Review of regulators’ approach to duty holders’ management of health and safety
HSL/2005/15

Project Leader: Rachel O’Hara
Authors: Rachel O’Hara, Julian Williamson & Christine Daniels
Science Group: Human Factors

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CONTENTS

1 Introduction .......................................................................................................................................... 7
1.1 Background ...................................................................................................................................... 7

2 Method .................................................................................................................................................. 8
2.1 Focus Groups ..................................................................................................................................... 8
  2.1.1 Prompt questions ......................................................................................................................... 8
  2.1.2 Participants ................................................................................................................................. 8
  2.1.3 Data collection ............................................................................................................................ 8
  2.1.4 Data analysis .............................................................................................................................. 9

3 Results .................................................................................................................................................. 10
3.1 Focus Group Findings ....................................................................................................................... 10
3.2 Key Findings from HSE Focus Groups ............................................................................................. 10
3.3 Key Findings from Local Authority Focus Groups ............................................................................. 14

4 Discussion ........................................................................................................................................... 19
4.1 Understanding of Health and Safety Management/Safety Management Systems ........... 19
4.2 Discussing Health and Safety Management with Duty Holders .............................................. 20
4.3 Assessing the Effectiveness of Health and Safety Management .............................................. 20
4.4 Variation in Approach Across Duty Holders .................................................................................. 21
4.5 Intervention Approaches ................................................................................................................. 21
4.6 Effectiveness of Different Approaches ............................................................................................ 22
4.7 How Has the Regulator’s Approach Changed? ................................................................................ 23
4.8 Changes in the Regulator’s Approach for the Future ..................................................................... 23
4.9 Opinions of HSG 65 ....................................................................................................................... 24

5 Recommendations ............................................................................................................................ 25

6 Appendix 1 – Focus Group Question Set ......................................................................................... 27

7 Appendix 2 – Focus Group Summaries .............................................................................................. 30
  7.1 Focus Group 1 – HSE Operations Staff (Birmingham) ................................................................. 30
  7.2 Focus Group 2 – HSE Operations Staff (Bootle 8/6/04) .............................................................. 36
  7.3 Focus Group 3 – HSE Operations Staff (Bootle 9/6/04) .............................................................. 43
  7.4 Focus Group 4 – HSE Policy Staff (London) .................................................................................. 49
  7.5 Focus Group 5 – Local Authority Staff (Salford am) ................................................................. 55
  7.6 Focus Group 6 – Local Authority Staff (Salford pm) ................................................................. 63
  7.7 Focus Group 7 – Local Authority Staff (Scotland) .......................................................................... 68

8 Appendix 3 – Interview Summaries ................................................................................................. 74
  8.1 Interview with HSE’s Risk Policy Unit Staff (London) ............................................................... 74
  8.2 Interview with new HSE Inspector ................................................................................................. 76

9 References ........................................................................................................................................... 80
EXECUTIVE SUMMARY

HSE’s Operations Management Forum (OMF) commissioned the Risk Assessment Section of the Health and Safety Laboratory to conduct this project, which represents the initial phase of a review of HSE’s & Local Authorities’ approach to duty holders’ health & safety management, taking into account the role of HSE’s seminal guidance, HSG 65 ‘Successful health and safety management’ (HSE, 1997) which is currently scheduled for review. It is intended that the outcomes of this study will be used to: (i) produce a Commission paper recommending options for taking the work forward, and (ii) inform the second phase of the project involving the review of existing guidance with specific attention to HSG65.

The aim of the project was to review the approach taken by HSE and Local Authorities for dealing with duty holders’ management of health and safety, and ensuring delivery of the required levels of health & safety performance.

OBJECTIVES

The objectives of the project were:

1. To conduct a series of seven focussed discussion groups with experienced HSE and Local Authority staff (3 HSE operations groups; 1 HSE policy group; 3 Local Authority groups).
2. To conduct a thematic analysis of the qualitative data arising from the focus groups to examine the key issues emerging in relation to the HSE & Local Authorities’ approach to duty holders’ health & safety management.
3. To produce a written report detailing the findings from these focus groups.

MAIN FINDINGS

The following are the key findings:

1. Participants referred to health and safety management as the arrangements that duty holders have in place for controlling risk and delivering regulatory compliance. For larger and better resourced businesses, participants would have a greater expectation in terms of companies having a more systematic and documented approach to health and safety management. The principles of health and safety management are the same in any organisation but the implementation should be proportionate to risk.

2. HSG65 represents the accepted model/framework for health and safety management used by regulators though many duty holders use other approaches, particularly larger businesses.

3. Participants indicated that discussions of health and safety management with duty holders need to engage with staff at different levels within the organisation from senior managers to shopfloor workers. However, it is becoming increasingly difficult to access shopfloor workers due to a decline in worker/safety representatives and trade unionisation.

4. Discussions with duty holders are intended to help them to understand their responsibilities, encouraging a proactive approach and sustained compliance rather than reacting to specific issues raised at inspections. It was considered necessary to engage with large and multi site duty holders at both the corporate and local level. There is an
awareness and use of a variety of levers to motivate duty holders to manage health and safety effectively, for example, highlighting the financial benefits.

5. There was considerable agreement that assessment of the effectiveness of health and safety management should be evidence based, checking the implementation of any documented systems; this includes talking to people and observation.

6. Focus group participants noted that for some duty holders it is necessary to distinguish between the prevention of personal accidents and ill-health, and the prevention of major accidents (e.g. fire, explosion). This distinction is not always appreciated by duty holders, who may be focusing more on personal risk and the associated indicators of successful health and safety management.

7. HSE and Local Authorities utilise a pragmatic mix of different approaches and intervention techniques to ensure the greatest impact. Local Authorities appear to favour a more advisory focused approach relative to HSE, who are more enforcement focussed. The Enforcement Management Model (EMM) is regarded by Local Authorities as directing them more towards enforcement.

8. Indicators used to judge the effectiveness of regulatory interventions include the number of visits, notices and prosecutions. A drawback associated with the use of enforcement as a performance indicator was raised in that it does not address the influence of advisory approaches.

9. Lack of continuity both within the regulators and duty holders was felt to compromise efforts to create a sustained improvement in health and safety management, particularly in attempting to change an organisational culture.

10. There has been an increase in the need to address the management of health risks but this area is perceived to be more difficult to address than the management of safety, specifically, how to assess, provide interventions and take enforcement action.

11. There has been an increase in the need to address the impact of organisational change on health and safety management and the human aspects of health and safety management but inspectors are lacking knowledge in how to assess, provide interventions, and take enforcement action on these issues.

12. Health and safety is perceived as having greater status within larger duty holders and is becoming increasingly situated within the business risk agenda.

13. The need for increased partnership working was identified across the focus groups. Local Authorities are keen to have greater access to the resources of HSE (e.g. sharing information and training, access to legal advice). Other partnerships include: Government Departments (e.g. NHS); educational establishments in order to address risk education issues; other intermediary bodies who may help to influence duty holders (e.g. insurance companies, trade bodies); and industry schemes.

14. On the subject of revising HSG65 it was suggested that a major change of the model or guidance is not necessary. A more appropriate revision to the document would be to make it a more of a ‘hub document’ referring the reader to other key documents to support the implementation of the principles (e.g. good practice case studies). A number of topics were identified as meriting greater attention in HSG65: risk assessment; contractorisation; organisational culture; corporate governance and directors’ roles, and self-auditing.
RECOMMENDATIONS

These recommendations are based on findings from a limited sample of 34 HSE staff and 17 Local Authority staff. They should therefore be regarded as extremely tentative and ideally tested against a wider sample of staff from each organisation. Work addressing some of these recommendations may be already be underway, for example, HSE’s Local Authority Unit have an initiative in progress to allow Local Authorities to access HSE documents via an ‘extranet’, this fits with recommendation 8.

1. A major revision of HSG65 is not sought. It would be helpful to provide additional information on how to implement the principles and provide links to a range of supporting tools (e.g. sector specific good practice guidance).

2. There is a need for clearer criteria regarding how to judge the performance of duty holders in relation to health and safety management.

3. There is a need for clearer criteria on how to judge the performance of regulators in effecting an improvement in health and safety management within and across duty holders.

4. In light of the increasing focus on occupational health issues, HSE needs to communicate more efficiently and systematically its approach to assessing, advising, controlling and enforcing compliance on the management of occupational health risks.

5. Options to increase the knowledge and skills of inspectors to address human factors issues (e.g. organisational and safety culture, leadership and supervision) should be explored, both in the assessment of health and safety management and enforcing on these issues.

6. The need to increase the knowledge and skills of inspectors regarding the relationship between health and safety management and business management should be explored.

7. The issue of continuity within regulators and duty holders appears to merit attention with a view to ensuring appropriate commitment across the lifecycle of interventions and initiatives.

8. The scope for increased access to HSE resources by Local Authority regulators (e.g. training, legal advice) should be explored.

9. In order to facilitate effective partnership working with the Local Authorities, HSE could ascertain the needs of Local Authorities, in order to determine how HSE can best support them in undertaking their regulatory duties.

10. There is a need to encourage increased worker representation and involvement in health and safety management.

11. HSE should consider undertaking a comprehensive review/stocktake of the range of current research relevant to aspects of HSE’s and Local Authorities’ approach to health and safety management in duty holders. This will allow HSE to gain an overview and evidence base in order to inform future strategy and appropriate allocation of resources.

12. Given the limited number of focus groups and the range of topics covered in this study, which was subject to project time constraints, there is scope for further work exploring the issues addressed with additional HSE and Local Authority staff. For example, a survey based approach to gain insight into a broader range of opinion relating to issues identified in the focus groups.
1 INTRODUCTION

1.1 BACKGROUND

The need for effective management of health and safety has been identified as essential across a number of industry sectors and has come to the fore following highly publicised incidents, for example, major accidents such as Piper Alpha, Ladbroke Grove, Dounreay, and more recently Grangemouth. Where regulatory interventions are made, the assessment of health and safety management is fundamental to the approach of HSE and Local Authorities. HSE’s Operations Management Forum (OMF) commissioned the Risk Assessment Section of the Health and Safety Laboratory to conduct this project, which represents the initial phase of a review of HSE’s & Local Authorities’ approach to duty holders’ health & safety management, taking into account the role of HSE’s seminal guidance, HSG 65 ‘Successful health and safety management’ (HSE, 1997) which is currently scheduled for review.

It is intended that the outcomes of this study will be used to: (i) produce a Commission paper recommending options for taking the work forward, and (ii) inform the second phase of the project involving the review of existing guidance with specific attention to HSG65.

The aim of the project was to review the approach taken by HSE and Local Authorities for dealing with duty holders’ management of health and safety and ensuring delivery of the required levels of health and safety performance.

The objectives of the project were:

1. To conduct a series of seven focussed discussion groups with experienced HSE and Local Authority staff (3 HSE operations groups; 1 HSE policy group; 3 Local Authority groups).

2. To conduct a thematic analysis of the qualitative data arising from the focus groups to examine the key issues emerging in relation to the HSE & Local Authorities’ approach to duty holders’ health & safety management.

3. To produce a written report detailing the findings from these focus groups.

Section 2 of this report details the methodology employed in carrying out the work. Section 3 presents the key findings from the HSE and Local Authority focus groups. The overall findings are discussed in section 4 and the recommendations are provided in section 5.
2 METHOD

2.1 FOCUS GROUPS

Seven focused group discussions were conducted with experienced HSE and Local Authority staff. Four of the focus groups were conducted with HSE staff; three of the groups comprising operational staff and the other group comprising staff working in policy. The other three focus groups comprised staff representing Local Authorities’ health and safety function; two of the groups took place in England and one in Scotland. The aim of the focused group discussions was to explore HSE’s and Local Authorities’ approach for dealing with duty holders’ management of health and safety and ensuring delivery of the required levels of health & safety performance.

Focused group discussions are a cost effective way of exploring the issues regarded as most significant by many people at once. The particular strength of this approach lies in the ability to produce concentrated amounts of data, on precisely the topic of interest, by capitalising on group interaction to provide insights into participant’s opinions and experiences (Morgan 1997).

2.1.1 Prompt questions

As part of the preparation for the focused group discussions a set of open-ended questions were developed, to elicit comprehensive responses from the participants. The prompts were intended to stimulate discussion amongst participants regarding a range of issues identified in relation to the regulators approach to duty holders’ management of health and safety. The topics covered included: participants’ understanding of the term health and safety management; what model/framework of health and safety management do they work to when dealing with duty holders; how the effectiveness of health and safety management is assessed; are different approaches adopted for different duty holders; what interventions are used to influence the management of health and safety in duty holders; which approaches have been most successful in improving health and safety management; have there been any changes in the regulators approach to influencing health and safety management in duty holders, and do they think a change of approach is needed for the future. Appendix 1 contains the full set of questions employed during each discussion.

2.1.2 Participants

Focus group participants were recruited by OMF/HSE. A total of 48 participants took part in the focus groups: 31 of these were from HSE and the other 17 from Local Authorities. Participants comprised individuals from a range of geographical locations, providing experience from a variety of sectors and sizes of organisation. Specific sectors represented by HSE participants included: Rail; Nuclear; Hazardous installations (Chemicals); Offshore; Manufacturing; Health services; Manufacturing; Construction; Gas and Pipelines; Explosives; Agriculture; Food; and Forestry. HSE specialists in occupational health and human factors also participated in the focus groups. Interviews were also conducted with a new HSE inspector and two members of staff from HSE’s Risk Policy Unit, which had not been represented in the policy focus group.

2.1.3 Data collection

Each focus group lasted for approximately 120 minutes. Each session was attended by a HSL facilitator to introduce the discussion questions and probe issues raised and a note taker to maintain a written record of each discussion. An additional HSL researcher who was involved in analysis of the focus group data attended two of the HSE and two of the Local Authority
focus groups. Discussions were audio taped with the permission of those present. Participants were assured that no individuals would be identified in connection with the findings.

2.1.4 Data analysis

Verbatim transcripts from each group discussion were produced. The audiotape recordings were supplemented with the written account of discussions to identify the contribution of individual speakers to the discussion.

The transcripts were reviewed by HSL researchers using a thematic analysis technique. Specifically, the text was considered with reference to a coding frame that reflected the key elements of the topics discussed. The content of the transcripts for each participating group and the interviews, condensed into key points, can be found in Appendix 2.

The significant issues from HSE and Local Authority groups were identified, taking into consideration any notable differences between the HSE operational and policy groups. A feature of focus groups is that there is a degree of variation in the extent and nature of discussion of specific topics, with some topics being addressed to a greater or lesser extent within different groups. This feature was addressed in the data analysis by the researchers identifying common issues across groups or issues where there was considerable consensus within a particular group. The supplementary HSE interviews were analysed in relation to whether they contributed any additional information for consideration. The key issues identified from the data analysis were then collated for the HSE and Local Authorities respectively, to provide a combined account of the common issues identified across the groups.
3 RESULTS

3.1 FOCUS GROUP FINDINGS

This section presents the combined main findings from the HSE and Local Authority focus groups respectively, according to the key topic areas covered. Findings from the four HSE groups have been combined. The process of identifying the significant issues across the four groups revealed a considerable degree of commonality between the findings from the policy group and the three operational groups. Specific differences are identified below.

