



IOSH submission to Lord Young of Graffham's review of health and safety

Submission
16.07.10

ABOUT IOSH

Founded in 1945, the Institution of Occupational Safety and Health (IOSH) is the largest body for health and safety professionals in the world, with around 37,000 members in 85 countries, including over 13,000 Chartered Safety and Health Practitioners. Incorporated by Royal Charter, IOSH is a registered charity, and an ILO international NGO and CIS collaborating centre. The IOSH vision is:

“A world of work which is safe, healthy and sustainable”

The Institution sets professional standards and supports and develops its members, providing impartial, authoritative, free guidance and a continuing professional development programme. Regularly consulted by government and other bodies on draft legislation, codes of practice, guidance and international standards, IOSH is a founding member of UK, European and International professional body networks.

IOSH has an active research and development fund and programme, helping develop the evidence-base for health and safety policy and practice. Summary and full reports are freely accessible from our website. IOSH publishes an international peer-reviewed journal of academic papers twice a year titled *Policy and practice in health and safety*. We have also developed a unique UK resource providing free access to a health and safety research database, as well other free on-line tools and guides, including award-winning websites for business start-ups and young people; an occupational health toolkit; and a risk management tool for small firms.

IOSH has 29 Branches in the UK and worldwide including in the Caribbean, Hong Kong, the Middle East and the Republic of Ireland and 16 special interest groups. These networks organise low-cost health and safety events across the UK that are open to the general public.

IOSH members work both in-house within organisations and also as external advisers, at strategic and operational levels across all employment sectors. IOSH accredited trainers deliver health and safety awareness training to all levels of the workforce from shop floor to managers and directors, through a licensed trainer network of more than 1,350 trainers. We issue around 120,000 certificates per year.

For more information about IOSH, our members and our work, please visit www.iosh.co.uk

Enquiries about this response should be directed to:

Richard Jones, Policy and Technical Director,

IOSH, The Grange, Highfield Drive, Wigston, Leicestershire, LE18 1NN. Tel: 0116 257 3100,

email: richard.jones@iosh.co.uk

1. INTRODUCTION

In December 2009 David Cameron made a speech ¹ at the Policy Exchange in which he referred to "...the nonsense of this over-the-top culture of health and safety and compensation..." and announced he would be asking Lord Young of Graffham to lead a review examining "...everything from the working of the Health and Safety Executive (HSE), to the nature of our health and safety laws, litigation and the insurance industry"; hereafter referred to in this submission as the 'review'.

Following the General Election in May 2010, Lord Young was appointed as 'Adviser to the Prime Minister on health and safety and the compensation culture' and in an article in The Times on 19 June 2010 ², publicised his review which will be reporting in the Summer. The terms of Lord Young's review are:

"To investigate and report back to the Prime Minister on the rise of the compensation culture over the last decade coupled with the current low standing that health and safety legislation now enjoys and to suggest solutions. Following the agreement of the report, to work with appropriate departments across government to bring the proposals into effect."

IOSH has met with Lord Young and provided him with a list of documents and links and suggested areas for his review, see Appendices 1 and 2. In the response that follows, we present our comments so far, grouped under the headings:

- Where are we now?
- Will the Lord Young review help?
- What would IOSH like to see?

In our comments, we have expressed some disappointment about the conduct of the review so far, because of its use of 'regulatory myths' ³ and the announcement of what seem premature conclusions while the review is still underway, via interviews in the press. Our 'What would IOSH like to see?' section contains our conclusions and the areas of omission we would like the review and the government to consider; which in brief are:

- How to create a risk intelligent society, improve public understanding of health and safety and tackle risk / liability aversion
- How to fully acknowledge the positive role of health and safety and of the profession in the working life and prosperity of the nation
- How to better publicise the business case and benefits of good workplace health and safety
- How to ensure adequate resourcing and support for the HSE and for SMEs

2. WHERE ARE WE NOW?

2.1 Health and safety law

Given the national failure data^{*} and levels of compliance in the UK, IOSH strongly disagrees with the premise that there is an 'over-the-top' culture of health and safety or an issue with the law itself (which only requires what is reasonable); but rather, we think there is an issue with some people's perception of it.

