Employment Relations: The heart of health and safety

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Editors Foreword

The Warwick Papers in Industrial Relations series publishes the work of members of the Industrial Relations Research Unit (IRRU) and people associated with it. Papers may be of topical interest or require presentation outside of the normal conventions of a journal article. A formal editorial process ensures that standards of quality and objectivity are maintained.

This paper publishes the text of the sixth Warwick-ACAS Lowry Lecture, given to an invited audience in March 2007 by Bill Callaghan, Chair of the Health and Safety Commission at the headquarters of the Engineering Employers Federation (EEF) in London.

The annual lecture is organised in honour of Sir Pat Lowry. A former chair of ACAS, Sir Pat was for many years an Honorary Professor at the University of Warwick, a long-standing member of the Business School's Advisory Board, and a source of valued counsel to IRRU in its work. His outstanding contribution to the practice of industrial relations commenced when he joined the EEF in 1938. He went on to become the Federation's Director of Industrial Relations. He left in 1970 to join British Leyland as Director of Industrial Relations. In 1981, Sir Pat was appointed as Chair of ACAS. He stepped down six years later with ACAS' reputation for impartial and constructive advice enhanced, in the face of an often turbulent industrial relations landscape.

This lecture prompted engaged comment and debate about an often neglected issue, the management of health and safety in the workplace. Bill Callaghan reminds us that work has always had an enormous impact on the health and well-being of workers. He argues that this needs to be considered centrally by policy makers and decision-makers at all levels; that 'elf n safety' should not be allowed to languish in separate 'silos' presided over by specialists. With this in mind, he offers some personal views on how self-regulation and inspection might be balanced in the future.

Trevor Colling

THE ANNUAL ACAS AND UNIVERSITY OF WARWICK LECTURE IN MEMORY OF SIR PAT LOWRY

Delivered by Bill Callaghan, Chair, Health and Safety Commission

20 March 2007

Introduction

It is indeed an honour to give this lecture and pay tribute to Pat Lowry. Now is perhaps not the time to describe in detail the visit Pat and I made to Terminal 4 at Heathrow as it was being built. British Airports Authority (BAA) were keen to show off the good working relations between the unions and the main contractor and we were impressed as we walked round the site, and heard many fine words over what proved to be a very long lunch. To cut a long story short, much drink had been consumed by the unions and the employers so that by about 3 pm they became very social partners and when the convenor and a site manager began to engage in arm wrestling we realised that it was time to make our excuses and leave.

So I have fond memories of Pat but I hope I can also share the dedication of this lecture to George Brumwell of UCATT (Union of Construction, Allied Trades and Technicians), who died in 2005. I worked closely with George at the Trades Union Congress (TUC) and latterly at the Health and Safety Commission (HSC). When discussions round the HSC table became a little too abstract or rarefied George would remind us of the practical realities of industrial life.

And that, colleagues, is an encapsulation of my main theme that health and safety and human or industrial relations are inextricably linked. It is a statement of the obvious that high standards of health and safety at the workplace depend on managers and employees agreeing to organise and carry out work in ways in which they might not have chosen initially. Rules and laws are essential but they do not by themselves change behaviour. A strong, well resourced, and independent inspectorate is vital too, but my colleagues in the Health and Safety Executive (HSE) and in local authorities cannot be in every workplace in the land at every hour of the day.

Robens recognised this[1]. His report proposed that the statutory arrangements should be revised and reorganised to increase the efficiency of the state's contribution to safety and health at work. But his second main proposal was that the new statutory arrangements should be designed to provide a framework for better self-regulation. "Safety and health at work is a matter of efficient management. But it is not a management prerogative. Workpeople must be encouraged to participate fully…" The 1974 Health and Safety at Work Act followed up Robens' report with wide ranging duties on employers, including a statutory duty to inform workers and consult safety representatives.

[1] The Robens Report (1972) provided the foundations for the Health and Safety at Work Act 1974 and the UK system of self-regulation. The report recognised that employee involvement in the promotion of health and safety at work was crucial to the success of self-regulation and led to the system of safety representatives appointed by trade unions which has been the cornerstone of health and safety consultation for the past twenty five years.

