



**Briefing note for meeting of the National Occupational Safety and Health Committee (NOSHC)  
to be held at 11.00 am on Friday 7th February 2014,  
at the offices of BDO Stoy Hayward, 55 Baker Street London W1U 7EU**

- Item 1**      **Welcome.** Members attending might be asked to introduce themselves.
- Item 2**      **Apologies for absence.** Charlotte Henderson will read out the list.
- Item 3**      **Minutes of the meeting held on 2<sup>nd</sup> October 2013.** (Annex 1)  
The Office has no points of accuracy.
- Item 4**      **Matters arising and review of actions.** (Annex 2)
- Item 5**      **Report from RoSPA.** (An oral report will be given)
- Item 6**      **Discussion of the Triennial Review of HSE.** Members views are invited on the analysis, conclusions and recommendations of the Temple Review ([www.gov.uk/government/publications/triennial-review-report-health-and-safety-executive-2014](http://www.gov.uk/government/publications/triennial-review-report-health-and-safety-executive-2014) ).  
RoSPA's initial statement can be accessed at:  
[www.rospace.com/news/releases/detail/?id=1273](http://www.rospace.com/news/releases/detail/?id=1273) .
- Item 7**      **Work of NOSHC in 2014/15.** – See discussion note (Annex 3).  
Views are invited on this plan.
- Item 8**      **The future of Corporate Manslaughter and Section 37 prosecutions.** – Members' views are sought on issues raised at a recent workshop on this issue (see my draft 'Parting Shot' for February – below).
- Item 9**      **Accident Investigation.** – An update will be given on progress with HSE's revised guidance.
- Item 11**     **Recent/current HSE consultations.** – Members' views are sought of recent consultations ([www.hse.gov.uk/consult/live.htm](http://www.hse.gov.uk/consult/live.htm) ).
- Item 12**     **Safety Groups UK – update.** (visit [www.safetygroupsuk.org.uk](http://www.safetygroupsuk.org.uk)) Mike Nixon will give an update, including on the Alan Butler Awards, the HR@W campaign, and a major state of play stock-take exercise that is now underway.
- Item 13**     **Progress with the "History of OS&H" project - by Sheila Pantry.** Sheila will deliver an update, including on the latest version of the concise history seminar of OS&H regulation that has been written by David Eves CB.  
(See: [www.aitisol.co.uk/prototypes/history/index.html](http://www.aitisol.co.uk/prototypes/history/index.html))

**Item 14**            **Reports from members** – Reports from members are invited.

**Item 15**            **Any other business** - None has been notified so far.

**Item 16**            **Date of next meeting:** 17th June 2014, BDO London (TBC)

**BTL items:**

**Parting Shots** (<http://www.rospa.com/occupational-safety/resources/partingshots/date.aspx> )

- November “Risk managing home safety”
- December “ Proportionality and prudence”
- January “Investigation re-think?”
- February (draft) “ Directing Directors” (Annex 4)

**Annex 2: Review of Actions from the meeting held on 2<sup>nd</sup> October 2013**

<b>Item</b>	<b>Action</b>	
Item 3 - Minutes of the Meeting 18/06/13	Minutes of the meeting to be corrected as notified	<i>Completed</i>
Item 5 – Report from RoSPA LASER Alliance	Committee members asked to promote the LASER centres and events and to visit their local centre	All Committee
	Send out information about LASER via SGUK to local Safety Groups	<i>Completed</i>
	Cassius Francis agreed to produce an information leaflet on LASER	<i>Completed</i>
	Regarding an article on LASER, Denclan Gibney agreed to put the suggestion to SHP	DG
Item 6 – Managing for Health and Safety	Gill McElvogue agreed to find out the HSE's plans for evaluating the guidance	GM
Item 8 – HSE Myth Buster Panel	Roger Bibbings to write to Judith Hackitt regarding insurance.	RB
Item 13 – History of OS&H	Committee members asked to contribute information and data	All Committee
	Gill McElvogue agreed to look at the HSE's forward look for possible events at which the website launch could take place.	GM
Item 14.a Report from Members, Gill McElvogue, HSE	Gill McElvogue agreed to check the timetable for completion of the HSE's review of guidance.	GM

## **Annex 3: Plans for NOSHC in 2014/15**

### **Royal Society for the Prevention of Accidents *National Occupational Safety and Health Committee***

#### **Plans for NOSHC in 2014/15**

This note sets out proposals for taking forward the work of the Committee in the coming year.

#### **Background**

As colleagues may know, after 14<sup>th</sup> February I will be retiring from my current role as RoSPA's Occupational Safety Adviser but I will be continuing to work for 30 (possibly up to 45) days a year for RoSPA, handling various tasks. One of these will be to help colleagues, Karen McDonnell and Rob Burgon, to take over the running of NOSHC.