We have a risk-based goal-setting approach to health and safety in the UK requiring employers to take reasonable, proportionate actions to ensure the health and safety of their employees and others who may be affected by their activities. This is about taking sensible precautions and not about excessive or pointless paperwork, as is sometimes portrayed. Contrary to some perceptions, since the introduction of the Health and Safety at Work, etc. Act 1974, the number of health and safety regulations on the statute book has actually reduced by about a half⁴. And the HSE review all this on an ongoing basis as part of their 'Simplification Plan'⁵.

So, we believe the issue the government should address is any public confusion about what health and safety law really requires, stemming from media stories relating to public / leisure activities and children and fear of being sued. In 2004 the Better Regulation Taskforce concluded that the 'compensation culture' was itself a myth, driven by media coverage; and in 2008 the Better Regulation Executive found the position appeared unchanged⁶.

IOSH would like to see basic risk management embedded in all national, vocational and professional courses, to help create a 'risk intelligent' society in which everyone recognises that risk is part of life; knows how to manage risk sensibly; and also understands personal responsibility.

Government needs to promote its health and safety guidance and provide more advisory support to SMEs. We have also suggested it would be helpful if all the non-health and safety regulation and requirements that impact SMEs, such as grant applications, employment law, insurance, etc, were simplified – as with the health and safety simplification plan – and more easily told apart, perhaps via an authoritative helpline.

IOSH offers free on-line tools to help small firms e.g. 'Risk assessment routefinder' and 'Safestartup' websites^{7, 8}, and has supported the HSE's work to help small firms, via their '5 steps to risk assessment' and example risk assessments^{9, 10}. In support of the HSE's 'sensible risk management' campaign, in 2006, we launched our 'Reality Checklist'¹¹, championing

* Failure data: for example, numbers and rates of work-related deaths, injuries and illnesses; and numbers of associated working days lost, produced annually by the Health and Safety Executive

'sensible safety' with 4-points for employers to consider when tackling risk, to ensure a sensible, proportionate approach.

In terms of balance, we think it's a shame that the review has, to date, focused exclusively on the reported 'health and safety gone mad' stories and not put this in context by mentioning the many thousands of good, sensible risk decisions taken in UK workplaces every single day. We also feel it's concerning that the review seems not to fully recognise the benefits of a risk-based, goal-setting system, giving employers flexibility in how they control their risks; and regulators, the scope to consider relative risk when making enforcement decisions. And we regret that though acknowledging the success of our current system in respect to our safety record, the review has failed (so far) to appreciate that better management and more effective enforcement could help further reduce the human and financial toll of health and safety failure; bringing benefits to individuals and their families, to businesses and to society. The HSE website provides a range of example case studies, helping make the business case for good health and safety ^{12, 13}.

2.2 Negative perceptions of health and safety

In recent years there has been an emergence and growth of 'elf & safety' myths – crazy stories that have nothing much to do with actual health and safety, but more to do with liability aversion. 'Health and safety' has now unfortunately become a wide-ranging 'catch-all label' in the media, under which anything seen as 'nannying' is put, with myths tending to be about the public, leisure activities or children.

Workplace health and safety, on the other hand, is about saving lives and preventing serious injury and illness at work. Tragically, in 2008-09 ¹⁴, 180 workers were killed; and there were also an estimated 246,000 reportable work-related injuries (LFS). Additionally, there are an estimated 1,000 deaths from work-related road traffic accidents ¹⁵ and thousands more from occupational cancers each year ¹⁶.

IOSH and others are concerned that the crazy stories can have a negative effect on public perception; make people less receptive to real health and safety messages; and cause confusion about the sensible, reasonable steps that the law actually requires. Negative media portrayal was listed by health and safety professionals as one of the top three issues currently facing the profession in a recent survey ¹⁷.