But this view of Health and Safety is not necessarily shared throughout the land. Mention health and safety and the image is often more one of what I call “elf ’n’ safety”, thirty page risk assessments for the most trivial of activities, signs stating that a swimming pool has been closed for health and safety reasons, a ‘jobsworth’ with a clipboard telling you not to do things. Safety experts are accused of fostering a nanny state and I have been called Britain’s chief nanny.

Key workplace issues, such as employee involvement and consultation or working time, are discussed in two separate silos by the industrial relations (IR) and safety communities. I was amazed that HSC discussions on safety representation paid scant attention to discussions elsewhere on information and consultation. Moreover, I was astounded when I joined HSC when I learned that there was no proactive enforcement of the working time regulations by HSE because the issues were seen as one of industrial relations. In other words, it was seen as too difficult and not our patch.

My view is that health and safety needs to rediscover its roots, rediscover the art of the possible, rather than pursue the ideal of the perfect. The IR and the Health and Safety communities need to work more closely together and I am pleased that Rita Donaghy and I have been able to promote joint working by HSC/E and ACAS (Advisory Conciliation and Arbitration Service) on stress and worker involvement.

Tonight I want first to trace the historical roots of health and safety, secondly explore how health and safety has evolved since the 1974 Act, and thirdly discuss some current challenges and suggest how these might be met. In preparing this lecture, I have been helped by a wide range of colleagues, present and former HSE officials, Commission colleagues, safety practioners and academics. Needless to say, the views expressed are my own and do not represent Commission policy but I hope they will stimulate debate and discussion.

History

Fundamental to the regulation of safety is that we have a responsibility to our fellow citizens. It is deeply engrained in our culture and ethics. In December 2003, Dr Elaine Storkey discussed safety in her *Thought for the Day* on the *Today* programme. She reminded us of the provisions of the Book of Deuteronomy. If you build a house you have to put a parapet round the roof so that no one falls off it. Her key conclusion was that the safety of others is the concern of each one of us and that we have a duty to foresee potential danger to our neighbour and the collective responsibility to do something about it.

It took some time before British statute law caught up. 1802 saw the Health and Morals of Apprentices Act, brought in by Sir Robert Peel. The provisions included a 12-hour limit to the working day; a phased elimination of night work; separate sleeping apartments for boys and girls and no more than 2 to a bed. There was little or no opposition and the 1802 Act might be better seen as an extension of the Poor Laws than the first safety legislation.

Farsighted employers such as Robert Owen recognised their moral duty to their workers and made the more utilitarian argument that protection of workers was likely

to make them more productive. Any reading of the 19th century debates and references to foreign competition show that the current debates about globalisation are nothing new. In evidence to Sir Robert Peel's committee Robert Owen addressed the issue of reduced working hours; "Such conduct to work people is the most likely to make them conscientious, and to obtain more from them than when they are forced to do their duty." A lesson still to be learned perhaps.

The first genuine safety legislation was the Factories Act in 1833, which saw the appointment of the first factory inspectors; this was followed by further Factories Acts, which extended the legislation beyond the textiles industry.

It is worth emphasising how bitter and fierce the political battles were, in contrast to the 1802 Act. A good example is the position by some employer groups on the issue of machine guarding. I am sure our current hosts, the Engineering Employers Federation (EEF), will forgive me mentioning Charles Dickens' famous description of the National Association of Factory Occupiers as the 'Association for the Mangling of Operatives.' Employers repeatedly argued that the Factories Acts should be modified (i.e. weakened) or the industry of England would seriously decline. Equally divisive were the debates about working time, for example the 10-hour debate.

This leads to a second observation: safety was only one of the items on the reform agenda. Early legislation was styled the Factories Acts and was about working conditions and in particular about hours of work. The early reports of the factory inspectors are authoritative accounts of factory life and are full of both qualitative and quantitative detail. For example, Mr Horner, the first chief inspector, surveyed over 10,000 workers seeking their views on the ten-hour limit and his reports had a great influence on legislation.

My third observation is that much of the early legislation was directed at protecting those seen as most vulnerable, women and children, though male workers also benefited. The Webbs made famous the remark of the Oldham Spinners secretary that the men's industrial battle for shorter hours was "fought from behind the women's petticoats". Vestiges of that legislation lived on to quite late in the 20th century and HSE inspectors would enforce the restrictions on women and night work until these were removed in 1989.

