

From the Chief Executive

Sarah Albon
Health and Safety Executive
7th Floor Caxton House
6-12 Tothill Street
London SW1H 9NA

Sent via email

12th February 2021

Rt. Hon. Stephen Timms MP
Chair of the Work and Pensions Select Committee
House of Commons
London
SW1A 0AA

Dear Mr Timms,

Thank you for your letter of 1st February in respect of reports, that the Committee have seen, that employees have faced pressure to travel to work and also stating that HSE has not issued any enforcement notices since the start of the current lockdown.

You asked a series of questions, relating to the above, which I have responded to in the attached annex as my reply is quite detailed.

I trust the information supplied reassures you that HSE is both fully committed to ensuring the safety of workers and fully engaged in supporting the national efforts to combat coronavirus, keeping our approach under constant review to ensure that we are focussing our efforts effectively, in what continues to be a busy and difficult time for all.

In particular, HSE fully recognises the importance of proactively keeping up our engagement with the public, and with MPs, on the work we are doing. I was pleased to see that you'll be joining us again at our Virtual Townhall for all MPs later today, so look forward to having an engaging discussion with you then.

I understand that the Minister for Employment, at her recent appearance before the committee, indicated she would be willing to return, alongside HSE officials, to discuss the work of HSE further. I am happy to do so and/or should you wish to meet with me and with HSE's Chair, Sarah Newton, to discuss any of these matters further, I would also be happy to arrange that at your convenience.

Yours sincerely

A handwritten signature in black ink, which appears to read 'Sarah Albon', is positioned below the 'Yours sincerely' text.

Sarah Albon
Chief Executive, Health and Safety Executive

ANNEX:

1. How does HSE measure its effectiveness in addressing health and safety in the workplace? Does the number of enforcement notices issued form part of this measure? What other criteria do you use?

HSE applies a range of regulatory tools to improve health and safety in the workplace by bringing together different interventions to achieve impact. This includes influencing and engaging stakeholders, creating knowledge and awareness of health and safety at work risks, and encouraging behaviour change through targeted communications, license and safety case assessments and direct interventions including inspections and investigations. HSE continuously evaluate our effectiveness in ways that are appropriate to the type of intervention. For example:

- Engaging closely with key stakeholders to evaluate and understand the impact of our messages on industry, using insight research, collaboration with industry sectors and direct feedback from individual dutyholders;
- Each year, inspectors visit a sample of previously visited sites to determine whether we have achieved sustainable compliance, and this information is used to develop future intervention strategies;
- Using web analytics to monitor and evaluate the use of HSE's website to determine the reach of our messages – since publication in March 2020, HSE's Covid-19 guidance pages on the website had been visited 11 million times.

Enforcement notices are a powerful tool for addressing serious risks, and HSE monitors the numbers of notices served, as well as the specific industries and risks against which they are targeted. However, HSE Inspectors seek to work with employers, securing improvements by agreement where possible. During the Covid-19 pandemic, a significant proportion of our regulatory activity has been directed towards ensuring workplaces are Covid-Secure. HSE will take enforcement action where warranted to address serious breaches, the vast majority of HSE's Covid-19 interventions secured the necessary improvements without the need for formal enforcement notices. This reflects the willingness of the majority of employers to follow the government's Covid-Secure guidelines.

Note on data provided for answers to (a), (b) and (c), below: All figures were extracted from HSE's live operational database between 3-5 February 2021 and are subject to change e.g. as there can be a delay of up to 10 working days before actions are updated on the database.

a. What are the reasons why HSE has not served any enforcement notices so far this year?

There has been no change to HSE's policy on the serving of notices. We have served a total of 172 enforcement notices between 1st January 2021- 4 February 2021, this includes 8 Covid-19 interventions where the outcome has been recorded as a notice.

b. How many times has HSE been contacted about potential breaches so far this year, and how many inspections has it carried out?