This growth in negative coverage has coincided with a growth in TV advertising of 'no win, no fee' personal injury claim firms, which seem to have raised some people's fears of being sued and made them defensive in their decisions. A research study ¹⁸ found decision-makers

themselves believed the top two solutions to preventing over-cautious decisions were definitive guidance and access to professional advice.

IOSH thinks these crazy stories are generally the result of misguided people who haven't taken professional advice and have 'made up the rules' themselves; or those who do not want the cost or trouble of organising an activity properly, and so use health and safety as an excuse. Other stories seem to be inaccurately reported or confused with subjects such as security, political correctness or civil liability issues. And it is a combination of all of this that serves to bring occupational safety and health unfairly into disrepute.

We believe others should join IOSH in helping 'debunk' the negative stories and that perhaps government, insurers and the legal profession could do more on this. We would also like to see more positive publicity about the benefits and business case for good health and safety at local and national levels.

2.3 Upskilling tomorrow's workforce

In 2008-09, 1.2 million workers suffered illness they believed caused / made worse by current or past work ¹⁴. While continuing to build on the improvements the country has made on workplace safety, we think the UK needs to do far more on work-related health issues, including better training for workers, managers and professionals and a stronger multidisciplinary approach.

In her review of the health of Britain's working age population report 'Working for a healthier tomorrow', Dame Carol Black, Director for Health and Work, says, "Healthy workplaces need to become the expected norm", and that, "Schools, further education and higher education have a role in embedding these expectations in the next generation." ¹⁹

IOSH believes young people should be able to take advantage of all the positive opportunities that are offered to them and learn how to deal sensibly with the new challenges of modern society. This is why we believe that helping them to be risk aware - not risk averse - is giving them a valuable skill. The new government's emphasis on vocational training and apprenticeships are ideal opportunities to get things right from the start, by embedding relevant health and safety messages in the fabric of these courses.

IOSH provides a bespoke website ('wiseup2work') ²⁰ with interactive information for young people and those working with them, including teachers, work placement officers and employers. Teachers from schools and colleges can also access free teaching resources to help develop sensible health and safety awareness in year-10 students, the 'Workplace Hazard Awareness Course' (WHAC), which around 3,500 have already registered to use.

3. WILL LORD YOUNG'S REVIEW HELP?

IOSH welcomed this review and debate on the basis that it would help tackle the root causes of today's risk aversion (e.g. negative stories, fear of being sued, people 'making up' the rules, use of health and safety as an excuse, public confusion), which we believe can undermine serious health and safety issues. While we are open to consider suggested improvements and new thinking on evidence-based policy and practice, we would not support actions that may lower health and safety standards and essential worker protection.

There have recently been a series of articles in the national press by Lord Young (The Times, 19.6.10 ²; Daily Telegraph, 22.6.10 and 7.7.10 ²¹) and another by David Cameron (Daily Mail, 10.7.10 ²²) in which they appear to be presenting conclusions that will form part of the final report. Unfortunately, so far, it seems the review is simply reiterating themes and assumptions outlined in David Cameron's December 2009 speech ¹ and the subsequent Policy Exchange report 'Health and safety: reducing the burden' ²³ (which we have heavily criticised ²⁴); using media myths as underpinning 'evidence'. We also believe there are significant omissions, some of which we have outlined in section 4 below. Stated review positions appear to be as follows:

3.1 Emergency services

"His [Lord Young's] plan is to amend the law so that health and safety rules no longer apply to the emergency services 'If you are a policeman then you get paid for doing a job that involves risk. Health and safety is being used as an excuse for inaction'" ². And "Lord Young will recommend excluding the police, paramedics, ambulance drivers and other emergency services from prosecution under health and safety laws while they are carrying out their duties" ²².