My fourth point is that statutory regulation preceded the growth of trade unions; unions subsequently became involved in the developing system and lobbied for its improvement. Item 10 on the agenda of the first meeting of the TUC in 1868 was "Factory Acts Extension Bill, 1867: the necessity of Compulsory Inspection, and its application to all places where women and children were employed. In his 1910 preface to Hutchins and Harrison's *A History of Factory Legislation* Sidney Webb wrote:

> "Some industries – cotton spinning, for example- are now so thoroughly guarded by Common Rules, enforced either by the factory inspector or by jointly-acting officials of the Trade Union and the Employers' Association, that no individual mill owner and no individual operative can go far in degrading the standard of life."

An early example of social partnership perhaps.

It is fascinating to recall the career of Henry Broadhurst, a delegate of the Stonemasons Society to the TUC, and a member of the Parliamentary Committee and Parliamentary Secretary to the TUC from 1874 to 1890. He became a Lib-Lab MP and was briefly a Minister at the Home Department in 1886. Broadhurst was offered the post of Assistant Inspector of Factories in 1881 though he declined the post offering it to Mr Prior, Secretary of the Amalgamated Carpenters and Joiners Association. In his autobiography, he notes that a number of other union trade union secretaries became inspectors.

But as the Webbs remarked in their *History of Trade Unionism* the union effort was a piecemeal one, with each union arguing for legislation for its own sector, and the efforts of the TUC Parliamentary Committee met with little success.

Trade union attitudes to compensation were also criticised. In 1897 the Workmen's Compensation Act gave a duty on employers to compensate their employees for loss of earnings due to accidents arising out of and in the course of employment. As J L Williams noted in his book *Accidents and Ill Health at Work* the unions had side tracked themselves on the issue of individual negligence.

Time does not permit a more extensive history but it is fair to say that the main elements of the British health and safety system were in place by the end of the first decade of the 20th century. The 1906 Act extended the provisions of the 1897 Act to include both accidents and diseases caused by work and initially six diseases were included on the schedule of prescribed diseases.

In his 1910 preface referred to earlier Sidney Webb wrote:

> "This century of experiment in factory legislation affords a typical example of English practical empiricism. We began with no abstract theory of social justice or the rights of man. We seem always to have been incapable of taking a general view of the subject we were legislating upon. Each successive statute aimed at remedying a single ascertained evil. It was in vain that objectors urged that other evils, no more defensible, existed in other trades or amongst other classes, or with persons other than those to which the particular Bill applied. Neither logic nor consistency, neither the over-nice consideration of even-handed justice nor the quixotic appeal of a general humanitarianism, was permitted to stand in the way of a practical remedy for a proved wrong."

The Robens Report and the 1974 Health and Safety at Work Act

Not surprisingly, this quotation was included in the Robens report, referring to the piecemeal fashion in which legislation developed. As Robens remarked despite many previous committees and inquiries no one had looked at the system as a whole before, and the report and the 1974 Act can be seen as revolutionary and reforming, a legislative landmark that has stood the test of time.

The need for reform was clear: in the second edition of *The Worker and the Law*, Wedderburn wrote in 1971 that "the battle to reduce accidents at work is being lost".

Tables 1 and 2 taken from the Robens report explain why. It is shocking to recall that around 1,000 employees died each year at the end of the 1960s. And that the number of fatal and non-fatal accidents in factories, docks and warehouses and construction was over 300,000 in 1970 compared with 193,000 in 1961.

Comparable figures are not available across all the economy but tables 3 and 4 suggest no great improvement over the first half of the 20th century in the rate of factory accidents.

TABLE 1

FATAL ACCIDENTS AT WORK IN GREAT BRITAIN 1961–1970

(The table relates to employees only)

	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
1. Factories	368	351	332	344	358	372	342	359	357	325
2. Docks and Warehouses	37	36	36	40	39	41	25	28	27	28
3. Construction	264	281	242	271	230	288	197	238	265	203
Total Factories Act (Lines 1–3)	669	668	610	655	627	701	564	625	649	556
4. Mines and Quarries	284	288	295	244	256	191	181	158	126	124
5. Agriculture (*a*)	80	71	65	64	49	73	58	63	70	41
6. Offices, Shops and Railway Premises (*b*)	28	28	28	28	34	29	16	39	20	32
7. Railways	167	118	116	96	103	72	78	62	69	68
8. Road Transport	57	55	65	70	86	78	82	90	81	80
9. Civil Aviation (*c*)	24	17	12	12	13	27	19	8	3	13
10. Seamen (*d*)	154	131	70	90	91	118	94	98	52	71
TOTAL (Lines 1–10)	1,463	1,376	1,261	1,259	1,259	1,289	1,092	1,143	1,070	985

