

11 October 2010

Item 2

Health and safety regulation and the Lord Young review of the operation of health and safety laws and the growth of the compensation culture – implications for councils

Purpose of report

For discussion and direction.

Summary

This report outlines the role of councils in the operation of health and safety laws, the Local Government Group's links with the Government's Health and Safety Executive and the emerging findings of a report by Lord Young of Grantham to the Prime Minister reviewing the operation of health and safety laws and the growth of the compensation culture.

Recommendations

Programme Board members are invited to:

1. Review the role of councils and the LG Group, including working with the Government's Health and Safety Executive, to deliver sensible health and safety that benefits local communities; and
2. Consider the emerging conclusions and recommendations of the Lord Young review into health and safety and possible responses to matters of relevance to councils.

Action

Officers to take forward appropriate action reflecting members' views

Contact officer: Mark Du Val
Position: Director of Policy, LG Regulation
Phone no: 020 7665 3868
E-mail: mark.duval@local.gov.uk

Item 2

Health and safety regulation and the Lord Young review of the operation of health and safety laws and the growth of the compensation culture – implications for councils

Background - The role of councils and HSE in the operation of health and safety laws

1. All Councils, as “duty holders” have responsibility for the health and safety of their workforces alongside a more general duty to the public visiting and using council facilities. District and unitary councils, as “regulators” have specific responsibilities for regulating health and safety in over a million workplaces, employing around half of the British workforce. Councils’ priority, both as duty-holder and regulator, is the delivery of sensible health and safety risk management, focussing on areas where there is a clear need to reduce the incidence of fatal and major injuries, alongside reducing work-related ill health. In 2008/09, 180 workers were killed at work, over 130,000 injuries to employees were formally reported, there were over 550,000 new cases of illness linked to work and an estimated 29.3 million working days were lost due to ill health or injury in Great Britain. Further background is given in **Annex 1**.
2. HSE and councils work alongside each other as co-regulators. The co-regulatory partnership was formalised in September 2004 with the publication of a “statement of intent” endorsed by the HSE and the local authority Associations including the LGA and LG Regulation. This led to a statement of commitment to improve our partnership working “to prevent death, injury and ill health of those at work and those affected by work activities”.
3. It was agreed that there should be a high level strategic meeting twice a year between leading councillors and members of the HSE’s governing Board to review the partnership. The LG Group nominates 4 members, including the Chairman of LG regulation, from the Group’s Safer and Stronger Communities Programme Board to what is called the “Local Government Panel” (LGP). The Welsh and Scottish Associations each also nominate one councillor member. As well as considering the “health” of the co-regulatory partnership, the meetings are allow local government political leadership to promote to the HSE’s Board members the role and contribution of health and safety to wider local community priorities such as community safety, health and well-being alongside supporting local businesses and their contribution to the local economy.

11 October 2010

Item 2

The Lord Young review of the operation of health and safety laws and the growth of the compensation culture

4. The Government announced in June 2010 that the Rt Hon Lord Young would undertake a Whitehall-wide review of the operation of health and safety laws and the growth of the compensation culture. We currently understand that Lord Young's report will be launched early-mid October but it has been trailed in speeches prior to the Conservative Party Conference.
5. The Chairmen and senior officers from LG Regulation and LG Employers met with Lord Young soon after the review was announced. The meeting covered a number of issues including: the role of consultants, lawyers and insurance companies in getting businesses and councils to be risk averse; perceived excesses of regulation in low risk businesses; coordinating food and health and safety inspections; councils allegedly banning local events; how to encourage sensible risk management and a greater common-sense approach. Following the meeting, Lord Young was provided with further information on various matters.
6. Lord Young said he would share his conclusions with the LG Group before publication, although we now understand this may simply be a pre-briefing before publication. Whilst we know the report is circulating around Whitehall departments, they have been instructed that they should not share it outside of Government. We also understand that part of the ongoing discussion with Whitehall departments and related (including the HSE) is to enable the Prime Minister and Lord Young, alongside the launch of the report, to publish an implementation plan with some challenging timescales for delivery. LG Regulation has been drawn into a number of pieces of work and discussions about what might be included in the plan. There have also been a number of media reports from various journalists suggesting what will be in Lord Young's report, all with a significant degree of consensus. Work is taking place with the LG Group media relations team to enable an effective response to be provided by the Group on behalf of councils once the report is made public.