Comment: IOSH has provided the review with copies of the HSE's recent guides on 'Striking the balance between operational and health and safety duties in the police service' ²⁵ and a similar guide for the fire and rescue service ²⁶. While fully recognising the challenges of working in fast-moving, highly charged and risky situations, we believe coverage by the Health and Safety at Work Act, with its reasonably practicable qualification, is appropriate. HSE acknowledge that it may be necessary to take some risks to secure wider public safety benefits and that employees may wish to act in a heroic manner to safeguard the public; but they also acknowledge that, if there is no prospect of success, employees may choose not to put themselves at unreasonable risk. Employers need to ensure effective management of work activities and provide safe systems, adequate training and resources; we believe this enhances operational efficiency of the emergency services and does not hinder it, as is implied by the review. It's also important to remember that the HSE's Enforcement Policy Statement ²⁷ includes the criteria that a prosecution is judged to be in the public interest.

3.2 Home workers and the self-employed

“People who work from home or are self-employed, will also be exempted from onerous health and safety ‘risk assessments’ of their own living spaces”²².

Comment: IOSH believes this exemption is unnecessary and unhelpful as only significant work-related risks need to be considered and there is no need for this to be onerous. Additionally, those employing less than 5 people are not required to record risk assessments. We believe that taking sensible steps to protect themselves, others who they may engage to help them, and the public, is good for the self-employed person, good for their business and good for UK plc. It should be remembered that if self-employed people are seriously injured / ill and cannot work, this will adversely affect their ability to earn a living and may cause them to permanently lose customers, who may find other suppliers. In addition, they may need support from GPs, NHS and possibly social services. So, it makes economic sense all-round for people to take sensible steps to look after themselves at work. It should also be remembered that the average fatal injury rate for the self-employed (2004-5 to 2008-9) was much higher (1.4 per 100,000) compared to that for employees for the same period (0.6 per 100,000)²⁸.

3.3 Teachers and school trips

“The Prime Minister said the Government was particularly determined to stop teachers refusing to take pupils on school trips because of red tape”²².

Comment: IOSH advocates improved teacher training to include the teaching of health and safety and our teaching materials promote a sensible approach to managing risk. HSE already provide information on this subject on its ‘school trips’ web pages²⁹, explaining “HSE believes very strongly in the educational value of well-planned visits and is a firm supporter of outdoor education. However, activities must be properly planned and managed.” There has also been work by the Department for Children, Schools and Families seeking to improve guidance on health and safety of learners outside the classroom and there is a bespoke website for this³⁰.

3.4 The Health and Safety Executive

“Mr Cameron did not rule out abolition of the Health and Safety Executive...”²².

Comment: As research³¹ has found that enforcement is important in driving compliance, IOSH would strongly oppose any such abolition without an equivalent replacement, and would also be opposed to cuts in front-line inspectorate provision. In addition, the HSE has already been

reviewed several times over recent years by Select Committees and been found to be 'fit for purpose'; and a 2006 Mori opinion poll ³² found that 90% of CEOs and 89% of employers who had had contact with HSE in their work agreed that the organisation was helpful. We think it regrettable that this abolition reference appeared in the national press, especially in the context of this review, as we believe it could undermine the credibility and authority of our country's inspectorate, a body we believe is vital in helping maintain standards.

3.5. Health and safety consultants

Lord Young is reported saying "...there was a restaurant that banned toothpicks. You think, how could it possibly ban toothpicks? But some consultant who didn't know what he was doing was being paid a few hundred pounds to do a report and stuck 'ban toothpicks' at the end of it." and then to go on to add "Any of us could be a health and safety consultant tomorrow, it requires absolutely no qualification. We shouldn't allow people to charge for advice unless they're properly trained." ².

Comment: IOSH, as the Chartered body for health and safety professionals, has a competence-based membership structure and since 2003, has been calling for a clearer definition for dutyholders of 'competent health and safety assistance' and for some form of licensing or certification / accreditation to ensure that those providing health and safety services are appropriately qualified and experienced. This is because we are concerned that unqualified and inexperienced health and safety advisers could give dangerous or 'over zealous' advice.