HSE receives a broad range of contacts (advice, requests for information and raising concerns) mainly through its Concerns and Advice Team. In answering this question, we have used the number of contacts raising a concern about workplace health and safety

conditions as a measure about potential breaches. HSE received 6273 workplace concerns for the period 1st January 2021 – 4th February 2021, and has carried out over 15,000 site visits, including Covid spot checks and other inspections. In addition, we have undertaken 15,200 Covid-19 spot checks by remote means.

c. What proportion of the reports that you have received this year is HSE responsible for investigating,

71% of the concerns raised with HSE between 1st January 2021 – 4 February 2021 related to matters within our remit. Where HSE's Concerns and Advice Team identify that the issue is for a different body or regulator, they will advise the notifier. HSE's concerns team assess each concern according to triage criteria which categorises them into high, medium and low risk. Low risk concerns are those that can easily be resolved without investigation. Medium and high-risk concerns are normally followed up by HSE regulatory operational staff who will investigate where necessary. This amounts to 26.5% of concerns received since 1st January 2021 (1665 in total).

2. Are you confident that HSE has the enforcement powers it needs to take action against employers?

HSE inspectors appointed under Section 19 of the Health and Safety at Work etc Act 1974 (HSWA) have effective powers to enforce the provisions of HSWA and specific health and safety at work regulations made under the Act. Although HSWA was enacted in 1974, the wide, goal-setting primary employer duty, i.e. to do everything reasonably practicable to protect workers from health and safety risks, ensures the Act applies equally well to new and emerging risks as it does to established risks such as dangerous machinery or work at height.

Inspectors have a wide range of tools and powers to deal with potential breaches of health and safety at work law. Many issues can be resolved immediately during a visit, however, where significant breaches are identified, inspectors' issue formal notifications of contravention, serve legally-enforceable improvement and prohibition notices and, where necessary, bring criminal prosecutions to hold to account those responsible for serious contraventions.

a. What impact has the latest lockdown had on HSE inspectors' ability to carry out their duties? Have staffing levels been affected by the lockdown or number of coronavirus cases?

The latest lockdown has not affected HSE Inspectors ability to carry out their duties. At the start of the pandemic in March 2020 HSE transitioned its workforce to work from home and adapted regulatory approaches accordingly. This involved some changes on priorities and the way some work has been carried, for example, face to face meetings being replaced by virtual approaches.

Visits to business premises and sites are conducted in line with social distancing regulations and guidelines. HSE worked closely with, and across, industry sectors to enable businesses to put practical measures in place to help people get back to work safely, while remaining compliant with both public health requirements and health and safety at work requirements. We also continue to work with a number of government departments and in particular with

the Department for Business, Energy and Industrial Strategy (BEIS) to ensure that advice to employers on Covid safety measures remains current and up to date. Further details about this guidance are under question 4.

During the pandemic HSE has worked to check that appropriate measures are in place to protect workers from Covid-19. At the start of 2021, HSE resumed targeted proactive inspection work of high-risk industries, this follows a targeted intervention on health-related issues in the construction industry which was carried out in the autumn of 2020.

We continue to deliver our re-prioritised regulatory approach to key critical areas and activities in major hazard offshore oil and gas and onshore chemical, explosives and microbiological industries. This includes using remote techniques in conjunction with site visits, including to offshore installations. We continue to undertake regulatory activities which do not require site visits as normally as possible, for example Approvals and Authorisation work for biocides and pesticides, Statutory Permissioning activities such as Licensing, Safety Case / Report Assessments, Thorough Reviews, Combined Operations Notifications, Wells Notifications, Land Use Planning Applications, Hazardous Substances Consents etc.

We also continue to investigate work related deaths across all industry sectors, the most serious major injuries and dangerous occurrences and reported concerns on non Covid-19 issues. In such cases we will continue to secure compliance with the law, and conduct our investigations using a mixture of technology, without compromising the collection of evidence and our ability to secure effective control of risk, and site visits.

3. In response to the pandemic, the Government announced additional funding of £14 million for HSE in May 2020. We recommended that HSE's funding should be reassessed at "regular intervals". What discussions have you had with the Government about future levels of funding?

a. Is the current level of funding that HSE receives sufficient? If not, have funding constraints had any impact on your ability to carry out enforcement action during the current lockdown?

