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Health and Safety: is Britain going backwards?

1. Ladies and Gentleman, I think my first duty today is to remember Allan St John Holt , in whose honour this annual lecture is given. Unlike some of the previous lecturers in this series , I never knew him personally having only moved into the area of workplace health and safety in late 2005. It is clear however that he was a man of great knowledge about and commitment to health and safety. He also saw it as part of his function to provoke and would have been pleased that commentators have described him as something of an " iconoclast" . In my view perhaps even more impressively he once succeeded in waylaying one of predecessors as Chief Executive of HSE, the formidable and very able John Rimington , at a dimly lit IOSH Party in a pub in Leicester. His purpose- I should immediately explain - was to talk to John about ladders and he accomplished this task in John's immortal words by making the subject " as inherently interesting as possible" (1) ! Clearly a man who believed in taking every opportunity of advancing health and safety and I salute his memory.

2. Since I have sought to imitate Allan in giving this lecture what I hope he would have regarded as a suitably iconoclastic title, I ought just to give a few health warnings about what I am going to say. The first is that although it inevitably reflects much of my personal experience in the nearly eight years I spent as Chief Executive of HSE before my resignation in 2013, the talk is no more than a reflection of my personal views and HSE cannot be held responsible for them. Similarly the talk also reflects the seven months

I spent as interim Chief Executive for WorkSafe New Zealand , which was a fascinating experience, but again WorkSafe New Zealand cannot be blamed for what I have to say. Equally and no doubt disappointingly from the point of view of some members of the audience, the talk is not an insight into the " secret history" of HSE but rather based exclusively on published sources. Finally I should perhaps stress that having spent some thirty nine years debarred from active party politics, I have no desire to change the habits of a lifetime! Hence this talk is not targeted at any political party or present or previous Government. I hope it will however be of interest to all who have responsibility in this area.

3. Hopefully this string of caveats not impair your appetite for what I am going to say ! Let me now be clear as to the theme of this talk. It is that there is much to celebrate in what has been achieved by way of health and safety in Britain but that there are perhaps more questions to be asked as to whether we are doing enough to maintain and preferably improve on what is achieved, whether we are simply neglecting some awkward issues and whether we are really taking the right track in winning public sympathy for what we are trying to do.

4. In many ways the easy part is to describe the UK's success in this area and the reasons for it. In doing so I in no way want to be " grudging" - it is a very creditable story. **[Slide2]** The UK has in the last 50 years or so since Robens pulled off the trick that he advocated of embodying health and safety in the practice of both sides of industry and thus left the regulator acting as a catalyst rather than a body condemned constantly to take centre stage in the absence of secure knowledges and practices elsewhere. The UK is also in my view fortunate in the number of skilled health and safety practitioners it has and with the voluntary bodies operating in the sector. Their fate of course is to be unappreciated and I noticed recently even HSE at Board level taking this line (2). The truth however , recognising that all professions including my own have their faults and failing members, seems to me to lie rather in that these sources of expertise pay the penalty for their success . I think this is well illustrated by the comment made by a rather difficult client to a health and safety consultant colleague whom I know " I don't know why we spend so much money on health and safety " he said continuing" we never have any accidents" ! **[Slide3]**It is also clear that as far as the EU is concerned the UK leads the field (3) on the basis of the latest stats (2012) and this is similar to the position it has held in recent years.

5. Even concentrating on the statistics for fatalities (and there is much more to health and safety than this), I think there are two causes for concern. First the fact that we happen to have been "top of the class" in 2012 should not blind us to the fact that we could do better - and thus reduce the sum of human misery. Whilst I personally agree with those, including Sir Bill Callaghan in his earlier lecturer in this series (4), who believe that some accidents are genuinely unavoidable I must say equally that in my experience at HSE much of what went wrong was simply a failure to observe perfectly well known and well established procedures. Hence I am in no doubt that we could and should do better. It is however in my view even more important that we do not fall in to the trap of believing that without continual reinforcement of safety messages, even present levels of comparatively low fatalities can be maintained. Here it seems to me we have indeed gone backwards and I would like to illustrate this by reference to the issue of mesothelioma.