So, we welcome the review's implied recognition of the value of competent health and safety advice and its support of our proposed accreditation of health and safety consultants. However, we think it is unhelpful for the review to exaggerate and overstate the current situation, using an embellished 'regulatory myth'. We do not know of instances where consultants have been involved in the crazy media stories such as the apparent 'toothpick ban'; rather such stories report misguided people 'making up their own rules', instead of seeking competent advice. Indeed, on investigating this particular story, it's clear that the hotel chain concerned had not in fact banned toothpicks at all and their spokesperson suggested that the waiter had simply run out of them ³³. So, no toothpick ban and no consultant involved either; yet the story is repeated.

Unfortunately, this promulgation of myths may serve to make people think the situation is worse than it is and put them off seeking assistance altogether. Importantly, we know from research ¹⁸ that decision-makers themselves believe that the top two solutions for preventing over-the-top decisions are definitive guidance and access to professional advice.

4. WHAT WOULD IOSH LIKE TO SEE?

In this section we cover a number of the key areas also included in our manifesto 'Creating a healthier UK plc'³⁴ – health, education, support for SMEs and access to good advice.

As indicated above, and recognising the benefits of civil litigation in improving standards and compensating those harmed due to negligence, we would like the review to tackle the root causes of risk / liability aversion and public confusion about health and safety, addressing any fears that may be driving it. This would require dispelling the many myths that bring **real** health and safety into disrepute and helping people to understand what is reasonable, so that any 'crazy' decisions are automatically challenged and further media stories and myths are not generated. We would like the government, insurers, the legal profession and others join us in this task.

We advocate embedding health and safety in national, vocational and professional curricula, to help create a 'risk intelligent society', so that tomorrow's workforce understands the benefits of sensible risk management. We would like to see far better recognition of the business case and benefits of good workplace health and safety. At a national level this would involve information sharing across government departments, for example, the Department of Work and Pensions, Department of Health, Department for Business, Innovation and Skills; and HM Treasury; and at a local level, between Councils, employers and local trade associations and business groups.

We think the government should look at how to improve investigation and enforcement levels and protect HSE resources during the forthcoming public spending cuts and consider the provision of free workplace advisory visits for SMEs in England (as offered in Scotland, Wales and Northern Ireland), as part of a spend-to-save approach. We believe government should fully endorse the valuable work of the HSE and publicly recognise its role in helping prevent suffering and loss and improve productivity. We also suggest there should be simplification and differentiation of the plethora of non-health and safety demands on SMEs, such as insurance requirements, grant application forms, employment law.

We welcome the government's support for the accreditation of health and safety consultants and think it would be helpful if it provided dutyholders with a clear definition of competent health and safety assistance and also acknowledged the positive role of competent health and safety professionals in the working life and prosperity of our nation.