The findings are presented as a series of concise bullet points for the purpose of clarity. It is worth noting that the topics used to organise the findings are not mutually exclusive categories, therefore some issues cut across more than one category. The overall findings from HSE and the Local Authorities will be discussed in section 4 of the report. The content of the transcripts for each participating group, condensed into key points, can be found in Appendix 2.

3.2 KEY FINDINGS FROM HSE FOCUS GROUPS

1. Understanding of health and safety management/safety management systems

- The arrangements that duty holders have in place for controlling risk.
- The activities and practices that duty holders have to do to deliver regulatory compliance.
- Systems are considered to relate to a model for logically organising the key processes for health and safety management within a duty holder.
- The policy group note that systems do not necessarily have to be documented to be effective, for example, where there is a short communication path.
- The implementation of health and safety management should be proportional to the risks concerned.
- Health and safety is becoming increasingly embedded within business management systems.
- Inspectors accept HSG65 as their working model of successful health and safety management.
- Large companies are more likely to use the HSG65 approach than smaller businesses but they also use alternative approaches and sources of guidance on health and safety management, for example:
  - CIA (Chemical Industries Association) responsible care system;
  - PSM (Process Safety Management) guidance;
  - BS8800 is regarded as more prescriptive;
  - OSHA – Process Safety Management;
  - OECD (Organisation for Economic Co-operation and Development);
  - IEA Standards (International Atomic Energy Authority);
  - ISRS (International Safety Rating System);
  - ILO OSH 2001 – Guidelines on Occupational Safety and Health Management Systems emphasises the integration of management and Safety management system;
  - Other sector/industry specific information and guidance;
  - Off the shelf packages for smaller companies.
- The policy group note that any approach to health and safety management should evolve based on learning lessons from incidents.
• Managing health and safety is broader than a systems approach would imply and should address the human aspects of the organisational context and culture.
• Duty holders understand the management of safety risk better than health risks.

2. Discussing health and safety management with duty holders

• Duty holders prefer prescriptive advice and guidance that clearly communicates the criteria for health and safety management in their sector.
• There is a need to link the principles of health and safety management to practical examples of implementation.
• Part of the regulator’s role is to present health and safety information in a way that can be understood by the duty holder; for smaller companies this can involve translating and demystifying legislation and guidance.
• The regulators’ approach to addressing health and safety issues may be indirect, focussing the discussion on issues that are perceived as more salient or appealing to the duty holder such as cost efficiency or general management.
• Conversing at board and senior management level is regarded as important in order to impact on the management system through those in control of resources.
• Engaging with the workforce to ascertain what they are doing is felt to be an important aspect of gathering evidence in order to judge the effectiveness of health and safety management within duty holders.

3. Assessing the effectiveness of health and safety management

• An excessive focus on the formal documented health and safety management system can distract both duty holders and regulators from addressing the human element of implementation.
• It is necessary to verify the implementation of even the best documented systems.
• Assessment needs to address both the processes of the health and safety management system as well as the outcomes.
• Assessing the effectiveness of health and safety management should consider the competence of duty holders with regard to both technical and managerial capability.
• Assessment is often based on negative indicators, for example, seeking indicators of a lack of competence or viewing the absence of accidents, ill-health or incidents as an indicator of effectiveness.
• It is considered easier to assess control systems for specific risks such as manual handling than general safety management systems.
• A word of caution was expressed about drawing overall conclusions regarding the effectiveness of a safety management system, based on assessing single elements as either good or bad.
• Inspectors are considered to be more comfortable discussing health issues with duty holders than assessing the extent to which health risks are being managed effectively.
• Duty holders do not always have a clear understanding of the distinction between prevention of personal accidents and ill-health, and major accident prevention.

4. Variation in approach across duty holders

• The principles of health and safety management are the same in any organisation but the implementation should be proportionate to the risks.
Some companies seek to exceed the minimum required for regulatory compliance where they have the resources, whereas others do the minimum required of them at inspection visits.

For small organisations a practical risk control approach is appropriate.

The reactive nature of inspection work means that there is a tendency to have more direct contact with lower performing duty holders.

The business case for health and safety is regarded as more appropriate for private, rather than public organisations.

Documented systems are perceived as more relevant to large organisations and high hazard sectors, especially those that operate within a permissioning regime.

For large multi site businesses it is considered important to engage with the duty holder at both a corporate and local level but the consistency of approach across sites and coordination of information needs to be addressed.

For large companies a significant driver to comply with health and safety legislation relates the potential impact of poor health and safety performance on their brand name/image, therefore health and safety is regarded as part of their overall business risk.

5. Intervention approaches

- HSE’s interventions comprise a pragmatic mix of different approaches and intervention techniques, all aiming to ensure greatest impact, they include: inspection visits; advice; notices; prosecutions; initiatives (e.g. TORCH - Transfer of Responsibility for the Control of Hazards); and the development of sector specific tools and guidance (e.g. Managing Health and Safety in Forestry - [http://www.hse.gov.uk/pubns/indg294.pdf](http://www.hse.gov.uk/pubns/indg294.pdf)).
- A less authoritarian way of working with duty holders considered to have effective health and safety management systems is advocated, with the potential for self regulation, e.g. ‘earned autonomy’.
- The policy group perceive HSE to be engaged more in enforcement activity than advisory and attribute this to a less advanced advisory capability.
- Duty holders are also influenced via sector and trade associations.

6. Effectiveness of different approaches

- Approaches that ensure personal accountability of named individuals, e.g. senior management signing declarations of agreement with safety cases are perceived by participants for the policy group as more effective at influencing health and safety performance than simply having a good system.
- The enforcement approach is less effective than an advisory approach for achieving sustained change but the advisory approach is resource intensive.
- The policy group note that the process of developing standards/benchmarks in consultation with stakeholders (e.g. via sector associations) creates mutual understanding.
- There is some concern that the specific requirement for documentation in permissioning regimes (e.g. rail safety cases, COMAH - Control of Major Accident Hazards, nuclear licences) may encourage passive compliance with what duty holders perceive to be the regulators model of health and safety management.
- Sector specific information, guidance and tools are perceived to be more effective for getting duty holders to manage health and safety risk effectively.
- Interventions seeking organisational and management change within larger and multi site companies require continuity, engagement, and commitment from HSE, which is currently felt to be lacking.

12
• The safety representative system within duty holders has weakened making it more difficult to engage with staff at this level.
• It is felt that there is more scope for HSE to address potential drivers to motivate duty holders to engage more with the issues of health and safety management, for example, insurance premiums and accreditation.
• The policy group mentioned HSE funded research identifying 19 case studies that demonstrate the business benefits of good health and safety.

7. How has the regulator’s approach changed?

• Revitalising Health and Safety (HSC 2000) is perceived by HSE policy staff as having encouraged a wider engagement with stakeholders, but on the operational side it has led to a narrower focus on the revitalising topics.
• Health and safety management should be proportionate to risks, but there is some concern that HSE’s current priority areas may not fit with the duty holder’s risk prioritisation.
• Corporate governance and the Turnbull report are putting health and safety on the business risk agenda and facilitate a more productive dialogue with senior management.
• There is an increasing need to address the impact of organisational change on health and safety management, for example, when mergers and takeovers result in new management systems.
• HSE are being challenged more by duty holders and asked to qualify judgements.
• In FOD the increasing volume of reactive work (complaints, incidents) leaves little time for more proactive inspection.
• Permissioning regimes (e.g. COMAH, Rail Safety cases) are more prescriptive about the criteria for health and safety management.
• There has been an increase in human factors specialist knowledge and expertise within HSE in the past 5 years.

8. Changes in the regulator’s approach for the future

• The policy group expect an increased focus on the management of occupational health.
• HSE will need to direct more attention to the specific information requirements of different duty holders.
• There is a need for greater consistency in how the human factors elements of health and safety management are addressed.
• There will be an increase in partnership working with other stakeholders and other Government Departments, e.g. Environment Agency.
• It is expected that there will be a greater focus on risk education before entering the workplace (e.g. Higher and Further Education).
• It is felt that HSE needs to develop a greater understanding of industry schemes (e.g. CASS - Conformity Assessment Scheme for Safety Systems) and should promote the use of good schemes as part of HSE’s tool kit.
• There is likely to be further engagement with European legislation, for example, the European safety directive for railways is expected to provide industry guidelines for getting a safety management system in place for railways operating across Europe.
• There is a need to engage more with drivers of health and safety management in order to secure improvements in health and safety management.
• HSE needs to acquire a greater understanding of the relationship between health and safety management systems and business management systems.
Progression towards earned autonomy is anticipated in combination with repeatable benchmarking and a consequent scaling down of inspections for the duty holders concerned.

More training of inspectors in human factors and what works as inspection techniques is regarded as necessary to support effective regulatory interventions.

Greater engagement with issues to do with the changing demographics of the workforce is anticipated, e.g. ‘Gangmasters’.

9. Opinions of HSG 65

There is wide acceptance of HSG65 as a working tool and underpinning intellectual basis for what HSE is trying to do; it is viewed as an evolving work in progress.

The elements and principles apply to all duty holders, but the implementation varies between duty holders.

HSG65 does not address the implementation of the principles of successful health and safety management.

The document is more appropriate for large organisations with defined management structures, or health and safety professionals as it is difficult to understand.

The HSG65 free leaflet, an eight page summary of HSG65 is perceived to have been very useful as it is written in more accessible language.

The HSG65 approach has been successfully applied to the management of occupational health (e.g. Hand Arm Vibration, Stress) within large organisations (e.g. NHS Trusts, Local Authorities).

A major change of the HSG65 model or guidance is not felt to be necessary although some areas of weakness could be addressed:
  - Risk assessment.
  - Addressing the changing organisation of work (e.g. contractorisation, organisational culture).
  - Corporate governance and director’s roles.
  - Self-auditing.

There is a need for case studies to support the effective implementation of HSG65.

Other suggested improvements include better referencing and links to other documents containing an appropriate level of detail for different duty holders.

An electronic version of HSG65 would have the benefit of being easy to link to other documents and easily updateable.

3.3 KEY FINDINGS FROM LOCAL AUTHORITY FOCUS GROUPS

1. Understanding of health and safety management/safety management systems

Understanding of health and safety management relates to the expectations of different duty holders.

For small premises health and safety management means the measures in place to control hazards/ risk.

For larger and better resourced premises there is an expectation of a more systematic approach to managing risks, taking on board HSG65 principles of health and safety management.

Local Authority inspectors use the HSG65 approach as a guide to what is successful health and safety management.

Training for regulators includes in house training, degree qualifications, NEBOSH,

For Local Authority inspectors their understanding of the health and safety inspection approach is acquired from training and learning on the job through dealing with a range
of duty holders, including: shadowing colleagues, learning by experience, discussing cases at team meetings, and supervision.

- Public health and safety is regarded as a significant consideration for Local Authorities, therefore size of duty holder is considered in terms of numbers of the public at risk, not just employees (e.g. leisure and retail).
- Networking with other Local Authorities and information sharing is problem driven rather than having efficient mechanisms for disseminating good practice. The 32 Local Authorities in Scotland maintain strong links via their Liaison group.

2. Discussing health and safety management with duty holders

- Local Authorities use different approaches for organisations depending on their size; resources; and risk profile.
- They adapt their discussion to the duty holder’s understanding, their knowledge and capability;, for larger premises this involves working to whatever system/approach the duty holder is working to (e.g. BS8800).
- Depending on the size of company inspectors talk to people from senior management through to the shopfloor as part of gathering evidence, but a lack of worker representation and shop floor input presents a barrier to assessing and promoting effective health and safety management.
- Duty holders desire prescription and prefer to be told what is required by the regulator, this is particularly the case with smaller premises.
- Large premises are more likely to challenge the regulators decisions, especially enforcement action.
- There is an awareness of and reference to drivers that will engage duty holders; for example, insurance premiums and supply chain health and safety requirements.
- Inspectors endeavour to help people understand their responsibilities rather than just doing something because it’s what the inspector tells them to do.

3. Assessing the effectiveness of health and safety management

- Assessment is initially based on judging whether the hazards are controlled and any practical indications of this; housekeeping often provides the initial impression of health and safety management.
- Evidence based inspection aims to check that duty holders are implementing any documented systems (e.g. competence, training implementation of the policy and auditing procedures); this involves talking to people and observing the workplace.
- Effectiveness is judged in terms of proactive health and safety management, sustained compliance with regulatory requirements and not simply reacting to the specific issues raised by an inspector.
- It is more difficult to assess the effectiveness of systems for managing occupational health than safety.
- A check list and aide memoir approach is used for smaller premises.
- A more prescriptive and detailed checklist approach is used for certain hazards (e.g. cooling towers).
- For businesses that are part of a national multi site company, Local Authorities work primarily with the local premises and management. Focus group participants in Scotland note that Lead Authorities (Lead Authority Partnership Scheme) are more likely to be involved if there are issues relevant to the higher-level health and safety management system (e.g. incidents).
- Other indicators of effectiveness include incidents/accidents, however participants acknowledge the limitations of such information (e.g. under-reporting).
4. Variation in approach across duty holders

- Consistency of approach across similar duty holders is important, so that duty holders perceive there to be a ‘level playing field’, such that costs incurred for implementing risk control measures are not felt to reduce a duty holder’s ability to compete.
- Statutory requirements of licensing (e.g. for public entertainment) encourage greater communication, awareness and willingness to comply on the part of the duty holder.
- There is a greater expectation for formalised systems and documentation in larger companies, but the documented systems have to be implemented and controlling risk.
- Local Authorities target duty holders according to their risk ranking to enable effective allocation of their limited resources.
- There is some concern over actual or potential decisions not to inspect certain duty holders, for example, those having ‘earned autonomy’ or a risk rating that is sufficiently low that they are deemed to not warrant inspection. This concern is based on the potential for the situation to change, specifically the potential impact of a management change at local level going unnoticed.

5. Intervention approaches

**Inspection Visits**
- Local Authorities target inspection visits on the basis of specific sectors and risk prioritisation.
- A simple implicit model of inspection includes: checking controls, making recommendations, and checking that the recommendations are implemented.

**Advisory Approach**
- The advisory approach is used to facilitate the development of a long-term relationship with duty holders and the inspectors having a consultancy role in helping duty holders to improve their health and safety management.
- Local Authorities identify the drivers that motivate duty holders to engage with health and safety and in one case helped a duty holder to gain a reduction in their insurance premium.
- Awareness raising activities include engaging in partnerships with other institutions (e.g. NHS primary care trusts) and bodies (e.g. License Trade Association)
- Local Authorities use HSE guidance to communicate information about health and safety management (e.g. HSE’s Small Firms Health and Safety Policy Document, HSG65 leaflet) and produce their own guidance (e.g. health and safety guidance for takeaways).