TABLE 2

ALL ACCIDENTS AT WORK IN GREAT BRITAIN 1961–1970

(Fatal and non-fatal accidents to employees as reported to various agencies)

	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
1. Factories	161,655	157,600	168,106	217,950	239,158	241,051	247,058	254,454	266,857	255,907
2. Docks and Warehouses	7,506	7,220	7,815	10,207	10,178	9,952	10,483	11,407	10,963	8,865
3. Construction	23,356	25,338	28,348	40,491	44,381	45,607	46,475	46,569	44,570	39,823
Total Factories Act (Lines 1–3)	192,517	190,158	204,269	268,648	293,717	296,610	304,016	312,430	322,390	304,595
4. Mines and Quarries (*a*)	191,208	201,389	206,234	201,364	209,935	188,909	169,763	144,046	121,402	93,983
5. Agriculture (*b*)	12,846	13,553	14,548	13,276	11,839	10,680	10,069	8,722	8,783	7,366
6. Offices, Shops and Railway Premises	18,000(*c*)	18,000(*c*)	18,000(*c*)	18,000(*c*)	17,225	18,533	19,903	19,075	19,018	16,871
7. Railways	14,233	12,139	11,846	11,064	9,838	8,236	8,003	6,912	7,335	7,625
8. Road Transport	16,200	16,400(*c*)	16,600	18,700	22,700	22,900	25,300	26,700	26,300	33,800
9. Civil Aviation (*d*)	30	27	25	17	22	35	28	14	6	15
10. Seamen (*e*)	8,817(*c*)	8,783(*c*)	8,805(*c*)	9,090	8,672	8,769	8,361	8,177	8,421	8,491
TOTAL (Lines 1–10)	453,851	460,449	480,327	540,159	573,948	554,672	545,443	526,076	513,655	472,746

TABLE 3

FACTORIES—ACCIDENTS PER 1,000 PERSONS (FACTORIES ONLY)[1]

1909	27[2]	1944	40
1927	30	1945	37
1928	27·7	1946	34
1930	26·6	1947	29
1933	22·2	1948	28
1935	26·4	1949	27
1936	29·2	1950	25
1937	30	1951	23
1938	29	1952	22·5
1939	28	1953	22·7
1940	34	1954	22·4
1941	38	1955	21
1942	43	1956	20 to 21
1943	42	1957/8	Not provided

TABLE 4

RAILWAY EMPLOYMENT—
ACCIDENTS PER 1,000 PERSONS EMPLOYED

	Injured	*Killed*
1922	22·8	0·34
1932	24·9	0·35
1935–39 (average)	26·1	0·40
1946–50 ,,	31·2	0·34
1951	28·2	0·27
1952	27·6	0·32
1953	27·1	0·32
1954	26·9	0·27
1955	26·3	0·30
1956	26·1	0·28
1957	26·0	0·29
1958	25·3	0·22

[1] The figures in this table for 1928 to 1936 are based upon figures in the Factories Report 1938, at p. 9. For the 1909 figure see p. 141 *post*.

[2] See *Report of Departmental Committee on Factory Accidents* 1911: Parliamentary Papers 1911: Vol. 23; the figure is based upon statistics under the Workmen's Compensation Act 1906. See p. 141.

In contrast, progress since the 1970s has been marked: 160 employees and 52 self-employers were killed at work in 2005/06, the lowest number and the lowest rate on record. Although compositional changes in the workforce can explain some of the improvement, the regulatory regime, proposed by the Commission and enforced by the Executive and local authorities, has been a major contributor. A cautious estimate is that over 5,000 lives have been saved by the health and safety improvements introduced following the 1974 Act. Construction remains a hazardous industry but the number of deaths at work in that sector is a third of the late 1960s level despite the industry employing many more people.

The impact of the Act deserves fuller treatment but tonight I want to highlight three key features. The first is the creation of a powerful, independent and unified health and safety inspectorate, the HSE.