6. Most mesothelioma deaths, as this audience will know, are a legacy of past occupational exposure when asbestos was widely used in the construction industry. There were a total of 2538 such deaths in 2013(5). Mesothelioma is a singularly painful disease, can be caused by the ingestion of an unquantifiable small amount of fibre and gives rise understandably to very high claims for damages where liability can be proved. The control measures and licensing system are in place but of course the key issue is whether they are effectively and continually observed. The temptation to skip essential precautions when in a hurry or when the mind is elsewhere must always be there particularly as there is no obvious sign of the danger. Prevention measures when I arrived in HSE were wisely concentrated both on the regulatory regime and its enforcement on the one hand and on a proactive workplace poster campaign entitled "Asbestos : the hidden killer" [Slide4] on the other. However the latter campaign, which independent evaluation found to have been very successful (6), seems to have fallen foul of some central government generic objection to publicity campaigns by public bodies (7) and ceased in 2010 and there was then a gap of five years before a new campaign was launched. This campaign consisted of kits distributed principally by a commercial partner, an "app" and "one off" media advertising. All of these elements are in my view fine in their own way but one has to ask how effective they can be in providing the day in day out reinforcement that is actually necessary. For example the target audience is 1,787,000 tradesmen but the number of unique hits on the app has been 32,000 and the average "dwell time" is 1 minute 42 seconds on the "how to guides". Again whilst the penetration figures for national

advertising bring the target audience reach to some 45%, one has again to ask the question as to how effective this is as a means of maintaining good practice as opposed to generating interest at a point in time, valuable in the short term as that may be(8). The point here is not to decry the use of apps or work with commercial partners but simply a plea that we still need visible striking warnings to workers as part of any convincing strategy to ensure that mesothelioma deaths really do decline dramatically from the period when the risks were not appreciated.

7. With the discussion of mesothelioma, we move into the area of occupational health. It has to be said that this always seemed to me a highly important area which remained a rather under realised area - sometimes precisely because of the rather unhelpful attitudes of the protagonists on both sides Yet it is clearly a very important area and will proportionately become more so with the legitimate demand for higher standards in this area.. Simply put, the difficulty lies in determining what is caused by what, what we can most usefully address and how, and how we gain the support from both sides of industry on the way forward.

8. **[Slide 5]** A major step forward in my view has been made by the decision of the HSE Board to appoint an independent Workplace Health Expert Committee, chaired by Professor Sir Anthony Newman -Taylor. For too long HSE has lacked a real source of independent expertise in this area and we have in my view been rather the victims of attempts at "tripartite science" rather than separating out a scientific statement and interpretation of the facts and then involving both sides of industry in designing whatever risk management strategy ,if any, is considered desirable. Similarly I think we need to avoid the " run before you can walk" syndrome which arguably led to the discontinuation of the very good work HSE undertook on stress. The problem in my view - and I should say there are many involved then and now who would dispute this interpretation - was that an extensive period which was really needed to enable business to adapt, consider and revise the very good tools HSE had provided. Instead industry found themselves instead faced with the prospect of enforcement as if stress, most obviously, could be regulated in the same way as faulty equipment. In fact if a time is reached where enforcement is considered desirable, there will always be much greater evidential difficulties in proving such cases and endless scope for expert argument. There is also an obvious danger in the regulator seeking under the guise of improving stress management to dictate how a company should be managed as a whole. What we therefore see is a

current standoff here domestically and in the EU between employers not prepared to take this risk of regulation and those who want to see additional regulatory provisions now in the whole psychosocial field. The answer is, I think, to clearly distinguish between those occupational health issues which have a scientifically valid cause and can be proportionately managed by direct enforceable measures (eg the removal or containment of potentially dangerous chemicals) and the recognition that stress and psychosocial issues more generally within the workplace need a different approach much more based on mutually agreed trials of new systems without initial recourse to enforcement systems. The latter, if ultimately found appropriate may need to be of a different order to those to which we are accustomed

9. Mention of occupational health brings me to the wider need to see workplace health and safety in the context of wider public health. It is worth reflecting that when the previous Conservative Government launched its "Health of the Nation" programme, which ran for six years from 1992, one of only five priority areas identified for improving public health was "accidents" and **[Slide 6]** it remained a priority area in the subsequent 1999 Labour Government Strategy " Saving Lives : Our Healthier Nation". The key point for me is that accidents were dealt with generically and thus workplace accidents were seen in the context of road traffic accidents and domestic accidents which today, let it be said led to 1775 deaths on the road(8) and approximately 6000 deaths in the home(9) as compared to only 142 (10) deaths officially ascribed to the workforce. Yet what we have seen in recent years is workplace health and safety seen in the context of regulatory policy rather than an important component of health policy. It is also worth saying that much of the toll of death and injury from other forms of accidents falls on workers and their immediate families and of course apart from the all important human damage will also inflict economic damage on employers. Hence the concern of more enlightened employers that their workforce should be helped to remain fit and healthy outside the workplace as much as inside. Clearly there is a need to reintegrate accidents as an issue for government, employers and individual workers alike.