**Enforcement Action**
- Initial inspection visits generally take an advisory route unless there are uncontrolled hazards or evidence of duty holder inaction.
- Formal cautions are used by Local Authorities in England.¹
- Prosecution is regarded as a last resort and cost is a consideration.
- Decisions regarding enforcement action are influenced by the Enforcement Management Model (EMM); previous health and safety record of the duty holder; the seriousness of any breach; severity of injury; and public risk.

**Initiatives**

¹ A formal caution is a legally binding admission of guilt by a duty holder. It is used in circumstances where a prosecution might otherwise be taken, for example, for a first time offence, of a less serious nature, where the accused admits responsibility. It remains in force for three years and may be cited in subsequent legal proceedings taken within this time limit.
• A number of Occupational Health initiatives support the work of Local Authorities, including those offering health and safety advice/consultancy and awards.
• A Joint HSE/Local Authority initiative was carried out when the responsibility for dry cleaning premises in Scotland was passed from HSE to the Local Authorities. This involved training and joint HSE/Local Authority inspections.
• Websites and telephone helplines are used to support the Local Authorities advisory function.

6. Effectiveness of different approaches

• Regular visits to premises are perceived to be the most effective way to achieve a sustained improvement in health and safety; this allows the building of a relationship over time.
• Inspectors try to promote a proactive approach and culture in duty holders as well as getting them to take responsibility for health and safety management, by encouraging them to engage in a ‘self-revealing process’ of identifying any weaknesses and solutions themselves.
• Approaches for lower risk premises that are not visited include, self-audit/self-report questionnaires, however this approach is relatively recent and needs to be in place longer to evaluate its effectiveness.
• Serving an improvement notice is regarded as effective in addressing specific issues but is viewed as less effective in contributing to sustained improvement.
• Formal cautions are considered to be effective in ensuring that management takes personal responsibility for health and safety management.
• One of the Local Authorities regards reporting of prosecutions in local press as an effective use of resource for promoting compliance.
• The EMM has positive and negative aspects, on the negative side it is perceived as pushing Local Authorities towards prosecution, but on the other hand it can be used to provide a justification for action.
• The current legislative framework is felt to be sufficient to support enforcement action.
• The effectiveness of interventions is judged by:
  o Risk rating improvement.
  o Reported Accidents - but the number may increase if more people are reporting.
  o Time taken to sort problems.
• The use of measures such as the number of prosecutions and notices is regarded as failing to reflect the positive aspects of the inspectors’ advisory role.
• Barriers to effective intervention include:
  o A high turnover in management and organisational change within duty holders.
  o Time is perceived as constraining what inspectors can do.
  o Local Authorities feel they are lacking the resource to pursue prosecutions, for example, time, money, and access to appropriate legal advice.

7. How has the regulator’s approach changed?

• There is a greater emphasis on enforcement due to the influence of the EMM.
• There is more visiting of duty holders’ premises outside ‘normal’ office hours.
• The health and safety function of the Local Authorities is linked to and influenced by the wider corporate and environmental agenda of Local Authorities (e.g. health promotion, regeneration).
• There is a greater focus on the priority topic areas within medium to larger premises but some debate exists regarding the influence of Revitalising Health and Safety and whether it constrains their approach.
• There is a greater emphasis on health issues but it is perceived as more difficult to assess the management of occupational health than safety.

8. Changes in the regulator’s approach for the future

• There is felt to be a need for stronger links between Local Authorities which share similar characteristics in terms of the duty holders they deal with.
• The increasing focus on health requires greater partnership working with NHS and other relevant bodies.
• There is a desire for increased partnership working with HSE and access to HSE resources, including training.

9. Opinions of HSG 65

• The document is regarded as more appropriate for large premises with dedicated management structures.
• HSG65 doesn’t address the changing nature of work and organisations, for example, contractorisation.
• HSG65 should be a ‘hub document’ referring the reader to other key documents.
• One of the groups questioned how HSE can say there’s a definitive way to do health and safety management when other parties are selling their own versions (e.g. BSI, ROSPA).
4 DISCUSSION

This section presents a discussion of the key findings across both the HSE and Local Authority focus groups. Where appropriate, reference is made to relevant sections of the health and safety commission (HSC) strategy document ‘A Strategy for Workplace Health and Safety in Great Britain to 2010 and beyond’ (HSC 2004). This document sets out what HSC, in conjunction with HSE and Local Authorities, wants to achieve. Four strategic themes are detailed along with key points to support them. The four strategic themes are:

1: Developing closer partnerships.
2: Helping people to benefit from effective health and safety management and a sensible health and safety culture.
3: Focussing on core business and the right interventions where we are best placed to reduce workplace injury.
4: Communicating the vision.

4.1 UNDERSTANDING OF HEALTH AND SAFETY MANAGEMENT/SAFETY MANAGEMENT SYSTEMS

Participants referred to health and safety management as the arrangements that duty holders have in place for controlling risk and delivering regulatory compliance. For larger and better-resourced businesses, participants would have a greater expectation in terms of companies having a more systematic and documented approach to health and safety management. HSE participants noted that managing health and safety is broader than a systems approach would imply; incorporating the human aspects of a duty holder’s organisational context and culture.

The issue of proportionality was regarded as a key factor influencing expectations of duty holders’ health and safety management and associated systems. The principles of health and safety management are the same in any organisation but the implementation should be proportionate to the risk. The issue of proportionality is addressed in strategic theme 3 under the key topic ‘continuing to enforce where appropriate’, it is stated that HSE and Local Authorities will work in partnership to secure proportionate compliance with the law. Participants expressed the view that health and safety management should evolve based on experience, such as lessons learned from incidents. However, it was felt that this is an area where there is scope for improvement by both regulators and duty holders. Across the focus groups it was felt that there is a better understanding of safety management than health, amongst both regulators and duty holders. This includes assessing effectiveness, offering advice and taking enforcement action. The need for occupational health advice and support for duty holders is addressed in strategic theme 2. The key point on ‘providing accessible advice and support’ highlights HSE’s intention to press for the provision of nationally available advice and support focussed primarily on occupational health.

HSG65 represents the accepted model/framework for health and safety management used by regulators though participants did note that many duty holders use other approaches, particularly larger businesses (e.g. BS8800 Guide to Occupational Health and Safety Management Systems; Chemical Industries Association Responsible Care System). The HSG65 approach appears to be used as an implicit reference point on the principles of effective health and safety management when faced with alternative approaches but the inspectors will focus on the extent to which the approach used by duty holders is effective in controlling risk. Public health and safety was perceived to be a more significant consideration for Local Authorities than HSE.
4.2 DISCUSSING HEALTH AND SAFETY MANAGEMENT WITH DUTY HOLDERS

Participants indicated that discussions of health and safety management with duty holders need to engage with staff at different levels within the organisation. Discussions with senior managers are necessary to impact on those in control of resources, who are also in a position to influence the organisational culture and the status of health and safety. Discussions with shopfloor workers are necessary to judge the effectiveness of health and safety management. It was noted that it is becoming increasingly difficult to access shop floor workers due to a decline in worker/safety representatives and trade unionisation. The issue of worker representation is addressed in strategic theme 2. The key point on ‘involving the workforce’ states that HSC will promote greater worker involvement in health and safety in the workplace and encourage a voluntary expansion of workplace health and safety representatives across all sectors of business and the public sector.

Discussions with duty holders are intended to help them to understand their responsibilities, encouraging a proactive approach and sustained compliance rather than reacting to specific issues raised at inspections. This can involve presenting information in a way that can be understood. For smaller premises this can involve translating and demystifying regulations and guidance, and linking them to practice. The majority of duty holders would prefer a more prescriptive approach from the regulator, giving them clear criteria on what they need to do; this is particularly the case for smaller premises.

There is an awareness and use of a variety of levers to motivate duty holders to manage health and safety effectively, including, highlighting the financial benefits such as less lost time; insurance premiums; and the ability to secure contracts within a supply chain. A specific lever for large companies includes linking poor health and safety performance to brand name/image, and promoting health and safety as part of their overall business risk. It was noted by one of the HSE operational groups that the business case is more appropriate for private than public organisations. Both HSE and Local Authorities indicated that there is further scope to exploit potential levers such as better insurance incentives and accreditation. Strategic theme 2 supports the use of such levers; the key point on ‘understanding the benefits of health and safety’ declares HSC’s intention to find ways to demonstrate the moral, business and economic cases for health and safety.

4.3 ASSESSING THE EFFECTIVENESS OF HEALTH AND SAFETY MANAGEMENT

It was felt than an excessive focus on the formal documented health and safety management system can pose a distraction from addressing the human element of how it is implemented. Assessment of effectiveness should be evidence based to check implementation of any documented systems, involving talking to people and observation. This is consistent with strategic theme 3; the key point on ‘an interventions strategy’ states that HSE and Local Authorities will develop a clear evidence-based interventions strategy. One of the problems identified in relation to indicators of successful health and safety management is that they are often negatives, e.g. the absence of incidents.

Focus group participants noted that for some duty holders it is necessary to distinguish between the prevention of personal accidents and ill-health, and the prevention of major accidents (e.g. fire, explosion). This distinction is not always appreciated by duty holders, who may be focussing more on personal risk and the associated indicators of successful health and safety management. It was regarded as important to consider a duty holder’s competence in health and safety management in terms of technical and managerial capability. However, HSE participants
suggested that inspectors are not well equipped in terms of having clear criteria to help them to assess, advise or enforce on the more human elements of health and safety management, such as competence.

Participants regard it as problematic to draw overall conclusions on effectiveness based on single elements of a health and safety management system, for example focusing on the control of specific hazards rather than the overall management system. This is a potential drawback in focussing on priority topic areas.

4.4 VARIATION IN APPROACH ACROSS DUTY HOLDERS

A number of participants highlighted the need for regulators to engage with large and multi-site duty holders at both the corporate and local level. This is facilitated in Local Authorities through the Lead Authority partnership scheme. Some of the Local Authorities indicated that they would only look beyond the local level if weaknesses were felt to stem from the overall health and safety management system or in the event of an incident. This raises a question over the extent to which there is a consistent approach for different premises that are part of the same company.

Statutory requirements of permissioning and licensing regimes encourage greater communication, awareness and willingness to comply with the regulators requirements. Furthermore these requirements are communicated clearly to the duty holders concerned. In strategic theme 3 the key point on ‘interventions strategy’ states HSC’s intention to review its safety case regimes to ensure that they remain relevant and proportionate to the changing nature of these industries. The downside of permissioning regimes was mentioned in that this approach may encourage passive compliance with the regulators requirements rather than the desired proactive approach.

Within Local Authorities, targeting of duty holders according to their risk ranking is used to allow the effective allocation of limited resources. This can mean that premises given the lowest risk rating are either not visited or provide self audit reports in relation to their health and safety management. In strategic theme 3 the key point on ‘being clear about our priorities’ outlines the strategy for targeting resources at those duty holders where there is greater need for attention to the management of risks. HSE and Local Authorities will be discouraged from intervening proactively where the risks are of low significance, well understood and properly managed. Focus group participants drew attention to the potential pitfalls of increased self-regulation with earned autonomy for larger premises and self-audit approaches for premises assigned a low risk rating. It was felt that the possible adverse impact of management changes on health and safety management would need to be addressed.

Local Authority participants mentioned the importance of consistency of approach and the perception of a ‘level playing field’ across duty holders was regarded as important in engaging duty holders. This issue is addressed on a wider scale in strategic theme 3; the key point on ‘an interventions strategy’ states that HSC will use their influence to maintain a level playing field in health and safety across Europe as the basis of proportionate law implemented consistently.

4.5 INTERVENTION APPROACHES

HSE and Local Authorities utilise a pragmatic mix of different approaches and intervention techniques to ensure the greatest impact. Local Authorities are more likely to target inspection visits on the basis of specific sectors and priority based approaches. Advisory approaches seek to develop long-term relationships and raise awareness among duty holders with a view to facilitating a sustained change. A continuing commitment to this approach is outlined in
strategic theme 2; the key point on ‘providing accessible advice and support’ states that HSE and Local Authority inspectors will continue to offer advice in the course of their other activities because this is generally welcomed by employers. Local Authorities appear to favour a more advisory focused approach relative to HSE, who are more enforcement focussed. This perceived distinction between the two regulators was further reinforced during discussion of the Enforcement Management Model (EMM). The EMM is regarded by Local Authorities as directing them more to enforcement. Large premises are perceived as being more likely to challenge the regulator’s decisions, particularly in relation to enforcement.

Both HSE and the Local Authorities identified a range of initiatives designed to improve duty holders’ health and safety management, many of these being sector specific such as the development of tools and guidance or awareness raising events. There appeared to be a larger number of health initiatives targeted at Local Authority enforced premises. Liaison with industry and trade bodies was also mentioned as a way of influencing duty holders.

4.6 EFFECTIVENESS OF DIFFERENT APPROACHES

In discussing how regulators judge the effectiveness of their interventions, it appeared that this is a problematic area. Indicators such as number of visits, notices and prosecutions may be used. In addition, numbers of incidents, risk rating reduction and taking less time to address problems were felt be give some indication of an improvement in health and safety management. A drawback associated with the use of enforcement as a performance indicator was raised in that this does not address the influence of advisory approaches.

Building relationships and encouraging proactivity is felt to be more effective than enforcement but this takes time and commitment. Ensuring personal accountability of named individuals is also felt to be particularly effective. This can occur voluntarily via dialogue at senior management or director level or through the formal caution approach used by Local Authorities in England. Formal cautions are felt to be a more effective way of achieving sustained change than a one-off notice or prosecution because the caution remains in place for three years. However the status of this form of enforcement action appears to be a bone of contention, as they are not recorded as prosecutions by HSE. It was felt that sector specific guidance and tools are more effective in engaging duty holders and creating a sustained change. Although a variety of sector specific material has been produced by HSE and Local Authorities it appears that there is potential for more work, particularly in relation to sector specific examples of good practice that which would assist both inspectors and duty holders. In strategic theme 2, the key point on ‘understanding the benefits of health and safety’ presents a commitment to use a more specific and prescriptive approach where businesses respond better to it. However, the key point on ‘providing accessible advice and support’ notes that others may be better placed to produce good practice guidance for particular industries or topics and this will encouraged by HSC.

A number of barriers to effective intervention were identified. Lack of continuity both within the regulators and duty holders was felt to compromise efforts to create a sustained improvement in health and safety management, particularly in attempting to change an organisational culture. Similarly, participants suggested that there is a need for a greater commitment to learning lessons from interventions and initiatives. Limited resources (e.g. time, financial, access to expertise) was identified as a barrier by Local Authority participants as health and safety is only one area of work that their organisation has responsibility for, compared to HSE’s total focus on health and safety.
4.7 HOW HAS THE REGULATOR’S APPROACH CHANGED?

