

Safety First?

Did the Health and Safety
Commission do its Job?

Christopher Gifford

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SAFETY FIRST?
Did the Health and Safety
Commission do its Job?

Christopher Gifford

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The author retired in 1988 as HM District Inspector of Mines and Quarries and worked subsequently as a consultant engineer, mainly advising the mining trade unions on health and safety legislation.

This pamphlet is based on a paper presented at a meeting held jointly by the South Wales Institute of Engineers and the Wales Branch of the Institution of Mining and Metallurgy in the School of Engineering, Cardiff University on 21 March 2001.

SAFETY FIRST?

Did the Health and Safety Commission do its Job?

by Christopher Gifford

Introduction

This pamphlet is about how opportunities to protect people from abuse were taken or missed in the 25 year period of jurisdiction of the Health and Safety Commission.

In 1974, the newly elected Labour Government enacted the Health and Safety at Work, Etc., Act based on a Bill drafted by the preceding Conservative Government. The Act was to secure the health, safety and welfare of people at work and also to protect the public from risks to health and safety created by work activities.

The Act created the Health and Safety Commission (HSC or 'the Commission') to give effect to the Act, to promote research, to approve codes of practice, and to advise government on health and safety legislation. Commission members are appointed by the Secretary of State for Employment. The Act also established a Health and Safety Executive to enforce the legislation and to oversee the work of several hitherto separate inspectorates. Some eight million people at work in previously unregulated employment, eg hospital workers, were protected for the first time.

In July 1999, the Health and Safety Commission published a Consultation Document¹ to mark its 25th anniversary with the title *Revitalising Health and Safety*. A linked publication – *The Strategy Statement – June 2000* included a 44 point *Action Plan*. Both publications were made jointly with the Department of Employment, Transport and the Regions. (DETR)

The Commission referred to a 25 years improving trend in the fatal injury rate to employees, some of which it attributed to changes in the world of work. The changes mentioned are

The decline in heavy industry (including mining)

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The growth in service industries

The privatisation of state enterprises

Downsizing and slimmer management structures

Increased use of contractors

Casualisation of the labour market

More women, elderly and disabled people in employment

Fewer employees in trade unions.

Why is Revitalising Necessary?

The Commission explained its strategy for revitalisation by reference to the changes mentioned above and to the exceptions from the overall picture of improvement. It states concern, for example, that the fatal injury rate in the (recently privatised) Extractive and Utility Supply Industries was 7.9 per 100 000 employed in 1997/8 (17 killed) compared with 1.6 in 1994/5 (4 killed).

In this pamphlet some of the successes and failures of the last 25 years of health and safety regulation are examined. Failure is as much deserving of attention as success if future success is to be assured. Not all the changes in the world of work have been beneficial and many of those that have been detrimental are not inevitable and can be reversed.²

Is the Commission's Diagnosis Complete and Correct?

How people relate to each other, whether as owner-slave, master-servant, employer-employee, contractor-client, monarch-subject or government-citizen, is relevant to a discussion of effective health and safety regulation. The Commission and the Government are agreed on proposals for ending crown immunity from health and safety legislation.

Would replacing the employer-employee relationship with the client-contractor relationship increase or decrease injury at work and damage to health and the environment? In this context two recent publications are particularly illuminating – both by the Health and Safety Executive's (HSE's) Nuclear Installations Inspectorate (the NII) – on waste management at Dounreay and at BNFL-Magnox's

Sellafield.^{3,4} In both documents alarmingly dangerous conditions were attributed to contractorisation or to privatisation or the prospect of privatisation.

Before the loss of the spaceship *Challenger* by the American National Aeronautical and Space Administration (NASA) contractors were reluctantly persuaded to change the specification of safety critical components ('O' ring seals) to allow take off in a sub-zero weather environment. The seals failed and rocket fuel exploded killing all the astronauts on board 73 seconds after lift-off. The client-contractor relationship lacks symmetry in empowerment when small firms work for large monopolies, just as the employer-employee (master-servant) relationship lacks symmetry when there is large-scale unemployment.

The author suggested to the Commission that it had been too accepting of the inevitability of the changes in the world of work.⁵ Few ministers behave as if they have read the publications by the Nuclear Installations Inspectorate. They are publications unprecedented in their anticipation of failure and their identification of structural causes. The Commission was acting responsibly in bringing them to public attention. One effect of that is that if the Government persists with its programme of privatising safety critical monopoly undertakings it can be supported, or removed, by voters of whom at least some are informed.

Health and the Environment

The first half of the last century began with more than 1000 miners a year being killed at work. More than 50 000 miners were killed between 1900 and 1950. A similar number died of dust disease. Effective regulation of the coal industry took another 40 years by which time the deaths were in single figures.

Even though imports of asbestos are now banned, asbestos dust may yet kill hundreds of thousand of people in the UK alone. It is now accepted that employment is too narrow a field for the regulation of substances hazardous to health. The chemicals used in industry and agriculture now show in breast milk, in drinking water and in food. Vehicle pollution kills ten thousand people a year in the UK and one child in eight has breathing difficulties. Every adolescent child in the

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UK has plutonium in his or her teeth.⁶ Plutonium, like many of the substances now polluting the environment, did not exist 60 years ago. The nuclear industry is just one example of the fact that there is more to the regulation business than protecting people at work. None of us wishes to be regulated in the pursuit of our indulgences but we don't want our grandchildren to spend their lives wheezing with asthma or to bear children with mutagenic deformities.

The Nuclear Installations Inspectorate Criteria

Few matters could be more important than that the regulation of the nuclear industry here and abroad should be effective. It is an industry that has the potential to make large tracts of Britain uninhabitable⁷ and the support that the Health and Safety Executive and the Nuclear Installations Inspectorate have given to similar but less developed authorities abroad is commendable. In those discussions the Nuclear Installations Inspectorate listed criteria for the formation of regulatory agencies which included:

- Effective independence
- Established regulatory process
- Regulatory effectiveness
- Adequate inspectorate powers and sanctions
- Internal quality assurance and monitoring.

