



The business people – an extension to your team

Health and Safety Panel Report

April 2011

Introduction

The Forum of Private Business is a proactive, not-for-profit organisation providing comprehensive support, protection and reassurance to small businesses. We add value to businesses through the collective voice for members in local, central and European government, and the provision of tailored solutions that promote business success.

Our Health and Safety Panel comprises approximately 126 members who have volunteered to provide feedback to us on health and safety matters. Traditionally, we have contacted panel members on an *ad hoc* basis to gather feedback on specific issues, however, we now engage more regularly with the business owners on our Member Panels to better understand and collect evidence of their real life experiences, to more effectively reinforce our policy and campaigns activities. This is the second report from the Health and Safety Law Panel.

Note: as panel figures refer to just over 100 businesses, they should be treated as indicative of rather than representative of all small and medium-sized businesses.

Summary

“Any relaxation of tight bureaucracy is a help. Most companies have decent health & safety practices that they adhere to. Any simplification is a big bonus.” Panel member response

Talk to a business about the burdens they face and administering health and safety compliance will be near the top. The Coalition Government has attempted to tackle the issue head on, by accepting in full the recommendations made by Lord Young in his report last year, *Common Sense*. Further work is happening in this area, with the Department of Justice studying compensation culture and the Department for Work and Pensions commissioning Professor Löfstedt to address how regulations can be consolidated or simplified and whether these regulations make us more or less competitive internationally.

Whilst businesses value and understanding the need for health and safety regulation, our research finds a general desire for a shift towards a more common sense approach. Many owners detected an assumption that the employer was always to blame, minimising the responsibility of the individual. Few want health and safety to become as unbalanced as employment law tribunals can be, so employers should be allowed the flexibility to focus on improving workplace safety rather than proving compliance through documentation.

Respondents were generally positive about Lord Young’s recommendations, with 83% of our members feeling that it was a positive report. In particular, 86% of members supported the focus on consolidating health and safety law into a single set of accessible documents. Also important was that health and safety focused on the serious health issues within the workplace, namely fatalities, major injuries and incidence of ill health caused by the workplace, rather than smaller issues.

How health and safety laws are enforced also remains an issue, primarily with members reporting a lack of consistency to the process. 68% of respondents felt that self regulation would be helpful in instances but were concerned about the lack of protection for their own business and concerned that good practice would be ignored by competitors.

Finally, businesses wanted intensive support and monitoring focused on businesses that were not compliant rather than on companies with exemplary records. Although our research questioned a small sample, there is evidence that this is beginning to happen as some members have reported a proactive stance on workplace safety and decreased inspections of their business.

Recommendations

- Enforcement agencies should focus more on shared responsibility for workplace safety. Employers should expect common sense from employees and customers in their workplace. Whilst accepting they have a duty of care towards their employees, businesses cannot watch over them all the time.
- The business community needs to see that accredited consultants and co-regulation can reduce the cost and time spent on health and safety compliance. Currently there is a belief that accreditation will increase costs and leave senior management with less time to develop their business.

- We would like to see a greater understanding across government of the financial demands on the business, in this case by consultants and the Health and Safety Executive. This needs to be a core requirement of any accreditation scheme, with enforcement officers aware that businesses face a number of inspections from agencies across all aspects of their business.
- The basic principles of health and safety such as manual handling, first aid and safety in a variety of workplaces should be taught in school. Business owners can be more certain that new employees have a basic level of common sense.
- Focus on the main issues in health and safety reducing fatalities, injuries and long-term ill health, rather than on the amount of paperwork produced.
- Look more closely at proportionality; businesses in the 10-24 employee sector have been hit hardest by the recession and increases in employment taxes. The benefits given to micro businesses need to be extended to small businesses in general to avoid a two-tier framework.
- Earned recognition schemes should be rolled out across health and safety bodies, rewarding businesses that are proactive in health and safety arrangements by reducing the amount of inspections they face.
- We recommend that the Government continues to expand the Primary Authority Scheme as a means of ensuring consistent and fair enforcement procedures across different local authorities.

