

Hazards Campaign

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The national Hazards Campaign is network of independent organizations across the UK working on occupational health and safety issues from the workers' perspective, plus safety reps, trade unions and single issue campaign groups (including Workstress Network, Construction Safety Campaign, RSI Action, Asbestos Victims Support Groups, FACK) forming a strong national campaign for the demands in the Hazards Campaign Charter: better health and safety for all workers via strong regulation and effective, adequately funded preventative enforcement of all laws, employers statutory duties to workers and trade union safety reps and proactive inspections; far greater corporate accountability via directors duties with imprisonment for those found guilty of criminal gross negligence, more prosecutions of grossly negligent employers and higher deterrent fines; more rights for workers and for trade unions safety reps such as the right to be roving reps, to stop the job and to impose provisional improvement notices where employers and failing to comply with the law; worker oriented and controlled occupational health services, just compensation for all harmed by work, and bans on occupational carcinogens such as asbestos. Each group works independently with workers and communities in their own geographical areas on the overall, or specific, issues of occupational safety and health. The Hazards Campaign brought Workers Memorial Day 28th April to this country in the 1990s with the twin slogans 'Remember the Dead: Fight for the Living'; organises an annual Hazards Conference for 400- 500 safety reps -22nd conference, Hazards 2011 2nd to 4th September at Keele University- and is allied to Hazards Magazine. The Hazards Campaign is an active participant in the European Work Hazards Network, which runs international conferences and networking across Europe and beyond, www.hazardscampaign.org.uk.

Hazards Campaign Response to the Lofstedt Review We register our concern that the questions are couched in biased terms, implying regulation is a bad thing, and forming part of an overall ideological deregulatory policy drive by the government, rather than any attempt to improve the health and safety for workers. There is no overall accurate exposition of the current state of health and safety, the level of harm caused by work with no attempt to estimate the real risk workers face daily. No explanation of the costs of harm caused by work to those directly harmed and their families, to the economy, and how the burden is borne mostly by those harmed and the state with those responsible paying less than a quarter of the cost. Nor how this review might be aimed at reducing the unacceptably high level of deaths, injuries and even more so the massive level of work-related ill-health which has been airbrushed off the agenda with the nonsensical re-classification of most workplaces as 'low hazard' emanating from the unevidenced Lord Young Review. The whole aim of this review seem to be to reduce a 'burden on business' which is asserted but not proven. This review must be seen in the context of all the government attacks on health and safety, and workers jobs, security and conditions of work, not in isolation. We are in the grip of an economic recession driven by credit crunch caused by the deregulation of the financial sector, then light touch, limited touch regulation which meant in practice a total lack of enforcement, and we are all paying for this with our jobs, public services, changes to benefits especially ESA, DLA and JSA all of which will have significantly detrimental effects on workers harmed by their work, with privatisation and destruction of our health service and schools, cuts to our pensions and every area of our life, and yet the message of this review is that even more deregulation and less enforcement will be the solution! The Hazards Campaign launched the We Didn't Vote to Die Campaign in July 2010 to challenge the lies behind the attacks on health and safety with facts and evidence , <http://www.hazards.org/votetodie>, <http://www.hazards.org/votetodie/jobkillers.htm>

Regulations don't kill jobs-lack of regulation kills workers!

<http://www.gmhazards.org.uk/We%20Didnt%27t%20Vote%20to%20die%20updated%20leaflet%20July.pdf> Everyone has the human right to come home alive and unharmed from their work every day. But this government threatens to make work more dangerous and the protection of workers is under attack as never before with cuts to enforcement of 35% to the HSE and at least 28% to Council EHOs, alongside a 33% slashing of proactive inspections- the ones that spot and rectify things that may injure, kill or make workers ill BEFORE they do! – which along with 'fee for fault' is part of turning the HSE into a reactive rump, not a frontline protection agency, with inspectors only visible after something has gone wrong and hurt workers. We are told that modern work doesn't harm many people and that our health and safety is a burden on business, costs employers far too much and is stopping jobs being created. None of this is true and it is nonsense when spouted by the business lobby, and is unacceptable when used by government to justify policies. Any reputable review of health and safety must be based on the truth and we hope that Professor Lofstedt will take our evidence on board, and speak truth to power.

Lie No.1: Health and Safety in Britain is one of best in world and very few people now hurt by modern work.

TRUTH: up to 1,500 killed in work related incidents, up to 50,000 die due to work-related illnesses and millions made ill by work EVERY YEAR; Britain only 30 out of 176 countries for occupational safety and health performance; we have more work-related ill-health now than ever, according to occupational health experts.

<http://www.gmhazards.org.uk/Whole%20story%202009-10%20update.doc>;

Lie No. 2: Health and safety has gone mad, it's over the top, over enforced, over bureaucratic.

TRUTH: there's less regulation now than 40 years ago, less paperwork, less time required by employers; less spot inspection of workplaces- only once in 38 years now; less investigations: only 1 in 13 major and fatal injuries even investigated; less prosecutions: down 50% over 10 years and in 98% of major injuries there is no enforcement action taken against the employer at all.

Lie No. 3: Offices, shops, schools are 'non-hazardous' so no need for health and safety that's designed for factories and building sites.

TRUTH: You're less likely to be killed or physically injured but these workers face musculo-skeletal risks from working with computers and manual handling, violence from customers and pupils, and a whole host of stress-related illnesses caused by bullying and harassment, by long hours and excessive workloads. Risk assessment is proportionate and takes account of the different hazards in these workplaces and doesn't require the same response as on construction sites or in factories.

Lie No. 4: Compensation culture is rife

TRUTH: Less than 10% of workers made ill, injured and the families of those killed by work, get any sort of compensation at all, research show claims down except for road traffic incidents.