The second is the guiding principles of the 1974 Act: Section 2 of the Act states "It shall be the duty of every employer to ensure, so far as is reasonable practicable, the health, safety and welfare at work of all his employees." Robens' vision was to sweep away previous prescriptive legislation and replace these with simpler regulations under the framework of the Act. Robens anticipated the better regulation agendas of successive governments, and HSC/E can rightly claim to be one of Britain's first risk based regulators. Employers may not always have liked enforcement decisions taken by HSE but they recognise that HSE is a proportionate regulator, one that is firm but fair.

Some of you may have read my comments over the past year about the need for a sensible approach to risk, that we cannot live in a risk free society. It would be nice to claim originality for these remarks but in fact I am acting more as the guardian of a long tradition, that we cannot mandate employers to achieve absolutely perfect levels of safety, rather that they should do all that is reasonably practicable. Of course, what is reasonably practicable now would not have been practicable 30 years ago and that is why the flexible framework of the 1974 Act has been a spur to safety improvements. In contrast, prescriptive legislation would have ossified the standards of the past.

Many of you will be aware that the UK currently faces European Union (EU) infraction proceedings following the decision to implement the 1989 Framework Directive through Section 2 of the 1974 Act. The EU argue that the UK under-implemented the Directive through the use of the qualifier "SFAIRP" ("so far as is reasonably practicable"). The Advocate General published his opinion on 18 January this year and it is best to await the final decision of the Court. But we should note that, comparing fatalities at work and allowing for differences in industrial structure, the UK has the best record in the EU.

The third key element underlying this success is the institutional structure established by the Act, namely the Commission and the Executive. Quite why officials and Ministers in 1973 put forward the quaint structure of a separate Commission and Executive rather than the unitary body recommended by Robens is shrouded in the mists of time. I set out my thinking on the relationship between the two bodies in my contribution to *The Changing Institutional Face of British Employment Relations*[2], published at the time of last year's Lowry lecture. Since then HSC and E have consulted on proposals to form a unitary organisation and we shall be examining the results of that consultation next month.

[2] Callaghan, B. (2006) 'The Health and Safety Commission and Executive', in Dickens, L. and Neal, A. (eds) *The Changing Institutional Face of British Employment Relations.* Biggleswade, Kluwer Law International.

But whether a unitary body or twin bodies, the involvement of the social partners has been crucial. There has not been a cosy consensus and there have been some sharp debates on the Commission and its Advisory Committees. The Commission has ensured that the proposals it puts to Ministers enjoy the support of both employers and employees.

Challenges

The record of the Commission and the Executive has been good and the improvements we have seen since 1974 reflect both the work of HSC and HSE, as well as the support of our key stakeholders. A judgement on our performance today is that the battle to improve safety is being won, but we should not be complacent, and although progress is being made to improve health, much more needs to be done. Without doubt, there are major challenges ahead.

One of these is public safety. Section 3 of the 1974 Act introduced a new duty on employers to safeguard members of the public affected by work activity. The Flixborough explosion in 1974 and the Buncefield fire and explosion in 2005 are vivid reminders that workplace safety failures directly affect more than the immediate workforce.

Few would dispute the role of HSE in incidents such as these. But in recent years the net has been drawn increasingly wide. Almost everything can be classified as a work activity ranging from conkers and snowballs in school playgrounds to MRSA in hospitals and clinical negligence. Sea green incorruptible I may be but I would rather chair the Health and Safety Commission than the Committee on Public Safety. But employers cannot duck their responsibilities under Section 3 of the Act. Neither can we; but where other bodies are better placed to take action, such as the Police in road traffic accidents or the Health Care Commission in MRSA, we should leave it to them.

Moreover, the principle of reasonable practicability remains. Our industrial stakeholders understand this term; in the field of public safety, pressure groups campaign for a zero risk approach. It nevertheless behoves HSC/E to explain its regulatory approach and why a sensible and proportionate approach is needed. I commend the work carried out by colleagues in HSE, in conjunction with the DFES on guidance on school trips. We do not want to see health and safety being used as a shoddy excuse to prevent our children enjoying adventure.

Despite the massive media attention on public safety, our core business is health and safety in the workplace. This is a function of many different factors: management effort and commitment, employee and trade union involvement, regulation by HSC/E and local authorities, pressures via the civil compensation system, and a host of other factors ranging from investors and the supply chain, pressure groups and the media.

