

New Health & Safety Sentencing Guidelines One Year On – Lessons Learned

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AT A GLANCE – THE LAST YEAR

- First half of 2015 - £14.6 million in fines
- First half of 2016 - £20.6 million in fines
- 41% increase

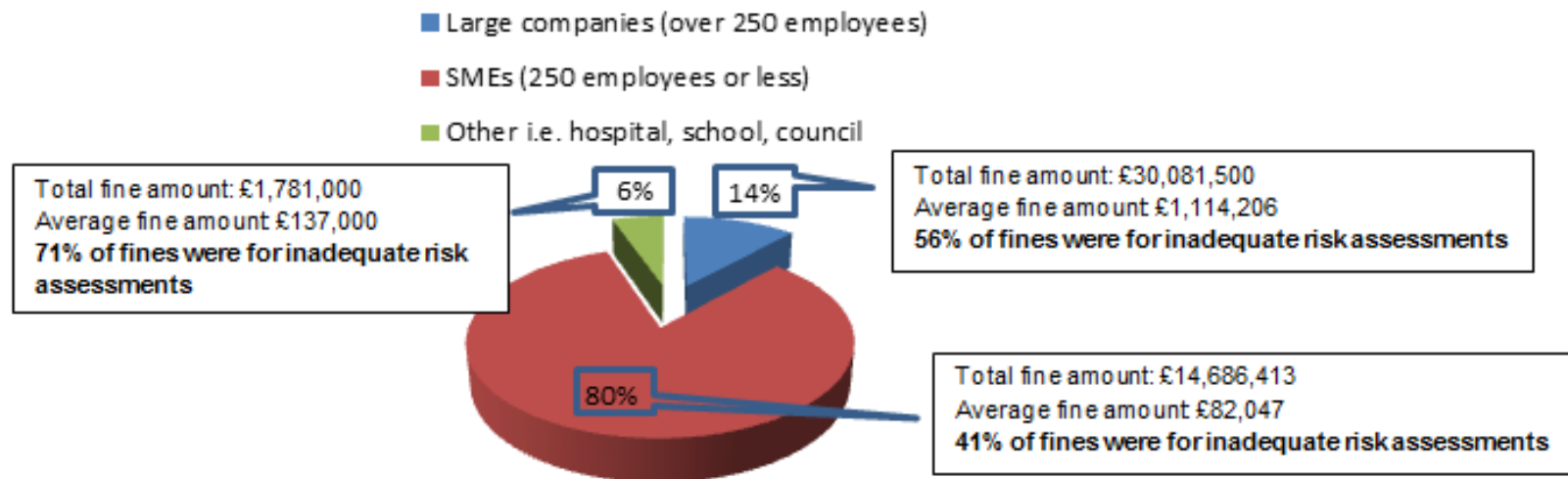


Chart outlining companies prosecuted by HSE since the Guidelines came into force
Source: HSE website: <http://press.hse.gov.uk/release-type/press/>