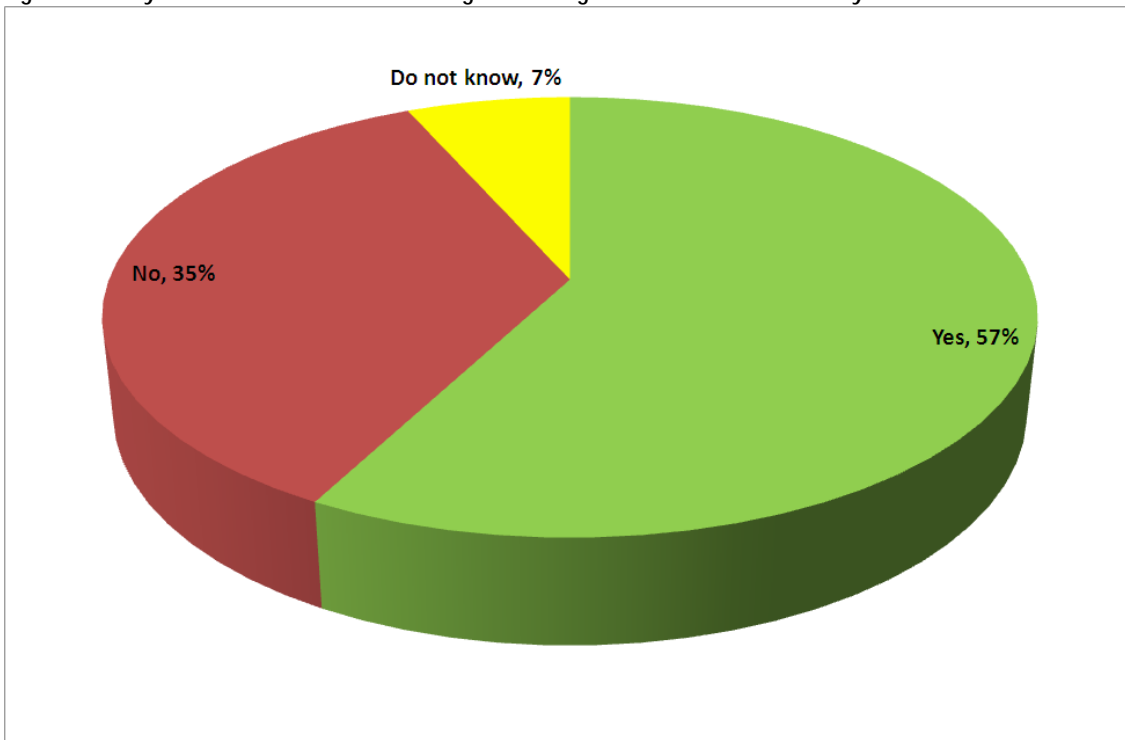
What constitutes long-term success?

In February 2011 the review "Revitalising Health and Safety", launched in 2000, had three aspirations for the following ten years. These were assessed in February 2011 to see if they had been met. The goals of the review were:

- To reduce the incidence rate of fatalities and major injuries by 10%. Statistically this target was **met**.
- To reduce the incidence rate of work-related ill health by 20%. Statistically this target was **probably not met**.
- To reduce the incidence rate of working days lost per worker from work-related injury and ill health by 30%. Statistically this target was **probably met**.

First of all we asked whether there should be long-term targets for health and safety in the future. In total a slight majority (57%) felt that there should, with 7% unsure. The remaining 35% felt that there should not.

Figure 1: Do you feel there should be long-term targets for health and safety?



Those that felt there should continue to be targets tended to agree with the targets that were indicated above. Owners argued that continuing to reduce fatalities, major injuries and ill health was important for

their businesses, as replacing staff even temporarily cost money and meant that key skills or knowledge was lost to the business.

With the reduction of funding through the “access to work” programme, some members felt a greater focus should be put on supporting people back into work rather than a perceived blame culture where blaming the employer appears to be the default option. Others felt that more emphasis should be put on targets that were not met, looking to find out why targets were missed.

Some owners wanted the long-term targets to remain the core focus for workplace safety over the long term. Most respondents felt that this should be accompanied with a greater use of common sense, either by making employees (and customers) take responsibility for their actions or stripping out unnecessary minutiae requirements required to cover a company in a legal dispute.

“Continue with the previous targets. Continue with advertising to make people really listen and think about themselves and their health.” Panel member response

“To de-regulate and simplify the regulations. To correctly identify and prosecute dangerous practices in dangerous situations and regulate the companies concerned accordingly and stop forcing normal companies to overcompensate and gather useless information because the Health and Safety requires it.” Panel member response

A number also felt that more effective monitoring was needed so that figures relating to the rate of incidences work-related ill health and working days lost as a result of ill health could be more accurately assessed.

“Workplaces are very safe, targets are not worth the effort.” Panel member response

These issues were also picked up by those who felt that there should not be long-term targets for health and safety in the future. Poor reporting practices by businesses with fewer than 5 employees and the time taken in reporting incidences made some respondents question the need for this. Others pointed to the low levels of incidence, particularly compared to other countries and were concerned that the targets themselves would become overly important and decreasingly feasible.