The criteria are relevant to all regulatory agencies. Later in this pamphlet the apparent lack of some of those features which led to some of the Health and Safety Executive's failures will be mentioned.

Successes and Failures

J K Galbraith said that a man who makes his entry by leaning on an infirm door gets an ill-deserved reputation for violence.⁸ Such a reputation may be difficult to avoid when reviewing the Health and Safety Executive's less successful areas because there are some weak hinges. There was even an attempt by the Commission to repeal law made in 1872 that enabled mineworkers' representatives to inspect the mine, in particular, the site of a major injury or dangerous

occurrence. Similar provision in the Health and Safety at Work, Etc. Act 1974 and the Safety Representatives and Safety Committees Regulations 1977 had already been disabled by Mrs Thatcher's Government in 1980, since when safety representatives in industries other than mining and quarrying have operated only where the employer was willing to recognise the trade union. In the quarrying industry the entitlement to make inspections on behalf of workmen under Section 123 of the Mines and Quarries Act 1954 was repealed in 1999 but similar provisions were enacted in regulation 40 of the Quarries Regulations 1999. In all other employment entitlements exercised by miners for almost 130 years were available to other employees for only two years and they remain extinguished.

The example quoted of regressive legislation on the recognition of safety representatives is not typical of the whole. But the climate created by the Deregulation and Contracting Out Act⁹ led to a minimalist and evasive approach to European legislation which was often enacted in Britain late and piecemeal with poor editing of the affected texts. It is fitting that the Deregulation Unit has been renamed the Better Regulation Unit. However, deregulation and liberalisation remain the worldwide mantras of business and many governments.

Lower Injury Rates

Any appraisal of the Commission's successes and failures must rely on criteria by which success and failure can be measured. If one takes for example the loss of the Piper Alpha platform in the North Sea one must begin by looking at the reach of the legislation and the remit of the enforcing authority. There is no doubt that the restricted application of the Health and Safety at Work, Etc., Act 1974 and the allocation of powers to inspectors accountable to the government department responsible for oil and gas production were policies conceded by the government to the operators in a climate of deregulation and resistance to the empowerment of safety representatives. There have since been many changes in enforcement in implementation of Lord Cullen's report.

Road transport is another example where death and injury, even of persons at work, is far from being in the enforcement jurisdiction of

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the Health and Safety Executive.

The Executive, quite properly, reports decreasing fatal and serious injury rates in its area of jurisdiction as a measure of success. It would be remarkable if injury rates had not fallen during the decades in which Britain's heavy industries – coal mining, steel production, shipbuilding, for example – were in serious decline. Injury in the construction industry remains an obstinate problem.

The Commission has lately been alerted to new trends in injury and health impairment such as upper limb disorders, vibration induced impairment, mental stress, violence at work, and asthma.

Publications

The Commission's record in producing publications useful to employers and safety representatives is impressive. Quite apart from formal guidance on the law there is much useful advice on management as such. It is ironic that sound principles in drafting legislation, such as systematic risk assessment and documented health and safety policies, which originated in Britain's mining legislation and the Health and Safety at Work, Etc., Act 1974 now return to us from Europe in directives requiring the re-jigging of our legislation.

Much useful and necessary pro-active law has been developed by the Commission on the model developed by the Mines and Quarries Act 1954 and its subordinate legislation, for example, the Construction, Design and Management Regulations. Parliament continues to enact over 3000 Statutory Instruments a year, of which only a minority are connected with health and safety, but which can cause dismay to those affected. Few of the Statutory Instruments are debated and there is still scope for better co-ordination and helpful editing in their publication.

In this 25 years review there is as much to be learned from failure as from success. The regressive legislation leading to the disempowerment of some safety representatives show that the issues surrounding some of the Health and Safety Executives's failures were not new but as old as industry itself. Before looking at the recent events it might help to go back to 1856 when the agenda for regulation by government was being set. It is difficult to see how anyone mindful of what happened in the Rhondda valley in 1856

could have proposed the repeal of the law on inspections on behalf of workmen – a provision which had been applauded almost without exception in every subsequent inspector's annual report. For the record it is worth mentioning that in the same period, the 1980s, the publication of inspectors' annual reports was discontinued.

Cymer Colliery

The story of Cymer colliery was researched¹⁰ by Dr E D Lewis, former Principal of Barry College and a local historian. He visited the office of Mr Albert Davies who was then HM Principal Inspector of Mines and Quarries for the South West District seeking access to the archive for sight of the first reports by HM Inspectors. A leather-bound report for 1856 provided some of the information that he wanted. He also made use of newspaper reports of the period.

The men and boys employed by Thomas Insole at Cymer Colliery near Porth in the Rhondda had been on strike for five months in the spring of 1854 because of their fear of gas below ground. They worked with candles and burning off the gas during the course of the shift seemed not to be safe. They sought better ventilation and an undertaking from the owner that impartial, trained officials would be employed to inspect the working places before men were sent to work to ensure that they were free from gas. The owner had a different view. No doubt he was aware that agricultural workers in Dorset had been convicted and transported to Australia for forming a trade union (the offence was that of taking an oath similar to that of the Freemasons). He was determined to be able to hire and fire, as he put it, 'without consulting any body of men' and he refused the men's demands.

An 1850 Act of Parliament had brought about the appointment of the first government Inspectors of Mines. The inspector for the Southwest in 1851 was Herbert Francis Mackworth, a young civil engineer from the West Indies, one of four inspectors for the United Kingdom. With such a large area of territory for so short a period, it is remarkable that he had visited Cymer mine by 1856. When he saw that there were two shafts he suggested to the owner that better ventilation could be achieved if one shaft was used as downcast and the other as upcast instead of using a fire at the base of the Cymer

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shaft with a partition in the shaft to induce air to descend. Thomas Insole ignored the advice.