Revitalising Health and Safety (HSC 2000) was perceived as having encouraged a wider engagement with stakeholders, but there was also some debate over whether concentrating on the priority areas makes the focus of the regulator too narrow. Local Authority participants also identified an increased focus on health issues as a change in approach for regulators and duty holders. However, the majority of participants consider it is more difficult to address the management of health than safety. The apparent lack of knowledge on how to assess, provide interventions and take enforcement action on these issues needs to be addressed. One participant did provide examples of effectively applying HSG65 principles to health issues (e.g. stress, Hand Arm Vibration) but it appears that this kind of information needs to be communicated more widely.

Participants identified an increasing need to address the impact of organisational change on health and safety management and the human aspects of health and safety management. The same barrier to effectively addressing these issues emerged, that is inspectors are perceived as not being well equipped to assess, provide interventions, and take enforcement action on these issues.

Health and safety is perceived as having greater status within larger duty holders and is becoming increasingly situated within the business risk agenda. It was felt that this is beneficial in enabling a more productive dialogue with senior management. However, it does also raise the issue of how well equipped inspectors are to discuss health and safety as part of business management. This approach requires an understanding of the relationship between health and safety management and business management. The Local Authorities have linked health and safety to wider corporate and environmental agendas of their own authority (e.g. health promotion, regeneration).

An increased volume of reactive work (incidents, complaints) was mentioned as a barrier to more proactive intervention, particularly in HSE. Lack of time for proactive inspections is not consistent with the key point on ‘interventions strategy’ under strategic theme 3, which states that HSE and Local Authorities will use both proactive and reactive means of intervention.

4.8 CHANGES IN THE REGULATOR’S APPROACH FOR THE FUTURE

The need for increased partnership working was identified across the focus groups. Local Authorities are keen to have greater access to the resources of HSE (e.g. sharing information and training, access to legal advice). Other partnerships include: Government Departments (e.g. NHS); educational establishments in order to address risk education issues; other intermediary bodies that may help to influence duty holders (e.g. insurance companies, trade bodies); and industry schemes. A clear commitment to strengthening partnership working is detailed in strategic theme 1, which refers to the HSE/Local Authorities partnership and other bodies including: educational establishments; the Department for Work and Pensions (DWP); trade unions, employers, insurers and health professionals.

Other changes in approach identified by participants included attending to the specific information needs of different audiences, for example, providing sector specific guidance. This issue is addressed in strategic theme 4, which states that HSE must become more adept at dealing with different audiences in different ways and ensure effective two-way communication. The need to understand the best way to market advice and guidance is also mentioned in theme 4 where reference is made to using intermediaries as a way of improving access to information on health and safety.
HSE participants suggested that an increased focus on earned autonomy would require the necessary benchmarking tools to be in place. It was also felt that there would be a need for greater engagement with issues to do with the changing demographics of the workforce (e.g. migrant labour).

4.9 OPINIONS OF HSG 65

There was wide acceptance of HSG65 as a working tool, representing the underpinning intellectual basis for the regulatory approach. Participants across the focus groups agreed that the language and format of the document makes it more appropriate for large organisations with defined management structures, or health and safety professionals. The elements and principles were felt to apply to all duty holders but the implementation of these principles will vary. The principles are applicable to both health and safety. Participants also commented that the HSG65 document does not help the reader to implement the principles.

On the subject of revising HSG65 it was suggested that a major change of the model or guidance is not necessary. A more appropriate revision to the document would be to make it a more of a ‘hub document’ referring the reader to other key documents to support the implementation of the principles (e.g. good practice case studies). An electronic version could be updated regularly. A number of topics were identified by HSE participants as meriting greater attention in HSG65: risk assessment; contractorisation; organisational culture; corporate governance and director’s roles, and self-auditing.
5 RECOMMENDATIONS

Based on the findings from the seven focus groups a number of recommendations are presented below. These recommendations are intended to represent the key areas that appear to merit attention in relation to HSE’s and Local Authorities’ approach for dealing with duty holders’ management of health and safety, and ensuring delivery of the required levels of health & safety performance. Work addressing some of these recommendations may already be underway, for example, HSE’s Local Authority Unit have an initiative in progress to allow Local Authorities to access HSE documents via an ‘extranet’, this fits with recommendation 8.

These recommendations are based on findings from a limited sample of 31 HSE staff and 17 Local Authority staff. They should therefore be regarded as extremely tentative and ideally tested against a wider sample of staff from each organisation.

1. A major revision of HSG65 is not sought. It would be helpful to provide additional information on how to implement the principles and provide links to a range of supporting tools (e.g. sector specific good practice guidance).

2. There is a need for clearer criteria regarding how to judge the performance of duty holders in relation to health and safety management.

3. There is a need for clearer criteria on how to judge the performance of regulators in effecting an improvement in health and safety management within and across duty holders.

4. In light of the increasing focus on occupational health issues, HSE needs to communicate more efficiently and systematically its approach to assessing, advising, controlling and enforcing compliance on the management of occupational health risks.

5. Options to increase the knowledge and skills of inspectors to address human factors issues (e.g. organisational and safety culture, leadership and supervision) should be explored, both in the assessment of health and safety management and enforcing on these issues.

6. The need to increase the knowledge and skills of inspectors regarding the relationship between health and safety management and business management should be explored.

7. The issue of continuity within regulators and duty holders appears to merit attention with a view to ensuring appropriate commitment across the lifecycle of interventions and initiatives.

8. The scope for increased access to HSE resources by Local Authority regulators (e.g. training, legal advice) should be explored.

9. In order to facilitate effective partnership working with Local Authorities, HSE could ascertain the needs of Local Authorities, in order to determine how HSE can best support them in undertaking their regulatory duties.

10. There is a need to encourage increased worker representation and involvement in health and safety management.

11. HSE should consider undertaking a comprehensive review/stocktake of the range of current research relevant to aspects of HSE’s and Local Authorities’ approach to health and safety management in duty holders. This will allow HSE to gain an overview and evidence base in order to inform future strategy and appropriate allocation of resources.

12. Given the limited number of focus groups and the range of topics covered in this study, which was subject to project time constraints, there is scope for further work exploring
the issues addressed with additional HSE and Local Authority staff. For example, a
survey based approach to gain insight into a broader range of opinion relating to issues
identified in the focus groups.
6 APPENDIX 1 – FOCUS GROUP QUESTION SET

Introductions – professional experience/background etc.

Standards & expectations

1. What do you understand by the term ‘health and safety management’ or ‘management of health and safety’ (also, safety management systems, risk management)?

Prompt:
- Do you work from a model/framework?
- If so, what model do you work from (e.g. HSG65, Management of health and safety regs)
- How important is this model in influencing/determining your action?
- Does your model give the same status to health as safety?
- Does your model encompass human factors?
- Do operators work from different models? If so, is this a problem?

2. What sources of information or guidance on health and safety management have you used? (elicit examples)

Prompt:
- Have you used HSE and non-HSE guidance and information (e.g. HSG65, BS8800, and Management of Health and Safety Regs)?
- What has been useful & Why?
- What has not been useful & Why?
- What are the strengths and weaknesses of HS/G 65?
- Is it better suited to some contexts more than others?
- Have you used standards? Which ones?
- Have you heard of/used BS8800?
- Did you know BS8800 was being revised and is due to be published in July?
- Have you produced or helped to produce any guidance (elicit details)
- Was it purely HSE guidance or did you work with intermediaries?
- Has the guidance been evaluated?
- What feedback have you received?

3. How do you discuss health and safety management with your duty holders?

Prompt:
- Who do you discuss the issues with?
- Do you discuss issues with senior managers, others or both?
- What influences who you deal with (e.g. sector)?
- Do you use HSG 65 language? If not how do you explain health and safety management?
- How confident are you about discussing HSE’s criteria for health and safety management as laid out in HSG65?
- How easily can it be put into practice/operationalised?
- Are there any areas you struggle with?
- Are there any areas duty holders struggle with?

4. How do you assess the effectiveness of health and safety management systems?

Prompt:
- What difficulties do you face in assessing HSMS?
- What, in your view is an effective/ineffective HSMS?
- How do you judge a HSMS to be successful/effective?
- Can you describe what an effective health and safety management system looks like in practice?
- Do you give equal status to health as to safety?
- Does your criteria vary depending on the sector/industry/size/complexity etc. you are working with? [i.e. do you judge what is a proportionate approach and what influences this?]
- Are you aware of any research or evaluation that helps you make this decision?
- Do operators assess whether the effectiveness of their HSMS and how well do they do this?
- Are you aware of any techniques for assessing or improving company safety culture that may have helped you?
- How did you learn to assess health and safety management?
- Do you take account of any certification schemes (e.g. OSHA 18001, Responsible Care Management)
- What makes a company manage health and safety well (elicit examples)?

5. Do you need different approaches for different duty holders?

Prompt:
- Do you make any distinctions between types of duty holder, e.g. knowledge, size, complexity, whether multi-site, multi-national or from different industry sectors etc?
- Do you need different approaches for the different sectors?
- Do you need different approaches within the sectors?
- What barriers are there to getting the message across to duty holders?

Intervention methods

6. What do you currently do to influence the management of health and safety in organisations? (elicit examples)

Prompt:
General
- How do you decide when to carry out a health and safety intervention (e.g. after an incident or a Notice, or because of a particular initiative or guidance)?
- How do you decide upon which action to take (e.g. type of duty holder)?
- How do you carry out interventions?
- Do you involve senior management in your interventions (e.g. corporate board members)? If so, in what way and with what success?
- Do you address human factors issues?

Enforcement action
- What legal requirements have helped to deliver improved h&s management?
- Do you try and ensure that health and safety staff are competent? How?
- Is the company safety policy a useful tool for gaining improved h & s management?
- In permissioning regimes, is the safety report, safety case or licence arrangements a useful tool for gaining improved h&s management?
- How do you decide whether an operator is operating SFAIRP or has reduced risk to ALARP?
- Advisory action
- Have you ever advised employers to appoint competent persons to advise them on health and safety?
Other action (e.g. use of intermediaries, education, policy initiatives, European legislation)

7. Which approaches have you found to be most successful/unsuccesful in improving health and safety management? (elicit examples)
Prompt:
- Where?
- Why?
- How long lasting are the changes made as a result of your interventions?
- Have you made efforts to publicise the successes so that others in HSE can utilise the same approach?
- Have you heard of other successful initiatives but not used them?
- Have you ever carried out any evaluation of the work you have done?

8. Has your approach to influencing the management of health and safety in organisations changed since you started doing this type of work? (elicit examples)
Prompt:
- Have you changed the type of intervention you carry out and how you carry out those interventions?
- Enforcement action – what, how, with what result?
- If you have taken enforcement action and know the result, how long did any changes last?
- Advisory action
- Other action (e.g. use of intermediaries, education, policy initiatives, European legislation)
- If Yes, Why has this change occurred (e.g. impact of ‘revitalising health and safety’, experience, working with different colleagues and/or line managers, knowledge of other initiatives within HSE, attendance at training courses, changes in HSE policy or legislation)?

Future activities
9. Do you think you will need to change your approach to influencing the health and safety management of organisations in the future?
Prompt:
- Why/Why not?
- What could influence you to change?
- How do you think you might change your approach/
- What limits the approaches you use e.g. resources including time, HSE policy etc?
- What developments at European/International level are you aware of that may make a change of approach necessary?
- Given a free choice and no restrictions, how would you like to be able to intervene with respect to HSMS ie what do you think would work best?
- How can you specifically raise the profile of health matters through tackling h & s management issues?

10. Do you think it is sensible or desirable for HSE and the LAs to aim for a more consistent approach to the management of health and safety across all sectors? NB: This does not mean a ‘one-size fits all’ approach, but more the application of common principles in a transparent and appropriate manner.
Prompt: How do you think we could achieve this?

11. What do you think of HSG65 (e.g. relevance, usability, what changes would improve it).
7 APPENDIX 2 – FOCUS GROUP SUMMARIES

7.1 FOCUS GROUP 1 – HSE OPERATIONS STAFF (BIRMINGHAM)

1. Understanding of Health & Safety Management/SMS

- The purpose of a safety management system is compliance with the law (HSWA enforcing European law) – giving regulators the right and duty to insist that duty holders have a system in place to manage risks and prevents deaths. This also anchors the role of HSE in a direct and definable way.
- SMS as part of a wider human activity, part of a process located within a culture that controls risk. An overall approach provides a traceable route to reduce risks.
- SMS as part of management, not separate, embedded as part of the system that allows a business to manage profit (cannot be extracted). The system is the way you ensure you are doing what you need to do to manage the company well. Systemic approach should be the same whatever the risk to managing profit, but also an awareness that duty holders can regard H&S management as separate to their business concerns, as an add on.
- Models are ideals that are applied to ‘difficult, messy organisations that are never static for long enough.’. Tension between the theory of the system, and the practice of the system.
- Distinction between elements of a system and the overall system. Especially a manager’s responsibility for an individual component of the SMS that does not require knowledge of the other components (specialisation), and an overview of the entire SMS (generalisation).
- System can be dependent on key players ‘personified’- who have an overview and understanding of the whole system. Tension between system and constituent elements, and how the system is defined and segmented:
  - Need to acknowledge that a system is dependent upon its constituent elements, i.e. individuals (links to importance of individual competence and local implementation and management).
  - But also that the success of the constituent elements does not guarantee the effectiveness of the system - ‘...but if you go in and sample the sort of things they do, we do have a lot of strengths and they are doing things well, in many areas, but why does it not all work together to actually make it successful enough? And that has been my greatest mystery as to why the people I meet in Network Rail and Railtrack before it, at an individual level are competent they are skilled they are understanding, etc., but it does not seem to operate as a cohesive whole to be successful enough…’
- Role of regulator in relation to SMS and compliance relates to the idea of what a company should do, and what it can do.
  - Regulator has a perception of what an SMS has to do. This aspect can be enforced as it is legally underpinned. Role is to look at framework of duty holder to ensure they are controlling risks.
  - Regulator has a perception of how a business should operate a SMS. This deals with the human aspect and regulator’s advisory role. Relating issues are:- will advice be taken and is the advice enforceable?
- Perception of standard duty holder’s response being passive, and waiting to be told what to do by the regulator. Lack of active involvement in the OHS framework. – ‘…the idea
that the kind of standard duty holder response has been, “there is no point in me taking any notice unless he will write to me.”