“As with all targets, the closer you get to the target, the more difficult or onerous the regulations are to achieve it.” Panel member response

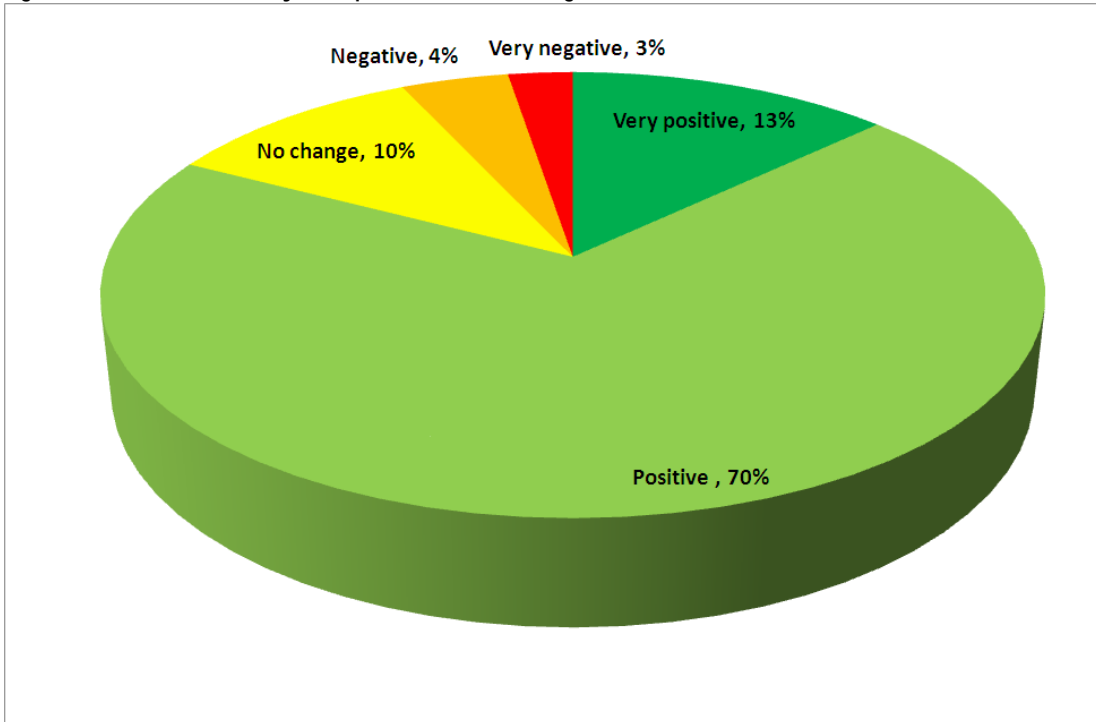
Interestingly, both those who supported greater use of long-term targets and those who did not felt that the way to improve health and safety was through employees and customers taking greater responsibility for their actions. Both sides saw information requests as a distraction from taking action to improve workplace safety.

The Young review

“The Young review acknowledges that for SME's working in low risk environments, health and safety compliance has been a burden that actually discourages good practice rather than encourages it due to the management resources that are required to be allocated”. Panel member response