On 15 July 1856, when the men had returned to work, an explosion occurred which killed 114 men and boys. Although there were many volunteers from neighbouring mines, entry to the mine was not possible because of the afterdamp (rich in carbon monoxide) and no person was rescued from the west workings.

Herbert Mackworth had drafted rules for the better management of mines but they had no legal force. The law available to him for enforcement was the common law of manslaughter. An inquest had recorded a verdict of manslaughter and a prosecution seemed appropriate.

The trial was heard in Swansea Assize court before His Lordship Judge Baron Watson. The judge was plainly unsympathetic to the prosecution and he commented freely during the trial to the effect that if mine owners, whose education was not comparable with that of the new government inspectors, were to be burdened with requirements imposed by the inspectors, the least that one could expect was that the mines would be prevented from blowing up. The accused manager and two junior officials were acquitted.

Cymer is an early example of an avoidable mine explosion. Sadly there were to be many more before regulation became effective. In 1913, the explosion at Senghenydd mine killed 439 persons.

Asbestos

After World War II, Acre Mill in Hebden Bridge, Yorkshire, illustrated the early failure to control the asbestos hazard. Medical evidence was ignored. The law was inadequate and ineffective. Employees lacked representation and involvement in health protection. An under-resourced inspectorate, not professionally qualified, unable except by sanctions to claim the attention of management and lacking on-site powers, failed even to confine the hazard to the factory.

In 1930 a Factory Inspectorate report by Merewether and Price confirmed that many asbestos workers were dying within 15 years of starting work. A link between lung cancer and work with asbestos was confirmed in 1947 by HM Medical Inspector of Factories. By 1960, it

was confirmed that mesothelioma – a fatal cancer of the chest wall – was caused by asbestos.

In March 1976, a report by the Ombudsman, Sir Alan Marre, criticised the inspectorate for its lack of determination and decisiveness in its 30 years work with Acre Mill. Forty former employees had died of asbestos related diseases and 200 others, including relatives of employees, had contracted such diseases. A judge in one of the common law cases which found the employer negligent described the Factory Inspectorate as ‘supine’.

Such was the prelude to the establishment of the Health and Safety Commission. In 1983, the Health and Safety Commission advised that even the tighter asbestos dust control levels set that year were not safe levels but were the upper limit of permitted exposure. Since then the controls have been progressively tightened leading to an almost total ban on the importation of asbestos. The Commission is still consulting on proposed improvements in the legislation.

Figure No 1 contrasts two press cuttings dated 1985 and 1995. The statement in 1985 that the risk was ‘tiny’ was based on estimates made by Dr Julian Peto and Professor Richard Doll. It was Professor Julian Peto who in March 1995 published with others in *The Lancet*¹¹ estimates of mortality indicating that deaths would peak at 9000 per year in the year 2025 instead of peaking at 3000 per year in the mid-1990s as had been forecast. The difference between the two estimates represents additional deaths numbered in hundreds of thousands. More recent data suggests that the peak may not be quite so high but that the tail of the incidence graph may be long. It is no longer installers but demolition workers and workers in service industries who are at risk.

The decade between the two estimates was a decade of deregulation in which the budgets for the Health and Safety Executive were reduced in relation to its tasks.

Sampling of Respirable Mine Dust

In the recently privatised coal industry in 1994, it became clear from comparison of respirable dust samples collected by mine staff with those collected by visiting scientists that the mine samples showed increasing deviation and possible understatement of the levels of

Risk of asbestos disease 'is tiny'

By Seumas Milne

Asbestosis is becoming a disease of the past and the risk of getting cancer from asbestos in homes and offices is tiny, according to a report published yesterday by the Health and Safety Executive.

The study has been written by two of Britain's leading experts on the causes of cancer, Sir Richard Doll and Professor Julian Peto, and was presented by the executive yesterday as an answer to the widespread fears about asbestos.

The executive's director-general, Mr John Rimmington, said the report would help people to get the risks from asbestos in perspective. "After all, we have lived, we do live, and for some purposes must continue to live with asbestos."

But campaigners for greater awareness of the dangers of asbestos have already complained that the study will lead to complacency. Mrs Nancy Tait, of the charity Spaid, which looks after the interests of workers suffering asbestos-related diseases, said yesterday: "This report will simply encourage employers to find an excuse to limit the protection they give to these people in the course of their work."

The report says that exposure to asbestos can cause four diseases: asbestosis, lung cancer, throat cancer and a form of cancer known as mesothelioma. About 1,200 people die every year in Britain from one of these diseases because they have worked in the asbestos industry.

Sir Richard said that these figures should be seen in the context of death rates in other hazardous jobs. One in 5,000 construction workers died every year because of occupational hazards; one in 20,000 radiation workers; one in 400 deep sea fishermen; and one in 5,000 asbestos textile workers.

The report's cautious guess is that only one person dies in Britain every year because of exposure to asbestos in the environment. But Sir Richard admitted yesterday that electricians, plumbers, and insulation workers were at risk from unexpectedly disturbing asbestos lagging.

Sir Richard discounted suggestions that car brakes, which are lined with asbestos, constituted a health hazard. The heat caused by braking made the asbestos harmless, he said.

Asbestos cancer deaths 'to treble'

Chris Mihill
Medical Correspondent

DEATHS from lung cancers caused by asbestos will treble among tradesmen such as plumbers and carpenters over the next 20 years, scientists and safety experts said yesterday.

Many skilled workers, including electricians, carpenters, gas fitters and plumbers, do not know the risk from asbestos when they renovate or maintain buildings, a new report says. Among some groups mesothelioma, a cancer of the lung lining, is expected to kill one in 100.

