

fack families against corporate killers

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Families Against Corporate Killers (FACK) is a group of families of people killed at work or by work activities due to employers' negligence, established in 2006 and launched at the Hazards 2006 Conference in Manchester to campaign against such avoidable deaths. For more information and FACK stories see <http://www.hazardscampaign.org.uk/fack/aboutus>. Founder Members of FACK are Dawn and Paul Adams, whose son Samuel Adams aged 6, was killed by an unrestrained railing at the newly opened Trafford Centre, in Trafford on 10th October 1998; Linzi Herbertson, whose husband Andrew Herbertson 29, was killed while dismantling a printing press in Oldham in January 1998 when he fell off incorrectly constructed tower scaffolding; Mike and Lynne Hutin, whose son Andrew Hutin 20, was killed at Corus steel works at Port Talbot, on 8th Nov 2001 when a faulty blast furnace blew up; Mick and Bet Murphy whose son Lewis Murphy 18, was killed by a fire at a garage in Brighton on 21st February 2004 when instructed by his boss to decant fuel in presence of an open flame; Louise Taggart, whose brother Michael Adamson 26, was electrocuted at work on 4th August 2005, when a live electric wire was incorrectly marked and not locked off; Linda Whelan whose son Craig Whelan 23, was killed in a fire ball while dismantling a metal chimney in Bolton, on 23rd May 2004; Dorothy & Douglas Wright whose son Mark Wright 37, was killed by an explosion at a scrap yard on 13th April 2005 when instructed to bale over 3,000 small aerosols by his manager. We have worked with over 100 families and are aware of the details of many more work-related deaths. For FACK leaflet, stories and press releases see <http://www.hazardscampaign.org.uk/fack>. For FACK DVD 'Face the FACKS: the human cost of workplace killing' stories of workers killed for just going to work where their employers failed to protect them, see <http://www.hazardscampaign.org.uk/fack/resources/facethefacks.pdf>

Members of FACK were pleased to meet Professor Lofstedt on 25th July, to tell him our real life stories, representative of thousands of deaths in preventable work-related incidents, and we found him very receptive and compassionate, left him with a lot of evidence which we are now backing up in this response. We wish to be very clear that FACK completely rejects the assumptions underpinning this review which are that laws protecting workers and members of the public and their enforcement are an intolerable financial burden on business, that work does very little harm these days, that most workplaces are 'low hazard' and that much health and safety law is over the top, stifling red tape, which is over enforced. Our own experiences are that the truth is the complete opposite and we bear the burden not business. This is supported by detailed well researched and evidenced articles in Hazards Magazine under the We Didn't Vote to Die at Work Campaign www.hazards.org/votetodie; especially Screw you, Dangerous Li(v)es, The real job killers: <http://www.hazards.org/votetodie/jobkillers.htm>.

Death by whatever means causes great sorrow and distress within families. When the death is due to someone behaving in a grossly negligent way, failing to take reasonable care of those to whom their is legal duty of care, failing to obey the law or callously disregarding it and then failing to face manslaughter charges and be punished appropriately, it is much harder for the family to recover. The repercussions of a work-related death go on for many years with spouses often unable to work again, children traumatised and failing at school, and families thrown into poverty and insecurity. Just like other victims of crime, our hearts have been torn out of our chests, but we are not seen as, not acknowledged as, and not supported as the victims of crime that we are.

Before the person we loved was killed at work, most of us believed the public version of health and safety: that in the UK we have strong laws, very strictly regulated, that good employers

generally comply with laws, the less good are afraid of being caught by inspectors, very few people are killed by work, and the criminal justice system treats victims well and generally the UK has best health and safety in the world. We believed that the full force of the law would ensure justice, and that employers guilty of gross negligence would be held to account. Some of us may even have had some sympathy with the popular view that health and safety could be a bit 'over the top'.

The moment our loved ones were killed we had a rude awakening to the stark reality of the state of lawlessness that exists in many workplaces, the massive under-resourcing of the HSE and Local Authorities charged with policing this, and a general attitude that employers who fail to obey very basic health and safety laws are not seen as nor treated as criminals, and lenient treatment via the courts. We thought our cases were unique but quickly learned otherwise, were horrified by what we learned and we now know that health and safety needs to be better regulated, with specific duties on directors, more rights and support for workers, with better resourced enforcement and also that the public need to be told the truth about the real numbers harmed by work, the real cost of that harm and who pays it and the reality of a breakdown in enforcement and punishment. We need far more good health and safety not less and so the current government attacks on health and safety of which this review is part and which is based on lies and myths, horrifies and angers us.

We refute all the myths underpinning this attack on health and safety and support the 'We Didn't Vote to Die at Work' Campaign, which summarises the myths and the evidence against them, <http://www.gmhazards.org.uk/We%20Didn%27t%20Vote%20to%20die%20updated%20leaflet%20July.pdf>

We utterly refute the biased and unevidenced assumption that health and safety law and enforcement is a 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>.