Lie No. 5: Health and safety costs too much.

TRUTH: Good health and safety saves employers and state money. Poor health and safety cost at least £30 billion EVERY YEAR and who pays? You do- workers and their families pay in heartbreak and poverty, we/state pay via health and benefit costs but the employers who cause the damage pay less than 25%.

Lie No.6: Health and safety is only common sense, we can do away with laws and enforcement and trust employers to do the right thing..

TRUTH: Workers are made ill and killed every day due to employers failing to manage health and safety and all the evidence shows what works is clear laws, strictly enforced to protect workers from ignorant, non-compliant negligent employers. What also works is trade union organisation & having a safety rep which reduce injuries by 50%.

The Hazards Campaign has long criticised the use of false figures for deaths injuries and ill- health caused by work, by the HSE, government ministers and the press, as these grossly underestimate the harm caused by the work, misrepresent the real risk workers and members of the public face from work activities, and hide the scale of employers law breaking and damage caused to lives and to the economy. Each year the HSE announces the number of workers killed in incidents at work who are reported to the HSE and Local Authorities under RIDDOR. Illogically they do not collate worker deaths reported to other investigating authorities such as the MCA, MAIB, CAA, and the police. The HSE does not report on deaths of those killed in work-related road traffic incidents, working in the seas and air, or those who commit suicide as a result of work pressures, or those members of the public killed by work activities. They also do not report fully the numbers killed by work-related illnesses every year, which are the iceberg below the incident tip.

For example in June 2011 the HSE announced that 171 workers (employees and self-employed) were provisionally killed at work in 2010/11. This was reported by the press as the total killed by work. It is used by ministers and by MPs as a total, in parliament, in devising policy, to the press, in letters to constituents and to groups such as FACK, because it is portrayed as a total. Many will think that if millions are at work and 'only' 171 killed this is not excessive and the tabloid press see it as an excuse to rubbish health and safety law as over the top and unnecessary red tape. But it probably a fraction of one percent of the total killed by work every year, and to use it as a total is gross misrepresentation.

The UK Statistics Authority in their Report 42 on Assessments of compliance with Code of Practice for official statistics - Statistics on Health and Safety at Work (produced by the HSE) Published May 2010 confirms our position, as it states in para 1.3.4: *'Statistics on work-related injuries and fatalities exclude those injuries that take place on the roads, in the air, at sea and exclude the armed forces. Although this is clearly acknowledged on HSE's website, it is not always made clear in the presentation of the statistics- for example, when addressing the organisation's targets in the compendium for publication. HSE does not produce an overall figure for work-related fatalities in Great Britain.'*

<http://www.hazardscampaign.org.uk/pressrelease/hsefatalityfigures.htm>

Using the work of experts such as Tombs and Whyte, RoSPA, Rory O'Neill, Simon Pickvance and Andrew Watterson, the Hazards Campaign estimates that up to 1,500 people are killed in work-related incidents and up to 50,000 die from work-related illness each year. The approximately 1,500 is made up of the figure reported by the HSE, e.g. 171 for 2010/11, plus the number of members of the public killed by work activities, usually between 80-100 (not published for this year yet), plus those killed in work related road traffic incidents which is about 1,000, plus an estimated 100 to 250 who commit suicide due to work pressures, and about 30 killed in the seas and air.

The figures for deaths from work-related illnesses are estimated by a range of occupational health experts at percentages of total deaths from cancer, heart and lung diseases and include: 18,000 from work-related cancer at 12% of all cancer deaths (Dr Richard Clapp et al estimated occupational cancers at 8-16% of the total), this includes at least 5,000 mesothelioma and lung cancer deaths caused by asbestos; 20 % of all heart disease deaths due to work related stress from long hours, over work, bullying and harassment which is up to 20,000; plus 15 – 20% of obstructive lung diseases, about 6,000, plus about another 6,000 from restrictive lung disease, neurological and

other work-related illnesses, totalling 50,000 deaths each year. For more details see <http://www.gmhazards.org.uk/The%20Whole%20Story%20SHP%20December%202008.doc> and <http://www.gmhazards.org.uk/Whole%20story%202009-10%20update.doc>. Job to Die for? And Burying the Evidence O'Neill, R, Pickvance S, Hazards 92, 2005 pp 4-5 and pp18-19; Clapp, Dr. R et al 2005: Environmental and occupational causes of cancer: A review of recent scientific literature, UMASS Lowell; Tombs, S, Whyte, D, 2008 A crisis of enforcement: the decriminalisation of death and injury at work, Centre for Criminal Justice Briefing.

These more realistic estimates make the HSE figure of '171 killed by work in 2010/11' less than half a percent of the total. In addition to the figures for those killed by work each year, there are the tens of thousands suffering major injury, hundreds of thousands suffering over 3 day injury and the over 2 million suffering ill-health caused by work. And this is using unreliable reporting and counting methods – up to 70% of RIDDOR reportable illness and injury goes unreported. The extent of work-caused and work-related harm is overwhelmingly massive yet annually reported, as this year as '171 people killed at work'. This failure to report the reality contributes to the tabloid myths and business claims that our regulations and enforcement are over the top, and allow government to misrepresent the real risk of harm to workers and society.

Q1: Are there any particular health and safety regulations (or ACoPs) that have significantly improved health and safety and should not be changed?

Yes far too many to mention and HSE and academic reviews have shown this, for example HSE commissioned Research Report 385/2001 'The impact of HSC/E: a review'. Some estimates credit about half the improvement in the death and injury figures to the regulation and enforcement regime, and about half to the change in the type of work.