The research, published in the *Lancet*, has been carried out by Julian Peto, of the Institute of Cancer Research in Surrey, and statisticians from the Health and Safety Executive. They looked at mesothelioma deaths in England, Wales and Scotland since 1968, and predict trends until 2020. Deaths rose from 154 in 1968 to 1,009 in 1991, and are expected to reach 3,000 a year in 2020.

For every mesothelioma death, two people will die from one of the commoner types of lung cancer, also as a result of exposure to asbestos, the HSE said yesterday. In 2020, therefore, total asbestos-related deaths could reach 9,000 a year.

"These data indicate that mesothelioma deaths will continue to increase for at least 15, and more likely 25, years. For the worst affected — men born in the 1940s — mesothelioma may account for 1 per cent of all deaths," the report says.

"Asbestos exposure at work in construction and building maintenance will account for a large proportion of these deaths, and it is important that such workers should be aware of the risks and take appropriate precautions," it adds.

Most at risk are metal plate workers — including shipyard workers — and people building vehicle bodies. The next highest risks are among plumbers, gas fitters, carpenters and electricians.

Asbestos imports were at their peak during the 1960s and 1970s, when it was used extensively in insulation boards and building tiles.

"Most of the asbestos ... is still in place in buildings, and carpenters, plumbers, electricians and other workers involved in building renovation, maintenance and demolition may still suffer unsuspected exposure.

"These workers often operate individually or in small unmonitored organisations, and it may be impossible to obtain reliable information on the extent of their exposure. A public information campaign ... seems justified", the report adds.

Peter Graham, the HSE's senior health policy official, said: "If you are a worker in these trades ... you should always ask if the building contains asbestos before you start work. In spite of today's legal controls, we believe the risk of exposure to asbestos is still very real for some workers, especially when drilling, cutting and sanding of asbestos materials is carried out."

March 3, 1995

April 25

1985

Figure 1

respirable dust. An audit by the inspectorate showed that mine samples were unrepresentative of working conditions with consistent bias towards underestimation of harmful dust. Even in this belated investigation the inspectorate failed to contemplate intimidation by management as a generic cause of corrupt sampling even though the law was based on self-regulation and self-inflicted penalties for excessive dust. Instead the inspectorate continued to claim success for the industry in dust control when the number of new cases of pneumoconiosis had been rising for six years.^{12,13}

Under-Reporting of Injuries

Exceptional levels of under-reporting of injuries causing more than three days absence from work and the possibility of the intimidation of employees by management were denied by the Chief Inspector of Mines who insisted in a BBC Radio 4 interview that there was no evidence of under-reporting. Data from the Department of Employment Labour Force Survey published by the Health and Safety Executive in its annual report indicated that 36% of mining injuries causing three or more days incapacity were not reported to the Executive as required by law. The allegations were subsequently investigated by HM Inspectors in detailed audits¹⁴ which showed 52% under-reporting. The Inspectorate's report for 1997-98¹⁵ showed a threefold increase in the rate of all reported injuries per 100 000 manshifts compared with the year 1995-96. It is possible that the public was misled on one of the consequences of privatisation when there was a need for better informed debate, for example, on proposals to privatise British Rail.

Was there a Common Cause of the Health and Safety Executive's Less Successful Ventures?

The author submits that the 'minimalist approach', mentioned without correction by the then Director General, John Rimington, was a common cause of failure by the Health and Safety Executive and other parts of Government in the 1990s. Deregulation was government policy. A deregulation unit was established in every department of government and, after a brief interim, health and safety legislation was no longer exempt. The author recalls the former

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Chairman of the Commission describing deregulation as a first priority.

By 1994 legislation was in place which enabled ministers to repeal primary legislation by being of the subjective opinion that an unnecessary burden should be removed from a duty holder. In such a culture held with such conviction it is not surprising that calamities followed. Bovine Spongiform Encephalopathy (BSE) was one of them. Piper Alpha, already mentioned, was another, but with a considerably longer gestation period. In the case of BSE, Ministry of Agriculture documents provided the explanation for the abandonment of proposed restrictions on animal feed in memorable language. It was to reflect the wish of ministers that 'The industry should itself determine how best to produce a quality product'.

The Boyd Report

A report commissioned by the Department of Trade and Industry¹⁶ as an overture to the planned privatisation of British Coal invaded the Health and Safety Commission's territory in 1993 with recommendations on changes in mining legislation. In the author's recollection it is by far the most irresponsible report ever paid for by the British taxpayer. It proposed changes to allow longer hours of work, to repeal the law on systematic support of mine roof, to allow the use of cutting torches and welding equipment below ground, to allow the extended use of non-flameproof equipment below ground, to allow damaged electrical cables to be repaired below ground (every one of them a potential mine explosion) and to allow the 'Big Bite' deep cut system of work with large areas of roof without support or roof bolts. None of the proposals was supported by any risk assessment as was required by the Management of Health and Safety at Work Regulations 1992. Injury rates in the countries where such methods were allowed were considerably higher than those for Britain.

The Commission's response was every bit as remarkable. It was to propose in no less than 12 highly contentious and indefensible drafts the Management and Administration of Safety and Health at Mines Regulations.¹⁷

Deregulation led to the removal of a central pillar of the Mines and Quarries Act 1954 – Section 12. The duty of coal mine supervisors to

inspect every workplace and to make tests for gas was delegated to others who could lack authority to gain access or instruct remedial action. Thirty-five modifications of eight statutory instruments were made to erase the word 'deputy' from the legal vocabulary.¹⁸ The qualifications previously required of supervisors were lowered and a prohibition of the appointment of contractors as officials was removed. Even the powers of HM Inspectors were reduced. Company directors previously strictly liable with others for any proven breach of the Acts or regulations were given immunity from that liability.¹⁹

The processes which led to the Mines Inspectorate's acceptance of draft management regulations which, for example, proposed, unsuccessfully, the loss of workmen's inspectors' entitlement to inspect the workplace by the repeal of Section 123 of the Mines and Quarries Act 1954 should be made public. Few of HM Inspectors were involved in those bizarre proposals and the reasons for their exclusion from consideration of such unwarranted changes should also be made public. They became law without parliamentary debate. Parliament was in recess.