10. Turning to the vexed issues of red tape, regulation and enforcement, my own observation - which may surprise some in the audience - was that many of the Coalition's initiatives in this area which were often claimed by opponents to be detrimental to health and safety may in fact have had a predominantly positive effect. **[Slide7]** This is because they forced the regulator to look again and rewrite much of its documentation making

much more clear for example the distinction between legislation, ACOPS and guidance. The need to simplify and reduce in length made the regulator give more emphasis to what really mattered and to explain it more clearly. Both of these effects are of course key drivers in improving compliance and it is compliance that matters. In addition much was done to simplify guidance for low risk SMEs and to make much more use of web technology. I think all this highlights one of the risks of tripartite discussion and negotiation of such documents, namely that guidance aimed at non- experts acquires precisely an "anorak" tone and content which is likely to do the least to encourage compliance with what really matters. The whole process is a great tribute to the HSE staff who were involved in the process and to the stakeholders who helped.

11. I think with regard to changes to enforcement, the jury is still out. I personally would not be too worried about the reduction in HSE's proactive inspections to 22,000 annually from the previous total of around 33,000 provided HSE remains untrammelled in investigating complaints according to its criteria and the HSE Board use the flexibility they have for identifying and changing the areas for proactive inspection. The very dramatic reduction in LA inspections is more difficult to assess as there was previously large scale variation in activity and no objective way of measuring its value. Nevertheless there are clearly dangers in having too few experts at LA levels to deal both with health and safety, food safety and environmental health issues. HSE's policy of Fee for Intervention where its inspectors find significant breaches has inevitably drawn strong criticism from those who might potentially have to pay! It is however no different from the "polluter pays" principle widely accepted in the environmental area. Perhaps a more interesting criticism is the idea that the regulator's relationship is changed by the introduction of FFI. It seems to me that this argument very much reflects what I said at the outset that historically HSE had to do more by way of individual inspection and advice precisely because the health and safety system was not mature and firms could not generally be relied upon to do the right thing and sources of reliable external advice were more limited. Today however the regulator it seems to me acting as catalyst should rather be concerned with giving generic advice with both sides of industry in such areas where this is needed(eg technical innovatory areas such as fracking) and should be targeting its inspection/ enforcement powers on those businesses which are inherently high risk or where there are grounds (including in particular complaints) for think serious violations exist.

12. There is absolutely in my view as strong a need as ever for both sides of industry to have a strong voice with the regulator and for the HSE to continue to have it as a main function to lead in the policy area. This is not about lowest common denominator decision making but rather drawing a rational and practical consensus from the views expressed and having the influence to "sell the result" back to both sides of industry. This requires Board Members who have strong roots in both sides of industry and can be relied upon both to know how their sector feels about an issue, be able to participate objectively in Board discussion and be able to explain the Board decision back to the industry. This need remains as great as ever given the level of both UK Government and EU activity in the area on the deregulation front, to give but one example. It is rather unfortunate from this point of view [Slide8] that, contrary to previous practice, Board Members in the main have largely though not exclusively been recruited in recent years who bring neither the relevant influence or any sectoral knowledge of health and safety. To take but one example, the HSE had had no occupational health member since Professor Khan left in 2010 and yet reaching decisions on the complex issues in this area is a key task of the HSE Board. There is a very obvious contrast here with the Board of WorkSafe New Zealand which in a country with a much smaller population base (around 4 million as opposed to around 63 million for Great Britain) managed to attract exclusively very well connected and personally committed Board members with the spheres of industry, trades unions and politics and be headed by a medically qualified Professor of Health Policy. Moreover, as I can testify from personal experience, the New Zealand Board were quite as competent initiators and interrogators on management issues as they were on health and safety. Clearly the appointments which are falling vacant in the HSE Board provide the opportunity to rectify this but it does in my opinion need a serious recruitment effort by those responsible