AT A GLANCE – THE LAST YEAR

- Increased risk of personal prosecution

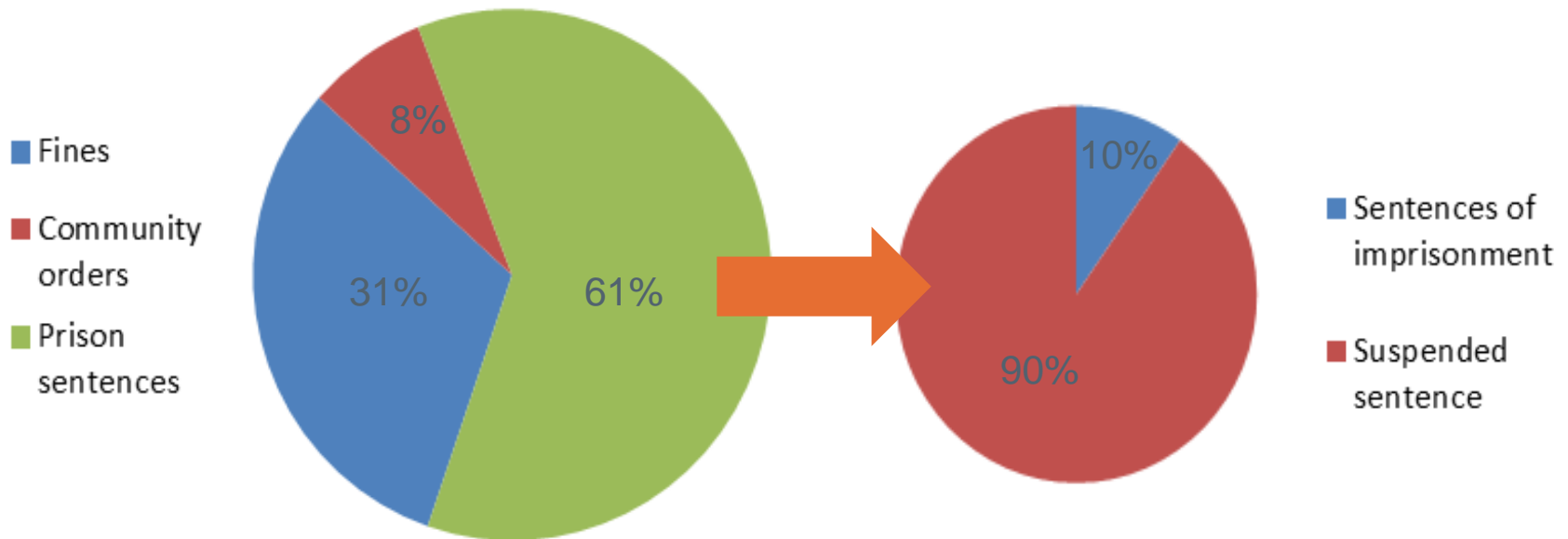


Chart outlining individuals prosecuted by HSE since the Guidelines came into force
Source: HSE website: <http://press.hse.gov.uk/release-type/press/>

AT A GLANCE – THE LAST YEAR

- Nearly 50% of all HSE prosecutions have been for inadequate risk assessments

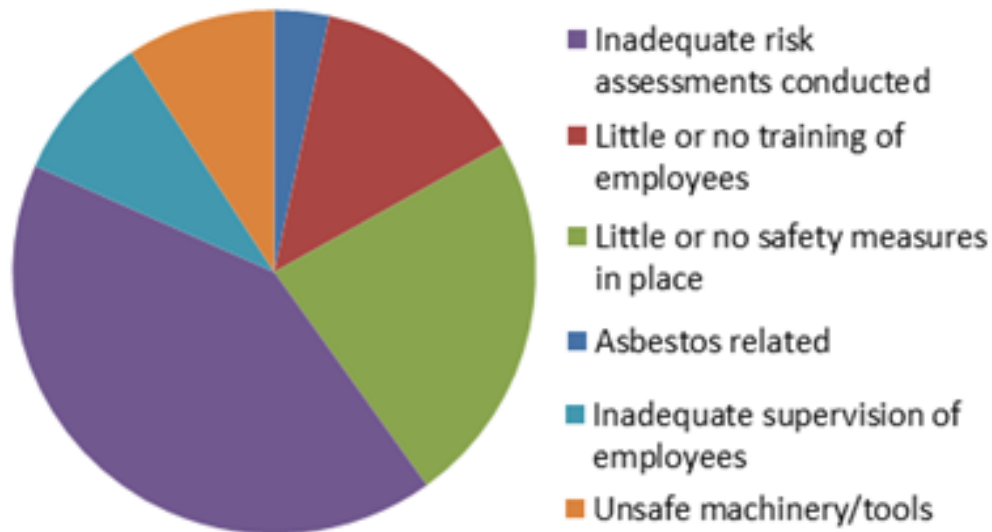


Chart outlining the causes of HSE prosecutions since the Guidelines came into force

Source: HSE website: <http://press.hse.gov.uk/release-type/press/>

INTRODUCTION

- Higher fines now commonplace, including where no injuries
- Fines for “very large” companies higher, but not necessarily in proportion to the size of company
- Courts remain unwilling expressly to take into account parent co finances when sentencing subsidiary
- Assessment of culpability and harm remains for Court’s discretion, even where parties are agreed as to an issue

SENTENCING TRENDS

No injury case - ConocoPhillips

- 3 gas releases, exposing workers to risk of injury
- Turnover = £4.8bn
- Fine = £3m
- High Culpability / Harm Level 1
- As a very large company, *“necessary to move well beyond that range to achieve a proportionate sentence”*