Moreover, the regulation of health and safety is distinct from other forms of labour market regulation. In Government DWP has responsibility for HSC/E, the DTI for Employment Relations and DCLG for equalities. Individual rights are enforced through the tribunal system. The Minimum Wage is enforced by around 100 HMRC staff and the Employment Agency Regulations by 12 staff. The Gangmasters Licensing Authority has 50 staff and responsibility lies with DEFRA. In the services sector Environmental Health Officers enforce health and safety law but also food safety and a number of other matters such as noise. DTI has responsibility for Working Time policy; HSE and Local authorities have responsibility for enforcement (outside the transport sector), though enforcement is on a reactive basis only.

Within companies and trade unions, the health and safety function can take many organisational forms. Some companies integrate the management of safety, health and environment; some see safety as an integral part of production management, dealing with health under an HR umbrella. After the 1977 Regulations on health and safety representatives a few unions, notably the TGWU, chose to integrate the role of the safety rep into the shop steward function, most developed a new cadre of specialist safety reps.

Against this background it is difficult to make general observations but there is no doubt in may mind that the break up of the Employment Department (ED) in July 1995 contributed to the estrangement of the health and safety and IR communities. The links between officials in ACAS, HSE and in ED weakened and different departmental priorities emerged. During our time at the Department of the Environment, Transport and the Regions (DETR) and DTLR (Department of Transport, Local Government and the Regions), HSE was seen mainly through the railway prism and a distorted prism that turned out to be.

Given the present structure of Government, DWP (Department of Work and Pensions) is our proper home, but at the risk of dealing with matters slightly above my pay grade I think there is a strong case for any Department of Work dealing with all employment relations and if anyone wants to call it a New Department of Labour that is fine by me, or even a Department of New Labour.

There is scope too for more joined up work on labour market regulation, whether it be through inspection, enforcement or advice. I realise that here I am treading into even more difficult territory, though the rhetoric often conceals rather than reveals.

Perhaps I should make my own position clear. I do not believe that a new law or regulation is the answer to every problem; I share the Robens vision about self-regulation, which I quoted at the beginning of this lecture. And perhaps I can give you one recollection of my time at the TUC, soon after the TUC decided to participate in EU institutions after the 1975 referendum I was sent to an ETUC EU Commission meeting to argue against legal limits on working time. *O tempora! O mores!*

But that recollection neatly encapsulates the major change in the UK over the last 20 years. Whatever the rhetoric about labour market flexibility and deregulation, there has been a marked increase in statutory regulation and a decline in joint regulation by employers and trade unions, either through collective bargaining or other social partnership arrangements; there has been an increase in individual rights set against a decline in collective protection. Rita, when you and I served on the Low Pay Commission we were clear that more than 8 out of 10 of the beneficiaries were not trade union members.

Safety representatives, appointed by trade unions under the 1977 regulations play a key role in Britain's health and safety system. We estimate the number of safety reps to be between 150,000 and 200,000. I have seen at first hand the constructive role that safety reps play in companies such as Airbus and the well-developed social partnership arrangements in the Electricity Supply Industry where a joint industry safety committee is alternately chaired by an employer and a trade union official.

This system is not solely confined to large firms. In a quarry in mid Wales, I met an inspired safety rep, Colin Evans who commanded the respect and support of his fellow workers and management, as well as our inspectors

The Regulations give substantial rights to safety reps and these followed many years of pressure from trade unions and the TUC. A 1970 Bill to provide for trade union appointed safety representatives lapsed with the General Election of that year. Thus, the 1974 Act and the subsequent 1977 regulations were a significant reform and I recall from meetings in Downing Street during the Social Contract discussions the regulations featured prominently. By the way as one who attended many meetings at No 10 and No 11, I can recall neither beer nor sandwiches.

But thirty years on the picture looks very different; the trigger for safety reps is trade union recognition and given the trends in trade union membership and recognition fewer and fewer workers are covered. Regulations introduced in 1996, following pressure from the EU, provide for employee consultation across the whole economy, including employee representatives of safety, but these are entirely at the discretion of the employer. We have no data on the numbers of employee representatives of safety. I suspect that there are very few.