A judicial review of the proposals was made in the High Court in which the author was pleased to be involved. The judges retreated from a detailed review when they confirmed that Parliament, by then, had debated the matter. Members of the South Wales Institute of Engineers will recall that one of the few recorded debates outside Parliament on the regulations took place in Cardiff²⁰.

Bilsthorpe

Some of the Boyd recommendations were adopted and accidents occurred. At Point of Ayr mine with some 40 square metres of unsupported roof two men were injured when the unsupported roof fell. The extensive fall of roof at Bilsthorpe Colliery, where three men were killed, became the subject of an inquiry by Professor Sir Bernard Crossland FRS.^{21,22} Both systems of work were the subject of exemptions from the support regulations granted by a government inspector. At the Middlebult mine in the Republic of South Africa where the 'Extended Cut – Big Bite' system was used, 53 miners were killed in May 1993 in an explosion of gas and dust.²³

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Railtrack and the Train Operating Companies

It is not unfair to state that where a competent regulatory agency is functioning with adequate powers and resources the failure of an operator to manage familiar hazards with disastrous consequences is as much a failure of regulation as it is of management. What then can be said for the effectiveness of the regulation of rail transport – by far the safest form of transport in Britain notwithstanding four recent crashes?

Southall

At Southall, in 1997 an inter-city train approaching Paddington went through signals at danger intended to cause it to give way to a freight train. It collided with the freight train at speed. Automatic train protection (ATP), similar to the protection installed on mine shaft winding engines as a precaution against driver incapacity or error, was not in use because of lack of maintenance and training. Automatic train protection in other countries is regarded as essential to high speed trains because reliance alone on human responses to visual signals at speeds such as 125 mph is seen as not warranted. The industry had resisted proposals for the widespread use of automatic train protection on grounds of cost and the government had appeared to be impressed by the reported cost-benefit analysis. A successful prosecution of the train operating company, Great Western Trains, resulted in a fine of £1.5 million.

Mr Greg Tucker, writing to *The Guardian* newspaper on 31 August 2000 as secretary of the train crew conference of the RMT trade union, rejected a claim by Mr Vic Coleman, the Health and Safety Executives HM Chief Inspector of Railways, that HSE had always used its powers when warranted. Mr Tucker claimed that HSE reacted only after major accidents and that his union had been 'fobbed off' when raising issues with the Inspectorate.

Ladbroke Grove

At Ladbroke Grove near Paddington on 5th October 1999 a Thames train went through signals at danger and collided with an intercity train approaching London at speed. Thirty-one people died. Recently installed features of the new Heathrow Express system had made the troublesome signal 109 less visible. The reorganisation for the

Heathrow Express with higher speeds and more bi-directional working, which had been predicated on the use of automatic train protection, had proceeded without it. The driver of the Thames train was barely out of training and lacked training for that route. A fine of £10 million levied by the other rail regulator, Mr Tom Windsor, for late running of trains was many times higher than that imposed on Great Western Trains by the Health and Safety Executive and the courts for unsafe operation. Mr Windsor was appointed to the post of Rail Regulator by the Secretary of State under the provisions of the Railways Act 1993 with exceptional powers.²⁴

Broken Rails – Hatfield

An increasing number of broken rails was causing concern to the regulators. Railtrack had decided against purchase of rail inspection equipment in purpose designed vehicles. Rail grinding to minimise the spread of surface cracking (typically at the inside corner of the outside rail) had almost been abandoned. With increased freight and passenger traffic rail maintenance was not keeping pace with wear and tear and the number of broken rails reported remained alarming. For ten months rail defects had been reported in curved track at Hatfield in Hertfordshire but action to improve the track had been postponed and no speed limit had been set for the defective track. On 17 October 2000, a 450 tonne passenger train with a trainee driver under instruction rounded the curve at 115 mph. A defective rail fractured into 300 pieces. Four people in the London to Leeds train were killed and 70 were injured.

Two months before the derailment, Mr Tom Windsor, the rail regulator, had written to the Chief Executive of Railtrack, 'I regard the excessive level of broken rails in two consecutive years, 952 in 1998-99 and 917 in 1999-2000, as prima facie evidence of a breach of condition 7 of Railtrack's network licence.' Section 4(3) of the amended Railways Act 1993 requires the Rail Regulator to '...take into account the need to protect all persons from danger arising from the operation of the railways taking into account, in particular, any advice given to him in that behalf by the Health and Safety Executive...' In his annual report for 1999-2000 Mr Windsor referred to Railtrack's lack of an asset inventory with which to plan renewal and maintenance, to the large

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growth in freight traffic and to increased congestion on the network. He reported also that he had sought advice from the Health and Safety Executive on broken rails.^{25,26}

One week before the Hatfield derailment, Mr Windsor was reported as having agreed to hold in abeyance until 2001 a potential fine of £35 million for underperformance including the late running of trains.²⁷

In the hiatus that followed the Hatfield derailment and Railtrack's admission of defective track at 81 sites there were speed restrictions and massive curtailment of services while millions of pounds was spent on track renewal and track repairs. By the end of the month speed restrictions affected 206 sites. The head of the Strategic Rail Authority, Alastair Morton, said that Railtrack had suffered a nervous breakdown.

