



Samantha Peace, HSE Divisional Director, Wales, Midlands and South

HSE Annual Progress Report and Future Plans

Samantha explained that her presentation would cover a number of topics:

- An update on what the HSE have been doing over the last 12 months
- Commercialisation
- Fee for Intervention
- Occupational Health
- the asbestos campaign
- the Construction (Design and Management) Regulations

and also leave the members with something to think about.

HSE – 40 Years Old!

The HSE celebrates its 40th birthday this year and there is a great deal to celebrate and feel proud about as a regulator and for all of us as health and safety professionals. Samantha acknowledged the contribution BHSEA members have made to improving health and safety and helping make Great Britain a world leader. Collectively we can be proud of what we have achieved. She also noted that those achievements were set against goal-setting risk-based legislation that has stood the test of time and numerous reviews.

Samantha valued the HSE's partnership with BHSEA and stated that Geoff Brown, Principal Inspector and successor to Paul Billinger, was looking forward to his involvement as a member of Council.

New Chief Executive

There are still a few people with the HSE who have been there since the beginning, notably Kevin Myers, the Deputy Chief Executive, who has just been awarded the CBE for his contribution towards driving up standards, both in the UK and in Europe.

Since November the HSE have had a new Chief Executive, Dr Richard Judge. He has both a private industry and public service background and brings valuable skills and experience to HSE.

During the previous 12 months there has been a government response to the Triennial Review and, along the way, two changes of Minister - from Mike Penning to Mark Harper and most recently Lord Freud.

Over the last three to four years the HSE have been closely monitoring the changes in the world around us, particularly with regard to technological developments and recognise that they need to continually adapt in order to survive.

Strategic Direction

HSE has three strategic themes:

- 1) To protect and strengthen their regulatory capability – first and foremost. Remaining a world-class Regulator with the reputation they have is incredibly important to them.
- 2) To make their knowledge and know-how available to those looking to improve their health and safety systems, both nationally and internationally, and making full use of the commercial potential of their intellectual property and reputation.
- 3) To seek to recover more of the costs of regulation from those who are creating the risk rather than the general tax payer.

Commercialisation

Samantha stressed that this did not mean privatisation. It is important that they retain their core purpose and reputation. However, they intend to develop the commercial opportunities to enable them to improve the management of risk in a way that complements their Regulatory role. They will therefore be extremely selective about the markets they develop and the products and services they offer to ensure that there is a risk management benefit. A percentage of their income is already derived from commercial activity, largely through HSL (Health and Safety Laboratories). They simply now wish to build upon this in the right way and over time.

George Allcock asked whether they would charge for this “knowledge and know-how” in the same way that consultants currently do. Samantha replied that where their expertise is sought and there is a clear risk management benefit, then this would be a chargeable service.

Samantha made it clear that it is very early days and there is much to consider and develop. So far HSE has worked overseas, for example to help other countries develop a regulatory framework in order to manage their major hazards. One benefit of this is that it gives the British companies an advantage when working overseas because they are familiar with these frameworks.

Samantha explained that many in the world of work want us to share our expertise but accept that it is unrealistic to expect this to be funded by the British taxpayer.

In answer to a question from the audience, Samantha confirmed that commercialisation should not be confused with Fee for Intervention, which was completely different.

Another Member queried that the three goals did not appear to address reducing accidents and making us safer. Samantha stressed that theme one is all about reducing risk through regulatory activity – in other words protecting people.

The Member was also concerned that the idea of commercialisation was in conflict with their long-held objectives. Samantha explained that commercialisation has existed for a long time within HSE/HSL and will be developed to continue to complement rather than detract from the activity of front line staff.

It also does not preclude the Inspectors giving the necessary advice as they do today as part of their Regulatory activity.

Steve Parton, Vice Chairman, queried which areas of industry are likely to be targeted for these services, and whether it would be based on the size of the organisation. Samantha explained that she did not have that level of detail but it would not be by size of organisation and we will have to wait and see how it develops.

Another Member asked if there would be an impact on the guidance that is currently downloadable for free, although hard copies are currently chargeable. Samantha was not aware that the Board intended to make any changes to the current position.

