibly and that reputation with customers and investors is more important to behaviour than regulation. Inquiries after all the recent major railway accidents have shown that the companies did act irresponsibly leaving many people dead. Railways are high risk and will only be safe if the risks are controlled and tightly regulated.'

HSC

At a recent open meeting of the HSC some of the Commissioners expressed their displeasure at the pressure on the Commission and HSE to give in to this business agenda. One Commissioner said: 'We are regulators, that's what we do and we should be proud of it.'

The trade union side on the HSC will need continued support if they are to maintain a position of strength as they resist the forces that are clearly building up outside.

For further information see:

▲ <http://www.lhc.org.uk/members/pub/newslet/82dha.htm>

WORKERS MEMORIAL DAY

London, April 28th 2005



London's Mayor says he'll boot dangerous firms off GLA contracts

Workers Memorial Day (WMD) was a resounding success nationally, internationally and especially in London this year.

A very well attended protest march organised by the Construction Safety Campaign (CSC) marched from the Tate Modern to the headquarters of the Health and Safety Executive (HSE) and then on to the Mayor's HQ, the Greater London Authority (GLA) offices by Tower Bridge. Marchers carried a coffin to remind us of those who had lost their lives over the years and banners blew in the wind.

On the way to the HSE the march stopped at the massive Bovis Bankside development and invited workers to stop work and join in a minutes silence to remember the dead. Approximately 100 workers came off the job while many more watched from the scaffold and a sombre and respectful minute's silence was held.

Union members and officials at the HSE came to meet the marchers where speakers called for more government safety inspectors and stronger enforcement of safety laws.

At the GLA a number of trade union speakers made some very relevant points but it was what London's Mayor, Ken Livingstone, said that gave promises to concerns. Following a speaker from Prospect who called for more enforcement officers, a stronger enforcement regime, stronger punishments in the courts and a safety rep in every workplace in London the Mayor said 'I couldn't agree more!' He then went on to point out the GLA along with the Deputy PM's Office will be dealing with billions of pounds of construction projects in the coming years and promised dangerous contractors would be thrown off those contracts.



Can tell, won't tell (employers, the DDA and RIDDOR)

Trade union Safety Representatives know that employers can be tardy and obstructive when asked to disclose information which the TU side needs to properly negotiate for their members or to act to protect their members.

Long before the Data Protection Act (DPA) arrived on the legal scene, many safety representatives had difficulty in getting employers to release information which was properly the subject of the Reporting of Incidents, Diseases and Dangerous Occurrence Regulations 1995 (RIDDOR).

Since the Data Protection Act 1996 (DPA) employers have become increasingly obstructive in releasing this information, quoting the DPA and, ironically, their not wanting to break the law, as a reason for withholding information from Safety Reps about serious accidents their workers have suffered.

What the London Hazards Centre seeks to do here is sort sense from nonsense about the information that can be properly divulged to safety reps and which, legally, employers have a duty to divulge.

Regulation 7 of RIDDOR makes it a legal requirement for an employer to keep a record of matters that they report under RIDDOR to the HSE.

Regulation 7(1) of the Safety Representative and Safety Committee Regulations (SRSCR) says: 'Safety representatives shall, for the performance of their functions under section 2(4) of the 1974 Act and under these Regulations, if they have given the employer reasonable notice, be entitled to inspect and take copies of any document relevant to the workplace or to the employees the safety representatives represent which the employer is required to keep by virtue of any relevant statutory provision within the meaning of section 53(1) of the 1974 (Health and Safety at Work) Act except a document consisting of or relating to any health record of an identifiable individual.'

RIDDOR is a 'relevant statutory provision within the meaning of Section 53(1) of the 1974 Act'.

Section 35 of the DPA is perfectly clear (see the text in separate box), it says that anything that a Safety Rep had a legal right of access to before the DPA – they still have a right of access to now.

The only exception to this right of access to SRSCR reg 7(1) information is information 'consisting of or relating to any health record of an identifiable individual.' Obviously a RIDDOR report is not a 'health record' it is report of an incident, disease or dangerous occurrence which is work related. The only portion of it which could be construed as a 'health record' is the name of the work related disease they

have or the nature of the work related injury they suffered. And so the only part of a RIDDOR form that could arguably be withheld from a Safety Representative is Part D, which relates to the injuries sustained. However, as this information is clearly needed by safety reps to fulfil their statutory functions we believe this argument outweighs all others and the information must legally be provided to reps.