The Regulation of Restructured Privatised Undertakings

On 20th October the Chief Executive of Railtrack, Gerald Corbett, said that the railways had been 'ripped apart at privatisation'. He wanted to see fewer train companies and he attacked the 'years and years of underinvestment and the fragmentation created at privatisation, plus a 25% increase in the number of trains'. On 8th November Mr Corbett said that after inspection at 2800 sites the company had found many one-year-old rails with cracks. Discussing the 'wheel-rail relationship' he said 'There are trains on the track in which we – who own the track – have no say in their design or specification and that can't be right for optimising the wheel-rail relationship.'

On 21 October 2000 Mr Vic Coleman speaking after the publication of an interim report on the Hatfield derailment said that he would not hesitate to close down track sections if he thought passengers were in danger. He stressed that the Health and Safety Executive would not hesitate to bring criminal prosecutions if it thought they were necessary.

On 10th November 2000, in evidence to Lord Cullen's inquiry into the Ladbroke Grove (Paddington) disaster, Mr Corbett said 'Power, control and accountability should be set in the same place'. He added that it had not been clear who was responsible for safety on Britain's railways and he blamed the regulatory bodies for not providing proper leadership. He said that the industry had three regulators when there was only need for one.

It is presumed that Mr Corbett was referring to the shadow Strategic Rail Authority, to Mr Tom Windsor of the Office of the Rail Regulator, and to the Health and Safety Executive's Railway Inspectorate. He could have mentioned that Railtrack itself then had a regulatory role in accepting the safety cases of the train operating companies. There has been no denial of the report in the BBC TV Panorama documentary on 4th February 2001 that not one director on the board of Railtrack was a qualified railway engineer.

The Railways (Safety Case) Regulations 2000 with effect from 31 December 2000 moved the responsibility of accepting train and station operators' safety cases to the Health and Safety Executive. The new regulations will assist HM Railway Inspectorate in appraising proposals for change in the ownership, funding, and management of London Underground Transport (LUT).

Selby – Road Vehicles on the Track

The potential for horrendous damage and injury was illustrated by the derailment of a southbound intercity city train by a Landrover and trailer which had left the M62 motorway. The derailed train then collided with a northbound freight train with 1000 tons of coal. Thirteen people were killed and 75 were injured. The Railways Act 1993 defines track as including bridges, fences and structures used in connection with track. No doubt the investigation will lead to a review of how other features and activities can interact with railways such as overloaded bridges, unsafe slopes and retaining walls, and road vehicles out of control.

Other Proposed Privatisations

The Government's proposals include privatisation of other high risk undertakings – air traffic control, British Nuclear Fuels–Magnox, and London Underground Transport. Many objections have been raised and linked with the Health and Safety Executive's recent difficulties.^{28,29} The proposals for London Underground Transport include a fragmented structure similar to that created from British Rail.

Large scale organisational change, untested structures, reduced representation of core engineering disciplines in line management, 'downsizing' to impress institutional investors, undue delegation to

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contractors, inadequate employee involvement and lack of competition are factors in recent failures. The attempts to create accountability and a safe regime through a multiplicity of competing regulators, at least in the railway industry, appear to have failed.

Revitalisation

The use of the word is justified. The indices of the Health and Safety Executive's enforcement activities for the last two decades show that deregulation was not better regulation. Taking into account European based law, the volume of legislation actually increased. Much of the new law was fully justified by the common social policies required for a slowly emerging common market and as good management practice. It was endorsed by ministers and much of it was overdue; such as requirements that miners be provided with bathing facilities. The need to integrate the new law leaves much tidying up to be done. It is now acknowledged that some levels of duty were understated in the United Kingdom Approved Codes of Practice and should appear in regulations.^{30,31}

Some out of date legislation was revoked, but much high quality legislation was modified to produce inferior material as in the law on egress from mines. The justification for reducing the powers of HM Inspectors to require qualified managers for certain mines was not produced. Administrative decisions, lacking legal authority, were made to diminish the effectiveness of inspectors as in the proposed 'no inspection agreements' and the advice to duty holders that HM Inspectors would give notice of an intention to serve an improvement notice. Alongside such changes, unmistakable in their overall effect of supporting the 'minimalist approach'³² and the 'light touch'³³, was the decreasing number of enforcement notices served, prosecutions made, and major injuries investigated (Table 1). Commitments made in Europe, for example on consultation with employees, were disregarded or delivered late.³⁴

Revitalisation is needed because, in the words of the former Chairman of the Commission, Sir Frank Davies, after describing studies of the costs of injuries and ill health, any balance between the costs (of better enforcement) and the benefits (in good health) is still a long way off.

Table I

ENFORCEMENT ACTION			
Year	Improvement notices served	Prohibition notices served	Prosecutions
1990/1	8,489	4,249	2,312
1991/2	8,395	4,024	2,424
1992/3	7,462	4,452	2,157
1993/4	6,484	4,105	1,793
1994/5	6,512	4,296	1,803
1995/6	5,219	3,467	1,767
1996/7	3,770	3,674	1,490
1997/8	4,411	4,500	1,627
1998/9	6,328	4,516	1,797

There have been two decades of gross underestimation of the contribution that employees and their representatives can make to health and safety and the success of an undertaking.

Mr Bill Callaghan, the Chairman of the Commission appointed in 1999, and the Deputy Prime Minister, John Prescott, on 7 June 2000 launched a 44 point action plan called the Revitalising Health and Safety Strategy Statement.³⁵ This was followed in December 2000 by an announcement of proposed new legislation agreed in outline by the government to make the law on safety representatives more effective where trade unions are not recognised by the employer.³⁶ The announcement quoted recent research confirming that unions have a positive impact in reducing injury rates.³⁷

In 1999, more than 30 000 employees contacted the Health and Safety Executive. More than half were complaints about health and safety which on investigation were found to be justified. Of those one quarter involved serious risks requiring priority action.³⁸

The Commission's strategy statement deals persuasively with a wide range of topics including under-reporting of injuries, openness and accountability, enforcement in the courts, company directors' responsibilities, promoting worker participation, improving management in the public sector, and raising awareness in education and training.