- Idea that companies need to be ‘mature’ to understand a safety management approach, e.g. they understand the need to actively manage their risks as part of a system, and how this relates to their business objectives, and not just an implicit model based on rote compliance.
- Requirement of a duty holder to learn the language of safety management in order to understand it. Learning the language of SMS becomes part of their maturation process – ‘They are now able to use HSG65 and have done so to a certain extent, to extract the type of language they were desperately trying to find to describe for themselves and their employees, what managing safety meant.’
- CDM Regs – Links to distinction between specialisation within a system, and an overview of the whole system itself, and the way that managing risk relates to all components. Concern with own component, and lack of awareness of how this component can influence H&S within the other parts of the process, e.g. client’s initial decisions can create or eliminate risks for contractors, designer/architect influence the risks to the contractor, but might not regard this as relevant to their specialisation.
- ILO guidelines as overarching document – Potential for document to be at top of hierarchy that dictates approach to national guidelines, sector specific guidelines, down to SMEs. Idea of finer granularity of guidance, to be closely linked to specific workplace.

2. Discussing H&S Management with Duty Holders

- Discretion used in applying the model proportionally to the risk profile of the duty holder.
- Centrality of RA providing transparent link between the hazard and the SMS. Relates to the idea of linking the specific practice to the wider SMS. So the individual can understand the relevance of what they are doing to the whole system, and so does not regard their task in isolation, and of little relevance to other personnel. ‘If Fred says “Right I have got the permit to work here, but I will just ignore that because that is just to control the contractor.” That is not for me. I am employed here.’
- Ineffective to approach a duty holder’s SMS as a general concept, the area of influence has to be at a less generic and theoretical, more specific level – ‘You have got to focus in very small areas for you and them to get significant benefit out of it.’ – ‘If you try to tell a major that the management system isn’t right, he will just stop listening. If you can tell them, this happened, it could have caused, how did your system allow this to happen? Tell me. Then you can get a reaction. But if we just argue philosophy, you are dead, ‘cos they are not interested. You have got to have a hard hook to hang it on.’

3. Assessing Effectiveness of H&S Management

- Tension between what organisations are capable of in terms of OHS, and what the regulator wants them to achieve.
- Idea of ‘mature’ companies who know the model that HSE will assess them against, but realise that describing what they do logically is sufficient, e.g. it is not a matter of speaking the same language or getting the tick in the box, but of managing the risk.
- Some consensus for a pragmatic approach to assessing SMS, in that the SMS system should not be judged itself, but that it should be judged on the outcomes it delivers – ‘…you are extolling the virtues of focusing on outputs. Don’t get marred in the systems, go for the outputs and let them sort out the systems themselves. There is the guidance on how you do the system. We are not interested in that, you just give me the
output...’. This partly relates to the difficulty in applying a general model to a specific context.

- Centrality of assessing individual competence to manage risk if concern of regulator is to ensure outcomes. Focus then moves from actual system and processes, to securing individual’s competence in successful H&S management. The level of analysis becomes the individual’s capability to not just assess risks, but manage the whole system (e.g. monitor, audit, communicate).

- Links to idea of two areas of competence relevant to SMS, - technical competence, and managerial competence. Some debate regarding whether technical competence/expertise is a prerequisite for successful managing of risk. – ‘So you might have the most competent person in terms of their profession. It doesn’t mean they have got a clue about anything else’. – ‘What I am saying is, a manager who knows the technicalities can control. A manager who doesn’t know the technicalities can administer, but can’t control. That is the difference.’ Related to problem of defining/recognising the profession categorised as management.

- The effectiveness of a system can be judged on whether it ensures the necessary competence of individuals to carry out their delegated responsibilities. Competence defined as an ability to understand and therefore control risk.

- Competence often assessed in a negative capacity, e.g. lack of competence, failure to do something. ‘You walk around and you say, “Well, there is evidence of your lack of competence and there is evidence of your lack of competence.’ In focusing on the evidence for incompetence of the individual, it presents a problem for defining a system that does ensure competence.

- Perception that HSE uses the concept of competence a great deal, but this is aspirational as opposed to being grounded in actual practice.

- Success of a SMS defined as dependent on regulator – deciding what to measure, deciding a base line for this in order to judge change over time.

- Difficulty of judging a good SMS system, as opposed to a system for managing certain topics, e.g. manual handling. Difficulty in making valid generalisations about the whole SMS from individual topics, as success in managing one risk area, cannot be assumed to read over into managing a different risk area.

- Important to realise that a company being incompetent in one area, might not be a reflection of general OHS performance. ‘It is a dangerous assumption that their incompetence is a mirror of their competence. Just because they are incompetent in one area doesn’t mean that all the good work they do is not good enough.’ Links to difficulty in deciding upon KPIs that are not too fixed to prevent the inspector applying proportionality, common sense and flexibility. The KPIs should be linked to the major risks to be controlled. Knowledge claims from KPIs should be generalisable, e.g. give some indication of the company as a whole. – ‘Knowing that a chlorine installation has been done properly doesn’t mean that the rest has been...’

- In terms of outcomes, assessment becomes looking for evidence of whether the outcome has failed or not. This can be problematic for measurement as SMS are designed to ensure incidents do not occur – ‘in essence they are running a whole system to avoid a negative and the measure is that they have avoided a negative. It is very difficult to measure what doesn’t happen.’ This reactive post-hoc approach to investigating SMS is related to the problem of finding positive evidence for measuring that a SMS is successful.

- Not a duality of either ‘good’ or ‘bad’ in the way a company manages safety, but a third position of ‘not good enough’. – ‘if you actually look at those companies and how they are organised, what you find is that they actually do quite a lot that is successful, but to be quite honest, they are not successful enough...’ This presents further difficulty in measuring/defining KPIs that can provide some indication of this subtlety. Relates to
tension in levels of investigation between the system and its constituent elements - ‘...we want to be sort of painting a balanced picture, and saying there are strengths, companies are rarely completely bad, so we ought to reflect back the good points because otherwise we can’t encourage them...’

- Importance of defining the problem within a company appropriately, e.g. skill, knowledge, violation based, and recognising that the solutions to these different types of problem are going to be different.

4. Variation in Approaches Across Duty Holders

- Permissioning regimes encourage Duty holder to adopt HSE’s conceptualisation of SMS. Safety cases can describe duty holder’s operations within the frame work they think HSE expects, and that this will equal compliance – ‘Get our tick in the box’. There is potential that the focus for duty holder becomes complying with HSE, not managing the risk directly.
- Distinction made between public and private sector, especially the business argument for H&S being less applicable to the public sector.
- Risk prioritisation - inspectors having to concentrate their resources on the lower performing organisations – ‘...the chances are with the population we are going to see, we know damn well that we are going to see them because they are at the bottom end of the scale to start with. So I don’t necessarily think we are going in with an expectation of what can we find that is going to be good here, we know we are going in to somewhere that is probably at the other end of the scale.’

5. Intervention Approaches

- If regulator is asking duty holder to go beyond the minimum for compliance, more persuasive/advisory role is applicable as compliance is satisfied. – ‘Well we sell it to be honest.’
- Within a safety case regime, duty holders are expected to provide evidence of their competency to control risks for specific areas. This approach is underpinned by enforcement.
- Some approaches can be perceived as working in partnership, emphasising equity in the relationship between regulator and duty holder, but are actually underpinned by enforcement:
  o Use of Safety Awareness Days perceived as breaking down barriers to compliance, but underpinned by enforcement – ‘So we get safety awareness days, we get 400 farmers and we basically say, “come and see your mates, see their presentations, find out how to safety manage and get a free lunch, and if you don’t come we will come and visit you”.’
  o Concept of ‘earned autonomy’ underpinned by enforcement – ‘If you get it right, we will not come and visit you. That means something to them.’
- Focus on range/combination of intervention techniques, based on pragmatism of achieving goal.
- Distinction between explaining the guidance, and interpreting the guidance, where interpreting is applying the guidance to the specific context of the organisation. The former is appropriate for contact officers, but the inspector’s role is for both.

6. Effectiveness of Different Approaches

- Limitations of enforcement route – ‘police car on the motorway’ - necessary to change attitudes for ‘long term legacy’.
• Distinction between enforcement and advisory approach. Enforcement approach does not deal with cultural issue, or influence attitude, and has a limited time frame – ‘But they would like to work with you to achieve the right result. Because then you will take the spirit of what you say on to the next job you do, whereas if you enforce, they will just do what you say on that job.’

• Fear of prosecution by duty holder as a barrier to them accepting the regulator taking an advisory approach - ‘The number of times they said to us, “We can’t do that because they will prosecute us”.’ This is also mediated by the risk profile of the duty holder, and not just their perception of the regulator – ‘The biggest risk to them is HSE. When we went into ______ and looked at their 15 biggest risks, HSE sat there with a kind of warring kind of stance because it can have such a major impact on their business if HSE decide not to do it.’

• Importance of interventions at higher/corporate level, e.g. Hospital’s star rating system, H&S component in health care and inspection audit, Risk education content in medic’s curriculum etc.

• Importance of the level at which the intervention is aimed, so that the intervention is perceived as relevant by the individual/duty holder, particularly with contact officers – ‘I am looking more at the risks side of it, asking them what their risk assessment is and asking them how they came to the decision that the process they have in place is suitable. But only localising it to that particular issue, not for company wide issues...’

8. Change in Regulator’s Approach for the Future

• Some consensus that there is not a clear view of how to address the ‘human issue’ within SMS, either in being consistent with what the law permits the regulator to do, and what it requires the regulator to do.

• Necessity of focusing on education and training approaches with intermediaries, especially at corporate level, and undergraduate syllabi. Some examples of this already happening, e.g. H&S included in accreditation requirements for medical courses, H&S inputs into vocational training certificates for agriculture. – ‘The root source where people get the skills for their working life.’

• Necessity of focusing on the language of approach, so that the language is inclusive (i.e. all sectors perceive its relevance), and addresses the specific context of each sector. Inherent tension between breadth and depth. – ‘We need to have different languages and there is also different pressures, whether it is quality in manufacturing, or clinical governance in the health services, there is different levers we can use and I think we need to make sure that the language in there is broad enough to take in whatever management systems people choose to use.’

9. Opinions of HSG 65

• HSG65 provides the components (skeleton) for a SMS – HSE has clear concept of this. The extent that these components are developed to some extent depends on the nature of the sector and company. An investigative tool, that provides a structured process to analyse complex systems.

• HSG65 (components) are unchallenged, no evidence to undermine it. A complete model. Embraced by BS8800.

• HSG65 as a work in progress – an attempt to understand successful management of H&S. Danger in being dogmatic and assuming all companies that manage H&S successfully do so in this logical and structured way.
• The model does not address adequately the changing social organisation of work, especially the issue of contractorisation. Assumes companies are static – doesn’t account for their flux and upheaval
• Problematic implementing the model at the human level (a model framework to be applied to a human condition and organisation). Breadth of the system may be obscured at local level of management, as they are responsible for one aspect/component. Not everyone responsible for H&S is involved in all the components.
• Limitations in implementing model, especially ‘economic reality of life’. The trade offs that are made are not discussed, though felt to be evident from experience.
• Model does not deal directly with managing the human aspect, nor how to account for additional factors in order to derive the most benefit from the model. Allows regulator to allude to these human issues by proxy, e.g. cannot prosecute a company for not communicating, but can say there is no safe operating system for communicating that information – or can allude to lack of H&S culture as an aggravating factor.
• Design of document, could be more functional, e.g. with index.
• The HSG65 document as a hub, but need to emphasise the relation to other key documents and guidance. Could be made more relevant to different audiences by signposting different guidance (relevant for that audience) within HSG65. Language needs to be ‘all encompassing’ so as not to exclude other management approaches, while also emphasising the relational nature of the document.
• Some criticism that the model does not make RA more explicit, and bring it to the beginning of the SMS process. Nor is hierarchy of control mentioned. The debate regarding assessing risks to create a good management system, or create a good management system to assess the risks becomes academic when role of regulator is to get duty holder to focus on the key risks. ‘The question is not what is the management system, but does the management system work?’
• HSG65 not used in a way that discriminates against health as opposed to safety, but the focus given to safety is due to other factors, especially the risk profile of certain sectors, and the proportionality adopted by each inspectorate – ‘You said, “Well when we go in and inspect the management system we pick the biggest risk”. So do we. For railways their health risks are just nowhere on the agenda from our perspective. It is all the public safety risk...’
1. Understanding of health & safety management/safety management systems

- The arrangements that companies have in place for managing risk.
- The activities and practices that duty holders have to deliver regulatory compliance well and cost effectively.
- ‘There is a difference between health and safety management and a health and safety management system. We would like some sort of health and safety management in all organisations, how you actually do that needs to be proportionate. But you can set out some basic building blocks, which indicate how you want things in a systematic way. The latter is more towards a health and safety management system; a health and safety management model which when applied within a company would become a health and safety management system within a company. Some of that may be written down some of that may not be written down.’
- Some companies want to more than meet the minimum required for regulatory compliance. ‘What they put in beyond meeting minimum standards depends on the profile of the company and how much resource they have. They may spend more because of their name and the consequences and they can only spend as much as they have.’
- Part of the business model putting safety where quality could be – but some duty holders lack competence in business management not just health and safety.
- Although inspectors work to the HSG65 framework, this is not necessarily what everyone else uses.
- ‘On the chemical side we are members of CIA [Chemical Industries Association], we are signed up to the responsible care system. I have no real idea in what regard HSE hold the responsible care system. These are Professional institutions in this country who we hold in high regard and work with, we need to be quite frank with them as to what we think in general terms of the systems they are pushing forward and I don’t know how much we do that centrally.’
- Other approaches and sources of information include:
  - BS8800
  - OSHA – Process Safety Management
  - OECD
  - Veritas ISRS system - chemical industry
  - IEA Standards – International Atomic Energy Authority
- Duty holders are also influenced by other safety organisations selling off the shelf packages; especially smaller companies.
- Inspectors follow formalised and documented approaches such as the FOD guide and learning on the job from their individual experiences, views, training, incidents investigated, and ability to interact with people but more training in inspection and audit techniques would be beneficial.

2. Discussing H&S Management with Duty Holders

- You can’t have one size fits all. For the biggest companies ‘the discussion is about corporate governance, the Turnbull report, what does the board of the PLC or holding company do to make sure that its global system is working and that safety is actually discussed by directors.’
- Some companies don’t appreciate the distinction between 1) prevention of personal accidents and ill-health, and 2) major accident prevention, and forget to broaden out. In major hazards companies they may have very good accident rates but they also need to manage major accident risk (fire, explosions, etc.).
• Speak to the operators about what they are doing and whoever is the most senior person on site or the person holding resources but they may not be on site.