5. REFERENCES

1. Cameron D: *Reducing the burden and impact of health and safety* – speech delivered at the Policy Exchange, 1 December 2009, www.conservatives.com/News/Speeches/2009/12/David_Cameron_Reducing_the_burden_and_impact_of_health_and_safety.aspx
2. Sylvester R, Thomson A and Ford R interview with Lord Young of Graffham “Police and firefighters to be freed from the ‘absurd’ health and safety shackles” and “There are children dying because of health and safety”, *The Times*, 19 June 2010
3. Almond P, The Dangers of Hanging Baskets: ‘Regulatory Myths’ and Media Representations of Health and Safety Regulation, *Journal of Law and Society*, 2009; 36 (3): 352-375
4. Health and Safety Commission (now Health and Safety Executive), *Measuring up...performance report 2006*, Sudbury: HSE Books, 2006, www.hse.gov.uk/aboutus/reports/performance/performance2006.pdf
5. Health and Safety Executive, *Simplification plan, 2009*, www.hse.gov.uk/simplification
6. Better Regulation Executive – *Improving outcomes from health and safety*, London: BIS, 2008 www.berr.gov.uk/whatwedo/bre/reviewing-regulation/health-safety/page44096.html
7. IOSH, *Risk assessment routefinder*, www.ioshroutefinder.co.uk
8. IOSH, *Safestartup* website, www.safestartup.org
9. Health and Safety Executive, *5 steps to risk assessment*, Sudbury: HSE Books, 2006, www.hse.gov.uk/pubns/indg163.pdf
10. Health and Safety Executive, example risk assessment for small firms, www.hse.gov.uk/risk/casestudies/index.htm
11. IOSH, *Reality checklist*, www.iosh.co.uk/news_and_events/campaigns/get_the_best.aspx
12. Health and Safety Executive, Small business case studies, www.hse.gov.uk/business/sme-case-studies.htm
13. Health and Safety Executive, Large business case studies, www.hse.gov.uk/business/casestudy.htm
14. Health and Safety Executive, Health and safety statistics, www.hse.gov.uk/statistics/index.htm
15. Health and Safety Executive, *Driving at work – managing work-related road safety* (INDG382), Sudbury: HSE Books, 2003, www.hse.gov.uk/pubns/indg382.pdf
16. Health and Safety Executive, Health and safety statistics, www.hse.gov.uk/statistics/causdis/cancer/index.htm
17. IOSH, *The value of health and safety – salary and attitudes survey 2009*, Wigston: IOSH, 2009, www.iosh.co.uk/membership/salary_survey_2009.aspx
18. Wright M, Beardwell C, Pennie D, Smith R, Norton-Doyle J and Dimopoulos E, *Evidence based evaluation of the scale of disproportionate decisions on risk assessment and management* (RR536), Sudbury: HSE Books, 2008, www.hse.gov.uk/research/rrhtm/rr536.htm

19. Black C, *Working for a healthier tomorrow*, London: The Stationery Office, 2008, www.workingforhealth.gov.uk/documents/working-for-a-healthier-tomorrow-tagged.pdf
20. IOSH, *Wiseup2work* website, www.wiseup2work.co.uk
21. Young D, "Health and safety law has noble origins – so what went wrong?" and "Law changes have allowed ambulance chasers to thrive", article in *The Daily Telegraph*, 22 June 2010 and 7 July 2010, www.telegraph.co.uk/news/newsttopics/politics/7847393/Health-and-safety-law-has-noble-origins-so-what-went-wrong.html and www.telegraph.co.uk/comment/personal-view/7876340/Law-changes-have-allowed-ambulance-chasers-to-thrive.html
22. Chapman J, interview with David Cameron "I'll end health 'n' safety farce", *Daily Mail*, 10 July 2010, www.dailymail.co.uk/news/article-1293508/III-end-health-n-safety-farce-PM-vows-cure-Labour-neurosis.html
23. Taylor C, *Health and safety: reducing the burden*, London: Policy Exchange, 2010, www.policyexchange.org.uk/publications/publication.cgi?id=189
24. IOSH, *Critique of Health and safety: reducing the burden*, by Corin Taylor, Policy Exchange, for Lord Young of Graffham's review, 2010, www.iosh.co.uk/ConsultDoc/Policy%2+0Exchange%20report.pdf
25. Health and Safety Executive guide – *Striking the balance between operational and health and safety duties in the police service*, Sudbury: HSE Books, 2009, www.hse.gov.uk/services/police/duties.pdf
26. Health and Safety Executive guide – *Striking the balance between operational and health and safety duties in the fire and rescue service*, Sudbury: HSE Books, 2010, www.hse.gov.uk/services/fire/duties.pdf
27. Health and Safety Executive, *Enforcement Policy Statement (HSE41(rev1))*, Sudbury: HSE Books, 2009, www.hse.gov.uk/pubns/hse41.pdf
28. Health and Safety Executive, average fatal injury rates for the 5-year period 2004-05 to 2008-09, www.hse.gov.uk/statistics/fatalinjuries.htm
29. Health and Safety Executive, School trips web pages, www.hse.gov.uk/schooltrips/index.htm
30. Learning Outside the Classroom website, www.lotc.org.uk
31. Wright M, Marsden S and Antonelli A, *Building an evidence base for the Health and Safety Commission Strategy to 2010 and beyond: a literature review of interventions to improve health and safety compliance (RR196)*, Sudbury: HSE Books, 2004, www.hse.gov.uk/research/rrpdf/rr196.pdf
32. Ipsos MORI poll for Health and Safety Executive, *Attitudes to Health and Safety: a quantitative study of stakeholder opinion*, London: Ipsos MORI, 2006, www.hse.gov.uk/risk/attitudes.htm
33. Hull L, "Toothpick Taliban! Restaurant outlaws the 'dangerous' dental sticks", article in *Daily Mail*, 22 January 2010, www.dailymail.co.uk/news/article-1245019/Restaurant-refuses-diner-toothpick-dangerous.html
34. IOSH, *Creating a healthier UK plc – IOSH health and safety manifesto*, Wigston: IOSH, 2010, www.iosh.co.uk/manifesto