SENTENCING TRENDS

Non-fatality case - Merlin: Alton Tower's - 'Smiler' rollercoaster

- Serious injuries suffered by 16
- High Culpability / Harm Level 1
- Turnover = £400m
- Fine of £5m (reduced from £7.5m to account for guilty plea)
- Despite being a very large company, a “*proportionate sentence*” can be achieved within the offence range



SENTENCING TRENDS

Fatality case - Network Rail

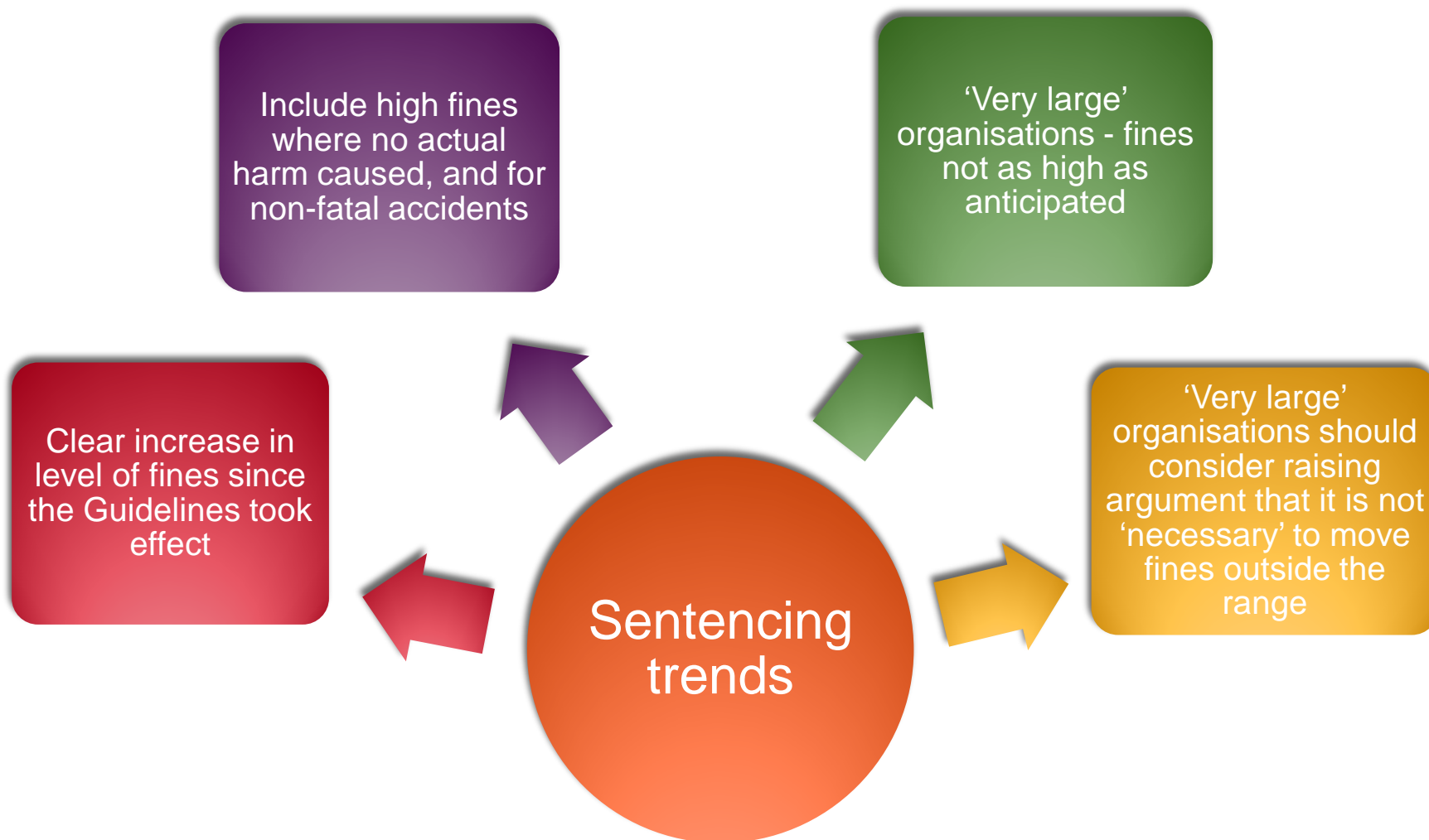
- Elderly victim killed at level crossing
- High Culpability / Harm Category 1
- Fine of £6m, reduced to £4m to reflect guilty plea
- Fine increased to reflect fact that offence exposed public to risk and caused death
- Judge noted Network Rail is not-for-dividend company and any profits made are reinvested in the network