We find the use of the pejorative term 'red tape' used about regulations that would, if complied with have saved lives, offensive when used by business lobbies and absolutely unacceptable and untruthful when used by government ministers.

We refute the HSE fatality figures used to justify this assault on health and safety protection. The HSE figures widely misquoted by ministers and the press as the total deaths caused by work are only that tiny fraction reported to HSE and Local Authorities under RIDDOR. 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 states, pPara 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>

This review must be based on the truth, and the evidence is that there is far more harm generally, more deaths in incidents, more death from occupational illnesses, and more work-related sickness, than official HSE figures record. 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, 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>

The British Chambers of Commerce 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 *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 not use the full work-place figures, the cost goes on rising.

But the most shocking fact to us is how employers are complaining of the burdens, but when they 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 and individuals (NOTE: does not include long latency diseases like asbestos and other occupational cancers, work-stress related heart disease, lung disease etc, 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 makers (employers) and the interests of the wider society. So long as employers do not bear the full costs of workplace injuries and work-related ill-health, they will continue to have weaker than 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>.)

We also refute the myth that employers are over-enforced, over- inspected by 'health and safety nazis'. The evidence demolishes these lies. There is now 46% less regulation than 35years ago, and 37% less than 15 years ago, and over the last three years the HSE has cut the numbers of forms for collecting information from 127 to 54, a 58% reduction (HSE/TUC Briefing). A government study called Administrative Burdens Measurement Exercise in 2005, found that *' the average firm spends approximately 20 hours and just over £350 a year on the administrative costs of complying with the Management Regulations (mainly risk assessment)'*. **FACK would like the business community, Professor Lofstedt and Minister Grayling to explain in what way are the lives of the people we have lost worth less than that?**

On workplace inspection, analysis by Hazards magazine and Tombs and Whyte, show that there are fewer proactive inspections, down by two thirds over the last decade, so that a workplace could expect to have spot inspection once in 38 years! There are far fewer investigations with only 1 in 13 major and fatal injuries even investigated. Enforcement action is also down with prosecutions down by over 50% in a decade and in 98% of major injuries, there is no enforcement action of any sort, not even the slap on the wrist of an Improvement Notice. (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.)

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. 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. (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; 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/rrpdf/rr451.pdf>)

There is also a mass of accepted evidence that trade union organised workplaces with a safety rep, have half as many injuries and ill-health compared to workplaces without a union, 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.

We believe this is the evidence the government should be looking at, not the unsubstantiated assertions, apocrypha and unevidenced myths in much of the business lobby case, and should be increasing protection from the criminal employers to support good employers and maintain a civilised society where workers can go to work and come home safe, well, and unharmed, at the end of shift. We cannot afford the heartbreak of more workplace killing and maiming, and the economy certainly cannot afford to continue to subsidise lawlessness to the tune of well over £50 billion a year

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 or we would still be sending small boys up chimneys, young girls under looms and practising slavery.

ACoPs are especially important as they clearly tell employers what to do and how to comply. Employers, especially those of small and medium sized enterprises, complain that they don't understand regulations, that they are too complicated, and that they need to be told exactly what is sufficient to comply, and this is exactly and completely what an ACoP does. Guidance does not do this and as it is not legally enforceable employers it creates more grey confusing areas for employers to get lost in. ACoPs are very important for workers and safety reps as they can point out to their employers what is legally required on very specific issues. Removing any ACoPs would be illogical and counter productive. See previous references as to what works.

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 all employers need to made far more aware of their responsibilities and duties under the Health and Safety at Work Act, that there are specific regulations with which they must comply, and ACoPs (and Guidance) to help them to do this, where to get advice and support and training to ensure they do, and the enforcement action they will face if they do not comply.

It is hard to see how regulations and ACoPs could be simple enough for some employers who claim at trials and inquests that health and safety is just common sense then proceed not to show any, or who write risk assessments forbidding an activity, or have a manual for machine which states never to do a certain task, and then go ahead and do it anyway! Some employers, especially the ignorant, non-compliant and criminal end of the spectrum, are using the complexity of regulations and ACoPs as a smoke screen to hide behind. The comments from many employers on the Red-Tape Challenge website show such a breathtaking level of wilful ignorance and complicit confusion, an amazing reluctance to actually find out what the law is and how to comply before they rubbish it as 'too complex, that it is clear for many of them regulations and ACoPs could never be simplified enough. It would be ludicrous to pander to this level of ignorance when the lives and health of workers are at risk and would not even be suggested in any other area of law. Much of the complaining is about perception and ignorance and this cannot be tackled by cutting the law.