13. Perhaps this is the cause of the decidedly worrying situation which arose over Professor Lofstedt's proposal (10) to exempt the self-employed who could cause no harm to others through their work from the Health and Safety Act. Although HSE's first proposal for consultation found general favour, it was subsequently reissued for consultation by the HSE Board without substantive public discussion in a very different version which appeared to exempt some self-employed who could through their work put others at risk. Only as a result of Parliamentary debate and the responses to the second consultation which reaffirmed the first consensus did the Coalition Government reverse its

view and effectively returned to the substance of the original HSE proposal. It does seem to me that this illustrates a lack of influence/ involvement by the HSE board which is of little help in ensuring that Ministers get proper advice including on the views of both sides of industry. I should also make clear that in mentioning Ministers, I have no doubt that the final decision should be theirs both because it is constitutionally proper and also because practically it gives an " effective right of appeal" to any parties dissatisfied with the Board view

14. A major recurring issues in this series of lectures has been the so called " conkers, bonkers" stories about how petty and unnecessary restrictions are enforced in the name of " health and safety" thereby bringing the UK health and safety system into disrepute. HSE used to combat this through a series of entertaining and lighthearted cartoons. This has now been replaced by a more bureaucratic affair the " myth busting panel"**[Slide9]** . I must confess to some guilt in regard to this, as I proposed the original idea that people who thought they were wrongly being asked to undertake alleged precautionary measures under the Health and Safety Act, could raise it with HSE and the answers would be published as a form of case law on what was and was not required. At Board level however this has now changed into a panel composed of non- HSE staff who have now adjudicated on over 300 questions. Interestingly it is made clear at the outset that " workplace health and safety problems" are not covered by the panel and therefore it has no reference value to the health and safety community. Instead we have a whole host of issues from whether bells should be allowed at night to go "ding dong"(11) to whether you should be allowed to donate baby baths to charity shops(12) The pretext under which this is done is that the action or lack of action complained of is justified by claims that it is due to " health and safety reasons".Enquirers are often told in response that there is no such requirement under the Health and Safety Act , which is hardly surprising as very often the Act and arguably HSE have no locus at all. Similarly there is a consistent refusal to accept the fact that in common parlance " health and safety " has a meaning which goes well beyond the issues HSE deals with. Even odder is the frequent judgement made that what is at issue is "poor customer service" - an area which is well outside HSE's remit. The point of course is that highlighting these cases and responding in this way does little good - HSE is not an authority and its judgements, for what they are worth, have no wider application or reference value. It is also a curious example of an attempt to combat the "Nanny State" **[Slide 10]** is in fact leading to a whole new form of "nannying" whereby

firms are rung up by public bodies over issues which lie outside of the competence to give decisions which have no effect.

15. Much the same issue arise as to the constant invocation of " common sense" [**Slide 11**] as the solution to most issues of health and safety. Of course common sense (which I take it we mean solving issues through the application of our existing knowledge and experience) has a part to play in many such issues and is an indispensable component to the decisions we all take in our daily lives including on workplace health and safety. Indeed it is a formulation I have myself used publicly on several occasions. We must be wary however of failing to understand the limitations of common sense [**Slide 12**] in this and other areas - which have been well articulated by wise men through the ages . In particular we have to be careful that we do not imply that common sense will equip you with all you need to know in other than the most specialised of circumstances. Common sense we know varies according to culture but health and safety risks of course do not. Moreover there is something rather mendaciously reassuring about appeals to common sense in that most of us have no difficulty in admitting areas where we are not competent but would absolutely dispute any deficiency of common sense on our part. Furthermore your view of the application of common sense to a particular issue may well differ from mine and I remember that this was often the case when I saw proposed answers to " myth busting cases". What we also need as much if not more sometimes than common sense to tackle health and safety is "competence" - which I define as understanding the issue in question, knowing how to tackle it and then doing what's needed to an acceptable standard. Using health and safety in its wider meaning, in the domestic context there are many things you need to do on the basis of competence rather than common sense to protect yourself and those around you. To give but a few examples common sense will not tell you to get your gas boiler serviced and the frequency for doing so (with carbon monoxide poisoning causing some 50 deaths and 1100 hospital admissions per year this is a very serious matter), it will not tell you not to drill into artex ceilings, nor will it enable the laymen to accurately predict the risk from a tree overhanging the highway. To take an even simpler example which I have experienced myself: if you order a coffee from at least one well known chain[**Slide 13**], the saucer will be placed on a high counter in front of you and you pay the bill whilst the hot coffee is produced . You are handed the full coffee cup and then following common sense you place this in the middle of the saucer and raise the ensemble. This is indeed common sense as we all know the need to put cups