Many employers complain regulations are too difficult to understand and they do not know how to comply, and ACoPs tell employers exactly what to do and how to ensure compliance, Guidance does not have the same legal status as ACoPs. Workers and safety reps find ACoPs important to use to show their employers what is legally required on very specific issues relating to risk assessment (Management of Health and Safety at Work Regulations) the hierarchy of control for work with chemicals (COSHH Regs); training, provision of information about the risks and work station assessments for the Display Screen Equipment Regs, and specific manual handling risk assessments for the Manual Handling Operation Regulations, to remove hazards, reduce risks and prevent harm.. The ACoPs to many other regulations, too numerous to mention, are very specific about what has to be done and help to make sense of the general duties of the HASAWA, especially Reg 3 of the Management of Health and Safety at Work Regulations on risk assessment.

The framework of legal requirements has driven technological solutions to make work safer, such as the Work at Height Regs leading to the development of Mobile Elevated Work Platforms; the Manual Handling Operations Regs leading to non-manual mechanical lifting and handling solutions. Without such ACoPs, most employers, especially SMEs would be clueless. It is also clear that the failure to have specific regulations and ACoP to deal with work-related stress has allowed an epidemic of illness and premature death to develop and increase.

There is much evidence gathered by the HSE, governments and independent academic studies, that regulation and inspection are what works in making workplaces safer and

that voluntary methods completely fail. The US has used Voluntary Protection Programmes for years which are much criticised as ineffective in making work safer, and when Ireland trialled such voluntary self-regulation, an increase in deaths and injuries resulted, causing a reversion to inspection and regulation following which deaths and injuries decreased. Professor Phil James of Middlesex University Business School, in RR451 for the HSE published in 2005, concluded: 'existing evidence suggests that legal regulations and their enforcement constitute a key, perhaps the most important, driver of director actions in respect of health and safety at work'. Rory O'Neill in 'The real Job Killers' concludes that "*The academic literature is dominated by studies showing three factors are key to making work safer: decent regulations, a meaningful threat of enforcement backed up by punitive penalties; and a genuine worker involvement.*" The arguments that regulations kill jobs and are over burdensome is also demolished in this article. Research and publications by Theo Nichols, Courtney Davis, David Walters, Phil James, Rory O'Neill, Simon Pickvance and Andrew Watterson, are widely cited and provide an extensive body of evidence about the value of health and safety regulation, the benefits of the enforcement agencies when properly resourced and supported and the dangers of reduced regulation, and voluntary approaches. (The real job killers Hazards magazine 113 <http://www.hazards.org/votetodie/jobkillers.htm>; Dangerous Li(v)es Hazards magazine 112 2010 <http://www.hazards.org/votetodie/dangerouslies.htm>; Dawson, S., Willman, P., Bamford, M. and Clinton, A. (1988) Safety at Work: the limits of self-regulation, Cambridge: Cambridge University Press; Dr Courtney Davis, 'Making Companies Safe, What Works?' 2005, Centre for Corporate Accountability and Amicus <http://www.unitetheunion.org/PDF/MakingCompaniesSafejan05.pdf>; Director's responsibilities for health and safety: the findings of two peer reviews of published research, HSE research report RR451, HSE 2005 <http://www.hse.gov.uk/research/rpdf/rr451.pdf>)

There is also a mass of widely accepted evidence that trade union organised workplaces with a safety rep, have half as many injuries and ill-health compared to workplaces without these factors, see Hazards magazine <http://www.hazards.org/unioneffect/>; and TUC for all the evidence <http://www.tuc.org.uk/workplace/tuc-8382-f0.cfm>; Walters, D., Nichols, T., Conner, J., Tasiran, A. and Cam, S. (2005) The Role and Effectiveness of Safety Representatives in Influencing Workplace Health and Safety. HSE Research Report 363, London: HSE Books; James, P. and Walters, D. (2002) Worker Representation in Health and Safety: options for regulatory reform, Industrial Relations Journal, 33(2): 141-156; Morantz, A. (2011) Coal Mine Safety: do unions make a difference, Stanford Law Review (In Press), available at http://www.stanford.edu/group/coal_mining_safety/3-5%20paper.pdf; Nichols, T. Walters, D.R., and Tasiran, A.C. (2007) Trade Unions, Institutional Mediation and Industrial Safety – Evidence from the UK, Journal of Industrial Relations, 49 (2), 211-225. The Safety Representatives and Safety Committees Regulations enable safety reps to work, are massively cost effective, and would be even more effective if positively enforced to maximise the union safety effect which saves money, saves lives and prevents ill-health.

Q2: Are there any particular health and safety regulations (or ACoPs) which need to be simplified?

In relation to what happens to those at work No. But there is in any case a system for doing this, for keeping all regulation, ACoPs and guidance under review in a tripartite, measured manner via the HSE. The HSE's simplification programme and the process of implementing EU Directives into UK law requires such an approach, is on-going and certainly more authoritative and also surely a great deal more cost effective than holding a total review of health and safety every time the business lobby complains about 'burdens'. This Lofstedt Review is the second commissioned by this government in less than twelve months.

The HSE already has extremely simplified information and advice on the website and available – until September- through Infoline. What is undoubtedly needed are ways to make employers far more aware of their legal responsibilities and duties under the Health and Safety at Work Act and specific regulations with which they must comply, with ACoPs (and Guidance) to help them to do this, where to get advice and support and training to ensure they do, and what enforcement action they will face if they do not comply.