3. Assessing effectiveness of health and safety management

• In assessing a health and safety management system you look at three things; documentation, what you see on the ground, and what people tell you.
• Take a sample of evidence/judgements - a structured method for gathering evidence against a standard. You may just happen on some good bits but having a reasonably robust methodology increases the chances of getting it right.
• Need a proportionate expectation on which to start to meaningfully judge adequacy.
• Not clear exactly what HSE’s expectations are in terms of the level of detail that small to large companies need. Especially when they are using approaches other than HSG65.
• Indicators of effectiveness:
  o Effectiveness in process safety measured by a reduction in the number of loss of containment incidents. HID measures process rather than outcome -outcome should be risk reduction, illustrated and demonstrated.
  o A genuine reduction in enforcement action and less need for prosecution should be a measure of success. ‘That only washes with the public if they perceive industry as getting better.’
  o A reduction in accidents, ill-health and lost time incidents.
• Even when the system and the people are in place, how do you know its working? How good are major accident precursors as indicators? How do you know whether it is effective management or simply chance?
• Most large companies will have an internal audit system which is independent of the site which can be checked.
• Permissioning regimes - assessing the safety report. ‘How we actually assess it is not whether they’ve got a health and safety management system because they’ve already described it in the safety report but checking the key elements of that system. The effectiveness is really about the scope of what they’ve got in place, how it’s actually working. Our approach tends to be to always follow the HSG65 model on an issue. Mostly if it is a permissioning regime, it’s not about providing us with information about what the management system is, it’s about providing information about that the system is in place and operating. Any inspection is about collecting information, and then you come to the judgements stage, where you have to have an expectation to make that judgement. Then there is the outcome stage, if it’s not what you expect what are you going to do about it.’
• Non-permissioning companies, which account for the majority of duty holders – Inspectors start with the hazard profile. There is an agenda of issues for the scope of the management system, which is proportionally focused. There may be HSG65 elements to the way some of those things are described, present, and operating.’
• HSE doesn’t actually know which are the best inspection techniques.
• ‘In COMAH, we actually have a duty to have an adequate system of inspection that focuses the mind as to what that might be if that’s a duty you could be sued in the event of a major accident. That’s forcing us to document how we do business and that’s proving pretty tricky. We’ve been working on it or about three years and we’re still struggling to agree how to inspect’

4. Variation in Approaches Across Duty Holders

• Companies having an effective health and safety management system should essentially be self-regulating. ‘The system should provide its own internal checks and balances.
Inspectors should only need to confirm that everything they have in place is in fact working.

- Permissioning regimes (Rail safety cases, COMAH, Nuclear licences) and legislation formalise what HSE, as the regulators, think health and safety management is. Criteria and structure is based on the POPMAR model.
- The rail industry set out their management system according HSG65 in safety case submissions. This industry is used to prescription with standards. ‘They have given us little mini risk control systems for each individual processes. So signals crossed at danger will be one. They’ve gone down the HSG65 route with a mini risk control system for that. Another one is management of change. I don’t know how well that works as an integrated package but it’s a fascinating approach.’
- In the Chemical sector they’ll often re-write their management system in HSG65 to get a tick in the box.
- Health and safety management criteria for non-permissioning companies is less prescriptive/rigid.
- Small companies would like more prescription; they want the inspector to tell them what they have to do.

5. Intervention Approaches

- One participant referred to HSE Research Report 44 ‘The role of managerial leadership in determining workplace safety outcomes’ which asserts that HSE needs to intervene more at board level as they currently impact mainly at site level. ‘What we’ve tended to do in the past is collect the evidence; the onus is always on us. Permissioning gives the power to force them to demonstrate to you that’s the big difference...At the end of the day an hour with the director may be more fruitful with all the evidence collected because what it forces them to do is address auditing their own safety management system.’
- Other participants agree that there are benefits from conversing with senior management such as getting resources released but consider that gathering evidence is still necessary.
- The Railways sector would prefer some kind of focus for HSE activities and powers but HSE has no formal links for providing guidance or overseeing. They are considered not ready for self-regulation. ‘Rail industry go all out on risk assessment and modelling in terms of precursors to risk and the KPIs [Key Performance Indicators] are measured, really we don’t have much say about any of that.’
- The sort of industries who have chosen to become self-regulating are those with major hazards - chemical and oil industry, who are very status conscious and public aware. The oil industry has produced its own code for safety management systems.
- Take up of health and safety management audit tools (e.g. health and safety climate tool) was thought to be very patchy with newer inspectors even less likely to use them.

Advisory/Guidance

- For small, poorly run companies inspectors recommend getting in specialist advice so they are not drawn into this role and end up constantly dealing with one issue at a time. Notices have been served when directors won’t accept that they need specialist help.
- Greater influence as a regulator in permissioning regimes because the sanctions are bigger. ‘We expect them to describe and justify what they do for risk in advance. Outside that we are reactive. We go in and ask them what they do and ask them the adequacy of that. And to influence them in terms of a better way to deal with the risks using the ‘sticks’ when we need them.’
• Try to influence via sector and trade associations, try to consult and engage them and get them on board. (e.g. Onshore chemical industry). ‘Haven’t proved it doesn’t work. I do believe industry acts…if we say it is on the agenda.’

Learning lessons
• Sharing lessons learned from accidents is something they are paying more attention to through formal/official reports (e.g. BP Grangemouth) and informally through trade associations. ‘…but it’s not very systematic and HSE corporate proceedings delay dissemination.
• The manufacturing sector has an alert system whereby details of the perceived cause of major incidents are faxed by the company concerned to other companies via the trade association. Press releases are also issued.
• Manufacturing also has a revitalising network whereby companies come together to share information and take more notice of others from their sector. Face to face better than written.
• A FOD Star chamber initiative started in April - following an explosion in a chipboard factory, getting all the chipboard companies together, telling them what the benchmark is, and asking them to come back in 3 months to assess their progress against the benchmark.

Initiatives
• Early 90’s - TORCH (Transfer of Responsibility for the Control of Hazards). A voluntary initiative for small companies, encouraging them to self regulate. If inspectors raised points at inspection, the duty holder produced an actions plan and the inspector responded to that. If they got it right they would see less of HSE. A means of educating and encouraging them to take the initiative.
• ‘We had a very high take-up in the explosives inspection with our licensees, we ran six or seven TORCH workshops. There seemed to be great enthusiasm and it was taken up not just by small companies but people like the Royal Ordinance. Sites with 3-400 employees were taking it up. Workshops started as a means of doing the process more cost effectively, collectively and on the basis that people who didn’t turn up when invited got a closer look. It was reviewed by OMF in the mid 90’s but don’t know what concluded.’

6. Effectiveness of Different Approaches

• Building relationships works but activity is becoming increasingly reactive quite often dealing with complaints.
• Enforcement approaches including prosecutions are only effective in the short term, rather than for gaining sustained improvement.
• Self-revealing process works much better than prescription and enforcement - explain to and show companies where they have got something wrong and should have got to that themselves.
• Success of initiatives is influenced by companies seeing that their competitors are having to do the same. ‘If the industry is small enough, and they can see that there is a level playing field operating.’

Use of Drivers
  o Need to look at incentives from insurance companies and the scope for incentives linked to standard benchmarking.
  o Accreditation - poorly performing sites risk losing their accreditation/standard
  o Supply chain influence and requirements
• Barriers
Lack of continuity in duty holder management and in HSE. ‘Have we got the structure, doggedness and tenacity to make any of this actually work when we make little attempt to provide continuity?’

There seems to be better continuity with employees than senior management but the safety representative system has weakened through a decline in trade unions.

7. How Has Regulator’s Approach Changed?

- Corporate governance and the influence of the Turnbull report. Getting health and safety on the business risk agenda. A change that enables HSE to have a fruitful dialogue with senior management.
- More focus on Human Factors. ‘In the last 5 years, one thing that has radically changed is the use of human factors. This has come about because it is only in the last 5 years that we have some specialist knowledge, expertise from HSE. This has had an impact on the way we approach things now, for the better. People’s actions impact on every aspect of what we are trying to manage and unless you have an insight into Psychology, how they work and why they work and what they’re doing, all you concentrate on is hardware issues. An approach to increasing human factors in health and safety is to bring in specialists and broaden our own knowledge.’
- Permissioning regimes - A positive and a negative change.
- ‘From the major hazard viewpoint, having to go through safety reports and assessments etc...in some degree has had a negative influence. We have focused a lot more on information rather than judgement. On the positive side getting more involved in looking at performance measuring to describe how they demonstrate adequacy of control and that doesn’t look like a technical report received by HSE – but a day to day demonstration of the robust information they have about the adequacy and operation of their process safety controls.’
- The COMAH regime is more robust and puts a better spotlight on the industry. It’s a more effective regime for achieving an improvement in standards.
- Lowered inventories at some sites since introduction of COMAH which sound good but a number of very important sites fall just outside COMAH criteria and don’t get quite the same attention.
- Charging is perceived as influencing targeting. ‘One very large company employs thousands of agency workers, and we never went there because we couldn’t charge them.’

8. Change in Regulator’s Approach for the Future

- HSE pushing earned autonomy for the future, which will require that companies audit themselves against a standard/benchmark, and HSE will have to make sure they do it rather than taking ownership and carrying out the audit. Inspection can be scaled down accordingly.
- Railways might need to change their regime depending on what the European safety directive for railways comes up with.
- HSE could be much more explicit about the elements of risk control systems that are expected to be in place in different sectors of industry. Something along the lines of the OSHA code for Process Safety. ‘...At least then they have an idea of what is our agenda when we come to inspect them.’
- HSE needs to learn lessons as an organisation from its own practice. ‘We haven’t changed or inspection methodology in response to failures of our inspection system.’
• Reduced employee numbers at sites due to automation and technological changes
results in a reduced number of large companies. SMEs may be controlling quite
sophisticated operations, full chemical plants, COMAH top tier plants, with a small
number of people compared to a few years ago. The approach for addressing this needs
to be considered.
• HSE needs to engage more drivers of health and safety management in order to get
improvement, for example engage insurance companies.
• There is a greater need for continuity and clarity in what HSE wants from duty holders,
for example, an agenda of things to be covered without being too prescriptive about the
time frame.
• More caretaker approach, more methodical approach, recognising differences between
sectors and developing more sector specific packages.
• More training for inspectors in what inspection techniques work and human factors.

9. Opinions of HSG 65

• HSG65 started off as HSE good advice/practice then it was imposed by MHSWR, reg 4
where it started to impose the system as a regulatory requirement.
• ‘It [HSG65] still does cover all the bases but not necessarily the same level of detail to
describe what exactly we want in term of detailed expectations, neither does it help us
to do the things – implementing it and influencing people.’
• A set of generic principles relevant to all sectors but it doesn’t tell you how to manage
risk in different sectors and sizes of duty holders (e.g. process safety risk). In certain
sectors there is a need for greater prescription, greater detail (e.g. do they have adequate
instruction systems).
• ‘The discipline and framework of thinking actually applies to a company of five and to
Shell, it’s the sophistication of where you apply isn’t it.? It’s how complicated it needs
to be to deal with the different levels of risk in different organisations.’
• Key issue :- how do you apply/implement the POPMAR principles and how do you
determine if they are working or not.?
• A major change of the HSG65 model or guidance was not felt to be necessary. In
general it is considered to be quite robust as it is. Improvements could include plugging
some gaps, better referencing and links to other documents, which have the level of
detail suitable for different types of duty holder. With an electronic version links could
be updated regularly.
• There is a need for supporting case studies.
• Gaps of HSG65
  o Risk assessment ‘You should be tailoring you’re management system to what
your risks are – So if you’re risks are major hazard risks then that’s where you
should direct your effort.’
  o Corporate governance and director’s roles.
  o More needed on self-auditing.
• ‘HSG65 contains a model for accident investigation of root cause based in the chemical
industry which is extremely difficult to follow and maybe what’s missing is getting small
companies to understand what their risks are and therefore how to direct their efforts.
If you don’t know what your precursors are to major accidents it doesn’t matter what
sort of management system you have, you don’t know what you’re doing it for.’
• A positive feature of HSG65 is that it isn’t too prescriptive and it is general, and in
relatively simple language. This can also be a downside as companies are more
comfortable with prescription like OSHA 1910 and process safety management – they
can see all the elements, they can check up whether they’ve got them.
• The HSG65 free leaflet, an eight page summary of HSG65 was perceived to have been very useful as it was in more accessible language than the main document.
• Employee leaflets – explaining what the systems mean to them and how they can maintain them.
1. Understanding of Health & Safety Management/SMS

- Arrangements for controlling health and safety risks, assuming duty holders know what the risks are.
- Management: people and responsibilities – how bad is it, what do we need to do
- System: processes needed to get things done, including monitoring and review to check it has worked.
- Systematic approach relating to what you are trying to achieve so you can audit it.
- Plan, Do, Check, Act arrangements that they have in place to ensure an effective outcome.
- Implies a proactive stance to tackling health and safety.
- Inspectors work to HSG65 principles of health and safety management.
- Larger duty holders have adopted alternative approaches, for example:
  - The CIA [Chemical Industries Association] responsible care system
  - PSM [process safety management] guidance
- Sector specific approach – ‘We’re doing some audits at the moment for arboriculture companies (tree surgeons) that work for railways vegetation control. For inspectors, we’ve taken some guidance from the industry from their approved contractor scheme modified it a little and given the guidance to inspectors and said this is what we expect a good contractor to look like in these defined areas, this what we would expect you to see. Then provide sensible criteria and question sets to find out whether they actually exist in practice.’

2. Discussing H&S Management with Duty Holders

- Tailor discussion to the specific requirements of duty holders according to difference such as size, sector, major hazards industry.
- HSE needs to address why many companies still don’t comply rather than saying ‘The law says you have to.’ Address potential drivers.
- ‘All the work we did in terms of successful companies and the better performing companies around the world in safety management says that compliance with the law is not the biggest driver. They’re good because they want to be good in everything they do and health and safety is just one of those things. For a lot of the bigger companies it was part of being excellent in business.’
- The problem with health and safety is the drivers are often hidden. In most cases they are negative drivers, fear of prosecution, fear of insurance premiums. Work on the costs of accidents helped but people are sceptical HSE ‘propaganda’.
- One participant encouraged a large company to calculate the cost to them of musculoskeletal disorders. Implementing an MSD management model based on HSG65 could save them £500k. Financial benefits thought to be a better driver than moral or legal arguments.
- HSE have not been very successful in getting pressure from insurance companies to motivate duty holders to address health and safety management. It was suggested this could be changing as one participant attended a talk by an insurance company representative ‘The general point the insurance speaker was making was consistent with HSG65, have you got systems, do you define your standards, do you say what you’re going to work to, do you check what people are doing, do you investigate accidents, promptly, do you train your managers…If we’re going to defend a civil case for you, you’re going to have to show that you have all that in place.’
3. Assessing Effectiveness of H&S Management

- Effective health and safety management depends on:
  - On the competence of the duty holder to implement what is required
  - The competence of the inspector to evaluate and enforce, particularly on the more human factors related aspects of health and safety management (e.g. leadership, supervision, organisations and safety culture).

- If companies use a different model to HSG65 inspectors work with that to identify how it fits with the elements from the POPMAR model and assess whether it is working to control risk. ‘Large companies, oil companies and so on have such a well developed system already that they’ve bought into that they don’t want to look at something else. We don’t want them to transfer over, but we want them to do a gap analysis between the principles in HSG65 and their system and our principles to see if they have missed anything out or they haven’t got a control in place.’