in the middle of the saucer for stability. Competence however would direct us first to locate first the indentation in the saucer for the cup which is in fact towards one edge in this particular chain for reasons doubtless of "coffee aesthetics" - which I have to admit are well beyond me! The result of applying "common sense" is spilt hot coffee, of applying "competence" safety. You might think this splitting hairs but in my view it is anything but. One of the main reasons in my view why "common sense" is so often invoked at the expense of "competence" in health and safety writings is an attempt to disparage the need for people to have proper health and safety information and training whether in the workplace or at home. This may be a reaction against excessive training being made compulsory for a particular purpose but if that is what is being campaigned against, it should be made clear that the objection is, very reasonably, against "over the top" training not a wholly incorrect advocacy of common sense as the universal and only necessary answer. It is perhaps no surprise that we have so many domestic fatalities and injuries if we continue to guide people away from acquiring the expertise they need in favour of the false reassurance that all can be managed through "common sense".

16. The final concept I wanted to discuss is that of what I call the vicious circle **[Slide 14]** of regulation - a phenomenon well known to regulators but not much discussed in wider circles. Under this model we start with a disaster. The net result is a huge State reaction : new regulations come forward in droves and often a new regulatory agency appears (sometimes giving in to its own vested self interest by itself encouraging the mountain of regulation). Then public attention on the disaster subsides and the issue in question is brought under some sort of control. The frameworks set up to deal with the disaster are reduced in size (and clearly some reduction may well be perfectly reasonable as the scale of issues to be handled reduces) , expert advice whether internal or external to government on the issue is literally discarded as no longer needed and regulatory protections are reduced. However we are told that all is well - until of course the next disaster strikes and off we go again. The point here of course is that this is not the way to protect the public, to ensure that business faces only burdens proportionate to real risk or to achieve value for money for the taxpayer. As things are, we need to consider whether health and safety in the UK may not already be a part of that vicious circle and whether we need to look again at our approach if the wheel is not again to turn full circle.

17. Yet I would not wish to end on such a pessimistic note . I think it is a primary function of arms length regulators such as HSE to " hold the balance " on the issue(s) they

regulate precisely to avoid and smooth out the tendency to lurch this way and that in terms of the regulatory approach. Many of the building blocks needed for this are already in place. It is an enormous plus that the overall UK approach to health and safety is generally supported and practised on a daily basis by both sides of industry and that the regulator and its staff have been similarly supported in their role whatever tensions may have arisen from time to time on individual issues. We absolutely should not want to go back on this achievement. However as I have endeavoured to show, the challenge is to make this success secure. To do that we need to recognise the areas where we need to do more, particularly in occupational health, to be more open and experimental in the psychosocial and stress field recognising the validity of the argument that we must be wary of " running before we can walk", to reengage with publicising to our workforce essential health and safety messages on a sustained basis and to encourage competence in health and safety issues at all levels of risk and in a way which is proportionate. We need to go back to looking at accidents " in the round " and to break up the barriers in doing this between the domestic setting and the workplace. Finally the regulator needs again to be the focal point for discussions between both sides of industry on the difficult issues which arise and to leave behind the somewhat confused and trivialised messages of the recent past. There is a great opportunity here for the next Chair and his or her new Board members. It is " doable" and in my view will enable us to chase away the vicious circle and achieve a balanced and proportionate approach to health and safety. This will be to the advantage of the British economy and people alike.

18. Thank you for listening. **[Slide 16]**

References:

- (1) John Rimington " Health and Safety : Past, parent and future" 2008
- (2) "What's the point of ROSPA?" Radio4 19 August 2015
- (3) Standardised incidence rates (per 100,000 workers) for fatal accidents at work 2012 - Eurostat data published by HSE 2015
- (4) Sir Bill Callaghan " Risk, Regulation and Rationality" 2010
- (5) HSE mesothelioma statistics 30 June 2015
- (6) Asbestos National Rollout campaign evaluation COI February 2009

- (7) see for example SETON article of 12 May 2014
- (8) Department of Transport GB data for 2014
- (9) HSE 2014/5 GB fatality statistics
- (10) Information drawn from Board Paper HSE /15/26 dated 25 March 2015
- (11) The Lofstedt Review DWP May 2011
- (12) HSE Mythbusting Panel case 344 2015
- (13) HSE Mythbusting Panel case 368 2015