The review like the Lord Young Review before it is based on false premises, on out of date, ill-informed and basically very old fashioned view of work ignoring many of the most important changes

since the HASAWA, such as that far more workers drive as part of their work, more people work in the public sector and in offices, call centres and at home, in small and micro sized workplaces, many without the life saving protection of a trade union. While this is clearly less risk of injury or death than working down mines or in steel works, much of this is high pressured and exposes workers to risks of stress-related illness – heart disease, metabolic and physiological disorders plus the more obvious anxiety and depression – and musculo-skeletal disorders, plus serious risk of violence from the public, from pupils and patients, and risks from low level asbestos exposure- hundreds of teachers and school workers have died of mesothelioma over. Many occupational health experts believe there is more occupational ill-health now than ever, and it is in the very sectors that Mr.Grayling has cut proactive inspections, supported by Lord Young's breathtakingly ignorant statement while carrying out his 'review': "*Has anyone ever seen a dangerous office?*" The banning of proactive inspection is in the very sectors which will suffer most from public sector cuts and will see fewer workers doing the same or more work, with inevitable massive increases in stress and musculo-skeletal disorders, already at a high level.

Many more workers are controlled by gang masters, there has been an explosion of casualised and agency work and this plus more migrant workers and an increase in work in the black and grey economies, means that a vast proportion of workers are in precarious work – well over 20% and increasing as jobs are cut and the economy is in recession. It is arguable that the existing framework of regulation and enforcement needs to be increased and extended to take account of these factors, not reduced and it is extremely worrying that the government's reviews of H&S seem disconnected from the real world of work that most of us experience. The Gang Masters legislation introduced after the death of cockle pickers in Morecambe Bay, has not been extended to cover construction as recommended by Rita Donaghy in her report on the construction industry '**One death is too many**', and governments have failed to fully implement the agency worker directive. Failure to allow the proper risk assessment of asbestos exposure in school and its proper control is potentially exposing all school staff and generations of pupils to risks of developing mesothelioma. Occupational ill-health is being airbrushed off the agenda despite it being the iceberg of harm caused by work and costing the most economically.

This review like Lord Young's before it, and the whole attack on health and safety law is based on the lie that Health and safety has gone mad, it's over the top, over enforced, over bureaucratic. This is not true. According to a TUC Briefing based on HSE figures 2010: there's less regulation now than 40 years ago- 46% less and 37% less than 15 years ago. There is also less paper work as the HSE has cut the number of forms it uses to collect information from employers from 127 to 54 over the last three years, a 54%

reduction. Employers spend relatively little time and money on health and safety , on average 20 minutes a week and just £350 to comply with the Management of Health and Safety at Work Regulations (Administrative Burdens Measurement Exercise in 2005) . Even before the massively and completely arbitrary cut of 33% in proactive, preventative inspections by the HSE and Local Authorities (LAs) decreed by Minister Grayling, in the ironically titled 'Good Health and Safety, Good for Everyone', there are less spot inspections of workplaces now than 10 years ago with a workplaces only likely to see an inspector once in 38 years. There is also less investigation by the HSE and LAs now compared to a decade ago as only 1 in 13 major and fatal injuries is even investigated so we have no idea how most of them happen and no learning can be gained, and these are amputation of limbs and loss of eyes, major fractures, head injuries, paralysis, crushings, burnings and other life changing injuries.

There are also fewer prosecutions now, down 50% over 10 years and in 98% of major injuries there is no enforcement action taken against the employer at all. So no evidence of over regulation, or over bureaucracy, of over penalising or of the 'safety nazis' but a great deal of evidence to the contrary: that many workplace are lawless health and safety free zones with no protection for the workers who work there. (Hazards 108, 'Escaping Scrutiny, <http://www.hazards.org/deadlybusiness/escapingscrutiny.htm> Tombs, S and Whyte, D (2010b) Regulatory Surrender: death, injury and the non-enforcement of law, London: Institute of Employment Rights.)

Q3: Are there any particular health and safety regulations (or ACoPs) which it would be helpful to merge together and why?

This has been going on all the time, a major review when the 6 pack was introduced, further tidying up done along the way under the tripartite HSC/E. When the EU Directive on musculo-skeletal disorders comes into force it will enable the rationalisation of the DSE and Manual Handling Operations Regulations to occur. But this must always be done with care and with the health and safety of people as the main imperative. Merging may not simplify or make more comprehensible and may in fact be far more confusing and complex, especially if rushed in populist, knee-jerk way manner. This may have unintended consequences which will cause problems, may risk lives or health, and will be far harder and more expensive to put right later.

Q4: Are there any particular health and safety regulations or (ACoPs) that could be abolished without any negative effect on the health and safety of individuals?

Not that we are aware of and to do so would be dangerous.

Q5: Are there any particular health and safety regulations that have created significant additional burdens on business but that have had a limited impact on health and safety?

As new UK regulations are now only introduced after an impact assessment of their cost/benefit which heavily favours the fallacious 'burdens on business' assumptions and gives far too little weight or value to the immense burdens on workers, their families and the state, this is highly unlikely!

We utterly refute the biased and unevenced assumption that health and safety law and enforcement is burden on business, when the evidence is that the real burden is of lack

of compliance causing injury, death and illness and it is borne by us, by workers by their families and then by the state, all of us – in health care, benefits, lost taxes - while employers pay less than 25% of the financial cost of the harm they causes and none of the pain and suffering <http://www.hazards.org/deadlybusiness/whopays.htm>.