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Investigation and Prosecution Policies

A Home Office Consultative Document 'Reforming the Law on Involuntary Manslaughter' was published in May 2000, and a Health and Safety Commission Consultative Document on the *Health and Safety Responsibilities of Directors*³⁹ proposed a code of practice on directors' responsibilities which included advice on the allocation of health and safety duties to a particular director. It was not clear that the advice would lead to the effective allocation of authority with responsibility or that it would deal with acts of omission by all directors. Changes in the penalties available to the courts for offences by individual directors and others and legislation defining all directors' duties proposed in the Strategy Statement⁴⁰ were more promising. It is possible that the problem of failed prosecutions of charges of corporate manslaughter for lack of the proven culpability of at least one director will be solved by the prosecution of all executive directors where there is culpability by omission.

Resources

A draft revised enforcement policy statement distributed by the Commission for comment in June 2000 dealt with criteria for investigation and prosecution⁴¹. It was earlier reported that only 6% of major injuries were investigated by inspection of the workplace⁴². The policy statement was specific about investigation at the site only in the case of fatal injury. Investigation needs to be defined as including a site inspection and the interviewing of witnesses. Paper investigations lead to undue reliance on the employer's version of events and employees may have no knowledge that an investigation ever took place. They will have no access to an inspector and no Section 28(8) disclosure of the findings of the investigation is likely to be made to them. The investigatory task needs closer definition if only to quantify the task and to ensure that there are sufficient inspectors to discharge it.

When recruited the inspectors should not be disadvantaged by legislation which refers to 'burdens' imposed on duty holders⁴³. The Chairman has rightly said that those who can not manage health and safety can not manage.

The Commission published cop-outs in its 'Possible Criteria'

paper⁴⁴. 'Inadequate resources due to other priorities' as a reason for non-investigation should be deleted. There are few priorities greater than finding out how someone was killed or maimed. If the Executive can not find out it will not be capable of developing appropriate policies and legislation either here or in Europe. Recent reports by HM Inspectors of the Nuclear Safety Directorate⁴⁵ described the incapacity of the Dounreay management even to recognise the potential for criticality in improperly stored nuclear waste. They attributed the failure to privatisation and contractorisation. The minister could hardly have read the reports when he asserted that privatisation would solve similar problems at Sellafield. The need for joined up government was thus illustrated: causes, remedies and resources must be related.

In a response to the publication⁴⁶ the author drew attention to a further cop-out: the 'possible criteria paper' at item C3 states that an investigation may not take place in circumstances where 'No reasonably practicable precautions available for risk reduction.' It is always dangerous to leave out the verb and to use disagreeable grammar. How will the unavailability, the reasonableness or the practicability of a precaution be known without investigation? Something less circular is needed here and C3 should be deleted. In 40 years of injury investigation the author did not find such a circumstance.

The Executive, partly because of railway incidents, has a funding crisis and projections of a £10 million overspend this year. It is having to consider more charging for information services.⁴⁷ An 'extra' £45 million over three years announced in December 2000 included an envisaged £9 million from charges and the remainder is to come later! A spokesman for the Department of Environment, Transport and the Regions (DETR) confirmed that there is no new cash for 2001-2. The Executive will ask DETR to provide extra resources for railway and nuclear industry regulation. The Chairman is understandably 'disappointed'. His disappointment is justified given that the government will provide an extra £1 billion for the privately owned Railtrack because of the crisis generated by the Hatfield derailment and earlier neglect. Over 10 years £26 billion of public funds will be contributed. The precautionary principle requires better than that failures be funded at the expense of regulation.

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In 'Regulating the Higher Hazards'⁴⁸ the Executive was already comparing railway regulation with nuclear regulation and preparing to meet the recommendations of the Joint Inquiry under Professor Uff and Lord Cullen on the Ladbroke Grove collision. The Hatfield derailment and the Selby collision will no doubt provide further reasons for thinking of pro-active as opposed to reactive involvement.

Conclusions

The Commission will need a listening government and resources appropriate to the tasks outlined in the Strategy Statement. It is presently underfunded and its failures have cost lives and billions of pounds.

Deregulation must mean better regulation and not less regulation.⁴⁹

Structures which set regulators in competition with each other must be avoided. The problem in Railtrack, for example, could be resolved by making the penalties for running on broken rails higher than those for the late running of trains.

The hazards of privatising high-risk monopoly undertakings with defective management structures and undue reliance on contractors have been demonstrated. They must not be repeated in the nuclear industry, in air traffic control, or in London Underground.

We should look forward to a half-size national health service which is deprived of patients because people have healthy workplaces and a healthy environment.