It is with some regret that I say that I have not been able to persuade Commission colleagues on an agreed way forward. Trade unions press strongly for an extension of the rights of safety reps and these are resisted by employers. A recent consultation exercise showed no consensus on limited legislative change. I note with some regret, too, that a fund to support Workers Safety Advisors (WSA), failed to attract significant trade union support, and is being wound up this year after three years. WSAs had a remit to work in small firms, typically where unions were non existent, offering advice to both workers and employers; they depended on the support of trade associations and employers and unions provided some, though not all, of the representatives.

I am grateful to Professor Stephen Wood for chairing the WSA Challenge Fund and I hope he would confirm that the fund supported some innovative and worthwhile projects.

The construction industry is one and I hope that the partnership between UCATT, TGWU, the Federation of Master Builders and the Construction Confederation can be built on.

The UCATT scheme of Regional Safety Officers is a good example of an innovative approach working in partnership with construction employers to offer skills and advice that can help both employers and employees. This scheme was introduced by George Brumwell and is tribute to his leadership; a recognition that trade unions have offered something to both employees and employers. I commend to you Billy Baldwin's study of *Worker Engagement in the Construction Industry*. Billy is UCATT's North West Regional Safety Adviser and he reminds us of the importance of partnership and cooperation and the need for genuine involvement and consultation rather than simply replicating structures, such as safety committees. As Billy argued "we have found that being aggressive and making demands simply does not work" and "the aim should be to achieve progress by mutual consent".

That theme is reinforced by an HSE Construction Inspector, Gordon Crick, who is the project manager for HSE's worker engagement initiative. Taking the antagonism out of work is a critical message for the industry and he sites the example of a case study on the refurbishment of job centres. This involved over 1,100 different projects and because of the way it was structured, using an open book partnership approach, there was not a single trade dispute and safety standards were exemplary.

There are other examples of unions and employers working together, for example in the Paper and Board industry and in quarrying. But these examples are not as numerous as they might be. One factor might be the decline in industry wide arrangements for collective bargaining which facilitated

contact between HSE and the social partners. Moreover the decline in trade union recognition will lead to a decline in trade union appointed safety reps and, barring any change in policy and practice, a decline in worker involvement. I have seen no evidence that employee representatives of safety have filled the gap.

There are of course other models than trade union appointed safety reps. In the offshore oil industry, following the Cullen report into Piper Alpha, all workers now have the right to elect safety representatives. Moreover, there are opportunities that I think both employers and unions may have missed. Some employers complain about the regulatory burden, red tape and the activities of the various inspectorates. During the Hampton review of regulation there was a fierce debate around the concept of earned autonomy, though this is another area where the rhetoric does not quite match the reality. I have never met an employer who would boast that they have been free from inspection and regulatory oversight. Indeed some positively crave the comfort blanket of having had an HSE inspection.

Nevertheless, it must be to the benefit of both the regulator and the regulated that we spend less of our scarce resources on the relatively good performers and more on the poor performers. But in this country, unions have viewed initiatives such as the US Voluntary Protection Programme with suspicion. And on the other side of the table some employers may well be suspicious of giving trade union or other employee representatives more of a role, for example a quality assurance check on the company's safety performance and procedures.

My view is that informal regulation via unions and employers will be more efficient and less onerous than regulation imposed externally, either by HSE or through the courts. However, the Robens vision of self regulation is seen as a threat by some unions and some of the pressure groups that are influential in TUC circles. Much of the rhetoric is about enforcement and prosecution.

Of course, HSE cannot desert the field, especially in industries that impose a major hazard, and no company can be free of prosecution, but the more we can be assured that certain companies are self-regulating the more we can focus on those failing to protect their employees and members of the public.

If you are not yet convinced about the importance of industrial relations to the safety agenda then read the report of the independent panel convened by BP and chaired by James Baker. It criticised BP's poor safety culture and its failure to establish a positive, trusting and open environment with effective lines of communication between management and workforce. It was particularly critical about the culture at the Toledo refinery, union management relations were described as "strained" and by some as "toxic". The low morale in Toledo was reflected in negative attitudes towards process safety reporting, commitment to process safety, and worker professionalism and empowerment.