The British Chambers of Commerce (BCC) claims complying with health and safety law costs about £374 million per year, but this figure is bogus to start with as it fails to subtract the benefits of compliance, for example less incidents, injuries and sickness; lower insurance premiums; less lost production or service time, or damage to plant; lower compensation, fines and sickness absence costs. But the BCC also fails to factor into this equation the cost of the failure to comply which runs to many, many billions, dwarfing the costs of compliance the BCC claims many times over and approaching the equivalent of a banking bail out – every year. A HSE 2004 report using 2001/02 figures, put the cost to society of occupational injury and illnesses at between £20 to £31.8 billion <http://www.hse.gov.uk/statistics/pdf/costs.pdf>. Minister Grayling recently used the lower end of this range, £20 billion, as the cost of health and safety failures in a misleading answer to Parliamentary Question by Ian Lavery MP, but HSE admitted this doesn't include the cost of long latency diseases, see Commons 'misled' on cost of unsafe work Hazards: <http://www.hazards.org/greenjobs/blog/2011/06/16/commons-%e2%80%98misled%e2%80%99-on-the-cost-of-unsafe-work/>

If even the extremely low and unrealistic HSE estimate of 8,000 occupational cancers death per year is added in, this would double the cost to £40 – 51.8 billion (Each occupational cancer cases costs £2.43 million per year according to REACH Partial Regulatory Impact Assessment after Common Position, Defra, May 2006) but this would not include all the other occupational illnesses like stress-related heart disease, lung diseases, so the figure goes up. As each work related fatality is estimated to cost £1.5 million per year, and the HSE does to use the full work-place figures, as shown above, the cost goes on rising.

But the most shocking fact to all of us should be that while employers complain of the burdens of compliance, when they fail to comply and consequently kill, injure or make people ill, they pay no more than a fraction of the harm they cause. HSE 2008 update to the 2004 report concluded: *“Society’ bears the largest cost burden (comprising loss of output, medical costs cost to the DWP for administering benefit payments and the HSE and local authority investigation costs- followed by individuals (in terms of loss of income, extra expenditure of dealing with injury or ill health, and subjective cost of pain, grief and suffering). Although the cost of workplace injuries and work-related ill-health are attributable to the activities of the business, .the bulk of these costs in 2001/2 fell ‘externally’ on individuals and society.”* The cost to employers in is less than 25%!

see table below. The costs to employers in Britain of workplace injuries and work-related ill health in 2005/06, HSE Discussion Paper Series, No. 002, September 2008

<http://www.hse.gov.uk/economics/research/injuryill0506.pdf>; Economic Analysis Unit (EAU) appraisal values, HSE, July 2008, <http://www.hse.gov.uk/economics/eauappraisal.htm>

Cost externalised onto society & individuals (NOTE: does not include long latency diseases like asbestos and other occupational cancers, work-stress related heart disease, lung disease , nor all the extra work related fatalities the HSE fails to count).

Costs £billions	Employers	Individuals	Society
Ill-health	1.5	5.9 - 9.4	11.3 - 17.3
Injury	1 - 1.1	3.3 - 6.3	5.9 - 10.7
Non-injury	1.4 - 5.3	-	1.4 - - 5.3
Total	3.9 - 7.8	10.2 - 14.7	20.0 - 31.8

This is supported by a study in US where the estimated split of the burden of occupational illness, injury and death is put at 44% on family, 18% on taxpayers and over 27% from employers-financed workers' compensation system and concluded that employers offset their much lower cost by 'cost shifting'- increasing prices or lowering wages (Paul J Leigh et al Costs of Occupational Injuries and Illnesses, University of Michigan Press 2000). An Australian government study in March 2009 took the opposite view to the BCC and concluded: 'In terms of the burden to economic agents, 3% of the total cost is borne by employers, 49% by workers and 47% by the community.'" (Cost of work-related injury and illness for Australian employers, workers and the community 2005-06, Australian Safety and Compensation Council, March 2008)

Even for Occupational Asthma the cost falls lightly on employers who cause the problem. A paper in Thorax estimates the lifelong costs of occupational asthma are borne 49% by the individual sufferer, 48% by the state and 3% by the employer. Jon Ayres and others. Costs of occupational asthma in the UK, Thorax, Online First, 25 November 2010. doi: 10.1136/thx.2010.136762
<http://thorax.bmj.com/content/early/2010/10/19/thx.2010.136762.short?rss=1>)

The 2008 HSE report states : 'Economic theory highlights that the presence of such external costs (externalities) create a divergence between the interest of decision makes (employers) and the interests of the wider society. So long as employers do not bear the full costs of workplace injures and work-related ill-health, they will continue to have weaker that optimal incentives to act to reduce workplace risk to health and safety. The externality provides a 'market failure' justification for policy intervention in workplace health and safety.' The costs to employers in Britain of workplace injuries and work-related ill health in 2005/06, HSE Discussion Paper Series, No. 002, September 2008
<http://www.hse.gov.uk/economics/research/injuryill0506.pdf>.)

Currently the UK economy is subsidising employers lawlessness to the tune of even the HSE's ten year old out of date estimate using only partial figures £30 billion, but more realistically many, many billions more. Every year. It is a tax levied on us all by negligent employers.

Q6: To what extent does the concept of 'reasonably practicable' help manage the burden of health and safety regulations?

'Reasonably practicable' has a legal definition from a 1949 case and it means balancing the cost of any improvement against the risk of injury or ill-health. Employers can only use cost as a reason for not taking action when the risk of injury or ill-health are insignificant compared to the costs of eliminating or controlling the hazard/.risk. This appears proportionate but has been challenged in Europe as being too weak, and as it is improperly interpreted this may be true.

A few examples from FACK (<http://www.fack.org/about>) show that, along with other gross negligence, misinterpretation of reasonably practicable is probably common. For example Gordon Field was killed when a 'C' hook crushed him. The steel company had carried out risk assessments, identified the risk and Gordon had in fact made safety cradles for the other 'C' hooks in the workplace to prevent such an incident. It was clearly reasonably practicable once the risk of severe injury or death was identified to take the 'C' hooks out of use until they could be made safe. The fact that it cost a mere £12 to make it safe is an insult to injury for his daughter Sharon: it cost her father his life and the company a fine of £100,000.