I have been giving this matter some thought and have consulted colleagues and NOSHC chair, Teresa Budworth, about a possible way forward for the next 12 to 18 months.

#### **Proposal**

In essence my suggestion is as follows:

We continue in 2014 with 3 meetings a year (February, June and October) with the existing membership under Teresa's chairmanship.

Karen will formally take over the role of Secretary of NOSHC and will carry out associated duties (with my assistance where necessary etc).

Charlotte Henderson will continue to organise meetings, correspondence, info circulation, minutes, run the Committee web area etc

We will continue to run a standard type of agenda, including: the report from RoSPA; reports from members; responses to CDs/submissions of evidence; review of current developments etc. (For the February meeting I have suggested a round table with invited contributors putting forward their views on the way ahead on accident investigation. We will also be discussing the Temple review)

The main part of the agenda however at each meeting would be given over to a major RoSPA enquiry into what needs to be done to further improve UK OS&H performance. This would be based on 1) a call to the main OS&H system stakeholders (as well as to the wider public, via social media possibly) to submit evidence on key issues (see below) and 2) invitations to key people to attend meetings of NOSHC to discuss this (perhaps 2 or 3 per meeting). (The idea would be to run this part of each Committee meeting rather like a Parliamentary Select Committee, taking evidence, perhaps even inviting in the media.)

Key contributors would be invited to condense their cases into 10 to 12 'Parting Shot' pieces to be published in the March to January/February editions of RoSPA's 'OS&H'. Hopefully a virtual 'core

group' of NOSHC members could also be formed to guide the process and help stimulate/elicit contributions.

In February 2015, together with Karen, Rob and 'core group' colleagues, I would then help to write up the results in a synoptic fashion, crafting a clear report on the state of play in UK OS&H with solid and well argued medium and longer term recommendations on the way ahead. This might be aimed not just at DWP/HSE but at many others, including, of course, RoSPA itself).

## Aims

The aims of the review therefore would be to:

- Enable NOSHC to act as a focus for developing OS&H leadership;
- Get the national focus back onto performance improvement after too long arguably spent by ministers on the question of 'burdens';
- Provide a vehicle for serious discussion with the key OS&H players (including consideration of ongoing issues emerging from the Temple review);
- Provide a basis for publicity and discussion pieces;
- Provide intelligence on new initiatives and new thinking;
- Provide an education for all colleagues about the wider OSH policy landscape; and
- Have a powerful influence over the way the UK OS&H system continues to develop.

## Issues

Examples of the kind of issues on which NOSHC might invite key stakeholders/individuals to give their ideas include, inter alia:

- Enhancing ministerial leadership and accountability for national OS&H performance;
- Enhancing UK OS&H policy governance (refreshing the HSE board, HSE KPIs, a new OS&H stakeholder forum, biennial Select Committee review etc);
- Strengthening the legal framework and enforcement (HSE, LAs, smart solutions with others?);
- Linking prevention and compensation and enhancing the role of insurers;
- Funding OS&H;
- Reducing non-regulatory OS&H 'burdens';
- Developing a comprehensive national data strategy;
- Building a joined up OS&H research system;
- Developing meaningful targets (for health as well as safety) ;
- Strengthening director leadership (including OS&H leadership competence standards);
- Developing the H&S management systems approach (certification? a new 'Highway Code' for H&S);
- Building workforce involvement and getting behavioural safety in perspective;
- Extending access to professional advice ('H&S advice for all', meeting the needs of SMEs etc, technical support services (occupational health, occupational hygiene, etc);
- Learning from accidents and incidents;
- Extending supply chain influence in a positive way;
- Meeting unmet OS&H training needs;
- Extending local OS&H outreach (safety groups etc);
- Developing the OS&H role of trade associations ;
- Promoting business to business H&S learning;
- Cutting serious injury rates in construction, agriculture, waste;

- Teaching safely, teaching safety in Britain's schools and colleges;
- Tackling occupational cancer;
- Reducing manual handling injuries;
- Fresh action on stress and violence;
- Tackling slips and trips;
- 'Re-booting' occupational road risk;
- Further reducing injuries to the public;
- Using OS&H to help build Safe Communities and wider risk literacy; and
- Education, education, education ...

This list of issues is only indicative and would need to be refined (with the help of the core group) in the eventual call for evidence to be developed with NOSHC member input. A very short discussion paper could be produced or alternatively the Review and the challenges it was seeking to address could be summarised in an initial '*Parting Shot*' article.

