From the Chief Executive

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

Sent via email

1st April 2020

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

Dear Mr Timms,

FURTHER INFORMATION FOLLOWING THE HEALTH AND SAFETY EXECUTIVE (HSE) EVIDENCE SESSION ON 4 MARCH 2020

Martin Temple and I would like to thank you for giving us the opportunity to give evidence before the Work and Pensions Select Committee.

During the session, you asked us to send further information on a number of points raised by the committee, expanding upon these further in your letter of 10 March 2020. Please accept my apologies for the time taken to respond to these; whilst I would have aimed to respond far sooner, I am afraid a significant amount of our time has been taken up in dealing with matters arising from the Covid-19 pandemic.

Those points on which the committee requested further information were:

A. Fee for Intervention - did the amount HSE receives match its expectations?

B. Musculoskeletal Disorders - what is HSE doing to reduce figures, especially with an ageing workforce?

C. Building Safety Regulator – does HSE have the resources to cope with taking on the responsibility of becoming the Building Safety Regulator?

D. Prosecutions - A note on how HSE can work with MPs to keep them informed about prosecutions in their constituencies and enable them to track cases.

E. COVID – 19 Personal Protective Equipment –

- Are you monitoring the availability of specific items of Protective Personal Equipment which protect workers from transmission? If so, what are they?

- Is there sufficient provision of PPE in the UK to cope with the virus?

- What responsibilities do you have in relation to PPE, and how are you preparing for increases in demand for equipment?

F. Work related stress –

- How can HSE adapt the model of the traditional inspection to tackle work-related stress more effectively?

- What practical methods can HSE adopt to ensure a workplace is following the management standards and guidance?

The responses to each of these points are in the attached annex.

We thank you once again and HSE looks forward to working with the Committee in the future.

Yours sincerely

Sarah Albon
Chief Executive, Health and Safety Executive

ANNEX

Further information following HSE's evidence session on 4 March 2020:

A. FEE FOR INTERVENTION - did the amount HSE receives match its expectations?

Fee for Intervention (FFI) was introduced in October 2012 as part of HSE's response to our reduced Spending Review 2010 Settlement. It includes a degree of uncertainty as costs are only recovered where there has been a 'material breach' of health and safety law.

The original impact assessment estimated that FFI could generate significantly more than it has to date. However, the amounts that HSE agreed with HM Treasury that it could retain to fund HSE activity (through a netting-off agreement) have broadly aligned with the actual receipts since 2015/16 and has met HSE's budgetary expectations.

The FFI scheme was subject to an independent review, which reported in June 2014; finding that it has proven effective in achieving the overarching policy aim of shifting the cost of health and safety regulation from the public purse to those businesses that break health and safety laws.

Background:

1. The original Impact Assessment estimated that FFI could recover £39m per annum once fully implemented, as summarised below.

Assumption	**Year 3 £m**

Field Operations (FOD & CD)
• 57,000 frontline days on inspection, investigation and enforcement (excluding prosecutions) = £36m
• Material breach:
  ○ approx. 70% of investigation days.
  ○ approx. 60% of inspection days.
  ○ all enforcement days.
• Reactive Support from HSL (now Science Division) = £4m
• Reduced for Bad Debts etc 10% = -£4m
	36

HID (CEMHD) – sub-COMAH, mines, explosives, pipelines, diving etc. • 2,000 days = £1.9m • plus £0.45m HSL Support • Reduced for Bad Debts.	**2**
CSEAD (Specialists) – human factors, radiation, process safety, hygienists etc • Staff time £0.75m plus HSL £0.1m plus third party £0.15m less bad debts	**1**
Total	**39**

2. The business case to HMT made it clear that the concept of a 'material breach' was totally new and had been developed for FFI. As such, the main sensitivity was around the actual amounts that would be recovered once FFI was implemented. It was agreed

that the periodic Spending Reviews would provide the opportunity to reconsider FFI and HSE's funding requirements.