Andrew Hutin and two colleagues were killed when a known to be faulty blast furnace exploded in 2001. Again it should have been assessed to be 'reasonably practicable' to repair it or replace it rather than risk the consequences of an explosion which would inevitably injure or kill workers. In the case of Craig Whelan and fellow steeplejack Paul Wakefield, application of 'reasonable practicable' should have led to the job of dismantling the chimney being specified for tender to be done in the safest way, using cold cutting gear from the outside at a greater cost. Instead it was given to the lowest bidder, at about a third of the cost with the consequence of killing two young men.

It is clear that reasonably practicable is misinterpreted by employers and their advisers to mean 'affordable' but should be a proportionate approach to the control of hazards and risks. Failure to assess the risk of death, injury and illness from not doing something against the cost of doing it, has led to massive burdens on workers and their families. It is clear that employers need to be made more aware of the real meaning of 'reasonably practicable' and their legal obligations before they kill, injure or make ill. <http://www.fack.org.uk/about>

Q7: Are there any examples where health and safety regulations have led to unreasonable outcomes, or to inappropriate litigation and compensation?

The Hazards Campaign is aware of hundreds upon hundreds of cases where a lack of regulation or its enforcement have led to the totally unreasonable outcome of people being killed or hurt or made ill with asthma cancer, respiratory diseases, neurological diseases, MSDs, when regulation and enforcement should have meant they were safe, and proactive inspections may have ensured they weren't harmed or killed.

However, we cannot think of examples of people being killed by an excess of regulation, or too much risk assessment. At the launch of this review, in a press release Dorothy Wright Founder member of Families Against Corporate Killers (FACK) says: "*My son Mark, features in the Job Killers poster above, and he was not killed because of too much regulation, too much red tape or over zealous enforcement of health and safety, but because his employers paid very little attention to health and safety, and utterly failed to reduce the risk to which he was exposed. They lacked the common sense to treat aerosols as dangerous, crushed them and blew him up in a fire ball. They did not fear any enforcement action by the HSE, they were not overburdened by paper work. Mark was killed because they did not obey the law and no one made them do it. There are lots of employers like Mark's*" <http://www.fack.org.uk/news>

As the HSE says 70% deaths are caused by employers failures, most of the estimated 1,500 killed in work-related incidents plus the up to 50,000 dying each year due to work-related illness would still be alive if their employers had merely complied with the legislation. At least 5,000 people are dying each year due to past exposure to asbestos which if banned earlier and exposure better regulated would mean we would not face a total of 90,000 deaths by 2035, with 60,000 still to come. The total cost of all those preventable asbestos deaths in financial terms alone is about £209 billion led alone the heart ache, pain and suffering.

A very unreasonable outcome is caused by the low fines levied on employers for injuring or killing workers and the lack of deterrent value. This is illustrated by the number of companies who have killed workers, been prosecuted and fined, but gone on to kill more workers and these serial offenders and serial killers include many household names such as BP, Corus and BIFFA. More deterrent penalties such as directors being held to account

in court and facing prison sentences if found guilty, would have more effect than fines.

Perverse outcomes of litigation include a number of cases where companies have been prosecuted for an offence plus lowly supervisors or individual workers, but not the directors of the company who are responsible for the creating the risks, see HSE press release about Morgan Plant Hire and item in TUC RISKS No 504 7th May 2011, <http://www.hse.gov.uk/press/2011/coi-se-2804.htm>

Companies committing health and safety crimes including killing and injuring workers and then going into liquidation to avoid being prosecuted are very common. For example NW Aerosols which killed Christopher Knoop in a fireball due to faulty systems which allowed aerosol gases to leak out of hoses, went into liquidation, no directors were charged with any offences, the HSE prosecuted the company with no-one in the dock, and the judge could only impose two fines of £1 each and £1 costs. Christopher's 7 year old nephew said: "*Does that mean they killed Uncle Chris for £3?*" <http://www.hazardscampaign.org.uk/fack/news/nwaerosols.htm>

Cases of corporate manslaughter are rarer than hens teeth – only one completed so far under the 2008 Corporate Manslaughter and Corporate Homicide Act - and fewer directors have ever been prosecuted for a s37 HASAWA offence, than go to prison EVERY year for cruelty to animals, Beck M et al 2007 : ICL Stockline Report: an independent investigation. Universities of Strathclyde and Stirling, Sheffield, Hazards. The linking of compensation with litigation is a red herring as the two are separate, though often confused. It also implies that compensation is not reasonable. When your body and mind have been damaged by negligence, which may reduce your earning and living capacity for the rest of your life, then you are entitled to compensation as fair and just, and this should be part of the financial pressure on employers to improve. However, the question echoes the tabloid myth, endorsed by Lord Young and the government but utterly unevicenced, of a so-called 'compensation culture'. The reality is that less than 10% of workers made ill or injured at work receive any compensation at all, which is cruel, unfair and unjust, causing poverty and suffering for the individual worker and their family. <http://www.hazards.org/compensation/alittlecompensation.pdf>. Employers Compulsory Liability Insurance claims are down, as are Public Liability Insurance Claims and the Compensation Recovery Unit and trade unions figures for compensation cases taken confirm this.

The popular but wrong assumption is that death means compensation but this is totally false. Compensation is not automatic, not handed out immediately when you need it, but has to be fought for, proving the employer owed a duty of care, that there was negligence and that there was harm resulting from that negligence. In injury cases these are easier to prove, but for far harder in occupational ill-health cases, especially for those not in a trade union as other than conditional fee agreements there is no free legal aid for personal injury.