As part of the Spending Review 2020 process, HSE has had numerous discussions with DWP, as its sponsoring department, in respect of future levels of funding. Through this process HSE is confident of securing an additional £14m for financial year 2021/22 to continue to support the government in its national response to the global Covid-19 pandemic. This will fund spot checks and inspections, including those enforced by Local Authorities (LAs), to ensure workplaces are Covid-Secure for workers and the public. It will also enable further communications activity through multiple channels to reach and engage a wide audience, ensuring employers have the right guidance and that employees feel safe and confident that their employer is managing risks posed by Covid-19 in the workplace.

This additional funding will be in addition to HSE's regular government funding to deliver our wide-ranging regulatory functions.

b. You have said to the BBC that you are scaling up checks on employers. Please can you give us the details of that work? How many checks do you plan to carry out?

We undertake spot checks across Great Britain on business premises that are regulated by both HSE and LAs, spanning multiple sectors and business types. We offered LAs a service to carry out spot checks on businesses they regulate and now have over 200 LAs that have expressed an interest in working with us. Spot checks are undertaken using a combination of proactive outbound calls and onsite visits, with HSE and LA inspectors dealing with the small number of businesses that may need intervention.

We have increased the volumes of spot checks in the last quarter of 20/21 to allow for more checks on HSE regulated business and to service the increasing demand from LA's. We have now completed over 100,000 spot checks, with 24,000 of those undertaken during January 21. We are forecasting an additional 50,000 spot checks to be completed during February and March, though there are many influencing factors that drive the volumes, not least changes in guidance.

4. Government guidelines say that people should only travel to work where they cannot “reasonably” work from home. Who is responsible for providing guidance on whether employers can “reasonably” expect an employee to return to their workplace?

Guidance on who should go to work has been produced by the government and is published on [GOV.UK](https://www.gov.uk). Further information and advice is also available in guidance produced by BEIS on [working safely during the coronavirus \(COVID-19\) pandemic](#).

a. Has HSE taken any action so far against employers that have required employees to return to their place of work, despite it being reasonable for them to work from home?

It is for an employer to decide, taking into account the published guidance mentioned above, whether it is appropriate or possible for people to work from home. The guidance from [BEIS](#) outlines steps that an employer should take when considering who need to come into the workplace and these steps include considering those at higher risk from Covid-19 and consulting with their workforce. Disputes between an employer and workers around the application of the government guidance is an employment rights matter and there are existing mechanisms that afford protection to workers against discrimination, unfair dismissal and detriment. This is not enforced by HSE.

HSE can only take enforcement action where business are not managing the risk of Covid-19 transmission in the workplace. For example, where social distancing is not being maintained or adequate cleaning regimes are not being followed.

b. How is HSE working with the Chartered Institute of Environmental Health and other bodies to ensure that workplaces are safe?

Chartered Institute of Environmental Health (CIEH) along with many other representative bodies play an important role as members of the HSE/Local Authority Enforcement Liaison (HELA) Board which oversees the strategic co-regulatory relationship between HSE and LAs across Great Britain.

HSE has increased the rate of HELA and similar virtual stakeholder meetings and briefing webinars for LA regulatory colleagues to ensure frontline LA officers can be kept up to date with developments in enforcement guidance. These and other relevant materials have been made available to co-regulatory colleagues via the secure extranet service HELEX.

CIEH have been actively working with HSE to raise awareness of these materials and we will continue to share all relevant guidance, updates and key messages with LA colleagues via our HELEX extranet messaging service.

This work is in addition to the spot checks we are carrying out on behalf of LAs, which is mentioned in the response to question 3b.

5. Is HSE responsible for enforcing regulations around hospitality venues such as pubs? If not, who does responsibility sit with?

a. How well do business owners and employers understand the roles and responsibilities of the different organisations which advise on and enforce health and safety legislation?

Health and safety in workplaces such as hospitality venues and pubs is normally the responsibility of the LA the business is based. There are some exemptions to this general rule, such as if the venue was owned and operated by the LA itself, in which case it would then be enforced by the HSE.