### **Comment**

This is an ambitious plan and the Committee would need to make it manageable and ensure it did not morph into a Robens Mk 2! It would also need to build on discussion and plans that are emerging from implementation of many of the recommendations in the Martin Temple Triennial Review of HSE, just published.

### **Conclusion**

Members' views are invited on this proposal.

**Roger Bibbings**

**Occupational Safety Adviser**

**15<sup>th</sup> January 2014**

## **Annex 4: Draft Parting Shot – February 2014 Directing directors**

(2nd) draft '*Parting Shot*'

### **Directing directors**

On 20<sup>th</sup> January I attended a forum run by the Business Accountability and Responsibility Centre at the University of South Wales for academics, practitioners, health and safety professionals and lawyers. The aim was to consider two important areas of health and safety law: Section 37 of the Health and Safety at Work Act 1974; and the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA 2007) and to explore key issues in relation to offences under both these statutes. The fruits of the debate are being written up and published by the University, in part to provide the background material for a further meeting to be held at Westminster.

For many of those who campaigned for the important change in the law of manslaughter which it introduced, the CMCHA 2007 seems to have failed to fulfil their expectations, namely to target large organisations for 'corporate killing'. At the time of writing there have been five successful prosecutions but all of these have been small companies. In four of the prosecutions thus far, guilty pleas have been entered, while charges against individual senior managers/directors for manslaughter have been dropped, possibly as a result of plea bargaining. It is still early days but there seem to be practical and political barriers to successful prosecutions of large companies. The level of fines penalties under CMCHA 2007 are not so different than from those under the Health and Safety at Work Act but it was suggested at the forum that CM had an important symbolic value in highlighting corporate failures leading to death.

The nature of Section 37 HSWA 1974 – tied as it is to offences under other parts of the Act - also continues to provoke debate. The forum heard that there have been a number of attempts to change the law to impose positive duties on directors in relation to health and safety. The last attempt to reform the law was in the form of a Private Members Bill, put forward by Frank Doran MP in 2010. (Frank was at the forum.) Evidence suggests that Section 37 may be being used more but again, only against directors in small companies. While 'corporate killing' is an offence of organisations rather than individuals, clearly the acts and omissions of those in senior decision making roles have also to be considered. But exactly how the CMCHA 2007 and S37 HSWA 1974 fit together in practice remains unclear. Everyone seemed to agree that the original aim of CM had been to hold directors to account but there was no consensus on how best this might be achieved.

For the last 16 years RoSPA has been campaigning for measures to strengthen director leadership of OS&H. The reason we continue to feel so strongly about this is because we know from both research and our own experience that what actually keeps people safe at work are not just the particular preventive or protective measures that have to be put in place following risk assessment to

safeguard people from specific hazards, but the policies, organisation and arrangements which together give organisational assurance that significant risks can be tackled on an on-going basis. Key elements here include: director leadership, workforce involvement and use of competent advice/services.

Of the three, the role of directors is arguably the most crucial. Directors and senior managers that understand and prioritise health and safety, create the conditions in which everyone else in their organisation can work together to operate safely. Conversely, directors who do not understand this and who fail to take action to enable their colleagues to manage safely, create the conditions in which unsafe and unhealthy systems of work go unchallenged and people are damaged as a result.

Such business leaders need to understand not just that people's lives are in their hands but that managing effectively for good health and safety outcomes also reduces financial losses due to accidents, incidents and health related staff absence; it supports quality and environmental management; and it helps to advance workers' morale and overall corporate reputation. It is in fact a bell weather of an organisation's overall culture and values because in practice such leadership cannot succeed other than by valuing openness, fairness and participation. (*'You can only do health and safety with people, not to them!'*)

So to lead H&S successfully directors have to do a whole lot more than simply sign off policies and budgets and engage suitably qualified H&S professionals. They need personally to become immersed in some of the challenges of running a safe and healthy operation.

RoSPA initiated its campaign on '*Director Action of Safety and Health*' (DASH) in 1998 (<http://www.rospace.com/occupationsafety/info/dash.pdf>) and this helped to ensure that this theme was part of the incoming Labour government's 'Revitalising Health and Safety' strategy in June 2000. We were party to development of 'version one' of the Health and Safety Executive's (HSE) guidance on directors. Later we also initiated a campaign called '*Going Public on Performance*' (<http://www.gopop.org.uk/>) which urged all companies to include details of H&S performance in their annual reports, another theme from 'Revitalising' which unfortunately never got very far..

Over a number of years we supported the *Centre for Corporate Accountability's* ultimately successful campaign to reform the law of manslaughter to enable organisations causing death by negligence to be found guilty of this offence without first having to identify a controlling mind. And we have at various times indicated our support in principle for Private Member's Bills dealing with directors' duties and disqualification.