Even for work-related cases deaths usually compensation is only to be fought for if there is a legal dependency, and negligence must be proved, with many employers refusing to accept liability at all, or for many years, so families are forced into poverty. For example LS , whose partner was killed at work in 2008 while she was eight months pregnant but not married to him, nor living together for 2 years, although completely financially dependent, is not legally entitled to any compensation at all. The only legal dependent was the unborn child and the compensation awarded is likely to be only £tens of thousands. Her partner's parents had to rescue her from eviction and in doing so have

put their own livelihoods and health at severe risk but like all parents of adult children on whom they are not dependent, are not themselves eligible for any compensation despite their lives being severely damaged. This family is bearing the real burden: 'Want to know about burdens?' <http://www.hazards.org/gallery/burdens.htm>. In the case of a man being killed at work, his 17 year old twins were taken in by his sister and her family. No compensation is available for his sister despite massive cost to her family, and as his twins were nearly 18, nearly adults at the time, the compensation offered is extremely low. In the case of a man being killed at work, his 17 year old twins were taken in by his sister and her family. No compensation is available for his sister despite massive cost to her family, and as his twins were nearly 18, nearly adults at the time, the compensation offered is extremely low

It should also be noted that where a worker is not in a trade union, with no legal aid for personal injury, if harmed, or their family if they are killed by work have to resort to 'no-win no fee' (conditional fee agreements) solicitors to fight for compensation. This system, and all legal aid, including that provided by trade unions for their members is under threat from various government proposals including the Jackson review. The harshness of the compensation system has to be seen to be believed, but government proposals will make it crueller and harsher still.

Q8: Are there any lessons that can be learned from the way other EU countries have approached the regulation of health and safety, in terms of (a) their overall approach and (b) regulating for particular risks or hazards?

We think Professor Lofstedt should examine two Italian cases, involving appropriately punitive and deterrent sentencing given or called for:

i) The sentencing of case of ThyssenKrupp for killing 7 workers in Turin, in TUC RISKS 503 30th April <http://www.tuc.org.uk/workplace/tuc-19532-f0.cfm#tuc-19532-18> An Italian court sentenced ThyssenKrupp's top boss in the country, Harald Espenhahn, to 16.5 years in prison for the murder of seven workers who died in a fire at the multinational's steel factory in Turin on 6 December 2007. In addition to the jailing of Espenhahn, the company's chief executive officer (CEO) for Italy, five other company officials were convicted on manslaughter charges and sentenced to up to 13.5 years in prison. The German company received a 1 million euro (£885,000) fine. The company was also told by the Turin court it would not be allowed to benefit from Italian state subsidies for six months. During the same period, ThyssenKrupp will also be banned from advertising its products in Italy. At the time of the incident the company was gradually dissolving the factory, with only 200 of the former 400 employees remaining. Unions accused the firm of losing interest in the plant and a failure to maintain health and safety standards. The prosecution's investigation into the incident proved that the CEO was fully aware of the risks and decided not to take the minimum measures required by law at the plant. The court's ruling, which the company say will be appealed, sets an important precedent in recognising the CEO as responsible for voluntary homicide, a first in Italy for a workplace incident. One worker died immediately in the horrific blaze at the plant in Turin, while the other six died later in hospital. The verdict was welcomed by prosecutor Raffaele Guariniello, who said it would 'mean a lot for health and safety at the workplace.' Giorgio Airaudo, of the metalworkers' union Fiom, also welcomed the ruling, saying: 'When workers are injured or killed at the workplace it's never by chance, it's always somebody's responsibility.' Labour minister Maurizio Sacconi said the verdict sets a 'relevant precedent'.

ii) Call for long sentences for Eternit over asbestos exposure TUC RISKS 513 9th July 2011 <http://www.tuc.org.uk/workplace/tuc-19745-f0.cfm#tuc-19745-20> Italy: Call for 20 years jail for asbestos magnates. A public prosecutor has called for 20 year prison terms for two asbestos magnates charged with a wilful failure to protect worker and the public from the deadly fibre, resulting in thousands of deaths. At a criminal trial in Turin, prosecutor Raffaele Guariniello this week delivered a closing statement in the trial of Stephan Schmidheiny and Belgian Baron Jean Louis Marie Ghislain De Cartier de Marchienne. Guariniello said their firm, the asbestos multinational Eternit, was responsible for 'an appalling disaster.' Schmidheiny, the former Swiss owner of building materials giant Eternit, and Jean-Louis Marie Ghislain de Cartier de Marchienne, a top shareholder, are being tried in absentia. In a mass civil action, some 6,000 people are seeking damages over the deaths of around 3,000 people who worked at or lived near Eternit's plants in Italy. The prosecution in the criminal case has requested the maximum sentence of 12 years imprisonment and demanded eight more years be added on the grounds that asbestos can trigger ailments decades after exposure. 'I had never seen such a tragedy... It has affected several regions in our country, employees and residents. It is still sowing death and who knows how much longer it will continue to do so,' Guariniello said. Victims' groups welcomed the heavy sentences requested by the Turin court. 'We are satisfied, this is the result of a 30-year struggle for justice and health during which we never gave up hope,' said Bruno Pesce, who heads an association representing victims from two of Eternit's northern plants. A verdict could be handed down at the end of the year. Asbestos in the Dock report. Yahoo News

In the UK we look to northern European countries, especially Finland, Sweden and Denmark for higher standards, better regulation, and enforcement, worker involvement practices and methods, and especially better occupational health protection. We learned a lot from Denmark about the dangers of exposure to organic solvents and used this to promote substitution and to help affected workers gain compensation.