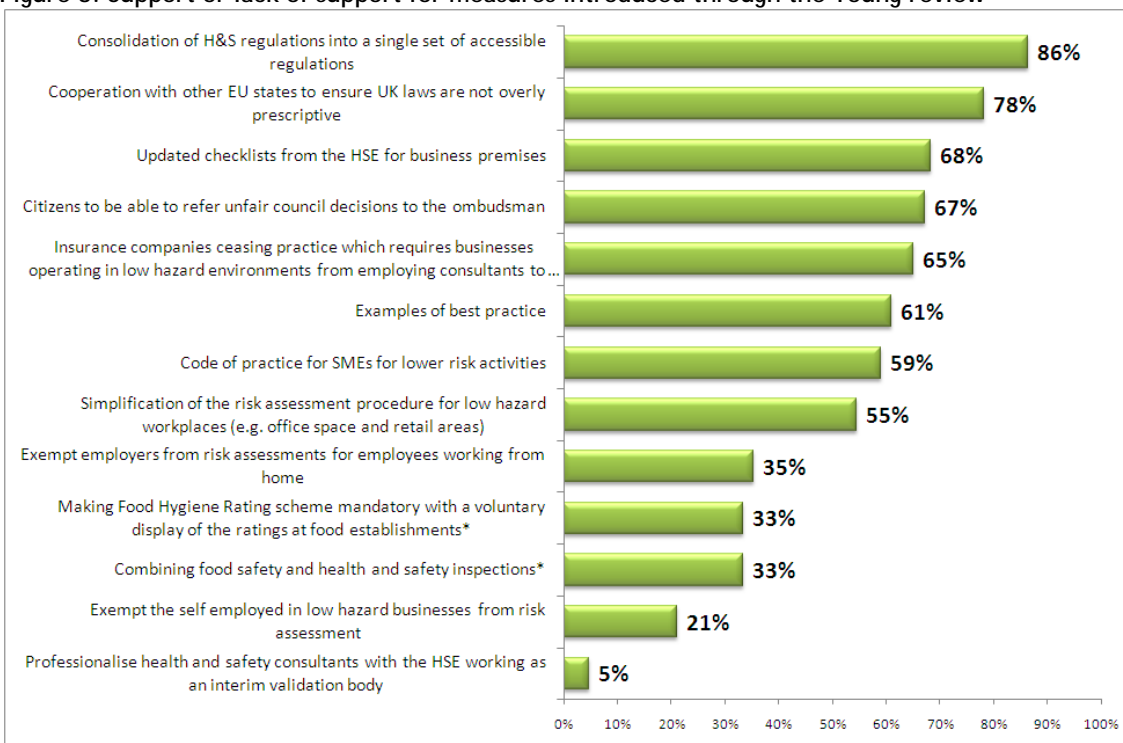
The Government has announced in the Budget that the recommendations from the Young report “*Common Sense, Common Safety*” would be introduced in full. Broadly, members of the panel felt that the recommendations were positive overall, although around 10% felt that it would affect their business in a negative way.

Figure 2: Overall what is your opinion of the Young Review



In total, 83% of respondents felt that the report overall was positive, with members generally feeling that the “review is trying to help SMEs”. However some of the measures indicated in the report were more controversial. These are shown below:

Figure 3: Support or lack of support for measures introduced through the Young review



*Relatively small sample as only really relevant to businesses involved in food preparation

“Hopefully by deregulation and simplification, we can operate without worrying about what might happen and what would happen if an employee started a bogus claim.” Panel member response

Businesses were overwhelmingly positive about consolidating health and safety regulations into a single set of accessible regulations with 86% feeling this was a positive move. Businesses wanted to ensure that UK health and safety laws are not overly prescriptive and that business owners should be able to exercise the ability of citizens to refer unfair council decisions to an ombudsman.

“Making it easier for SMEs (who are in the worst position to be able to afford H&S consultants) to either carry out H&S duties themselves, or take them out of H&S requirements all together.” Panel member response

The fourth most popular measure also has an element of returning control of the legal procedure to the business in reducing the ability of their insurers to dictate to businesses. However members were worried about exemptions from risk assessments for home workers and the self employed in case of a legal challenge. Anecdotally, businesses were also concerned about the growing gulf between the requirements placed on the self employed and businesses with fewer than 5 employees compared to other small employers. The most recent requirement was the potential exemption of micro businesses (those with fewer than 10 employees) from new UK legislation.

In the last panel survey (September 2010) the concept of accredited consultants was relatively popular but the indication that the HSE would work as an interim validation body appears to be a concern. This is not necessarily a reflection of the HSE as an organisation as anecdotal worries about the cost of accreditation and bureaucracy were being mentioned by businesses and H&S consultants. For the latter this is a greater potential concern as revenue from low hazard workplaces may lead to a decline in business.

The majority of members were keen to make their workplaces as safe (and productive) as possible, and were interested in cases of *relevant* best practice (there was a feeling that most case studies were larger businesses).

Businesses were also supportive of greater flexibility on health and safety in low hazard areas of their businesses, particularly those who felt that health and safety should focus on reducing serious injuries and fatalities rather than dealing with petty infringements of fairly obscure rules. There was some concern that this could lead to a further erosion of common sense, particularly as a significant number of owner managers would be exempt from basic health and safety procedures.

Food safety is a big issue for some of our members and a number of businesses were looking for greater consistency from local enforcement officers.

“Food safety is currently contracted out by my council, with only bad cases being referred to qualified EHOs. This has proved to be a poor practice, with the EHO representatives giving inaccurate advice to operators.” Panel member response

Enforcement

“The Young Review was a hasty reaction to perceived workplace issues with little consultation. The proposed changes have little substance and only serve to reinforce the present Government's plans to abolish the HSE and promote self-regulation. Self-regulation will result in reduced legislative compliance and more workplace accidents.” Member response

Most of the complaints about workplace safety are centred on enforcement and, as the member above indicates, the longer-term implications of the Young review and the rolling back of the public sector will lead to more self regulation or co-regulation.