Fee for Intervention

This policy was introduced a couple of years ago and huge care was taken with its implementation. It has been reviewed, following the Triennial Review by an independent panel who concluded that it was meeting its objective, which is to transfer the cost from the general tax payer to those who create the risks and fail to manage them properly to the standard the law requires. The panel could not identify any viable alternative to it. Prior to its introduction HSE undertook a thorough system and peer review in order to ensure consistency in decision-making and regulatory response.

Samantha stressed that there are no targets for inspectors. Income is a consequence of material breaches uncovered when premises are inspected. A company who are a long way from meeting the standards will be likely to incur greater costs simply because it takes more time to deal with them. The HSE only look for material and not trivial breaches. They target businesses where the evidence is that risks are not well controlled.

A Member asked for clarification regarding why fees were charged when an inspector had been called in following what appeared to be the reporting of a minor injury. Samantha pointed out that it is wholly reasonable for the regulator to respond to a reported accident as a signal that risks may not be being managed. If they then find a material breach, where the business has failed to take the necessary precautions, then they will be charged from the point of the inspector's visit up until the matter is closed. In this particular instance, based on

the information the Member provided, the inspector had uncovered that the injury had resulted from equipment not being tested, with a serious health risk arising – a material breach – so their intervention led to a charge. She advised that there is a comprehensive leaflet on the HSE website explaining Fee for Intervention and when it does and does not apply, together with situational examples. The inspector's focus is on looking for risks that the business is failing to control. If it is swiftly obvious that key risks are well controlled, the inspector will stop the inspection and there is no charge.

Another Member pointed out that businesses within the environmental industry understand and accept that the “polluter pays” and are familiar with paying for inspections and material breaches and suggested HSE adopt the same terminology. Samantha explained that their approach and terminology took into account that there are real rogues and then there are those who are simply ignorant and will act accordingly.

The HSE have published their strategy about which industries they are and are not targeting with inspections. The Sector Strategies set out the evidence, levels of harm, types of risk and whether inspections are the right type of intervention. HSE will continue to inspect high risk premises with high risk activities and those that come to their attention. For instance, those in the waste and recycling industry who persistently fail to meet the regulations and disobey planning authorities or environmental agencies. Sometimes all three regulatory bodies attend at the same time to enable the business to comply and ensure no conflict of requirements.

Accident Statistics

Within the waste and recycling industry, figures for the years 2013/2014 have reported 4 deaths, compared to 9 in previous years. This could be as a result of the industry settling down following the implementation of various controls. They are still, however, accounting for 0.5% of the employees but 2.6% of the major injuries. Construction remains a priority. Provisional figures for 2013/2014 have reported 42 deaths as opposed to a five year average of 49. This industry amounts to 20% of the workforce accounting for 31% of deaths and 10% of major injuries. In manufacturing and agriculture there has been a downward trend in deaths but they seem to have reached a plateau.

Samantha speculated that anecdotal evidence is that some of the improvements in the figures are because the medical profession with their modern methods are able to keep the people alive. Some of the injuries are so devastating that these people are unable to live a normal life and require 24/7 care.

Occupational Health and Occupational Disease

This is a very challenging area; one which is hardest to improve or measure. Campaigns covering Noise, Musculoskeletal Disorders and Respiratory Disease have made a difference by raising awareness but it is necessary to change the way people do things. Some real success has come from wider intervention, for

example since 2005 there has been a significant drop in the incidence of contact dermatitis following restrictions on the amount of chromate permitted in cement.

The construction industry accounts for 40% of the cancer deaths. Silica is now an area requiring greater focus. The HSE website includes stories from a number of organisations sharing how they are handling their health issues.

The new asbestos campaign has led to kits being distributed to tradesmen at point of sale. These include an app which the HSE designed following a great deal of research. They recognised that the world of communication is changing. Samantha noted that students in university are moving away from e-mails in favour of social networking and apps designed for the i-Phone. These changes present a challenge for us all in communicating with younger workers.

Although progress has undoubtedly been made within Health, there is a lot more work to do and Samantha praised the BHSEA Safely and Health Awareness Days (SHADS) and welcomed further activity in this regard.

Review of Regulations

The HSE, in their quest to make it easier for people to understand what they need to do, reviewed 200 sets of regulations on the statute book. They removed all the out of date, superseded and duplicated regulations, reducing the volume but not the standards and making the law easier to navigate.