References

- 1 The Health and Safety Commission and the DETR *Revitalising Health and Safety* Consultative Document July 1999 (and Strategy Statement June 2000)
- 2 Gifford, C *Revitalising Health and Safety a Response to the Consultative Document* July 1999
- 3 HSE Nuclear Safety Directorate *Safety Audit at Dounreay 1998* HSE Books Sudbury Suffolk CO10 6FS
- 4 HSE Nuclear Safety Directorate *Intermediate Level Waste Storage at Sellafield 1999* HSE Books Sudbury Suffolk CO10 6FS
- 5 See endnote 2 above
- 6 Brown, Paul in *The Guardian* 3 September 1997 quoting Department of Health data on 3300 adolescents.
- 7 In response to this finding by the consultants for the Association of Nuclear Free Local Authorities the then Chief Inspector of Nuclear Installations, Dr Sam Harbison, commented only that it was a low probability event of high outcome.
- 8 Galbraith, J K *A Life in Our Times* Transworld Publishers Ltd 1981
- 9 The Deregulation and Contracting Out Act 1994 The Stationery Office London
- 10 Lewis, E D, *The Cwmer Rhondda Explosion*, Transactions of the Honourable Society of Cymmrodorion 1976.
- 11 Peto, Julian, Hodgson, John T and others: *Continuing Increase in Mesothelioma Mortality in Britain* The Lancet, Vol.343, 4-3-95, UK
- 12 HSE The Mines Inspectorate *Report of the Investigation into Dust Sampling at British Coal Mines* Undated, probably 1994. (The reference to the 'continuing reduction' in the incidence of dust disease is at page 5).
- 13 Health and Safety Commission *Annual Report 1995-96 Health and Safety Statistics* Figure 2.5 at page 76 shows that the number of new cases of pneumoconiosis had been rising for the previous seven years.
- 14 HSE HM Inspectorate of Mines *Audit of RIDDOR Reporting at Large Coal Mines* June 1998 HSE Books Sudbury Suffolk UK
- 15 HSE HM Inspectorate of Mines *Report of Accidents and Dangerous Occurrence for 1997-98* in *International Mining and Minerals* May 1999 p129 The Institution of Mining Engineers Doncaster DN1 2DK UK
- 16 The John T Boyd Company of Pittsburg, Pennsylvania, *Independent Analysis: 21 Pit Closure Review of Collieries* Report No 2265.5 January 1993 The Department of Trade and Industry London UK
- 17 The Management and Administration of Safety and Health at Mines Regulations 1993 SI 1993/1897 The Stationery Office London

Safety First?

- 18 Gifford, C *Deregulation, Disasters and BSE* Spokesman Press Russell House, Bulwell Lane, Nottingham NG6 0BT, 1996.
- 19 By the disapplication of Section 1 of the Mines and Quarries Act Section 152 ceased to affect the directors of coal mines.
- 20 Gifford, C , *The European Community Extractive Industries Directive: Mines and Quarries*; 'The Mining Engineer' March 1994 The Institution of Mining Engineers The Parade Doncaster DN1 2DY
- 21 The Health and Safety Commission *Public Hearing Following the Extensive Fall of Roof at Bilsthorpe Colliery* A report by Professor Sir Bernard Crossland 1993 The Commission London
- 22 Gifford, C *Proof of Evidence presented to the Public Hearing Following the Extensive Fall of Roof at Bilsthorpe Colliery* 1993 The Health and Safety Commission London.
- 23 Davies, A W, Isaac, A K, and Cook, P M, *Investigation of a Coal Mine Explosion and Relevance of Risk Assessment (Middlebult)* The Transactions of the Institution of Mining and Metallurgy Section A Volume 109 May-August 2000 The Institution Doncaster DN1 DY UK.
- 24 The Railways Act 1993 as amended by the Transport Act 2000.
- 25 Annual Report of the Office of the Rail Regulator for 1999-2000 Holborn London EC1N 2TQ
- 26 In *Rail Failure Assessment for the Office of the Rail Regulator* by Transportation Technology Center Inc October 25 2000 a broken rail is defined as a rail with a complete break or a piece missing.
- 27 Keith Harper *The Guardian* 10 October 2000
- 28 In *Safety Audit at Downreay*, HSE Books 1999, serious defects in the management of nuclear waste were attributed to privatisation and the delegation of management functions to contractors.
- 29 Jenny Bacon, HSE, Director General, reported in *Health and Safety at Work* journal April 2000, said that HSE was concerned by the rail industry's poor safety culture. An internal inquiry report introduced by David Eves, HSE Deputy Director General, on 17 April 2000 referred to the 'conflicting demands' on Railtrack and to HSE's underestimation of the regulatory task.
- 30 HSE Consultative Document CD 131 *Train Protection and Mark I Rolling Stock* HSE Books Sudbury Suffolk CO10 6FS May 1998
- 31 Gifford, C Response to the HSE Consultative Document CD131 19 September 1998
- 32 The author recalls the then Director General, Mr J D Rimington, using this expression.
- 33 *HSE Admits failings of HMRI in run-up to Ladbroke Grove Incident* an HSE

Christopher Gifford

- internal inquiry report reported in *Health and Safety at Work Journal* June 2000 Butterworths Tolley Publications Croydon Surrey CR9 5AF.
- 34 The enactment of draft 'Radiation Emergency Preparedness and Public Information Regulations' required by the Euratom Directive to deal with Chernobyl type events is now almost a year overdue.
- 35 See endnote 1
- 36 HSC News Release 15 December 2000
- 37 Discussion Paper 468: *Trade Unions and Industrial Injury in Great Britain* Litwin, A S, Trade Centre for Economic Performance, London School of Economics and Political Science.
- 38 Health and Safety Commission and the DETR *Revitalising Health and Safety: Strategy Statement* June 2000
- 39 Ref. CD 167 January 2001
- 40 See endnote 1.
- 41 HSE publication *Prosecution and Investigation Policy and Draft Revised Enforcement Policy Statement* 21 September 2000 (including *Possible Criteria for investigating RIDDOR Reports*)
- 42 Fourth Report of the Select Committee, Department of Environment, Transport and the Regions House of Commons 2000
- 43 See endnote 9.
- 44 See endnote 41
- 45 *Safety Audit at Downreay*, HSE Books 1999
- 46 Gifford, C *Prosecution and Investigation Policy – Comments in Response to the Draft Revised Enforcement Policy Statement* 21 September 2000.
- 47 Editorial comment *HSE Funding: Do the Figures Add Up?* *Health and Safety at Work Journal* February 2001 Butterworths Tolley Publications Croydon Surrey CR9 5AF
- 48 HSE Discussion Document DDE15 September 2000 HSE Books Sudbury Suffolk CO10 2WA
- 49 Gifford, C *Deregulation, Disasters and BSE* European Labour Forum Russell House, Bulwell Lane, Nottingham NG6 0BT 1996

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