Issues likely to be covered in Lord Young's report of relevance to councils

7. It appears very likely that any launch will include various messages that local government can wholeheartedly support – a desire to see a health and safety system that is proportionate and not bureaucratic, a system that is aimed at protecting people and does not place a massive burden on business and public services. Councils will be sympathetic to suggestions like declaring war on the mushrooming compensation culture and lifting regulations on police, teachers and ambulance workers so they no longer face the threat of being sued for making common sense decisions. Whilst there may be anecdotes or isolated

11 October 2010

Item 2

examples that give rise to some of the underlying perceptions, there does not appear to be the evidence that these things are widespread.

8. However, councils are unlikely to agree that the current health and safety rules are mad and the system needs drastic reform, or that health and safety laws are 'a music hall joke'. It is not the legislation that is the problem. The duties are goal based and seek to focus on the real risks that can lead to death, injury and ill health of those at work and those affected by work activities. These are matters that citizens rightly can expect from employers.
9. Whilst there does not appear to be evidence to suggest major issues with regard to personal injury claims impacting on councils disproportionately, some of the recommendations that might be in Lord Young's report could be supported. For example controls on lawyers advertising and claims with regard to "no win no fee" actions and powers for the courts to cap costs of lawyers.
10. Lord Young has publicly shared his concern about what he sees as excessive regulation in low risk businesses such as offices (an area of regulation that falls to councils). Whilst it is not very likely that councils would visit offices because they are mostly low risk, there may be occasions where councils need to investigate reports of accidents or ill-health or specific complaints. LG Regulation is working with the HSE to develop a web-based tool that office businesses could use to undertake and document risk assessments where their activities are low risk.
11. Lord Young is concerned about the perceived barriers that health and safety risk assessments create for schools trips. Again, there would be support for anything that might clarify what is essential and reduce any perceived unnecessary burdens in terms of managing risks and reducing paperwork. Suggesting schools should not be liable for accidents on trips, nor for injuries suffered by children playing organised games, unless there has been "reckless disregard" appears sensible but this would need to be considered carefully to ensure that there are no unintended consequences.
12. Lord Young has stated previously that firework displays, street parties and concerts should no longer be able to be banned unilaterally by councils on health and safety grounds and organisers should have the right to challenge any decision, with an independent ombudsman ruling on contentious cases. There does not appear to be any evidence that this is an issue locally. Recently the LG Group worked with CLG who wanted to promote guidance on street parties to clarify various misunderstandings about councils preventing such from taking place, although there was little evidence of any widespread problems. The LG Group is confident that councils do explain local decisions and there are existing mechanisms in all councils to deal with situations where

11 October 2010

Item 2

citizens do not agree with decisions or want to better understand the reasons. Indeed, it would also be possible if a citizen had used all these routes but still disagreed with a council's explanation to then approach the current Local Government Ombudsman service.

13. There has been much media reference as to how this will impact and promote "common sense" policing but at this point there have been no detailed discussions on this issue. We will have to await the formal report.

Conclusion and next steps

14. The LG Group is preparing for the publication of the Lord Young report to the Prime Minister and will robustly defend councils' reputation where criticisms are based on anecdotes or local issues that have been significantly misrepresented. LG Regulation will continue to engage with the Government and HSE in relation to any further work that follows. The Group's priority will be to reinforce and support the delivery of sensible and proportionate health and safety expectations and requirements, that deliver the prevention of death, injury and ill health of those at work and those affected by work activities.
15. The Programme Board is invited to consider what are likely to be some of the key conclusions / recommendations of Lord Young and the suggested positioning of the Group. Key messages could include that the LG Group:-
 - 15.1 wishes to see a health and safety system that is proportionate and not bureaucratic, a system that is aimed at protecting people and does not place a massive burden on business and public services;**
 - 15.2 welcomes measures to tackle the mushrooming compensation culture;**
 - 15.3 supports the lifting regulations on police, teachers and ambulance workers so they no longer face the threat of being sued for making common sense decisions;**
 - 15.4 do not agree that the current health and safety rules are mad and the system needs drastic reform;**
 - 15.5 welcome measures to control "no win no fee" lawyers;**
 - 15.6 support powers for the courts to cap costs of lawyers;**
 - 15.7 support measures that reduce any unnecessary burdens in terms of managing risks and reducing paperwork for school trips;**
 - 15.8 believe that councils already explain any local decisions to ban events and have appropriate mechanisms in place for local people to raise any concerns about these.**