- Inspectors might do the process okay but they also need to be able to judge what is good practice. They need clear criteria to benchmark against, drawing on good practice where it is available.

- Success in terms of health and safety is a negative. Inspectors are looking for an absence of accidents and ill health.

- Gaps in the training of inspectors constitute a barrier to assessing health and safety management systems, e.g. auditing compliance; assessing the processes and functioning of safety management systems.

- ‘Are inspectors being allowed sufficient time to do the safety management audit effectively needs to be considered’

- Inspectors in FOD are not well equipped with the knowledge of human factors and skills necessary to assess and analyse the organisational or safety cultures of the businesses and advise CEOs how they can go about changing safety culture.

- A limited experience base is regarded as problematic in FOD. ‘You feel FOD is the donor organ for the rest of the organisation, everytime some other part has a problem, OSD or railways or whatever, it dips into FOD and takes a huge amount of their resources. Those are usually the experienced people. We are reduced to a level where the average experience of a field inspector in the groups is less than 5 years. These people are doing a tremendous job but we have to accept that if we are going to do something about these sorts we have to have the right experience profile in staff.’

- In agriculture there are 250,000 small farms who may at any one time have large numbers of people coming onto their farms as contractors but are unlikely to have documented systems and have no legal obligations to, unless they have to produce them to satisfy client requirements in order to get a contract. There is a lack of information on how you assess health and safety management for these.

- In major hazards companies, for example those using computer based systems in chemical plants ‘We would expect a decent infrastructure/safety management system to be in place, and then we would use technical standards, functional safety, to see whether design standards have been maintained. Often you can’t use precursors as the basis as you’re often talking about high consequence low frequency events – It might not happen for many years.’

- Large companies can have great systems on paper but when it comes down to it, it doesn’t exist on the ground. ‘You need to get out there talking to people and walking around the plant.’ The difficulty for duty holders is the implementation and it’s the outcome of health and safety management systems that matter.

- In assessing operating procedures ‘I’m looking for some kind of proof that they have a feedback loop where they go and do a kind of compliance check to see if people are
following the procedures properly...I'm asking the site what are they doing in their management system to go out and see if it works.’

- Examples of companies having all the paper work, the process is great but the outcome is lacking, an internal ISO Legionella quality audit had focused on the paperwork and identified only a minor issue to be addressed, while an HSE inspection of cooling towers resulted in a prohibition notice.
- Accident, ill-health statistics give some indication as to whether things are working or not but are not a good indicator of major hazards such as major fires, explosions, or toxic releases.
- Near misses are also more relevant to lost time injuries rather than processes safety. Though near misses as releases and dangerous occurrences are more relevant to major hazards and process safety. Examples were provided of multi nationals who were good performers on occupational ill-health and length of time without a lost time accident that experienced major incidents (fire, explosion).
- Some debate over standards as traditionally HSE has gone down the standards route to promote something they think the whole of the UK should have. There were no arguments in favour of certifiable standards and BS8800 offers a guidance standard.

4. Variation in Approaches Across Duty Holders

- The principles of health and safety management are the same in any size of organisation - how they are implemented is different. ‘I do get concerned when we get mixed up between the ways people do it and the principles that we are seeking in terms of ensuring that outcome.’
- ‘Need to recognise that if we produce something it might be okay for the big companies who have the wherewithal to deal with it but how do you deal with the small companies?’
- In small firms with very lean management, there is no resource for health and safety. The literature is onerous. There is a need for essential information, and to know how to find it.
- Small companies also experience difficulties in knowing what are the acceptable criteria and good practice. Unless a company has some idea as to what is reasonable in the circumstances it is very difficult to fit that within a management system. Inspectors also need to know this.
- Industry perceives HSE’s role as a regulator, to do with auditing and checking against a legal minimum, as well as encouraging excellence. But not trying to enforce compliance against other systems in place, which seek excellence at a higher standard than the law requires.

5. Intervention Approaches

- Provide adequate information so they can help themselves.
- Getting the company to have an independent audit by another part of the group if it’s a multinational to enhance their knowledge by getting themselves involved (rather than HSE doing it). HSE then go in and check the audit that they have done. This process can reveal problems and is a useful tool for getting them to talk.
- Sector specific tools
- Manufacturing sector is trying to develop a structured system for managing musculoskeletal disorders, distilling it down into a very simple step by step procedures and tailored differently for smaller companies 20-100 who have less management resources.
Agriculture sector has developed an online risk assessment pack for farmers; a step by step process going through a series of questions, and obtaining an action plan. It has been well received by farmers and inspectors. It translates the principles of managing safety into something they can relate to without overtly calling it managing safety. This level is not appropriate for large companies. Need to develop more tools showing them the path, and how to get there.

‘Managing Health and Safety in Forestry’ (http://www.hse.gov.uk/pubns/indg294.pdf) details the roles and tasks to be done by the various people within the chain from landowner to contractor. ‘It’s been very successful. Accidents halved and two years ago there wasn’t a single fatal accident. One of the reasons why it was successful was along with producing the guidance we had a series of workshops and focus groups during its development across the country and modified it in the light of views. In the launch we put an awful lot of effort into explaining it and showing how it could operate in practice. The other benefit we had is that just over half the industry is controlled by one government department, the Forestry commission and they had a fairly big influence on health and safety, however, they now see excellence in health and safety has a point. A small industry, its very specific, but that’s what worked.’

‘Printers guide’ – a one stop shop for the printing industry. They won’t use the internet.

6. Effectiveness of Different Approaches

A lack of clear criteria on the implementation of health and safety management systems can pose a barrier to interventions due to the increased likelihood that duty holders will challenge an inspector’s recommendations. The OIAC [Offshore Industry advisory committee] permit to work system guidance is an example of HSE developing a ‘yardstick’ that industry has signed up to and inspectors are aware of.

Sector specific information has more impact. ‘They feel that had been made for them rather than something generic. You have generic international standards and then sectoral implementations – machine sector/process sector. Even though in points of principle it is the same, it is the language that is used. You can add constraints and simplify things for the sector/industry...Tailoring it for a particular duty holder is vital, because if something is too generic it doesn’t make any sense.’

To promote management change in larger and multi site companies requires continuity, engagement, and commitment from HSE, which is lacking. ‘We have no method of engaging a company for 3 to 5 years...We’ve shot ourselves in the foot so many times with some of these big companies.’

The FOD annual planning system is not consistent with health and safety intervention for multi-site, multi-national companies.

‘You’ve got to stick there with them through the duration and only at the end can you go away, say we moved you from there to there, we’ll go away and do somebody else. If you can’t be there at the end, you shouldn’t get involved in the intervention in the first place. You lose credibility. You find out people from all over the country are intervening at their sites and have all got their own agenda so there’s no consistency. It is essential that the project is run centrally, and that everybody deals with the company according to the process and have an input to the project team.’

In relation to targeting of Britain's top 350 companies – concern was expressed over the extent to which HSE staff engaging with these companies have had training or briefing.

One participant mentioned a paper going to OMF at the end of June called ‘More Prescriptive Advice to Duty Holders’ which asserts that the more junior inspectors are not comfortable giving prescriptive advice on what are regarded as well known hazards, risks, methods of control and good practice.
7. How Has Regulator’s Approach Changed?

- Sites are becoming more challenging of inspectors because of financial considerations. ‘So not only do we not have clear criteria, we are afraid of pushing them as we know they will appeal and may go to a tribunal and inspection teams don’t want to support enforcement.’
- Mergers and takeovers resulting in different management systems ‘All those changes that are going on, all these different structures impact upon the management system. If you merge with another company, you’ve got two different management systems trying to come together. How do we assess that, how do we go in and look at issues like that?’
- FOD inspection format has changed following Revitalising Health and Safety (RHS) resulting in a narrower focus on the priority topics with a checklist to follow irrespective of the type of organisation. Danger that less experienced inspectors may address specific areas where risk are not being controlled without looking at the safety management systems
- ‘That’s almost where we were before safety management came in. When we were boys and girls we went out and gave them a list of things to do, which they fixed all being well, and then we left it and 5 years later we went back and picked up the same list of all the same things.’
- In FOD the high volume of reactive work leaves little time for anything else.
- Health and safety management system should be proportionate, but HSE’s current priority areas may not fit with duty holder’s priorities. ‘The danger in my mind is that the duty holders become re-focused, there is a limited amount of resource in any company’
- Concern was expressed that focusing on high frequency hazards may draw the duty holders’ attention away from low frequency high consequence situations. For example, because nobody was injured in a factory explosion the local office did not propose to investigate.
- ‘One of the difficulties for the field is this constant changing of the goal posts, this year its all projects. Two years ago we set off on this revitalising thing. Mid 90’s its lets do safety management. There is no long term period within HSE, it’s this flavour of the monthism.’

8. Change in Regulator’s Approach for the Future

- HSE needs to understand Industry schemes (e.g. CASS - Conformity Assessment Scheme for Safety Systems) and even encourage good schemes as part of HSE’s tool kit
- Develop more sector/industry specific criteria that experienced inspectors would agree are essential. Such good practice criteria should give inspectors more confidence and can be used in enforcement.
- Gangmasters is an issue in agriculture – they may actually be large but health and safety management systems are regarded as a complete irrelevance by them.
- The European safety directive for railways is underpinned as safety management issues inside the directive and that is likely to be underpinned by some industry guidelines for getting a SMS in place for operating railways for all of Europe.

9. Opinions of HSG 65

- Working tool, underpinning intellectual basis for what HSE is trying to do.
- The elements and principles apply to all duty holders, but the implementation will vary. This is not addressed in the HSG65.
• ‘When HSG65 was written it was the first document to articulate what we meant by management health and safety, almost in the world. That’s history, 1991. Since then lots of things have come out. Now in 2004, all those models/descriptions all contain the same key elements. No matter what we’re presented from any company or organisation, we can make sense of that within a framework that we are familiar with. That is not the same as imposing that framework on any others.’

• EMAS have successfully applied the HSG65 approach occupational health (e.g. Hand Arm Vibration, Stress) within large organisations (e.g. NHS Trusts, Local Authorities).

• It is regarded as ‘fit for purpose’ for big companies but not for SME as they don’t have the time or expertise to understand the subtleties and background.

• Supporting case studies could be developed showing how to apply the principles to specific topics (e.g. revitalising topics; what is meant by organisation, cooperation). Such documents could be provided as a subset. This would clarify requirements for duty holders and HSE.

• The POPMAR approach has been adopted by other organisations addressing public safety – ‘Visitor Safety in the Countryside’(www.vscg.co.uk) by the Countryside Group including British Waterways, English heritage, EA, Forest Commission & RSPB.

**Additional information from a focus group participant**

• The latest draft revision of BS8800 is an improvement and they would be likely to use it, or bits of it, as a tool. In particular, the material on safety culture and the example of a simple attitudes survey.

• They are considering using The Corporate Health and Safety Performance Index (CHaSPI). An HSE sponsored initiative that allows firms to log their accident statistics on a public site, which can be viewed by other businesses in the same sector for comparison. Initially it is only for organisations with more than 250 employees but a version for the SME sector is under development. This Will enable tracking of progress and improvement over a period of years.

• There appears to be less resource available now to support inspectors wanting to use the health and safety climate tool (e.g. to supplement a health and safety management system audit), the only HSE resource available is some help with interpreting results.
1. Understanding of Health & Safety Management/SMS

- Some acknowledgement for a narrow definition of SMS, not relating to everything in an organisation that influences safety – ‘...a defined, documented system for, with positive feedback that drives control and improvement in certain aspects, key aspects of the company’s business in relation to safety. So it is quite limited.’

- Evolution of safety management systems, as initially separate to management systems, but increasingly becoming embedded in overall business system, especially in the oil sector – ‘...the concept of safety management was used with a system and companies set up safety management systems but that is not really not so much what is going on now so much – it is becoming embedded in the way they run their business.’

- The purpose of SMS is not to deal with low risk events such as slips and trips, but with events the workforce are less likely to have direct experience of – ‘I think in safety that means things like not very intuitive hazards, low probability, high consequence events that don’t come intuitively to people.’

- Acknowledgement that having a good SMS in place, does not mean that the H&S is well managed, and wider cultural consideration come into play – ‘Just because you have got good systems in place, does that necessarily mean that you manage H&S properly? Well, not necessarily. There is a whole lot of other H&S factors human factors that come into this, communications training, awareness involved with the workers.’ – ‘...you can have a system in place, but if you are not communicating it and working with the people who are actually doing the work, the systems fail.’

- Continuum in SMS, between documented systems, and systems that can be communicated directly to employees, relates to distinction between large and small companies – ‘...the people from small firms were saying, well, we don’t really need that, we can have management systems in place which don’t need to be documented in great detail.’

- The term ‘system’ is itself misleading, it implies a structure and organisation that is tangible, that might not reflect how risks are effectively managed within an organisation. This focus on a ‘system’ can be restrictive, as H&S management is perceived to be broader than a systems based approach would imply – ‘H&S management is wider than just the system which is what you said, a tangible, measurable thing. H&S management is much more broad.’

- Perception that for duty holders, compliance relates to following inspector’s instructions, as opposed to adhering to the letter of the law (reported from King’s College research into approaches by LAs)

- Perception that duty holders have a greater understanding of safety as opposed to health issues – ‘But they understand safety more clearly because it is immediate, so you get things done…’

- Approaches can be reactive, based on learning from incidents with duty holders – ‘...it is an evolution based on reaction to learning from accidents… it is an evolutionary process driven by what you discover from things that don’t work.’

2. Discussing H&S Management with Duty Holders

- Idea of H&S management as a commercial concern. Potential for the vested commercial interests of H&S organisations to mystify the H&S process in order to maintain their expertise and authority, with the result being that the H&S requirements of the majority of small businesses are not addressed – ‘They do some really good work but some of the
discussions are really so high level and they are just capturing just a small part of the H&S workers in Britain.’

• Communicating OHS management to smaller companies is conceived as an issue of translation, of presenting information on safety management in a language that can be understood by a small company – ‘I think that it is very much that it is about making this language simpler and making a lot of what we do simple for people to understand. They do a lot of this in small companies already. They just don’t know that those are the words we are looking for, or the language is different.’

• Focusing on general management issues can be an effective way to approach H&S – ‘So you end up going and giving them some really good free management consultancy. It is probably time well spent because they run their business better. They are prepared to engage with you because of that, they don’t see you as a threat any more and they start to be open and honest with you…’ This approach can become problematic, as the regulator’s legitimate sphere is only management of H&S and it can be difficult to define the line between management and management of OHS.

• The lesson to be taken from the 19 case studies that showed the business benefits of good H&S was that it improving H&S did not entail great resources – ‘…the important thing was that the basic messages about what they had done were stuff about good business, effective communications, training, development, talk to people, be more of an understanding organisation that understands people, shares problems and sorts them out collectively. So really basic stuff and most of the initiatives were all around that…’

• A lot of the information that is produced for H&S management is indirectly aimed at H&S professionals (‘us’), and is not consciously aimed at the information needs of ‘…people out there as an organisation…’ – ‘…because we do write and the language we use is very much geared to what we understand.’