Documents, links and information provided by IOSH to Lord Young of Graffham's review:

1. IOSH, *Critique of Health and safety: reducing the burden*, by Corin Taylor, Policy Exchange, for Lord Young of Graffham's review, 2010, www.iosh.co.uk/ConsultDoc/Policy%2+0Exchange%20report.pdf
2. IOSH, *Getting help with health and safety – practical guidance on with a consultant*, Wigston: IOSH, 2009, www.iosh.co.uk/guidance
3. IOSH, *Consultancy - good practice guide: Practical guidance on working as a competent health and safety consultant*, Wigston: IOSH, 2009, www.iosh.co.uk/guidance
4. IOSH, Negative image of health and safety (IOSH policy statement), 2010, www.iosh.co.uk/information_and_resources/policy_and_consultation/policies.aspx
5. Health and Safety Executive guide – *Striking the balance between operational and health and safety duties in the police service* www.hse.gov.uk/services/police/duties.pdf
6. Health and Safety Executive guide – *Striking the balance between operational and health and safety duties in the fire and rescue service* www.hse.gov.uk/services/fire/duties.pdf
7. Health and Safety Executive – *Evidence based evaluation of the scale of disproportionate decisions on risk assessment and management* (2008) RR536 www.hse.gov.uk/research/rrhtm/rr536.htm
8. Health and Safety Executive's 'Myth of the month' web page has many examples of myths they have tried to debunk www.hse.gov.uk/myth/index.htm
9. Health and Safety Executive's 'Simplification plan' – indicates some of the progress made so far in simplifying the regulations www.hse.gov.uk/simplification/
10. Work and Pensions Select Committee – *The role of HSC/E in regulating workplace health and safety* (April, 2008) www.publications.parliament.uk/pa/cm200708/cmselect/cmworpen/246/246i.pdf
11. Work and Pensions Select Committee – *The role of HSC/E in regulating workplace health and safety: government response* (June, 2008) www.publications.parliament.uk/pa/cm200708/cmselect/cmworpen/837/837.pdf
12. Better Regulation Executive – *Improving outcomes from health and safety* (2008) www.berr.gov.uk/whatwedo/bre/reviewing-regulation/health-safety/page44096.html (including the 'Vanilla' Report)
13. Regulatory Reform Committee – *Themes and trends in regulatory reform* (July, 2009) www.publications.parliament.uk/pa/cm200809/cmselect/cmdereg/329/329i.pdf
14. Almond P, The Dangers of Hanging Baskets: 'Regulatory Myths' and Media Representations of Health and Safety Regulation, *Journal of Law and Society*, 2009; 36 (3): 352-375
15. Hull L, "Toothpick Taliban! Restaurant outlaws the 'dangerous' dental sticks", article in *Daily Mail*, 22 January 2010, www.dailymail.co.uk/news/article-1245019/Restaurant-refuses-diner-toothpick-dangerous.html