SENTENCING TRENDS

Other cases

- **Balfour Beatty**: trench collapsed killing worker. Dormant company, but group turnover £8.2bn, fine of £2.6m (May 2016)
- **Decco**: death of agency worker who fell 2.4m from unguarded platform. Turnover £102m, fine of £2.2m (Sept 2016)
- **Travis Perkins**: death of customer run over by a lorry in yard. Turnover of £2.2bn, fine of £2m (April 2016)
- **Tata Steel UK**: two workers lost parts of hands in separate machinery incidents. Turnover of £4.1bn, fine of £1.98m (July 2016)
- **C.RO Ports (London)**: prior to new Guideline coming into force. Serious injuries to worker's arm by a rotating capstan. Fine of £1.8m (Jan 2016)
- **Foodles Production (UK) Ltd**: Harrison Ford suffered broken leg and deep lacerations on Star Wars set at Pinewood Studios, Slough. Fine of £1.6m (Oct 2016)

CONCLUSION - SENTENCING TRENDS



LOOKING FORWARDS - PROPOSED GUILTY PLEA GUIDELINES

Current position

- Early guilty plea = maximum $\frac{1}{3}$ reduction in sentence
- Guilty plea entered after “the first reasonable opportunity” = maximum $\frac{1}{4}$ reduction

Proposal

- After first stage - maximum reduction is on a sliding scale of $\frac{1}{5}$ to $\frac{1}{10}$ up to the start of the trial

LOOKING FORWARDS - EFFECT OF CONSULTATION PROPOSALS

- Understand incident as early as possible
- Assists in agreeing:
 - basis of plea;
 - level of harm; and
 - culpability.
- May be more beneficial to challenge the prosecution's case
- Only achieved through **early** and **constructive** engagement with experts and the HSE