Throughout however we have said that it is not enough simply to clarify the duties of directors in general terms but to highlight, in a transparent way, key elements of director leadership, including not just policy level decision making and periodic performance review but practical involvement of individual directors and senior managers in key aspects of health and safety management such as tours, inspections, investigations, participation in training etc. and close attention the health and safety implications of strategic decisions. Despite all that has gone on over the last decade and a half, a big educational effort is still required, a view we formed very early on as a result of a research study we helped to carry out in 1997, together with Aston University into the coverage of H&S in courses for those undertaking MBAs in UK business schools (Hawkins and Booth, 1998). The results then were depressing and sadly little has changed since.

Four years earlier, in 2004, working with a consultant, Sara Lumley, we had initiated a study of 'front end' director involvement called '*Back to the Floor*' (<http://www.rosa.com/occupational-safety/current-campaigns/dash/back-to-the-floor.aspx>) which showed that, even in many higher performing companies, director leadership was weak and tokenistic.

Eventually when HSE and the Institute of Directors (IoD) developed '*Leading Health and Safety at Work*' (INDG 417 <http://www.hse.gov.uk/pubns/indg417.pdf>) we got closely involved in drafting and publicising this guidance which it was promised would be benchmark material in future CM cases. Later we were also part of the IoD review group which looked at the impact of this fairly short and easy to read document. But again, despite considerable publicity, hard evidence about its uptake and implementation was difficult to find.

Since the mid nineteen nineties I have tried to represent RoSPA's viewpoint, on the issue of director leadership in this column (see <http://www.rosa.com/occupational-safety/resources/partingshots/default.aspx>). In our magazines '*OS&H*' and '*Safety Express*' and in our Ebulletins, we have sought to track high profile cases to ensure directors are held accountable in cases where their 'consent, connivance or neglect' has led to cases of injury or damage to health. We have covered the issue of director leadership and performance reporting regularly in various ways at our seminars and events over the last fifteen years. I talk regularly on director leadership in different settings and in recent years have been invited to talk to boards from time to time (usually pro bono). And as a leading training organisation we provide training course for directors and senior managers.

In addition to calling more severe penalties for directors found guilty of H&S offences we have argued consistently for compulsory re-education and remedial programmes for directors and their organisations. And where directors and senior managers, as employees, have failed to carry out their company's H&S policy, we also favour more prosecutions under Section 7 of the HSW Act (which

imposes an absolute, unqualified duty on employees to cooperate with their employer's health and safety policy and arrangements).

We feel that the way ahead must include not just expanding and giving legal force to the basic principles in INDG 417 but indicating the basic competence (knowledge, skills and experience) needed by directors and senior managers for them to discharge their roles. We would like to see stronger requirements for employers to investigate accidents/incidents/cases of work-related ill-health in partnership with workers, to make use of appropriate H&S services, and to manage major under-regulated issues such as work related road safety (<http://www.rospace.com/drivertraining/morr/background/24arguments.aspx>). (Our campaign on this latter issue started in 1996!)

We insist on clear evidence of director and senior manager leadership from companies seeking to win recognition in the RoSPA Awards, with such evidence needing to be stronger at higher levels. And we favour a thorough examination of H&S leadership by directors and senior managers as part of all contractor H&S pre-qualification processes, particularly as an important part of all public procurement.

More recently however in the context of the *Lord Young* and *Lofstedt* Reviews, we have been diverted into arguing hard in defence of existing health and safety legislation. Together with IOSH and others, we opposed the abolition of the Managing Health and Safety (MHSW) Regulations Approved Code of Practice (ACoP), arguing instead that it should be retained and improved as the 'Highway Code' for H&S management. This should include clearer statements about the responsibilities and expected behaviours of directors and senior managers. Such a code, we feel, should be taught as an integral part of all business management education courses. What has since been produced in place of the ACoP, (*'Managing for Health and Safety'*) as part of the Government's 'modernisation programme', while useful as an introduction (see <http://www.hse.gov.uk/pubns/books/hsg65.htm>), still lacks sufficient bite and direction.

In the current political and economic climate we do not anticipate an enhanced appetite for legal change on this issue and many at the forum seemed to agree with RoSPA that more effort now needs to be put into director education and CPD and into indicating '*what good looks like*'. The case for further legal change to create the right approach to directors duties and liabilities still needs further debate and is unlikely to remain permanently off the agenda.

As ever, readers' views are welcome and can be sent to me at [rbibbings@rospace.com](mailto:rbibbings@rospace.com).

**Roger Bibbings**

**Occupational Safety Adviser**

**20th January 2014**