Britain ranks 30 out of 176 countries for occupational safety and health performance in the Maplecroft Global Health and Safety Risk Index 2009 which means it has a good regulatory system and record. But it does not have the best record in either Europe or the world, as frequently claimed, as Denmark, Sweden and Australia scorer significantly better.

Other countries make better use of safety reps' skills either using them effectively as Roving Reps as in Sweden, or giving them rights to impose provisional improvement notices (PINS) as in parts of Australia. Judith Hackitt said at a recent UNISON health and safety conference this year, that safety reps are the eyes and ears of the HSE. As inspector numbers in the HSE and Local Authorities have been slashed, as proactive inspections have been banned in most workplaces, it would seem sensible to enhance and maximise the union safety effect by allowing safety reps to become Roving Reps and also have the power to impose PINS and stop the job where lives or health are in danger.

Q9: Can you provide evidence that the requirements of EU directives have or have not been unnecessarily enhanced ('gold plated') when they are incorporated into UK health and safety regulation?

No. EU directives are intended to provide minimum standards, not replace any existing higher standards an EU member state already has. This is a misunderstanding and proposes that we 'brass plate' our hard won regulations and higher standards!

Additionally the UK has admitted to under implementing some EU Directives, most recently the Asbestos Directive and has had to agree to strengthen our Asbestos Regulations.

Q10: Does health and safety law suitably place responsibility in an appropriate way on those that create risk? If not what changes would be required?

As made clear above, absolutely and completely not as it allows those who are responsible, who make the decisions that lead to death, injury and ill-health, to walk away with impunity!

There is a total lack of accountability for health and safety at the top of organisations amongst those who make the decisions which create the risks. The statutory duties are on the company not those responsible for making the decision, the directors. While they are all pleased to reap the rewards and benefits, they refuse to take responsibility for their actions, creating a situation of corporate lawlessness. While directors can be charged under s37 of HASAWA after an offence where there has been consent, connivance or neglect, there is no positive duty on a director to be responsible for actively ensuring the health and safety of workers and others and preventing injury, death or illness. The number of s37 prosecutions ever taken number only tens. Individual workers are more likely to be prosecuted under s7 of HASAWA, a trend we fear may be increasing. In the workplace the worker has relatively little or no power over the risk s/he faces as work, doing what the employer directs them to do, whereas the directors and senior managers do have power, but face very little risk of being held to account for any decision they make. In addition if the company goes into liquidation after killing workers, and the directors are not charged with any offences, see NW Aerosols above, then they are able to set up again with impunity. Provision to disqualify directors are rarely used, even after the rare prosecutions.

This lack of accountability leads to many perverse outcomes, not least to justice as guilty people escape and go on to commit more crimes. For example the Texas City refinery explosion that killed 14 workers was traced by an inquiry back to decisions taken in the BP board room in London. No director ever faced any charges. In 2010 BP was at it again, as the Deep Water Horizon rig exploded killing 11 workers and destroying the livelihoods and environment of hundreds of thousands .

Fines however large, and most are miniscule compared with profits and turnover, are no deterrent and that is why the Hazards Campaign has long called for real corporate accountability through positive legal directors duties. Those at the top of a company who take the profits and benefits in good times must also accept the blame and take the punishment when they get things wrong. Without positive legal Directors Duties there is no real responsibility and corporate lawlessness ensues.

Changes required

1. Positive legal duties for health and safety on all directors. The voluntary guidance in place currently is ineffective as HSE reviews have shown with few aware of the guidance and even fewer having taken any action. Rita Dohaghy in her Report to the Secretary of State for Work and Pensions: '**One Death is too many**' an inquiry into the underlying causes of construction fatal accidents, July 2009, had Directors Duties as a key recommendation

<http://www.official-documents.gov.uk/document/cm76/7657/7657.pdf>

2. Stricter enforcement of all regulations, more proactive, preventative inspections across all workplaces, for health as well as safety, more investigations of incidents that cause injuries, and more prosecutions of wrong doers, with more proportionate penalties to create credible deterrent effect and for justice. This will require at least a doubling of inspectors and increased funding for the HSE and Local Authority enforcement officers.

3. A stop to the false information of portraying the less than half of one percent of total work-related deaths put out by HSE annually, as the total killed by work each year;; estimates of all those killed, injured or made ill by work to be reported and widely publicised at least annually.

4. A stop to government ministers referring to the unevidenced claims about 'burdens on business' without publicising the real costs of workplace harm, and how they are mostly borne by individuals, their families, the state/tax payers, and the employers pay less than 25% <http://www.hazards.org/whopays?youdo>

5. Maximise the union safety effect through more rights for trade union safety reps, such as to be Roving Reps, to be able to stop the job in dangerous conditions, and to be able to impose Provisional Improvement Notices on employers where there is lack of compliance with regulations and ACoPs allowing the employer time to comply or for the enforcement agency to come in and arbitrate <http://www.hazards.org/notices/> Hazards Campaign Charter.

6. Public information campaigns on health and safety at work covering:

- the truth about health and safety at work, the real numbers killed, injured and made ill by work, so that workers are properly informed of the real risks they face;
- Clearer laws on workers' rights to refuse dangerous work and how workers can protect themselves, support for whistle blowers.
- workers rights at work and their employers' legal duties towards them;
- how workers are safer in a trade union and how to join one;
- how workers can get their health and safety enforced, how they can get help if they are at risk at work, how they can call in enforcers before someone is hurt
- how workers and prospective workers can get information about their employers' H&S record;
- who will bear the burden if a worker is injured or made ill, or killed, how much employers pay, how much the state pays, the subsidy for negligent employers.

7. Support from government funded Victim Support Schemes for those harmed by work as victims of crime, especially the families of those killed by work.

Hazards Campaign July 2011.