CONDUCTING INCIDENT INVESTIGATIONS

Assess, understand and plan response to incident

Cooperate with the HSE or police

Pin point what expert evidence is required

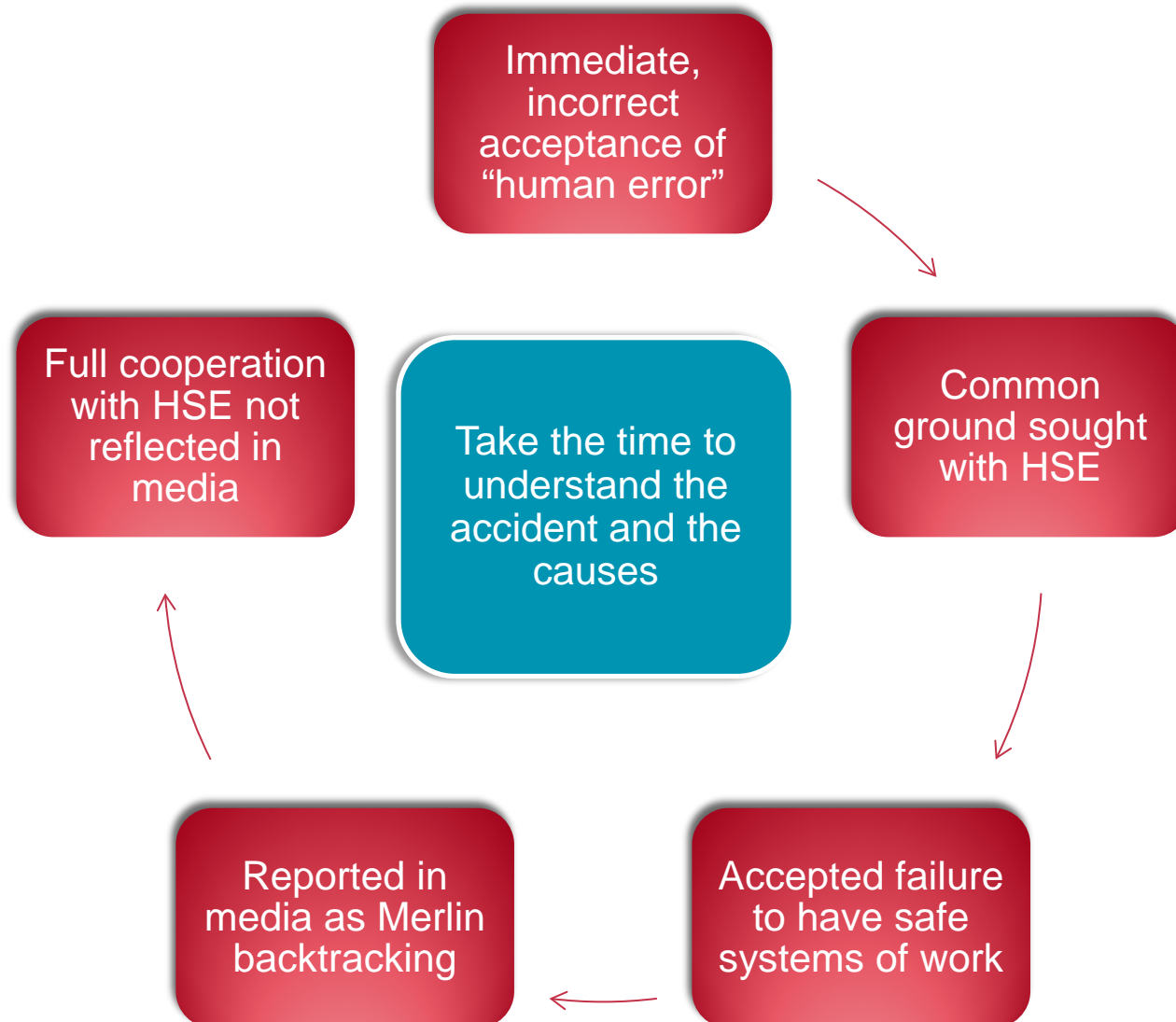
Keep the HSE updated

Understand and engage with the HSE's preliminary findings

INTERACTING WITH THE MEDIA



ALTON TOWERS



EARLY ENGAGEMENT EXPERT EVIDENCE

- Engage experts early to address alleged failings
- Understand your position as fully as possible to:
 - take advantage of early guilty;
 - defend a prosecution; or
 - challenge elements of the HSE's case.
- Submit expert evidence to HSE

WHY TALK TO THE HSE?

1

- GENUINE COOPERATION

2

- LEARN, REMEDIATE AND PREVENT

3

- MORE LIKELY TO RESOLVE ISSUES EARLIER

4

- MAY HELP MITIGATE POSITION

5

- EARLY SHARING OF EXPERT EVIDENCE MAY DEMONSTRATE NOT AT FAULT
- DON'T WAIT UNTIL YOU GET TO COURT - TOO LATE

COHERENCE AND CONSISTENCY

- Coherent and consistent approach to:
 - Crisis management
 - Media communication
 - Internal investigations
 - Insurance communication
- Investigating thoroughly does not impact ability to cooperate with the HSE
- Demonstrates commitment to remediation and improvement