Co-regulation

“Co-regulation is a way for the Government to deregulate its own duties. There is no plan for companies on the consultant's register to demonstrate specific competencies. Consultants cannot be competent in all areas of health and safety and this will be very confusing for employers when choosing who to employ.” Panel member response

Overall 65% of the comments on this issue were negative, 23% positive and 13% neutral. As can be seen from the analysis below members main concerns were that co-regulation would lead to an increase in the cost and paperwork businesses have to spend on dealing with health and safety issues.

Figure 4: Positive and negative perceptions of co-regulation

	Positive	Negative	Neutral
Cost	23%	0%	0%
Time	2%	6%	0%
Paperwork	19%	0%	0%
Practicality	9%	6%	0%
Control	8%	5%	0%
Enthusiasm for job	0%	1%	0%
Proportionality	6%	1%	0%
Depends on application	0%	0%	13%
Improve H&S in the supply chain/standards	0%	3%	0%

“Any requirement to use an external consultant to verify compliance would be a backward step. Consultants in any field of business have a vested interest to make their subject appear more complex and difficult than it actually is. Business needs simplification, clarity and less red tape, not another layer of expensive bureaucracy.” Panel member response

Many businesses felt that co-regulation through accredited consultants would not lead to more cost effective and proportionate regulation – one respondent described the idea as ‘bureaucratic rot’ – while others felt that the consultants would find problems where there are none. Others saw accreditation as meaning much more expense as currently the co-regulation marks are near the top end of the market in terms of cost.

“If it simplifies the process it would be beneficial.” Panel member response

Some businesses saw co-regulation as a way of increasing deregulation and reducing the requirements on their business allowing them to introduce practical solutions and retain control of the business. However many of these businesses were also cautious about how it could help them unless it was part of a wider process to minimise the requirements on their business.

14% of members felt that it depended on the application of application and 1% liked the potential opportunity to focus on the entire supply chain rather like the accreditation processes of supermarkets.

Self regulation

68% of members felt that there should be more self regulation as they feel that this would allow a greater emphasis on common sense to be introduced. Supporters of greater self regulation also highlighted the issue that formal risk assessments are only as good as the person undertaking them, and allowing the workforce some input would improve the proportionality of workplace safety (taking into account the skills and sense of the employees) and reduce the administrative load on the owner. Getting employees to buy into the process was also felt to be important. However in most cases there were a number of caveats in where and how self regulation could be used.

“Common sense should be the most important part of regulation and risk assessments only used where there is an actual unnecessary or unusual risk.” Panel member response

Much of the focus was on the repetitive nature of risk assessments by business owners who are undertaking them because they feel that they have to rather than because of a business need.

“Risk assessments are an essential part of any business, they should compliment the organisation and help make it more efficient not prevent progress.” Panel member response

22% felt that self regulation would be a regressive step, with some businesses (particularly competitors) not taking workplace safety seriously. Mainly highlighted the importance of formal processes such as risk assessments which they felt protected their organisation legally and were the most consistent approach to workplace safety.

“A self regulated agreement would still have to be documented in case there was an accident or a health problem arose and if it was found to be lacking despite mutual agreement between employer and