Founder member of FACK Linda Whelan said at the launch of the Grayling commissioned review *"None of our family members was killed by too much regulation or employers fearing enforcement. They were killed because of the exact opposite – too little if any time spent on health and safety, and no fear of being found out. It now feels like we are living in Alice in Wonderland where cutting health and safety regulation and slashing the numbers of those who*

enforce it, is supposed to make everything magically better! How reducing requirements on employers and almost completely removing any credible threat that they might be inspected and found out by proactive inspections BEFORE they kill, maim, or make someone very ill, can improve what we know is a pitifully inadequate system, is completely beyond us”

Summaries of founder FACK members cases which illustrate that it is not the difficulty of regulation, or the over-bearing nature of enforcement that burdens employers, but wilful ignorance and criminal contempt for basic health and safety law and their statutory duties which cause workplace deaths.

Samuel Adams was 6 when he was killed by a 28 stone removable railing falling on him at the newly opened Trafford Centre. His parents, Paul and Dawn Adams were both experienced construction professional, teaching health and safety law and working as surveyors. They knew that compliance with the Construction and Design Regulations and ACoP in place at the time would have removed the hazard and therefore the risk of Sam being killed. The fact that it wasn't complied with and that the enforcement authorities did not take a case against the designer, and the derisory, non-deterrent fine of £100,000 on the multi-millionaire owners of the Centre, has shaken their faith in the regulatory and enforcement system.
<http://www.hazardscampaign.org.uk/fack/about/samueladams.pdf>

Linzi and **Andy Herbertson** had two young children, Amy and Steven, and he was working over time to support them. Andy was working on a tower scaffolding dismantling a printing press when he fell and was fatally injured. Linzi had to turn off his life support machine on their son's 8th birthday. Andy's employer had not bothered to comply with any basic duties of care, or specific regulations or ACoPs to ensure the scaffolding was erected properly, or that those using it were trained, or that any supervision or monitoring took place. Workers were left to get on with it and get the job done. A derisory fine of £10,000 completed the injustice of a young man's life cut short, as are at least 80% of all deaths and major injuries, by his employers' negligence.
<http://www.hazardscampaign.org.uk/fack/about/andrewherbertson.pdf>

Linda Whelan's son **Craig Whelan** a steeplejack, was killed in a fire-ball with colleague Paul Wakefield while dismantling a metal chimney in Bolton, from the inside using hot cutting gear. His company from Nottingham won the tender as the lowest bidder, using the cheapest method, local companies bids involved doing it using safer methods, from the outside using cold cutting gear. Craig's company did not carry out any risk assessments nor did the chimney owners. Concern from Craig and colleague about the residue from lacquer on inside of chimney being flammable led to managers contacting ICI which made the lacquer, and they sent an e-mail warning not to do the job using hot cutting gear. This e-mail was shut in a drawer and managers signed hot-work permits, sending Craig and Paul back to work and to their deaths hours later. The manslaughter charges against the three managers fell apart in court and they were eventually fined about £17,000 in total. Carnaud Metal Box had killed another employee at another site after Mark was killed but the HSE failed to raise this in court to contradict their claim to have a good health and safety record. Craig had a young daughter Katy.
<http://www.hazardscampaign.org.uk/fack/about/craigwhelan.pdf>

On 12th April 2005 **Mark Wright** who worked at Deeside Metals in Saltney, near Chester, was ordered by his general manager to bale 3- 4,000 sealed aerosol containers, which came from Jeyes of Mold. This was contrary to the manager's own risk assessment and expressly forbidden by the baling machine manual. A cloud of volatile vapour was released and ignited by an electric spark. The roof was blown off the building and Mark suffered 90% burns in the explosion and died the next day. Mark was 37, married with two children Leigh and Megan. After nearly 6 years the manager and the two companies were sentenced to fines. Deeside fined £100,000 to be paid over 4 years (the company is to appeal), Roberts fined £10,000, and Jeyes £330,000. to <http://www.hazardscampaign.org.uk/fack/about/markwright.pdf>;
Dorothy Wright's Victim Impact Statement <http://www.fack.org.uk/news/wrightvic.htm>; Hazards article www.hazards.org/lifesupport.htm

Mike and Lynne Hutin's son **Andrew Hutin** was killed in the explosion of a faulty blast furnace at Corus in Port Talbot, long with other colleagues. Corus was eventually prosecuted and fined £1.3 million plus £1.7 million, a miniscule fraction of their turnover, but received £75 million from the insurers for a new blast furnace, clearly contravening the notion that criminal should not profit from their crimes. Corus was at that time a serial killer and has gone on to kill more workers at UK sites since Andrew <http://www.hazardscampaign.org.uk/fack/about/andrewhutin.pdf>;
<http://www.hazardscampaign.org.uk/pressrelease/coruscalls.htm>;
Hazards magazine keep track of the serial offending and killing of Corus at : <http://www.hazards.org/corus/>;