11 October 2010

Item 2

Financial Implications

16. There are no financial implications arising directly from this report. Work arising following the publication of the Lord Young report will be dealt with by LG Regulation and LG Employers from within existing budgets.

11 October 2010

Item 2

ANNEX 1 – BACKGROUND INFORMATION

The role of councils in the operation of health and safety laws

All councils have responsibility for the health and safety of their workforces alongside a more general duty to the public visiting and using council facilities. This is often described as councils “duty-holder” role. Local government is a significant employer in the public sector but its health and safety responsibilities are also important when councils are acting as both commissioners and procurers of services. Support for councils as duty-holders is provided by LG Employers.

District and unitary councils have specific responsibilities for regulating health and safety in over a million workplaces, employing around half of the British workforce. These workplaces include shops, offices, banks/building societies, hotels, restaurants, pubs and clubs, leisure activities, warehouses, museums, places of worship, sheltered accommodation and care homes. Councils have a statutory duty to make adequate provision for health and safety regulation in their areas. Support for councils as regulators is provided by LG Group through LG Regulation.

Regulation of health and safety means councils using a range of interventions available to help reduce accidents and ill-health in workplaces in their communities. These include giving advice to local businesses, providing training, undertaking education, promotion and awareness events and campaigns, investigating accidents, incidents of ill-health and complaints, as well as inspections and enforcement.

Councils’ priority, both as duty-holder and regulator, is the delivery of sensible health and safety risk management, focussing on areas where there is a clear need to reduce the incidence of fatal and major injuries, alongside reducing work-related ill health.

The role of the Health and Safety Executive

The Health and Safety Executive (HSE) is a non-departmental public body, sponsored by the Department for Work and Pensions and accountable to its Ministers. Its primary function is to secure the health, safety and welfare of people at work and to protect others from risks to health and safety from work activity. Its vision is “the prevention of death, injury and ill health to those at work and those affected by work activities”.

Alongside supporting the health and safety regime including its regulation, part of the HSE also specifically regulates across a range of sectors and industries including major hazard sites such as nuclear installations, offshore gas and oil installations and onshore chemical plants through to more conventional sites, quarries, farms, factories, waste management sites, hospitals and councils. The HSE, like councils,

11 October 2010

Item 2

targets its resources to priority risks and sectors such as the agriculture, construction and waste management industries, applying an appropriate and proportionate mix of intervention techniques such as inspection, communication campaigns, advice and support and, where necessary, enforcement action.

The health and safety of Great Britain

In June 2009, the LG Group joined the Chairman of the HSE in the launch of the HSE's new strategy "The Health and Safety of Great Britain – Be part of the solution". Local government had been directly involved in the development of the strategy. The strategy emphasised that to build further on the country's strengths and successes in health and safety, any partnership in delivery needed to see all partners, including HSE and councils, effectively contributing and working together.

The strategy emphasised that everyone has a role – employers, the self-employed, manufacturers, suppliers, workers, unions, trade associations, professional bodies, consultants and voluntary organisations, as well as the HSE and councils. Together we needed to renew our efforts to improve health and safety performance. This would include finding new ways of engaging with managers and workers in all workplaces of all shapes and sizes, promoting a common-sense, practical approach to health and safety, recognising and being motivated by the real business benefits of getting it right. Re-establishing the value and benefits of "health and safety", challenging the use of "health and safety" as a synonym for unnecessary bureaucracy and an excuse for not doing things was also important. The LG Group signed up to the HSE's pledge to "be part of the solution" on behalf of councils as co-regulators with HSE and as duty holders as part of the strategy launch.