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To: All Branches

Dear Colleagues,

'Tailored Review of the Health and Safety Executive (HSE)' Report Published:

A new review, entitled the 'Tailored Review of The HSE' (The Smart Review), commissioned by the Department of Work and Pensions (DWP) has called on the organisation to "up their game on safety inspections and prosecutions". It also challenges many of the changes that were forced on the HSE by the Tory/Lib.Dem Coalition and Conservative Governments, making a total of 27 Recommendations.

The review, carried out by Sarah Smart (Chair of the Audit Committee at The Pensions Regulator), is generally positive about the HSE. However, it makes quite a number of recommendations that will reassure a lot of those who have been concerned over the direction that the HSE was going after 2010.

In 2010 the Tory/Lib.Dem Government instructed the HSE to stop all proactive safety inspections in the vast majority of sectors, terming them 'Low or Medium Risk' industries. From that point the HSE could only inspect workplaces after a complaint or a report of an incident. Local Councils were later ordered by the Government to do the same as it pursued its so called deregulatory agenda, removing 'burdens on business' with its 'light-touch' enforcement approach. As a result, HSE and Local Authority workplace inspections fell dramatically and Inspector staff numbers were slashed. This decline was highest in the local authority inspected sector where the number of pro-active inspections fell by 97 per cent between 2010 and 2016, and the overall number of inspections and other interventions fell by 65 per cent. Because of the fall in inspections, both prosecutions and enforcement activity fell as well.

The TUC, CWU and all UK Trade Unions campaigned and argued strongly that the move away from proactive inspections and enforcing authority staff cuts was a political move and not one based on evidence. The Unions also pointed out that the HSE approach to inspections was far more likely to find breaches of safety, where serious injuries have to be reported, rather than health. Proactive inspections continue to expose a material breach rate of 45-50 per cent, demonstrating the value of this form of intervention in removing risks from the workplace.

This latest report calls on the HSE to address these points. It asks for inspection and enforcement to be based on evidence of the best outcomes and there is a recommendation that the HSE maximise the impact of interventions on workplace health which means focusing ever-strained HSE resources on what works to remove risks. Equally welcome is the proposal

that the HSE should consider taking on more challenging prosecutions. This would include areas that the HSE has shied away from in the past decade, such as work-related stress.

The report also looks at the composition of the HSE Board. The requirement for three worker seats and three employer seats has been under threat for several years. Firstly the Government increased the number of additional seats from three to six, which diluted the balance on the board and reduced the worker/employer voice, and then the Government started refusing to appoint trade unionist nominations to the board. At one point they even appointed an employer to fill one of the worker representative seats on the board and refused to appoint trade union nominations to the board supported by the TUC, CWU and UK Trade Unions. Only after a huge, high profile campaign did the Government eventually back off but then it delayed advertising a Workers Representative HSE Board Seat for 2 years.

The Smart review is very clear on this issue, as was an earlier review, four years previously (The Triennial Review of the Health and Safety Executive Report - Temple Report). It states "The tripartite structure of the HSE board should be retained". It also asks the Government to explore "collaborative solutions" to avoid the situation we had whereby a board seat was vacant for 2 years because the Government simply could not bring itself to appoint the TUC, Trade Unions supported candidate.

Another area that the review looked at was the growing pressure on the HSE to take on more 'Commercial Work'. This has been a major demand from the Government and, so far has widely been seen as a failure, with the HSE being forced to chase private work which had little, if any benefit to either the organisation, or health and safety in the UK in general. The report makes a number of important recommendations that it is worth quoting:

- "Recommendation 5: The tripartite structure of the HSE Board should be retained (Involving Trade Union Seats). The Department should lead in exploring collaborative solutions to avoid a recurrence of the recent delays in filling vacancies for certain non-executive director roles.
- "Recommendation 12: The HSE Board should examine how it receives assurance over the quality of HSE's regulatory activity, including through the establishment of a dedicated team, and consider how it oversees the quality of local authority health and safety regulatory activity."
- "Recommendation 16: HSE should continue to develop and enhance its interventions to maximise its impact on work-related ill-health."
- "Recommendation 17: HSE should review its risk appetite in prosecutions and consider taking on more challenging prosecutions, in line with existing prosecution and enforcement guidance, when there is benefit in doing so."
- "Recommendation 18: HSE should continue to develop ways to facilitate local authority input into the development of relevant policy and regulation."
- "Recommendation 24: HSE should clarify the purpose of its commercial strategy and ambitions, to ensure that projects undertaken align and complement HSE's core business"
- "Recommendation 25: HSE should ensure that the success of commercial activity is measured by its contribution, rather than by income."