The issue has been fudged by HMSO who have brought in a disclosure consent form, to be signed by the injured person. If the form is not signed (for whatever reason – the person is dead, hospitalised or just doesn't want people to know) the employer will have days if not weeks to clean up the accident site before the Safety Rep can properly carry out an investigation into the matter under Regulation 6 of the SRSCR.

This current fudge by Government and the HSE allows employers to use the DPA to subvert the force of Section 35 of the DPA (which allows disclosure, otherwise illegal, for purposes of establishing, exercising or defending legal rights). To deny Safety Reps access to information they have a legal right to and to interfere detrimentally with Safety Reps exercising their investigative function established by Reg 6 of SRSCR can't be the intention of the lawmakers otherwise there would never have been a Section 35 of DPA.

This position adopted by the authorities, in providing employers (yet again) with a 'get out of jail free' card, is untenable especially when SRSCR Code of Practice 6 (c) says:

'The Regulations require employers to make information within their knowledge available to safety representatives necessary to enable them to fulfil their functions. Such information should include: information which the employer keeps relating to the occurrence of any accident, dangerous occurrence or notifiable industrial disease and any statistical records relating to such

Data Protection Act, 1996

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- (1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.
- (2) Personal data are exempt from the non-disclosure provisions where the disclosure is necessary
 - (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or
 - (b) for the purpose of obtaining legal advice, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights

accidents, dangerous occurrences or cases of notifiable industrial disease.'

Unions who have Safety Reps facing this problem should consider, if the matter can't be resolved under their workplace disputes or grievance procedure, taking the employer to Employment Tribunal for causing the Safety Rep 'a detriment' contrary to Section 44 of the Employment Rights Act, 1996.

This is a method of trying to resolve problems of obstructive employers that, to our knowledge, has not been tried too much, if at all, for Safety Representative's health and safety matters. It would probably take a few test Employment Tribunal cases to see if it is truly a useful way of getting Safety Representatives health and safety problems resolved – but is worth considering.

Section 44 Employment Rights Act, 1996

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that –
 - (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,
 - (b) being a representative of workers on matters of health and safety at work or member of a safety committee –
 - (i) in accordance with arrangements established under or by virtue of any enactment, or
 - (ii) by reason of being acknowledged as such by the employer, the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

Barking and Dagenham asbestos meeting

On the 18th May, the Barking and Dagenham Asbestos Victims Support Group, launched a year ago with the help of the local UNISON branch, held a public meeting at Barking Town Hall.

Jon Cruddas, MP for Dagenham, chaired the meeting which included presentations from Mick Holder of the London Hazards Centre, Tony Whitston from the Manchester Asbestos Victims Support Group, Dr Simon Piggott from the Institute of Cancer Research, local lung cancer nurse Yvonne Miah, specialist asbestos litigation solicitor Sally Moore from Leigh Day & Co and Dr. Gregory Deleuil, respiratory physician and medical adviser to the Asbestos Diseases Society of Australia.

The meeting was well attended by doctors, specialists and members of the public. The Barking and Dagenham Asbestos Victims Support Group would like to thank all those who took part and attended for their support in raising the profile of this major issue which has already had a devastating effect on the local Barking and Dagenham community.



For further information about the Barking and Dagenham Asbestos Victims Support Group go to:

▲ www.badasbestos.org.uk

For further information on asbestos issues visit the London Hazards Centre web site at:

▲ www.lhc.org.uk

Tube nightmares continue

In early June over 1,000 passengers were trapped on the Central Line after signal failures stopped the trains between Marble Arch and Lancaster Gate just before 10am. Trains were evacuated and three people were treated for the effects of heat. Three Central Line trains had to be moved to Lancaster Gate, where the passengers were able to get off. Passengers were reported as having fainted and become ill.