For most business, who enforces their work-related health and safety is relatively clear. Simple guidance explaining the HSE/LA enforcement boundary is available on our website: www.hse.gov.uk/contact/authority.htm. For premises that have main activities that are less clear cut, there is detailed technical guidance available here: www.hse.gov.uk/lau/enforcement-allocation.htm.

If a business does approach the wrong regulator, HSE and LAs redirect the enquiry to the appropriate regulator. In either case, the same regulations, guidance and standards for health and safety apply; all of which are available from the HSE website.

6. Under RIDDOR (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013), only infections and deaths of people who contracted coronavirus during the course of their work should be recorded. There is no requirement to record infections of other people who may have contracted coronavirus from a workplace, for example customers or patients. Why are employers not required to record these cases, and is there a risk that this creates an incomplete picture of transmission in the workplace?

RIDDOR applies to all sectors and workplaces in Great Britain. It is the single national reporting framework by which responsible persons (employers in relation to their employees) are required to report certain dangerous occurrences, cases of disease and deaths due to occupational exposure to Coronavirus (SARS Cov 2) where there is reasonable evidence to suggest that the cause of the infection was more likely than not due to an occupational exposure at work.

There is no requirement under RIDDOR to report incidents of disease or deaths of members of the public, patients, care home residents or service users from Covid-19 as such instances do not result from an occupational exposure to the virus.

a. A study by Professor Raymond Agius at the University of Manchester, published in September 2020, found that HSE's guidance on recording Covid-related deaths "may miss many thousands of cases and needs further iteration". What consideration have you given to the findings of this study?

HSE is aware of the academic articles and research published by Professor Raymond Agius, Emeritus Professor of Occupational Medicine, University of Manchester. At the start of the pandemic, HSE published web-based guidance to support responsible persons in making decisions about reporting occupational cases of Covid-19 under the legal requirements of RIDDOR. This guidance has been subsequently updated, strengthened and kept under regular review to remain accessible, relevant, fit for purpose and legally correct. Working with colleagues in HSE's online communications team, targeted media activity, across a number channels, has also been undertaken to promote and highlight both the RIDDOR Covid-19 guidance and its applicability to all workplaces and work sectors.

b. Your own website acknowledges that "the RIDDOR notification system suffers from widespread under-reporting which has the potential to give a distorted view of both the scale and spread of cases by important risk factors such as industry sector" and that many reports are misclassified by employers. What action are you taking to address this as a matter of urgency?

RIDDOR is a reporting framework that requires responsible persons to inform the relevant enforcing authority that an incident has occurred. This allows the enforcing authority to determine an appropriate regulatory response to each reported incident and to monitor trends over time. RIDDOR does not provide for definitive health and safety at work statistics.

In relation to Covid-19, HSE is routinely publishing management information regarding the number of Covid-19 RIDDOR reports that have been received along with an explanation as to the limitations of the information based on the fact that it is published "as reported" and has not been subject to verification checks. As outlined above, we have promoted the requirement to report occupational cases of Covid-19 through significant targeted media activity and related communications. In addition to RIDDOR reporting of occupational cases of Covid-19, Public Health England (PHE) is the lead government body for monitoring infection rates and the scale and spread of infections more widely (both in community and workplace settings).

c. Does HSE have a sufficient number of specialist inspectors needed to carry out investigative work into Covid transmission in the workplace?

HSE investigates Covid-19 transmission in workplaces in the context of responding to concerns raised by workers and others, following spot inspections where HSE's third party supplier has identified an issue, in support of public health teams responding to workplace outbreaks and when cases of Covid-19 disease notified under RIDDOR are selected for investigation.

In almost all cases these investigations are made by HSE's "generalist" inspectors or Visiting Officers. The training, qualifications and experience of HSE staff making workplace visits makes them expert in making judgements about a wide range of health and safety matters and standards of control required. During the pandemic the HSE operational team has had additional guidance, training and briefing on investigating Covid transmission and has built up a wealth of expertise from experience. The fundamental precautions effective in preventing workplace transmission (distance, hygiene and ventilation) are explained in [Working safely during coronavirus \(COVID-19\)](#) and do not require specific specialist knowledge to implement.