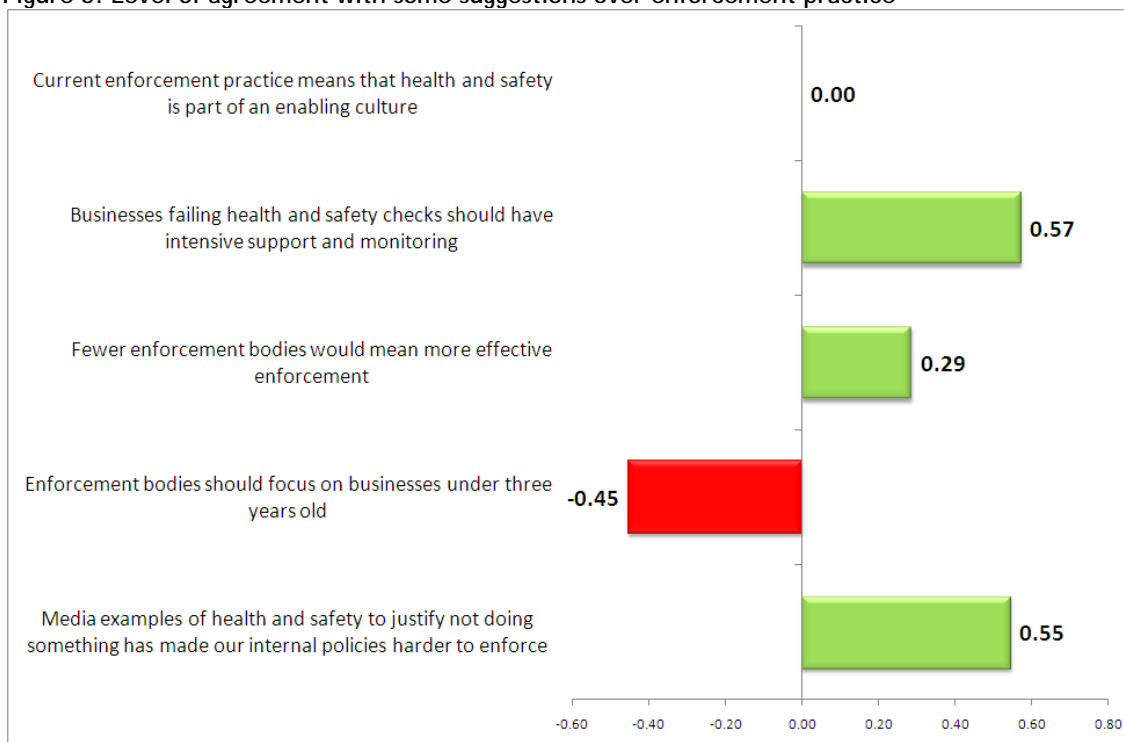
employee/subcontractor what would happen then? Also what if one employee is happy with an agreement and another isn't? You then face the risk of having to have multiple agreements." Panel member response

Others felt that self-regulation simply will not work out pointing out that a more nebulous health and safety environment could lead to business owners having to spend more time and money in defending themselves legally, with the outcome of a case being less predictable. Forum members, who enjoy an insured advice service as part of their membership, were also worried about whether insurers would use this as a way to avoid paying out.

10% would like more information on how self regulation could be used to support their business by allowing them to spend more time and invest more of their profits in developing their business. Even those who did feel that there was a place for self regulation were worried that it could be abused.

General attitudes to enforcement

Figure 5: Level of agreement with some suggestions over enforcement practice



Overall there was a slightly higher number of members who felt that current enforcement practice was part of an enabling culture (47%) compared to those who felt it was not (35%). However almost four times as many respondents strongly disagreed with the statement compared to the number who strongly agreed and it was this vehemence that gave this suggestion a neutral rather than positive score. This does suggest that if health and safety is not administered and enforced well then the entire business can suffer.

Members also disagreed with the suggestion that enforcement bodies should focus on businesses under 3 years old, with members wanting them to focus more on those who had poor performance and those in high risk sectors.

Intensive support and monitoring for businesses that had failed health and safety checks was generally seen as a positive suggestion, although some owners felt that they should not be rewarded for failure. Some respondents also felt that whether support should be provided (and the cost) should depend on the nature of the transgression.

Respondents also felt that fewer enforcement bodies would lead to more effective enforcement providing that the enforcement bodies had the skills and expertise to carry out the checks. This is consistent with the last panel where industry-specific expertise and specialist knowledge from enforcement of fire regulations by the fire service were appreciated.

Members also felt that examples in the press of poor health and safety practice (although Lord Young and the HSE have indicated that the reality was often very different) has led to employees being less attentive to workplace safety or used health and safety as a way of delaying a process.

Ways to improve enforcement

A lot of members reported that they had limited experience of enforcement agencies and so were not really sure of the tone and nature of enforcement at the moment. A number of businesses simply wanted fairness in the approach to enforcement, pointing to geographical or size issues as a reason why they have to compete with higher overheads.

“To ensure that all service companies carry out risk assessments when they visit their customers. Our company does this but our competitors do not. It is unfair as this means we spend time and consequently money on H&S more than our competitors.” Panel member response

The main focus was on greater support and less punitive measures for smaller businesses, taking into account that sometimes the ability of owners to make changes are hampered by a lack of resources.

“Advice rather than threats would be a positive step.” Panel member response

Some owners wanted more discretionary powers for enforcement officers, but this needed to be tempered with good training as a bad experience with an enforcement officer can lead to disillusionment with the system.

Consistency was a big issue in terms of enforcement with health and safety requirements on businesses becoming more costly under some enforcement officers and excessive pettiness of some officers at the start of a project followed by lower levels of enforcement later on.

A significant minority of businesses wanted a reversal of the reduction in enforcement levels but this was also allied with more advice to business owners and lower administrative burdens for businesses which they felt would also help.