As I have already argued, a well resourced and independent inspectorate is vital but there challenges on the inspection front. During the Hampton review of regulation the case was cogently made by many employers for more "joining up" of the different inspection regimes, for example the work of HSE, EA (Environment Agency), FSA (Food Standards Agency) and local authorities. I am not sure whether I am surprised that they did not argue for joining up the different labour market inspection regimes, but, at the risk of entering yet even more difficult territory, I think there is a good case.

As I have already noted the system, if it can be called that, is fragmented. Some topic-based inspectorates are tiny and could not possibly have the reach that HSE or local authorities have.

There have been some attempts at joining up inspection work. The Joint Workplace Enforcement Pilot (JWEP) was conceived in 2004 as a three-year pilot to tackle the range of issues contributing to the use and exploitation of undocumented migrant labour. Participating bodies are West Midlands Police, HSE, HMRC (Her Majesty's Revenue and Customs), the Immigration Service, DTI's Employment Agencies Standards Inspectorate, the Gangmasters Licensing Authority, DWP and DEFRA (Department of Environment, Food, and Rural Affairs). The findings so far suggest that there may be benefits in pooling intelligence as a predictive tool for assessing whether an employer is likely to be serially in contravention of legislation. The JWEP has been limited and has involved HSE seconding an inspector for up to three days a week for the duration of the project. The pilot suggests that the project could be replicated, though there are some inherent tensions between our wish to protect people at work, whatever their immigration or employment status, and other agencies.

Another significant development was the Hampton recommendation, accepted by the Government, for the Gangmasters Licensing Authority (GLA) to be merged with the HSC/E. If this proceeds, it will take HSE directly into the territory of licensing temporary employment providers and the question is bound to be raised as to whether the GLA approach should be extended to other sectors. I am not arguing that it necessarily should, but the issue of vulnerable migrant labour is one that goes beyond agriculture. The TUC's attitude to migrant labour has been exemplary and a number of unions have taken imaginative steps to organise migrant workers. However, these workers are difficult to organise, are often vulnerable and the case for joined up inspection is a strong one.

Each inspectorate has its own expertise and there are bound to be concerns that any move towards a general inspectorate would lead to a diminution in specialist expertise. There is considerable force in that argument, but at present HSE and local authority inspectors already have to deal with a wide range of topics and have the ability to call in specialist help when needed. Moreover, it is not unreasonable for inspectorates to pool intelligence, and warn colleagues when they come across instances of evident concern in jurisdictions other than their own.

But to reinforce an earlier point, not every problem needs a new law. We also need to join up the advice, guidance and best practice agendas. Issues such as managing attendance, dealing with sickness absence and rehabilitation are a case in point, as is stress at work. I am delighted that HSE has been working closely with CIPD (Chartered Institute of Personnel and Development) and ACAS on these issues. Our stress management standards highlight the following issues: demands on the individual, control, support, relationships, role and change. These do not fit neatly into a health and safety box, arguably they are a core part of the HR agenda; indeed we could not have developed the standards and promulgated their use without the active support of ACAS.

These are not side issues for HSE. Stress accounts for 10.5 million working days lost in Britain, out of a total of 30.5 million working days lost through injury and ill health. This has to be set against the 150 million days lost through sickness absence in total.

But this also reinforces the case for more explicit joining up of the health and safety agenda with the management and productivity agendas. This is beginning to happen: our work on sickness absence in the Public Sector led to the Work Foundation's publications on *The Well Managed Organisation.* However, more needs to be done to convince employers of the business case for good health and safety.

At the national level if we are to reduce the days lost due to injury and ill health, prevent people drifting into long-term sick leave and onto invalidity benefit (IB), and rescue those who have been on IB for some time, we will need closer cooperation between a wide range of Government agencies and departments. That is the topic of another lecture, but it needs close attention by the IR community as well as the Health and Safety community and ideally close cooperation between employers and unions.

Conclusion

I hope that I have been able to convince you that health and safety law and practice are intimately bound up with the wider human relations agenda. Self regulation and worker involvement are inextricably linked. We have come a long way since the early 19th century, though we cannot take the safety improvements made for granted. Moreover, the conditions of some migrant workers give cause for concern, as are the growing pressures on some workers who have no control over their work.

Inspectorates need to work closely together, as do employers and employee representatives, not just to prevent harm but also to promote well being, good jobs and a high performing and competitive workplace. Now there is a challenge for us all. And we meet that challenge through partnership.