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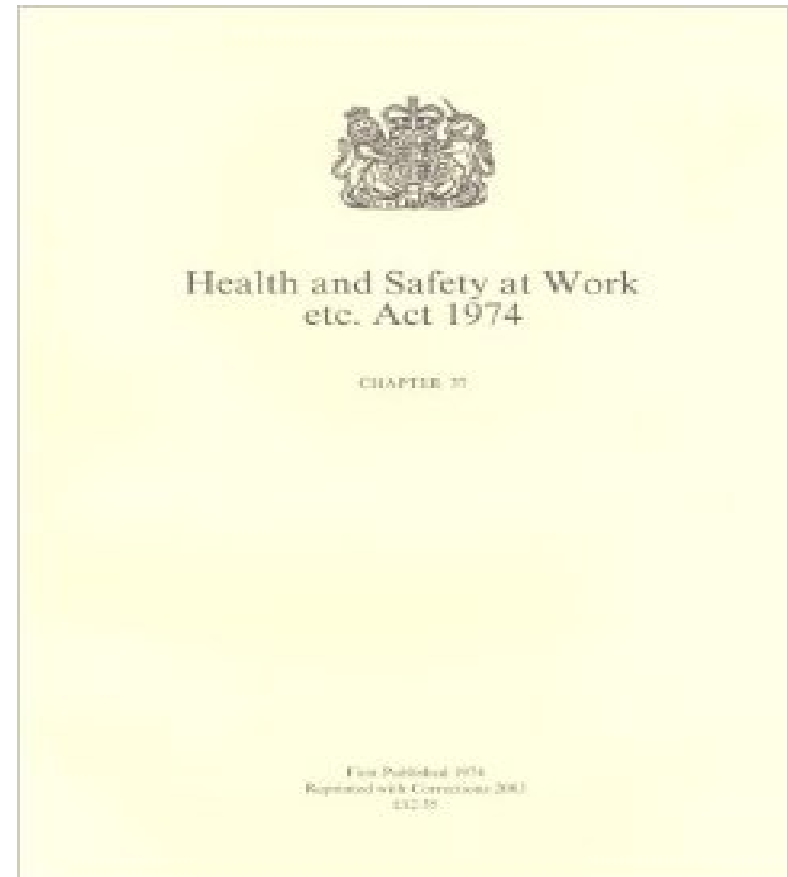
Current issues for HSE

9 February 2017

Philip White
Head of Operational Strategy

BACKGROUND

- Over 40 years since HSW Act came into force
- Fatal incidents, injuries and ill health greatly reduced
- Mature system of regulation, with many experienced and committed participants
- World leading system and outcomes
- ... could be even better
- ... still some way to go in many areas

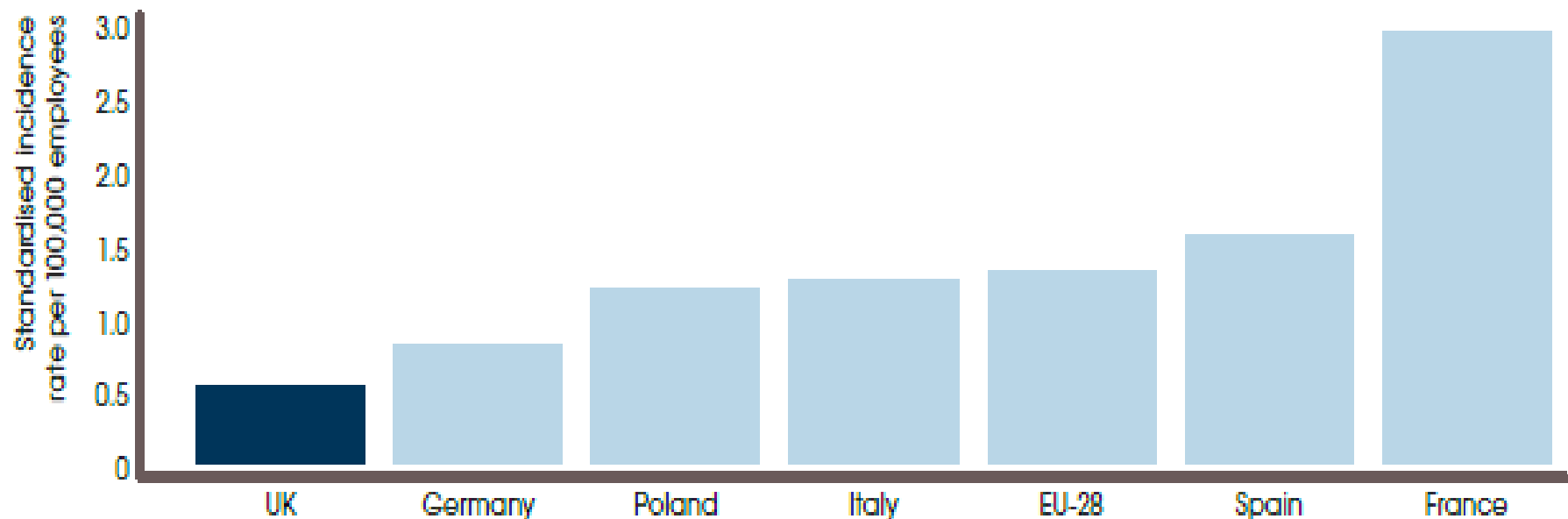




BACKGROUND

Fatalities:	651 to 105 employees*	(1974 to 2015/16p).
	* excludes self-employed	
Reported Injuries:	337,000 to 73,000	(1974 to 2011/12).
Ill health cases:	fallen by a third	(since early 1990's).