Incentives for training for owners or key staff was also mentioned as panel members felt that greater knowledge of health and safety would allow them to scale back their H&S processes, a concept noticed in the last panel report.

Role of Health and Safety Executive

“Much the same as the NHS, prevention is far better than cure. They should play a more advisory role with the view to minimising enforcement issues.” Panel member response

As mentioned earlier, the concern businesses had with consultants accredited by the HSE was that they felt this would lead to additional cost in how they meet the need for workplace safety. Members also wanted an honest, pro-small-business approach from the HSE, clarifying what was a statutory obligation and what was best practice.

“The general feeling is that if the HSE comes calling it will mean they are looking for trouble not to give support. This is a shame bearing in the mind the actual importance of working in as safe an environment as one can.” Panel member response

By adopting a more flexible approach, which looked at reducing the cost and administration of keeping the workplace secure, the HSE could then claim to support business owners and there would be less concern about gold-plating by accredited consultants. One owner went further suggesting that the HSE should lobby the Government for specific ways to make smaller firms more profitable. This may be counter to the current (and welcome) reduction in taxpayers money being spent on lobbying but it was one of the original aims of Business Link.

More common was the suggestion that the HSE should adopt a more positive role for the HSE with a research and support role for the HSE similar to that provided by Business Link or Acas, whether this could lead to revenue generation was not covered fully by respondents. Some businesses suggested that the HSE offered live chats or a helpline service similar to the Forum’s own service, however this needed to be confidential, as almost all members noted that they would not trust an advice service that could then lead to an enforcement visit.

“Split it into two units - enforcement and advice. Employers are wary about obtaining advice/liaising with HSE as they feel that being open with them may lead to complications.” Panel member response

“As a low risk environment we have little need of HSE, so cutting their budget and getting them to focus on high risk industries is a positive step in the right direction.” Panel member response

Others felt that the HSE should concentrate on enforcement and focus on particular industries or businesses with poor past records or businesses in their infancy. From the sample there is evidence that this is effectively what HSE has been doing! As many panel members are perceived as having good H&S processes and so tend not to have enforcement visits. The same is true of start up businesses as one member noted: *“We have had one visit after we started trading, and nothing further in 6 years.”*

Communication

“Small companies don’t have the time or money to research and implement most of what is required. They do have the time to browse through a website when required or read a change to practise when necessary.” Panel member response

Given limited resources we asked how health and safety support should be best communicated to smaller firms. 80% of respondents felt that the best communications channels were via the internet and downloadable checklists. These are clearly complimentary with the website being used for information and downloadable checklists along with factsheets being used to complete a task. Both were key elements of Lord Young’s recommendations.

Assistance rather than information was, however, more varied in the channels chosen by business owners.

Figure 6: Best way of using limited resources to provide health and safety support to smaller firms



As mentioned earlier, a helpline would also be popular with over half of respondents, providing that there are firewalls within the HSE to ensure that information cannot be accessed by the enforcement side. Training courses (providing they were free or reasonably priced) also have their place in contrast to seminars which are not perceived as particularly helpful if they are remote from the workplace.

“Direct mail should only be used for very important communications, such as changes in the law. Seminars and training sessions can be used more effectively as an on-line, always available, free resource. Trade associations are respected more than the HSE and will be able to communicate in a way that is tailored for their industry.” Panel member response

Trade associations and professional institutes also are important for industry-specific laws, particularly if these organisations have a profound knowledge of the legislation and can advise on processes where the HSE may not.

23% felt greater targeted visits by enforcement officers should also be introduced and more co-ordination with other enforcement bodies so that visits are limited in number and do not lead to unnecessary changes from inconsistent advice or cost for the employer.

“Courses and seminars can be expensive to small businesses. In our experience during visits, officers’ interpretations of regulations can be a bit odd or difficult.” Panel member response

1 in 5 also supported direct mail though this would have to be targeted and some suggested a combination using postal and email distribution channels. As highlighted above, there was a feeling that direct mail should be used for important communications such as major changes in law.