They have reviewed the level of detail and technical information and, unless necessary - such as in the complex area of electrical or radiation for example - have simplified content. They have also worked to ensure there is a proportionate response to European requirements.

Construction Design and Management (CDM) Changes

There were about 1400 responses to the consultation. In the main there has been agreement to the proposals with regard to the removal of the CDM co-ordinator role in favour of the Principal Designer, the focus upon the client in setting standards, and splitting competence into component parts to make it easier to assess and ensure that a team or individuals have the correct skills and experience for the work required.

The draft guidance was published on 9 January 2015 and, although parliamentary approval is still awaited, should not change significantly. Industry guides have also been published. The HSE believe focusing upon the Principal Designer is a necessary step as it now makes them accountable for the structure throughout its lifetime.

Something to think about

Samantha spoke about the rather specialist and industry specific notion of process safety, inviting everyone to see it in a broader context. Like CDM the concept has two principles: inherent and safe design and prevention of a catastrophe. Improvements can be made in design at any time, take the Forth

Bridge for example – it no longer requires frequent painting due to chemical developments of anti-corrosion paints. With regard to catastrophe, this is a little more complex.

Samantha referred to two major incidents in recent history - Buncefield and Texas City - where there had been a catalogue of failures leading to disastrous results. Following each accident other organisations considered what had transpired and whether they could relate or compare any of the failures to their own organisations. For many they instinctively sought to establish that it was either not relevant to them or using a narrow focus swiftly stated that because they 'did not use that value', 'did not run a major hazards site', 'did not operate that procedure', that it could not happen to them.

Samantha used Buncefield to illustrate the wider lessons for all organisations and the approach that leaders and Boards should take to foster a constant and real sense of unease (to avoid complacency) and a real understanding of their key process vulnerabilities. Leaders and Boards should be encouraged not to seek reassurance that it could not happen to them, but instead ask "what are our process vulnerabilities?" "what are we doing to control them?". Samantha noted that it takes courage for a subordinate to tell a leader that they are vulnerable and that 'it could happen here'. She concluded by saying that process safety is a state of mind and continuous commitment.

A Member, with experience in process safety, endorsed this line of thought and was immediately recruited to share his experience in 'Members Corner'!

Members' Questions

A member queried whether there were any plans to reinvigorate work on Stress. Samantha replied that they have produced stress management standards for organisations to work to and adopt but only investigate, deal with and serve notice on substantial failures at organisational level. Such as where no policy is in place and no arrangements exist to manage the issue. Individual stress cases are not investigated as they feel their expertise as a Regulator is best focused on other issues allocated a greater priority such as respiratory disease and cancers.

Neil Boon queried of the 42 deaths in the construction industry, how many were attributed to small and medium sized enterprises. Samantha replied that in her experience the deaths could be quite random, happening on any size of construction site at any time. The character of the leadership on site, and their competency levels, can often have a dramatic bearing on a site's safety record.

Steve Parton asked what sort of income had been raised by the HSE from Fee for Intervention over the last two years, and whether any specific trades/activities were going to be targeted in the future. Samantha replied that approximately £7m had been raised and there is a section on the HSE website

(www.hse.gov.uk) headed 'Sector Intervention Plans' that outlines the kind of organisations posing the greatest risk (eg ship building; woodworking and certain aspects of engineering) and therefore more likely to be targeted.

Toby Ryder raised some concerns regarding the new CDM Regulations, specifically the withdrawal of the CDM Co-ordinator role and also the transfer of responsibilities to the domestic client. George advised that the Construction Programme Meeting 9 March (BMI) will be devoted to CDM issues, and there will be an opportunity to raise and discuss any concerns at that time.

Roger Caleb commended the benefits of Process Safety as a means by which an organisation can identify and put in place systems in order to monitor and manage potential problems. (A good topic for a Members' Corner slot Roger?!)

In answer to Ralph Sander's query regarding how to access Corporate Manslaughter case files, Samantha advised that the Ministry of Justice and the CPS would be the place to start. Chris Hopkins then interjected that, for anyone who was interested, his company, Pinsent Mason, are maintaining a tracker with details of all the cases.

George thanked Samantha for her stimulating and thought provoking (as ever) presentation. Samantha responded to say that it was lovely to come back to address such an enlightened and forward thinking audience.