Fatal injuries in large EU economies (Eurostat 2013)



BACKGROUND



14.1
billion

Annual costs of work-related injury and new cases of illness in 2014/15, excluding long latency illness such as cancer

BACKGROUND



30.4
million

Working days lost due to
work-related illness and non-fatal
workplace injuries in 2015/16

OPPORTUNITIES & CHALLENGES

Challenges:

- Stretching to drive further improvement
- Temptation to set disproportionate standards
- Immediacy of safety can detract from tackling health issues



Helping
Great Britain
work well

NEW STRATEGY FOR THE GB SYSTEM



Helping
Great Britain
work well



Helping
Great Britain
work well

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FELGWYDR HORIZONS
OF WRNAIS AWENSING



HELPING BRITAIN WORK WELL



Acting together

Promoting broader ownership of health and safety in Great Britain



Tackling ill health

Highlighting and tackling the costs of work-related ill health



Managing risk well

Simplifying risk management and helping business to grow



Supporting small employers

Giving SMEs simple advice so they know what they have to do



Keeping pace with change

Anticipating and tackling new health and safety challenges



Sharing our success

Promoting the benefits of Great Britain's world-class health and safety system



Helping Great Britain work well

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OF WRNAIS AWENING

ACTING TOGETHER

- Everyone has an active part to play
- Identify the most important challenges and develop ways of taking collective ownership
- Do our individual contributions help as much as they can, without causing unnecessary cost or inefficiency?



Acting together

Promoting broader ownership of
health and safety in Great Britain

TACKLING ILL HEALTH

- 13,000 deaths from work-related lung disease and cancer last year - reflecting historical conditions and standards
- 1.2 m working people suffering from work-related illness last year - half a million were new conditions
- Long-latency hazards, stress and musculoskeletal disorders
- Drive for improvement must come from everyone with a stake in keeping people healthy and fit for work



Tackling ill health

Highlighting and tackling the costs of work-related ill health

SUPPORTING SMALL EMPLOYERS

- HSE has already simplified legislation and guidance, and produced straightforward tools
- Reaching SMEs is challenging
- The best large businesses and intermediaries support SMEs – not offering overcomplicated advice or unnecessary barriers to business



Supporting small employers
Giving SMEs simple advice
so they know what they have to do

MANAGING RISK WELL

- Risk assessments don't need excessive paperwork
- Risk management doesn't mean managing trivial risks
- Getting it wrong inhibits productivity, creativity and growth
- Managing the right risks in the right ways
- Help smaller companies get it right efficiently and effectively



Managing risk well

Simplifying risk management
and helping business to grow

KEEPING PACE WITH CHANGE

- Anticipate & tackle new health and safety challenges
- Enables new and different approaches – shared internationally
- Ideas for how we can keep track of trends, as well as any future challenges



Keeping pace with change
Anticipating and tackling
new health and safety challenges

SHARING SUCCESS

- Sharing good practice, both at home and abroad
- Sharing across sectors
- Promoting goal-based approach overseas, making it easier for British businesses to expand into new markets



Sharing our success

Promoting the benefits of Great Britain's
world-class health and safety system

HSE's contribution

- Ensuring current standards are maintained
- Supporting the system by:
 - Maintaining the regulatory framework
 - Acting as a catalyst for improvements
 - Sector strategies
 - Enforcing the law where required



EU REFERENDUM

- No immediate consequences for how HSE works and regulates
- Three main areas of EU activity
 - Social policy
 - Environmental & human health protection
 - Single market



BETTER REGULATION

- £10bn savings to be delivered over the Parliament
- Business Impact Targets
- Post Implementation Reviews
- Some regulatory consolidation and amendment
- Business on business burdens - tackling 'Blue Tape/Private Sector Gold Plating'



IN SUMMARY

- Fatal incidents, injuries and ill health greatly reduced since 1974
- Further improvements a big challenge for us all
- The need to work together



SUMMARY

MANY THANKS





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