3. FFI was classified as 'akin to a fine' and for HSE to retain the receipts as Negative DEL would require a netting-off agreement agreed with the Chief Secretary to the Treasury. Any receipts over the agreed netting-off limit would be paid to the Consolidated Fund. HSE agreed the netting-off agreements as per the table below:

Year	Netting-Off Limit £m	FFI Outturn £m	Notes
2012/13	10.0	2.8	
2013/14	17.0	8.7	
2014/15	23.0	10.2	
2015/16	11.0	14.7	£3.7m paid to Consolidated Fund
2016/17	17.0	14.9	
2017/18	17.0	15.1	
2018/19	17.0	14.1	

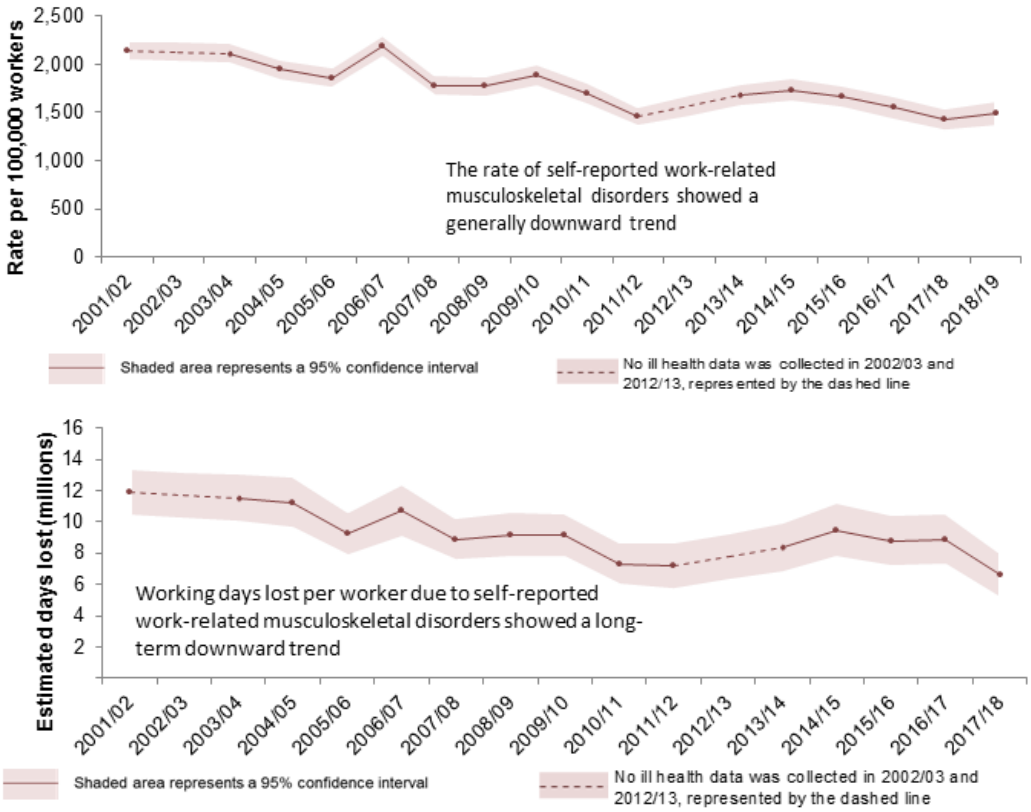
4. The gap between the estimated and actual receipts is the product of a number of drivers, which can be broken down into two broad areas:

- As material breach was a new concept, no accurate baseline exercise was possible in advance of its introduction and therefore figures seen in reality have simply been lower than those estimated. Inspection, for example, is at 50% compared to an assumption of 60% and investigations is c. 40% compared to a 70% assumption.

- Levels of activity have also turned out to be lower in general – this is believed, at least in part, to be due to a change in inspector behaviour. Whilst the lack of baseline makes this difficult to explore in detail, it is likely that this was a result of FFI making inspectors more aware of the cost consequences of their work and therefore to their choosing to take care not to spend more time than is necessary, nor to involve others (including our own Science Division, which has been commissioned for considerably less reactive work than was envisaged) on a particular case except where clearly required as part of that case.

B. MUSCULOSKELETAL DISORDERS - has increased over the past couple of years, what more can HSE do to reduce these figures?

1. HSE focuses on ill health caused by or made worse by work. HSE uses the annual labour force survey to collate statistics on this and while the number of cases and days lost due to work-related musculoskeletal disorders has increased slightly in 2018/19, (compared to the previous year), the longer-term picture actually reflects a generally downward trend in both prevalence rate and days lost.



(https://www.hse.gov.uk/statistics/causdis/msd.pdf)

2. The number of people with musculoskeletal disorders in the working age population has increased, due to a range of factors not limited to work (such as diet, lifestyle, genetics).

3. HSE is contributing to this wider agenda as part of cross-government and expert MSK reference groups, to deliver commitments in the DWP/DHSC green paper "*Advancing our health: prevention in the 2020s*". This aims to help employers prevent health problems (such as musculoskeletal disorders) arising and to better manage health conditions among their workforce.