Michael Adamson experienced electrician was electrocuted in August 2006 when he cut through a wire marked 'not use' which in fact was live and had not been isolated or locked off. During the trial his family heard evidence that, between 2004 and 2006, seven electricians died as a result of failure to ensure power switches were padlocked shut to prevent their inadvertent reconnection. The HSE inspector who investigated Michael's death was unable to obtain examples of the padlocks from major suppliers. He was told this was because there was "no demand" for them from the industry. This padlocking is a fundamental safety procedure each electrician is taught during his or her apprenticeship, yet it was a procedure not being implemented by employers. Mitie Engineering was fined £300,000.
<http://www.hazardscampaign.org.uk/fack/about/michaeladamson.pdf>

Steven Burke Steven was a karate champion with international status aged 17 when he was killed in 2004, falling from an incorrectly erected bird cage scaffolding inside a sewage digester tank. He had been involved in the same job on two other tanks, working safely under a mentor supervisor, but another supervisor was in charge of this tank and he had used thousands less poles and boards than required, claimed never to have seen or been trained in the HSE scaffolding guidance, and failed to supervise Steven who was in a gang of workers none more experienced than him. The supervisor was found guilty and fined £7,500 but had this reduced on appeal. 3D Scaffolding was fined £60,000, and other companies involved £75,000 and £75,000.
<http://www.hazardscampaign.org.uk/fack/about/stevenburke.pdf>

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

There may be but this is an on-going process carried out between HSE, employers and trade unions.. But care must be taken against unintended consequences and any merging done carefully and systematically, not in a populist, knee-jerk way, but considering all the implications so as not to confuse employers or put workers and others at risk.

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. According to the HSE/TUC there has been a 46% reduction in regulations since 1974, further reduction and consolidation in the last 15 years as part implementing EU Directives and the HSE's own effective simplification process, see <http://www.hase.gov.uk/legislation/enforced.htm> 2009

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 regulations are now only introduced after a long process and 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!

However, the experience of FACK is that the additional burdens of health and safety failure responsible for at least 80% of all major injuries, death and occupational disease according to the HSE, is caused by the lack of employers compliance with basic statutory duties and regulations, that creates the massive burden we must bear all our lives from having someone we love killed when they should have been safe at work.

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.

FACK's cases show that 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 is 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.

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

FACK members are all too painfully aware of their own and hundreds upon hundreds of other cases where a lack of regulation or its enforcement have led to the totally unreasonable outcome of people being killed, when regulation and enforcement should have meant they were safe. We would struggle to find examples of people being killed by too much regulation. Far from regulation strangling employers, lack of it is squeezing the life blood out of us.

All the members of our own families would be alive today along with 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 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.

An 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.

The linking of compensation with litigation is a red herring as the two are separate, though often confused. The question echoes the tabloid myth, endorsed by Lord Young and the government but utterly unevidenced, of a so-called 'compensation culture'. Less than 10% of workers made ill or injured at work receive any compensation at all

<http://www.hazards.org/compensation/alittlecompensation.pdf> . Employers Compulsory Liability Insurance claims are down, as are Public Liability Insurance Claims
<http://www.unison.org.uk/file/5164.pdf>

It is also wrongly assumed that death means compensation, this is totally false. There is usually only compensation 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 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>

It should also be noted that where a worker is not in a trade union, with no legal aid for personal injury, families of those killed by work have to resort to 'no-win no fee' (conditional fee agreements) solicitors to fight for compensation. 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. The harshness of the compensation system has to be seen to be believed.

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 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.

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?

FACK would like to draw Professor Lofstedt's attention to two Italian cases.

- 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. The incident prompted a strike and demonstrations on the city's streets, and a nationwide campaign for workplace safety improvements ([Risks 336](#)). 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 Airaud, 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](#)

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!

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?

Absolutely and completely not!

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 for consent or 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 whereas the directors and senior managers do, but face very less 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 a CBS 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.

Fines however large, and most are miniscule, are no deterrent and that is why FACK joins other campaigners in calling 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 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 plainly ineffective. Directors Duties were a recommendation by 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. (<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 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 1% of deaths put out by HSE annually as the total killed by work each year
4. A stop to government ministers repeating the unevidenced claims about 'burdens on business' and publicising of the real costs of workplace harm, and how they are mostly borne by individuals, their families, the state/tax payers, and only then the employers.

5. Provision of government funded support for victims of workplace crimes
6. Clearer laws on a workers rights to refuse dangerous work and how workers can protect themselves.
7. 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)
8. 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;
 - 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.

Submitted on behalf of FACK, by founder members:

Dawn and Paul Adams, Linzi Herbertson, Mike and Lynne Hutin, Louise Taggart, Linda Whelan, Dorothy and Douglas Wright

29th July 2011

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