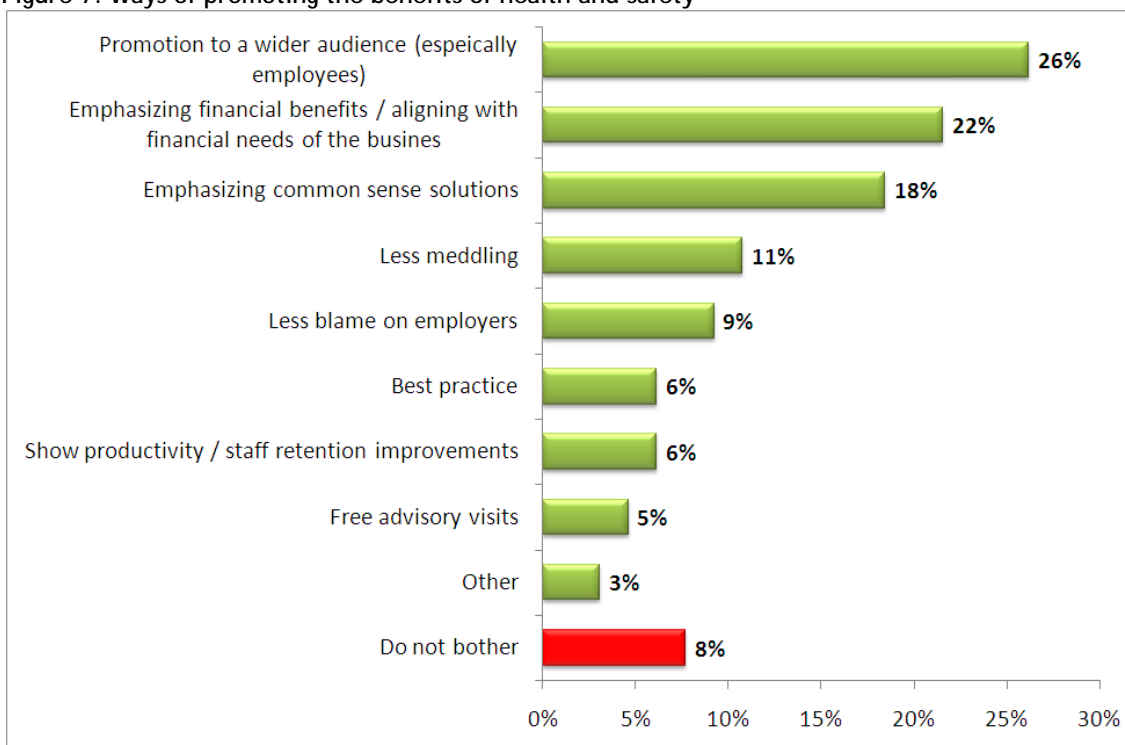
Promoting the benefits of health and safety

“At present the view of the HSE and the issues they cover is viewed as that of a meddling busy body assuming that one is incapable of doing anything in a safe and sensible manner without instruction or interference. Changing this perception and promoting the value of the service will have to overcome this prejudice, and find a new way of showing SME’s that there is a value in what they do.”

11% of businesses wanted less meddling by health and safety bodies and a further 9% wanted less blame on employers, particularly for employees’ actions, as the employee needs to take greater responsibility.

“The law has to change to shift the focus back on to the individual employee so that employers do not fear being penalised for negative events that are due to the behaviour of the employee. Employers have become victims of the ‘blame culture’ which has taken and removed an element of personal responsibility away from the individual.” Panel member response

Figure 7: Ways of promoting the benefits of health and safety



This was an argument picked up by the 26% who wanted health and safety more widely promoted particularly to employees, but with less focus on blaming the employer as happened in a recent radio campaign, unless they have not acted on an issue. Slogans like “a safe site is not an accident” are seen by members as being as applicable to ordinary workers as to themselves.

“Responsibility by all parties, if an employee is not happy with something in his workplace, he should bring it to the attention of management and not wait till an accident has occurred. Alternatively if it has

been brought to the management attention and not acted on then they should be held responsible for any accidents relating to the problem. " Panel member response

18% of businesses wanted common sense solutions prioritised, looking at how machinery could be modified or trained to cope with safety deficiencies rather than making the business replace it.

22% felt that health and safety should be more aligned to the needs of the business in making a profit. Safe solutions to issues that can save business owners money and time is highly valued by panel members as are their employees. Business owners felt that not a strong enough financial case was given for health and safety interference and they would be more amenable to changes if there was a strong business case. This could also include other benefits such as retaining staff and increasing productivity.

Burden of health and safety

There has been no discernable change in the burden of health and safety over the last six months, although a slight decrease may be due to the pro-business side of the Young Review of health and safety, as no significant legislation was introduced. This is in marked contrast to the employment law figures which rose from 5.1 to 6.5 as a result of changes to flexible working and paternity legislation.

	Panel 1	Panel 2
	September 2010*	April 2010*
Burden of health and safety(out of 10)	4.09	4.00

*Date of Fieldwork

Forum of Private Business
Ruskin Chambers
Drury Lane
Knutsford
Cheshire
WA16 6HA

Telephone: 01565 634467
Email: info@fpb.org
Web: www.fpb.org