4. More specifically, HSE is tackling the risks of work-related musculoskeletal disorders through a blend of activities captured in the published HSE's musculoskeletal disorders priority plan, including:

   - Providing employers with a range of guidance and tools to help them manage the risks of musculoskeletal disorders more effectively; and improving their accessibility through communications ('Go Home Healthy' campaign and improved website) and working with partner organisations (e.g. signposting through safety representatives and the Trades Union Congress);

- Encouraging employers to think differently, by challenging employers' reliance on 'off-the-shelf' manual handling training; and rewarding innovative solutions through HSE's 'Reducing risk through design award';

- Undertaking research on musculoskeletal disorders including to better understand the perceptions, attitudes and behaviours of employers and employees, in relation to risks of musculoskeletal disorders; and scope out the relative risks around new technologies (such as exoskeletons) being used in the workplace;

- Prioritising sectors or activities with high incidence of MSDs. For example, HSE is working with the Early Years Alliance, National Education Union, physiotherapists and the University of Derby to develop sector-specific guidance to tackle significant problems with back, lower and upper limbs for workers from lifting and carrying, prolonged standing and working at low-level height in nursery, pre-school teachers and classroom assistants;

- Completing a programme of MSD inspections and related communications activity with particular emphasis on the manufacturing and healthcare sectors.

As the workforce is getting older, how is HSE planning to manage an ageing workforce?

5. While the Labour Force Survey does indicate that musculoskeletal disorders are more common in older than younger workers, this can be explained by a difference between the demands of work and the worker's physical capacity (or work ability) rather than their specific age. HSE would expect employers to consider this as part of their assessment of the risks to their workers.

6. The physical capacity is affected by many factors including sedentary lifestyle, diet, genetic-predisposition and fitness. Consequently, other Government Agencies and groups such as Public Health England (NHS Employers, Versus Arthritis) are leading on this topic through the '*Musculoskeletal Health: Five-year framework for prevention across the lifecourse*'. HSE is a contributing partner.

7. The framework launched in 2019, promotes the concept of 'productive healthy aging' through prevention of musculoskeletal disorders, their early detection and treatment across the lifecourse.

8. Additionally, HSE is interested in the impact of changing workforce demographics and understanding and managing extended working lives is an active area of research. This work will include:

    - Exploring the feasibility of building a numerical picture of extended working lives;

    - Understanding changes in risk attitudes, behaviours and health, across extended working lives;

- Gaining information to help understand how to influence employers' attitudes and behaviours with respect to designing and adapting the workplace (including managing chronic health conditions) over extended working lives;

- Understanding the difference made by 'good' practices for managing the health and safety of older workers - enabling early intervention and understanding what makes the biggest difference.

Reference Sources:

1. Work related musculoskeletal disorders statistics 2019 - HSE annual statistics (https://www.hse.gov.uk/statistics/causdis/msd.pdf)
2. Health priority plan: Musculoskeletal disorders (https://www.hse.gov.uk/aboutus/strategiesandplans/health-and-work-strategy/musculoskeletal-disorders.pdf)
3. HSE risk reduction through design award (https://www.hse.gov.uk/msd/awards.htm)
4. Work-related musculoskeletal disorders: a trisector exploration (https://www.hse.gov.uk/research/insight.htm)
5. HSE Business Plan 2019/20 (https://www.hse.gov.uk/aboutus/strategiesandplans/businessplans/plan1920.pdf)
6. Advancing our health: Prevention in the 2020s (https://www.gov.uk/government/consultations/advancing-our-health-prevention-in-the-2020s?wp-linkindex=2&utm_campaign=Prevention%20launch&utm_content=dhsc-mail.co.uk&utm_medium=email&utm_source=Department%20of%20Health%20and%20Social%20Care)
7. Musculoskeletal Health: A five-year strategy for prevention across the lifecourse (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810348/Musculoskeletal_Health_5_year_strategy.pdf)
8. Ageing and work-related musculoskeletal disorders (https://www.hse.gov.uk/research/rrpdf/rr799.pdf)

C. BUILDING SAFETY REGULATOR – does HSE have the resources to cope with taking on the responsibility of becoming the Building Safety Regulator?