In a reply to official question, Ken Livingstone's office said that signal failures on London Underground (LU) rose from 152 in January to 219 in April, an increase of almost a half. The Conservatives are reported to have said Metronet and Tube Lines, the two firms

responsible for maintaining the underground lines, had "some serious explaining to do". In reply Metronet said signal failures on its lines fell 4% over six months. Tube Lines said reliability had improved. The District Line featured heavily between 9 January to 30 April with a total of 145, with April being the worst month, the Mayor's figures showed.

The London Assembly's Transport Committee again slammed the PPP, Metronet and Tube Lines. They say they are failing to deliver improvements on time which is making investors reluctant to invest more. They reported a record number of overruns and a failure to deal with improvements to tracks, signals, lifts, escalators and stations.

New LHC migrant and refugee worker project

Abuse of employment rights (including health & safety) is commonplace amongst refugees and migrant workers. They can get rates of pay less than the minimum wage and endure long and illegal working hours. Accidents and injuries have always been high amongst this group of workers as the Morecambe Bay and other tragedies have highlighted.

The London Hazards Centre is about to launch a new project that will:

- ▲ Address the health, safety and welfare of refugee and migrant workers in London who are concentrated in low paid, dangerous and insecure jobs.
- ▲ Ensure that refugee and migrant workers know the range of potential health risks associated with their work.
- ▲ Tell refugee and migrant workers of their rights under health and safety and employment legislation.
- ▲ Create a user group steering committee.

We will work with refugees and migrant workers, employed or seeking employment in low paid and insecure jobs. e.g. construction, catering, factory work and health care.

Via a series of briefings and advice sessions across London we will provide

understandable information about employment rights and alert people to the life dangers that exist in the workplace. We hope to work closely with trade unions, union branches, workplaces, education providers and voluntary sector organisations to get the information and organisation to where it is needed.

Appeal for extra funding

We carried out a survey early last year which showed that refugee and mainstream organisations clearly see the need for this project and want to work with LHC in delivering it. We have managed to secure a small grant to do this work from the City Parochial Foundation **BUT** we didn't get enough money to fully implement the project and so we are seeking additional funding.

This is your chance to do something about the exploitation of migrant and refugee workers. Please consider making a donation to ensure we have a chance to do this work as thoroughly as we originally planned.

Please make all cheques payable to 'London Hazards Centre' and send them to us at 213 Haverstock Hill, London NW3 4QP.

Call our telephone advice line – it's free!

The London Hazards Centre operates a free telephone advice line for Londoners, which is there to help people at work, at home and in the community with health and safety issues. We are funded to provide Londoners who can't afford to pay for professional advice and help with this free service. The Centre strives to ensure the advice we give is of a very high standard and is in language that lay people can understand. Because we are grant funded this means we can give information that is free from the influence of business etc.

We try to give honest, health based advice that takes into account current medical opinion and trends in concerns. The Centre has been at the cutting edge on advice on vast ranges of topics that are considered day-to-day now such as repetition strain injury (RSI), sick building syndrome, asbestos, computer based work, chemicals and pesticides at work and in the home, stress and many more.

So if you have a health and safety problem and need some advice – give us a call.



COURSE PROGRAMME

The Centre runs one-day courses aimed at trade union safety representatives and voluntary/public sector organisations.

Courses cost £55 per person and are held at the Red Cross building near the Angel, Islington which is fully accessible.

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

Our Autumn programme includes:

- ▲ **Introduction to Workplace Health and Safety**
Thursday 8th September 2005
- ▲ **Introduction to Risk Assessment**
Thursday 29th September 2005
- ▲ **Health and safety for people working with children**
Thursday 27th October 2005
- ▲ **Introduction to Fire Risk Assessments**
Thursday 24th November 2005

Details and booking forms at www.lhc.org.uk or from the Centre advice line 020 7794 5999.

COURSES TO ORDER

We run tailor made courses on a range of health and safety topics for unions, charities, community groups and councils. Contact us to discuss training for your organisation or workplace.

If your organisation needs regular health and safety support we have an annual subscription scheme that provides a discounted daily fee for scheme members.

London Hazards Centre free telephone advice line: 020 7794 5999.