Some IOSH suggested review areas, in no fixed order, March 2010

As part of a review into civil litigation and risk / liability aversion, the following may be useful areas for exploration / improvements (points 1-6 below):

1. Review curricula and support the embedding of basic risk management in all national / vocational / professional courses to help create a 'risk intelligent' society, which recognises risk is part of life; knows how to manage it sensibly; and understands personal responsibility.
2. Review the non-health and safety regulation and requirements that impact SMEs (insurance requirements, grant application forms, employment law, etc) to ascertain whether these have been simplified (as health and safety regulation has) and how they can be differentiated in dutyholders' minds e.g. via an authoritative helpline. Also consider whether simplification should be a condition of all business incentive schemes and the agencies that deliver them, in order to reduce unnecessary bureaucracy.
3. Explore whether investing in more publicity campaigns to strengthen community engagement in sensible risk management would help improve public perception (similar to TV ads like 'kill your speed, not a child'). Also, examine whether publicly-owned media can and should be encouraged to include statements within their annual reports on their commitment to promoting positive risk management and its coverage.
4. Recommend support of accreditation of health and safety consultants and a clearer definition of competent health and safety advice, to help make sure employers are getting the right assistance, when they need it.
5. Review tax rules [†] on the purchase of certain therapies for non-work injury / illness, to help remove any disincentives for organisations to support rehabilitation.
6. Review the 'press complaints procedure' and why organisations and agencies do not use this in the context of 'elf & safety' media myths, where appropriate [‡].

[†] HSE guide 'Tax rules and the purchase of occupational health support', www.hse.gov.uk/pubns/taxrules.pdf

[‡] House of Lords Economic Affairs Committee 2006 report 'Government policy on the management of risk' www.publications.parliament.uk/pa/ld200506/ldselect/ldeconaf/183/183i.pdf see page 14, para 37

Some IOSH suggested review areas, in no fixed order, March 2010 (continued)

Recognising the benefits of civil litigation in compensating those harmed due to negligence and its role in helping to improve standards, and that there is no evidence of the so-called compensation culture, in view of the apparent growth of risk / liability aversion and the current negative media portrayal of health and safety, we believe the following might usefully be examined (points 7-10 below):

7. Explore how to allay any unfounded fears in public sector employees that they may be sued or prosecuted when behaving reasonably and in good faith.
8. Review the role of insurers in personal injury cases and the system under which they can consider it more economic to settle unfounded cases than defend, even where they could do this successfully. And also, the overall efficiency of the system, taking appropriate account of the recent *Review of Civil Litigation Costs: final report* (December 2009), by Lord Justice Jackson [§].
9. Review the role of self-insured local authorities in this context or those authorities with huge excesses to pay; and investigate the possible advantages / disadvantages of making settlements from the public purse more transparent and accountable. Also, examine the efficacy of communication strategies used by public bodies in relation to public risk ^{**}.
10. Review the Compensation Act 2006 (post-legislative scrutiny) to see if it has operated as anticipated in terms of encouraging more employers to offer appropriate rehabilitation. We also note that the Risk and Regulation Advisory Council (RRAC) 2009 report *Judges, courts, the legal profession and public risk* ^{††} includes the Act's role in allowing courts to consider the 'desirability' of an activity. RRAC found the effect of the Act on courts' appreciation of public risk to be unknown and was not aware of relevant parts being cited in judgements.

For further information on this, please contact richard.jones@iosh.co.uk or 0116 257 3149

[§] Review of Civil Litigation Costs, 2009 www.judiciary.gov.uk/about_judiciary/cost-review/reports.htm

^{**} A Practical Guide to Public Risk Communication, RRAC 2009
www.berr.gov.uk/deliverypartners/list/rrac/index.html

^{††} Judges, courts, the legal profession and public risk, RRAC 2009, pp 8 and 9,
www.berr.gov.uk/files/file53398.doc