9. On 20 January this year, the Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government, announced that the new Building Safety Regulator (BSR) would be established within HSE. We are extremely proud to have been asked to take on this role. It reflects our position as a mature and trusted regulator, and our many years' experience regulating safety in the construction industry and of operating safety case regimes in other sectors which lies at the heart of this new regime for building safety. The BSR function will complement our role as the national workplace health and safety regulator

10. HSE and the Secretary of State for Work and Pensions are clear that the Ministry of Housing, Communities and Local Government (MHCLG) will provide full financial funding for HSE's continued involvement in the Government's Building Safety Programme and for the design, development and delivery of the new Building Safety Regulator's functions in shadow and fully-fledged forms.

11. In response to questions in The House after his statement, the Secretary of State for Housing also reiterated that whatever funds are required to ensure that the new regulator succeeds will be made available. The Building Safety Regulator will be established as a directorate of HSE reporting through HSE's Chief Executive to the HSE Board.

12. HSE's work on the Building Safety Programme is currently funded by MHCLG through a Memorandum of Understanding. A formal Agency Agreement will secure the necessary legal vires and continuity of funding for HSE to deploy its resources to deliver the shadow regulator functions and to recruit and train staff, and design and develop the BSR to enable it to operate at scale as soon as possible after the Building Safety Bill receives Royal Assent. This will also enable HSE to maintain regulatory activity in its priority areas of workplace health, safety and welfare.

13. HSE is also working closely with MHCLG to build the Business Case for the BSR that will eventually be submitted to the Treasury for the BSR's longer-term funding. The expectation is that the BSR's regulatory functions under the new building safety regime for high risk buildings will be ultimately funded by industry.

D. PROSECUTIONS - How HSE can work with MPs to keep them informed about prosecutions in their constituencies and enable them to track cases.

14. Whilst HSE does currently have some ad-hoc systems in place to do so, we do not currently keep individual MPs proactively informed, on a routine basis, about prosecutions within their constituencies.

15. Currently, whilst we publish details of HSE convictions on our website and there is always up-to-date information available for MPs, there is space in this area for us to be more proactive in the assistance we provide.

16. As outlined at the Committee, the Chief Executive and our legal services team would be happy to work with individual members of the committee to explore what additional information we might be able to offer to MPs on a routine basis. If any member wishes to discuss this, could they please contact HSE direct and this can be arranged.

E. COVID - 19: PERSONAL PROTECTIVE EQUIPMENT - Are you monitoring the availability of specific items of Protective Personal Equipment (PPE) which protect workers from transmission? If so, what are they?

17. HSE does not have any means of monitoring the availability of specific items of PPE and does not have a role in availability. We are advising Government bodies, industry and trade associations dealing with the impact of Covid-19 outbreak on the selection and use of PPE. We are members of the PPE Supply Chains working group chaired by Cabinet Office, which meets regularly to discuss issues of supply across Government.

18. PHE has produced guidance for the main groups of workers who need protecting from transmission of Covid-19 as this is a public health issue. PHE have set out the PPE, including Respiratory Protective Equipment, required for healthcare workers and first responders, such as Border Force, who may have to deal with symptomatic individuals. Healthcare workers in the Four Nations are provided with PPE from the supply network managed by DHSC.

Is there sufficient provision of PPE in the UK to cope with the virus?

19. DHSC has reported to the PPE Supply Chains Working Group on its PPE stock levels to protect healthcare workers and first responders from transmission of the virus and would be best placed to provide information on this.

What responsibilities do you have in relation to PPE, and how are you preparing for increases in demand for equipment?

20. HSE do not have any responsibilities in relation to the availability of PPE. HSE enforces the Regulations covering the safety of PPE manufactured or supplied onto the UK market.

21. HSE also enforces the Regulations requiring employers to ensure that suitable PPE is provided to workers, where the risks from exposure cannot be adequately controlled in other ways. There is a similar requirement for self-employed persons.

22. HSE has established guidance about factors to consider when buying PPE for use in workplaces and we are reminding employers where they raise concerns about shortage of supply.

23. HSE is also working with PHE to ensure that any guidance they produce to protect workers against transmission of Covid-19 is also consistent with health and safety requirements, securing suitable protection for healthcare workers.

F. WORK RELATED STRESS - How can HSE adapt the model of the traditional inspection to tackle work-related stress more effectively?

24. HSE has recently reissued its inspection criteria, which identifies more clearly where HSE may investigate complaints about work related stress. This is backed up by the establishment of a 'virtual' team of inspectors, occupational health inspectors, policy and specialist staff to support any reactive inspection work that may arise.