Infectious diseases in the workplace

This factsheet deals with the main infectious diseases in the workplace, their symptoms, their prevention and the main groups of workers at risk. It also covers the legal obligations of employers and the action that can be taken by workers and their representatives.

Government sources reported 1,100 cases of work-related infections in 2003. They accept this is probably a gross under representation of the real situation. The main activities involved were health care, social work, farming and food handling.

Main infectious diseases at work

Hepatitis

This is a viral liver disease with three main forms, A, B and C. Those at risk include healthcare workers, sewage workers, police and emergency services, morticians and embalmers and others who come into contact with bodily fluids.

Hepatitis A is easily contracted from close contact with infected individuals or ingesting contaminated food or faeces. Symptoms can range from virtually no effect through fever, nausea, lack of appetite, diarrhoea, abdominal pain and jaundice to coma and death. Prevention is achieved by good sanitation, waste disposal and personal hygiene.

Hepatitis B is 100 times more infectious than HIV, and carried in blood, saliva, semen, urine and vaginal secretions. One third of those infected are without symptoms, and there are up to 50,000 symptomless carriers in the UK; one third suffer a mild flu-like illness and one third suffer severe illness for up to six months with nausea, vomiting, fever, pain, fatigue and jaundice. Cirrhosis or cancer of the liver can

develop. Prevention can be achieved by vaccination, good personal hygiene and avoiding contact with bodily fluids.

Hepatitis C can cause chronic illness and ultimately death. It is also transmitted in body fluids though to a lesser extent than hepatitis B. There is no vaccine currently available.

HIV/AIDS

Acquired Immune Deficiency Syndrome (AIDS) is caused by the human immunodeficiency virus (HIV). The virus may be carried for many years before symptoms appear. A breakdown of the body's defences can lead to serious infections and some cancers. Treatment with drugs can arrest the onset of symptoms. The virus is transmitted by infected blood, semen and vaginal fluid. Occupational groups at risk are health and personal care workers through needlestick injuries or contact with infected blood through skin cuts and abrasions. Prevention of exposure is achieved by good standards of cleanliness and hygiene.

Tuberculosis

Tuberculosis is a bacterial disease which mostly affects the lungs (pulmonary TB) but can affect other organs. The illness is severe and may lead to long convalescence or to permanent disability. Pulmonary tuberculosis can be transmitted by inhaling the saliva or sputum of an infected person or animal. Groups at risk are health care staff, workers in old peoples' homes, homeless hostels and drug rehabilitation centres and farm and veterinary workers. Prevention is by BCG vaccination which offers immunity for up to 15 years.

Leptospirosis (Weil's Disease)

This is a potentially lethal disease contracted from water contaminated with the urine of rats or possibly other animals, infected with leptospires, which are a form of bacteria. Infection can

occur through contact with the eyes and mouth or through cuts and abrasions. In humans the disease is called Weil's disease, which can lead to jaundice or meningitis. Vulnerable groups are water and sewage workers. Vaccination is not available for humans in the UK. Suitable protective equipment to avoid contact with contaminated water is required. Workers, such as sewer workers, can carry medical alert cards and should advise their GP they are at risk.

Legionnaires' disease

This is a bacterial respiratory disease which can be fatal. It is contracted by inhaling droplets of water contaminated with legionella bacteria emanating from cooling towers, air conditioning, humidifiers, showers and other water systems. Anyone in the vicinity of such systems is at risk. Control is by good design, location, maintenance and cleaning of water towers and other systems. The bacteria can be killed by biocides or raising the water temperature to over 60°C. Humidifier fever is a related disease though less virulent and caused by a variety of organisms.

Zoonoses

These are infections transmitted from animals to humans. The most severe are anthrax, bovine tuberculosis, brucellosis, hantavirus, psittacosis, Q fever, rabies, salmonellosis. A somewhat less serious group includes leptospirosis, cowpox, cryptosporidiosis, listeriosis, Newcastle disease, orf, ovine chlamydiosis, ringworm, tetanus and toxocariasis.

Infections in pregnant women

Some infections can cause miscarriages or affect a breastfeeding child: German measles, chickenpox, hepatitis, HIV, typhoid, tuberculosis, ovine chlamydia, and toxoplasma, found in infected cat and dog faeces.

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