These Recommendations support the views campaigned on by the TUC, CWU and others in recent years during which time the HSE and Local Authority Health and Safety Regulation and Enforcement have come under attack by the Government. The Recommendations are a very strong reminder to the current Government that the HSE is there for a reason, which is to protect and improve the health and safety of workers and the public by enforcing Health and Safety Laws - and it is NOT a commercial organisation chasing profits.

The HSE Workforce will also welcome the proposals on staff engagement, communications and diversity which are issues that the HSE workforce Trade Unions have been campaigning on for many years.

The Report makes 27 Recommendations:-

- Recommendation 1: HSE and the joint DWP and DHSC (Department of Health and Social Care) Work and Health Unit should review their collaboration and agree a Memorandum of Understanding.
- Recommendation 2: In line with the Cabinet Office's 'Partnerships with arm's length bodies: code of good practice', the Department should review its partnership arrangements with HSE to provide greater clarity, ensure that they are proportionate and provide direct engagement between the centre of DWP and HSE. The Department should work with HSE to update the Framework Document to reflect this.
- Recommendation 3: The Department's Permanent Secretary and the HSE Chair should meet three or four times per year, and the Department and the HSE Chief Executive should maintain regular engagement.
- Recommendation 4: The Department should review HSE's budget delegations to ensure that the requirements for departmental approval are proportionate and recognise HSE's size and maturity.
- Recommendation 5: The tripartite structure of the HSE Board should be retained. The Department should lead in exploring collaborative solutions to avoid a recurrence of the recent delays in filling vacancies for certain non-executive director roles.
- Recommendation 6: The HSE and ONR Boards should agree when it is appropriate to end the reciprocal board membership arrangement.
- Recommendation 7: The HSE Board should consider whether there are opportunities to reduce the number of attendees at HSE Board meetings, in line with best practice, while maintaining the necessary skills and effectiveness of the Board.
- Recommendation 8: HSE should develop a skills matrix for the HSE Board and conduct an annual skills review to identify any gaps against this.
- Recommendation 9: The Department should ensure that future appointments to the HSE Board aim to fill any identified skills gaps and increase diversity on the Board, and continue to aim to stagger appointment terms.
- Recommendation 10: The HSE Board should continue to review open Board meetings, to ensure that each meeting has clear objectives and an appropriate format to support this.
- Recommendation 11: The HSE Management Board should conduct a review of its own effectiveness, as well as the structure of the Management Board and Extended Management Board, to ensure that these are as effective and efficient as possible.
- Recommendation 12: The HSE Board should examine how it receives assurance over the quality of HSE's regulatory activity, including through the establishment of a dedicated team, and consider how it oversees the quality of local authority health and safety regulatory activity.
- Recommendation 13: HSE should ensure that both externally and internally facing objectives are published, publicly reported against and included in performance tracking, as well as considering the benefit of a multi-year corporate plan.
- Recommendation 14: Using the insight work and building on the successful Business Intelligence tool, HSE should refresh its performance information, with appropriately challenging targets, and a focus on outcomes. HSE should discuss with other regulators to share best practice on effective outcome - based measurements of regulatory performance.
- Recommendation 15: HSE and the Department should work together to clarify responsibilities for horizon-scanning and increase the prominence of this work.
- Recommendation 16: HSE should continue to develop and enhance its interventions to maximise its impact on work-related ill-health.
- Recommendation 17: HSE should review its risk appetite in prosecutions and consider taking on more challenging prosecutions, in line with existing prosecution and enforcement guidance, when there is benefit in doing so.

- Recommendation 18: HSE should continue to develop ways to facilitate local authority input into the development of relevant policy and regulation.
- Recommendation 19: HSE should continue to work with the Cabinet Office, in line with the recommendations of the Regulatory Futures Review, to consider enabling local authorities to recover the costs of some of their enforcement activities.
- Recommendation 23: HSE should explore opportunities for expansion of the use of cost recovery in certain sectors, building on the lessons learned from Fee for Intervention to ensure clear objectives.
- Recommendation 24: HSE should clarify the purpose of its commercial strategy and ambitions, to ensure that projects undertaken align with, and complement, HSE's core business.
- Recommendation 25: HSE should ensure that the success of commercial activity is measured by its contribution, rather than by income.
- Recommendation 26: Cabinet Office and HM Treasury should consider the potential impact of uncertain cost recovery income on budgets and HSE should work with the Department, HM Treasury and Cabinet Office to clarify the position of commercial and Fee for Intervention income in the budgeting process
- Recommendation 27: HSE should consider how best to achieve further efficiencies over the next five years, with a particular focus on continuing to drive down estates costs, targeting regulatory activity and the use of digital services.

A copy of the 40 page Report 'Tailored Review of the Health and Safety' known as the 'Smart Review' is attached for your information and reference.

Yours sincerely



Dave Joyce
National Health, Safety & Environment Officer