25. HSE can and will take enforcement action against employers failing to meet their legal duties. However:

- We cannot investigate individual cases of work-related stress since stress is subjective, what affects one worker may have no ill-effect on their colleagues – this may be due to individual issues such as a pre-existing condition that makes the person more susceptible to stress.

- HSE cannot readily establish what level of workload, supervision or job control would be reasonable for any given role so investigations are considered where there is an indication of an organisational or systemic problem; and

- Because it is unfeasible to show a direct causal link between work-related stress and the resultant injury (because people have external contributing factors) we concentrate efforts on ensuring employers have in place a suitable and sufficient risk assessment, apply it and have in place interventions to tackle identified stressors.

What practical methods can HSE adopt to ensure a workplace is following the management standards and guidance?

26. Work-related stress is a workplace hazard and HSE encourages employers deal with it, so far as possible, as they would any other – by assessing the risks and tackling any identified issues. HSE has raised awareness of the issue and potential solutions through several communication campaigns. We also provide a broad range of help and support to encourage employers to introduce interventions to prevent work-related stress rather than relying on HSE inspections which would generally only highlight issues once workers have been 'psychologically injured'.

27. HSE is working with industry, Trades Unions and academia to develop variations of the approach that are tailored toward specific sectors and for smaller organisations, for example the HSE's Talking Toolkits. These came out of trials conducted by HSE with priority sectors and are targeted at smaller organisations or smaller groups within large organisations. At present there is a generic version plus one specifically for schools. A health care (NHS) version is due soon. HSE is also working to develop a tool for SMEs that will be based on checklists for achieving compliance with the legislation.

28. Although HSE develops and promotes its own tools and guidance, they do not constitute an obligatory approach to tackling work- related stressors. The Management Standards (MS) stress risk assessment approach, whilst effective, is not a legal requirement – employers must make a suitable and sufficient assessment of the risks, but this can be done using other approaches equivalent to the MS. HSE takes an active role in

development of other approaches where possible e.g. Topic experts are working on the development of an ISO standard (45003) relating to psychosocial risks in the workplace.

Work and Pensions Committee
House of Commons, London, SW1A 0AA
Tel 020 7219 8976 Email workpencom@parliament.uk

From the Chair

Sarah Albon and Martin Temple
Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

10 March 2020

Dear Sarah and Martin,

Thank you again for coming to give evidence to the Work and Pensions Committee this week. As I said, you were the first witnesses in front of the new Committee and we were very pleased to hear from you.

During the session, we discussed a range of topics which fall under your remit as Britain's workplace regulator. There were some lines of inquiry I wanted to follow up in writing.

We agreed that the Health and Safety Executive (HSE) would provide notes on the following topics to the Committee:

1. **A note on how much money was made from the Fee for Intervention (FFI) regime since its introduction in October 2012, setting out how this compares with initial projections;**
2. **A note on why musculoskeletal disorders (MSDs) increased between 2017-18 and 2018-19, and the results of HSE's insight work into how to communicate better with those affected by MSDs;**
3. **A note on the resources the Health and Safety Executive will receive to cover the cost of taking on the post-Grenfell building safety regulator, and whether this resource is sufficient;**
4. **A note on how HSE can work with MPs to keep them informed about prosecutions in their constituencies and enable them to track cases.**

At the hearing, we briefly discussed the HSE's role in monitoring the availability of Personal Protective Equipment like masks, gloves and respirators. These tools are fundamental to safeguard workers from injury and illness. Following the outbreak of COVID-19, might you please let us know:

1. **Are you monitoring the availability of specific items of Protective Personal Equipment which protect workers from transmission? If so, what are they?**
2. **Is there sufficient provision of PPE in the UK to cope with the virus?**
3. **What responsibilities do you have in relation to PPE, and how are you preparing for increases in demand for equipment?**

According to HSE figures, the combination of stress, depression and anxiety constitutes the most commonly reported work-related health problem. You informed us that HSE has prioritised tackling this through the publication of toolkits and management standards. On the question of enforcement, however, you stated that practical action against stress presents a “challenge” for HSE going forward.

4. **How can HSE adapt the model of the traditional inspection to tackle work-related stress more effectively?**
5. **What practical methods can HSE adopt to ensure a workplace is following the management standards and guidance?**

Thank you in advance for giving further context to our discussion by responding to these pertinent questions. I look forward to hearing from you.

With best wishes,

Rt Hon Stephen Timms MP
Chair, Work and Pensions Committee