In more complex situations, e.g. in healthcare, additional support to investigations is available from inspectors with expert specialist knowledge in Occupational Health, Occupational Hygiene or biological safety and inspectors can call on specialist scientific support from HSE's expert laboratory team. HSE has sufficient of these specialists to support the broad range of investigations in workplaces into Covid transmission.



Work and Pensions Committee

House of Commons, London SW1A 0AA

Tel 020 7219 8976 Email workpencom@parliament.uk Website www.parliament.uk/workpencom

From the Chair

Sarah Albon
Chief Executive
Health and Safety Executive

1 February 2021

Dear Sarah,

I am writing to you following recent reports that, despite Government advice that people should only leave their home for work where they cannot reasonably work from home, some employees have faced pressure to travel to their place of work.

According to a survey by the Royal Society for Arts, Manufactures and Commerce, 1 in 9 workers said that they had been told to return to their workplace, despite being able to do their job from home. Others have reported being asked to return to work in premises that have remained open, despite being “non-essential”.

The Committee has seen reports that HSE has not issued any enforcement notices since the start of the current lockdown, despite being contacted almost 3,000 times during the period of 6-14 January. It would be helpful to have answers to the following questions:

- 1. How does HSE measure its effectiveness in addressing health and safety in the workplace? Does the number of enforcement notices issued form part of this measure? What other criteria do you use?**
 - a. What are the reasons why HSE has not served any enforcement notices so far this year?**
 - b. How many times has HSE been contacted about potential breaches so far this year, and how many inspections has it carried out?**
 - c. What proportion of the reports that you have received this year is HSE responsible for investigating, and how many have you had to refer to other bodies?**
- 2. Are you confident that HSE has the enforcement powers it needs to take action against employers?**

- a. What impact has the latest lockdown had on HSE inspectors' ability to carry out their duties? Have staffing levels been affected by the lockdown or number of coronavirus cases?
3. In response to the pandemic, the Government announced additional funding of £14 million for HSE in May 2020. We recommended that HSE's funding should be reassessed at "regular intervals". What discussions have you had with the Government about future levels of funding?
 - a. Is the current level of funding that HSE receives sufficient? If not, have funding constraints had any impact on your ability to carry out enforcement action during the current lockdown?
 - b. You have said to the BBC that you are scaling up checks on employers. Please can you give us the details of that work? How many checks do you plan to carry out?
4. Government guidelines say that people should only travel to work where they cannot "reasonably" work from home. Who is responsible for providing guidance on whether employers can "reasonably" expect an employee to return to their workplace?
 - a. Has HSE taken any action so far against employers that have required employees to return to their place of work, despite it being reasonable for them to work from home?
 - b. How is HSE working with the Chartered Institute of Environmental Health and other bodies to ensure that workplaces are safe?
5. Is HSE responsible for enforcing regulations around hospitality venues such as pubs? If not, who does responsibility sit with?
 - a. How well do business owners and employers understand the roles and responsibilities of the different organisations which advise on and enforce health and safety legislation?
6. Under RIDDOR (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013), only infections and deaths of people who contracted coronavirus during the course of their work should be recorded. There is no requirement to record infections of other people who may have contracted coronavirus from a workplace, for example customers or patients. Why are employers not required to record these cases, and is there a risk that this creates an incomplete picture of transmission in the workplace?
 - a. A study by Professor Raymond Agius at the University of Manchester, published in September 2020, found that HSE's guidance on recording Covid-related deaths "may miss many thousands of cases and needs further iteration". What consideration have you given to the findings of this study?

- b. Your own website acknowledges that “the RIDDOR notification system suffers from widespread under-reporting which has the potential to give a distorted view of both the scale and spread of cases by important risk factors such as industry sector” and that many reports are misclassified by employers. What action are you taking to address this as a matter of urgency?**
- c. Does HSE have a sufficient number of specialist inspectors needed to carry out investigative work into Covid transmission in the workplace?**

It would be helpful to have a response by Friday 12 February.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Timms', with a horizontal line above the name.

Rt Hon Stephen Timms MP
Chair, Work and Pensions Committee