• Importance of duty holders accepting the relevance of H&S to their operations, which can often be the result of obvious difficulties – ‘But you have got to have a reason to go in there in the first place and for them to believe that they need help. That will tend to be an accident.’ The salience of H&S can also be emphasised by explaining the cost benefits associated with good practice – ‘…our advice has been to them, well don’t mention H&S, mention that we do sickness absence levels and the costs that go with that produced in Insurance premiums.’ – ‘…the links between safety, quality and efficiency are a very strong tool in our toolkit…’

• Benefits of providing H&S information to duty holders is that it links key principles of H&S management to practical examples of the principles.

3. Assessing Effectiveness of H&S Management

• Perception in oil sector that new duty holders with short communication paths between management and the workforce can outperform some of the bigger duty holders with well documented and extensive SMS.

• Large documented systems become the focus of management attention, as opposed to dealing directly with the risks. There then becomes the potential for a discrepancy between the risks the system is meant to address, and the actual risks in the work place – ‘they had a problem with failure to comply with their permit to work system, they had 80 pages of procedures with the permit to work plus a lot of things to do with rule violation. The guys on the shop floor had completely lost what they were supposed to do. The system wasn’t controlling the risks the way it was supposed to.’

• The potential for large documented quality systems to become the focus of attention as opposed to the actual product – ‘There was an inverse relationship between the size and sophistication of the Quality Management System and the product quality inversely. I am not kidding, those who had the big systems and bid manuals and lots of detail were
actually concentrating on that and not on the outcome.’ The implication is that this also applies to SMS, but the direct comparison between quality systems and safety management systems can be criticised, especially the motivations for legislative compliance.

- Difficult to assess the H&S performance of small companies through a questionnaire approach, as majority will not have SMS in place. Potential for all questions to be answered in the negative which could be demotivating for the duty holder, and ultimately counterproductive for the regulator – ‘That is what worries me about the SME Index. How many questions can you realistically ask very small firms employing under 25 without embarrassing them by getting to page 2 and they have answered No to every single one.’

- Assessing safety performance can be problematic in sectors that have a high awareness of the regulator’s assessment categories. Questionnaire and interview methodologies elicit ‘idealised’ responses (e.g. the duty holder saying what the regulator wants to hear – ‘…they all know exactly what to write, so they can write down everything you expect to see …’) that do not reflect actual working practices. This requires accurate assessment to be based on more direct observation methodologies – ‘You only really know what is going on when you get out there and find out whether people know what they are doing or not.’

- This relates to the idea of documentary compliance obscuring the purpose of the SMS – ‘A safety management system is about people. You can’t judge them by correspondence. It is a qualitative thing isn’t it? Does it actually work in practice or are all my boxes ticked?’

- Assessing the effectiveness of a SMS in relation to health issues is regarded as more complex and problematic than for safety issues. The importance of the stress standards is seen in terms of the process they outline for employers to engage with employees about this issue, as opposed to a prescribed set of outcomes that must be attained – ‘We are not inventing this marvellous cure for stress, the actual standard itself is not important, it is the process, it is how you actually engage with employees to find out what they are feeling.’ This approach is regarded as more appropriate for larger organisations.

- The factors that are associated with stress assessment are also related to good management – ‘…does the guy in charge know what he is doing, is this place well organised? Has the work been divided reasonably between the number of people and particularly in our sector that is in decline, do they have enough people?’

- Concept of assessing a duty holder in terms of organisational learning in relation to H&S – ‘We are also looking instead at what we call the capability of the organisation or its cultural maturity, in the extent at which it learns from its mistakes.’ This approach is resource intensive, but evidence of learning is taken as a very positive indicator of OHS performance – ‘If you have got learning in your organisation, you know they are heading for success.’

- Some questioning of the effectiveness of safety cases in OS, in relation to perceived decline of OHS performance of duty holders. Need for direct observation of implementation of measures indicated in safety cases – ‘…look at what they have to say about their safety management systems go back out on the field and look at what is in place and look at whether it has worked.’

- Perception that some multi-national companies do not focus sufficiently within their SMS on the events preceding an incident – ‘…some of the large multi-national companies are not looking at the right things. They are very good at carrying out lots of audits and very good at having low accident and sickness records but what they are not doing with major accidents is looking at the precursors.’

51
4. Variation in Approaches Across Duty Holders

- The need for documented systems is perceived as more relevant to high hazard industries, especially those that operate within permissioning regimes as the documentation provides evidence and support for compliance with the regime.
- Positioning H&S management as part of the management to the risks a business faces is regarded as an effective means of engaging with larger duty holders, especially those that are also concerned with corporate responsibility – ‘They understand about controlling risks to their business and they will engage on that because they see safety often as a negative cost on what they are doing instead of seeing it as a helpful part of overall risk control of the business.’ This relates to duty holders perceiving the salience of H&S management.
- Perception that large retailers feel that there is inconsistency with regulators taking enforcement action with them at a local level, when they believe that the issue has been adequately accounted for by the corporate H&S system. This partly relates to the difficulty of applying generic systems at a local level, as they fail to account for the range of variation. Perception that the concept of ‘practicable’ prevents the large retailers from limiting responsibility to the local level of management as opposed to the corporate level – ‘...to replace being practicable with all due care and all due diligence because that way they can offload some responsibility on to local store managers and make it clear that what happened over on the fruit and veg counter is not compliant with the corporate system, so they should be hung out to dry.’ Some discussion whether the discrepancy between the corporate and local level of management is intentional, in that it allows scope for the central organisation to assign culpability to the local level (as store managers are relatively expendable), thus diverting criticism from the corporate level – ‘...it is quite convenient for these people to say, well it is the store manager, and then sack the store manager.’
- Small organisations need a practical risk control based approach from the regulator, and to be shown basic principles – ‘I think there is a challenge for us to say, Look, actually having systems in place doesn’t necessarily mean you are going to have to go out and spend thousands of pounds on consultancy and buy and absorb the detail in loads and loads of manuals. But there are realistic and sensible measures that you have got to put in place. Some of the basic things, like, what are your key risks?’
- Distinction made between a company’s capability to manage OHS, and their motivation to do so.
- For organisations with a high public profile it was thought there was a potential to use brand integrity as a lever to improve OHS performance.

5. Intervention Approaches

- Acknowledgement that bringing about change in an organisation towards better OHS management is the main role for the regulator. It is difficult to develop valid measures for the concept of change – ‘...the ultimate metric is not the number of notices or whatever because you never know whether more is good or bad, it is simply Have you produced a change in that organisation – do the people in charge run the organisation better?’ Potential to use more ‘transformational’ techniques to engender management change.
- Distinction made between management system approaches and accountability approaches (e.g. senior management signs declaration of conformity with a safety case).
- Mention of report by King’s College into approaches by LAs. LAs that used a mixture of advisory and enforcement approaches were most successful in terms of achieving compliance.
• Acknowledgement of a gap between enforcement and advisory approaches in HSE – ‘HSE have lost over the years the ability to provide that advice and education.’

• Interventions (within OS) aimed at how organisations are managed as opposed to individual employees.

6. Effectiveness of Different Approaches

• Importance of getting feedback from duty holders in a more systematic structured way to gain a greater understanding of effectiveness of approach.

• The effectiveness of management system and accountability approaches judged according to the outputs they deliver – ‘Our in point is that a guy knows what he is doing, he is trained and has the right procedures whether that is delivered by a management system or by an accountability route.’

• Accountability approaches perceived to be more effective at influencing safety performance than the systems approach – ‘Then you ask yourself which one would promote on the shop floor up-to-date procedures and a genuine enthusiasm for safety and it is more likely to be putting the MD’s head on the block.’

• Enforcement approaches regarded as sometimes having limitations in that once this approach is taken, it prevents a chance of developing a relationship between the regulator and duty holder, and so precludes the use of advisory approaches – ‘…there would have been an enforcement alternative, but it would have been a one-off and after that, that would have been the end of that engagement so you are in a personal dilemma while you discuss with them all sorts of bad practices while you could just as easily take out a warrant and say, You should really have a written procedure for that.’

• Some questioning of the requirement to measure and assess approaches as being driven by the need to provide evidence for political justification. This is perceived as counter productive as it necessitates that approaches that are taken are the ones that provide measurable outcomes, not the approaches that necessarily are perceived as making the biggest difference – ‘…we are still going ahead and producing all these things because they are measurable and tangible… and so we want to prove that we are really effective and we are making a difference, well how can you prove that we are making a difference unless we have something tangible to measure, so of course it is much better in one respect to get those measures, but you know as a person who wants to make a difference that that is not going to make a difference…’

• Some evidence that working in partnership with duty holders to establish OHS performance consensually is effective for long term change, but that this approach requires a lot of resources (especially time and commitment) on the part of the regulator – ‘… a H&S system…which was fundamentally different to what we had before and hugely beneficial to the organisation because they went through a learning process and we didn’t impose it on them.’ The consensual approach can be made more effective by relating H&S to the business case – ‘Where things work is where you are empathetic with their total business.’

• This partnership approach is contrasted with a view that the regulator is sometimes operating from an overly authoritarian standpoint, that does not acknowledge the position of the duty holder – ‘I think we are still tempered in that language of “We are health and safety and what we say goes”, and you are just going to have to do it.’

• Some feeling that it is difficult to enforce on safety management systems, but that one way was to enforce on the desired outcome of a system, as opposed to the process or procedure – ‘It depends on how you frame the enforcement ……….. You can enforce on design outcomes like make sure your employees comply with procedures, and then it is up to them how they do it.’
• The development of British standards regarded as a useful process to encourage interaction, debate and agreement on OHS issues between industry and other stakeholders, irrespective of whether the regulator is involved or not.

7. How Has Regulator’s Approach Changed?

• Influence of Revitalising has created recognition of the need to engage with a wide range of stakeholders who can influence H&S independently of the regulator. The aim is not to impose complex SMS, but to engage more effectively in order to enhance the management of safety.
• Based on findings from a number of major incidents, HID on-shore is addressing how multi-nationals look at the pre-cursors to incidents within their SMS – ‘That is something that has shifted the emphasis in HID on-shore to looking more to the audit and review end of management systems to make sure people are looking at the right things.’
• Communicating H&S information is increasingly being done in a way that emphasises the relation of H&S to the objectives of business management, as opposed to a separate process. Also in this information the links and relationship between HSE and other H&S stakeholders and OGDs is being made more clearly. Potential for information to address the practical difficulties faced by duty holders

8. Change in Regulator’s Approach for the Future

• An increasing focus on the concept of health as opposed to safety – ‘We haven’t been used to talking about health as an organisation, it is a new concept to us…’
• Requirement for HSE in the future to produce information that is geared more directly to the informational requirements of the different audiences in the different sectors, and the variety of models they use in relation to understanding H&S management.
• Within high hazard industries there is a focus on which areas of the overall SMS are most important for controlling the main risks within the process safety management system ‘to prevent the big things from happening.’ Potential to expand this approach to consider the elements of the way a business is run that influence safety issues.
• Potential to emphasise H&S management more effectively through other channels, e.g. making link with environmental concerns.

9. Opinions of HSG 65

• HSG65 aimed at the health and safety professional, in organisations with defined H&S management structures, as opposed to small businesses without H&S policies or systems.
• Organisations (management and workforce) find HSG65 hard to understand – ‘Managers find it difficult because they have got their plan, do, review, cycle and then the workforce don’t see that it has anything to say to them. It is a management owned type process.’ – ‘HSG 65 and a lot of the information we were giving out in HSE was really not useful to people at all.’
• HSG65 provides a useful framework for inspectors. An internal document that many people in HSE are very familiar with. HSG65 provides a reference point and common terminology for communicating with inspectors – ‘We have almost invested a language for ourselves…’ HSG48 perceived as more easily communicable to duty holders than HSG65.
• HSG65 does not address the interpersonal aspects of how a duty holder is organised, such as relationships between the workforce and management and the issue of trust –
‘The level of trust in the management. There is no trust in HSG 65 at all and whether you believe the management or not is extremely important as to whether you comply with proceedings or not.’

- The breadth of duty holders that HSG65 applies to regarded as a strength and a weakness.
- Potential to produce different versions of HSG65, according to the information needs of different audiences, especially large and small organisations. – ‘…HSG65 tries to do a number of things and ends up not doing any of them quite well enough. I think the alternative of being a suite of documents that cover different levels and different needs. What ICI needs is not the same as what a barbershop needs.’
- Acceptance that basic principles of HSG65 apply to all, especially risk based approach, e.g. identifying risks, and controlling risks.
- Some argument over the logical priority of the POPMAR model. Some feeling that the audit and review feedback loop is the element of HSG65 that has the greatest influence on H&S management.

7.5 FOCUS GROUP 5 – LOCAL AUTHORITY STAFF (SALFORD AM)

1. Understanding of Health & Safety Management/SMS

- Smaller companies do not understand the systemic approach to SMS, but can cherry pick from HSG65.
- Language of HSG65 is alien to small firms, as is the concept of a cohesive system for managing H&S, but logical approach is evident in their thinking and organisation of work. Compares to perception that large, well-resourced companies conceptualise SMS in a way that is closer to HSE, than small companies.
- Perception that resources are not used in training and educating at local level about the SMS by large duty holders – ‘At a local level from head office those systems are very much just sent out and get on with it. There’s no time or input or resources allocated to the local office who are implementing those and getting their head round what should be included in those systems.’
- LAs commitment to visiting organisations face to face, underpinned by the range of their responsibility, and so there is a requirement to gain knowledge and understanding of a wide range of duty holders – ‘I’m going to go and have a look at how the velodrome operates – well why do you need to go in the evening? Well there’s no point going during the day; I don’t know what happens when they have a cycle race, when they have an event meeting. You’ve got to go and see that and that’s the only way you gain your experience.’ – ‘…I know when you talk to anyone from HSE they’re absolutely gob smacked at the range of issues that we know about, that we get involved in, the degree of skill that we demonstrate, when really all they’re doing is working in one of the several strands of activity that we’re working in and expected to work across.’

2. Discussing H&S Management with Duty Holders

- Perception of standard duty holder’s response being passive, and waiting to be told what to do by the regulator. Lack of active involvement in the OHS framework. – ‘…the idea that the kind of standard duty holder response has been, there is no point in me taking any notice unless he will write to me.’
• Problem of SMS becoming too big, so as to prevent anyone having an overview and understanding of the system – ‘The systems are so large that nobody knows how to operate them. You’ve got four or five A4 forms, quite thick, where do you start? No one seems to know their way around the systems. So sometimes the actual management systems become bigger than the actual companies can deal with.’ This can lead to duty holders relying on a system for documenting compliance, instead of actively engaging with the issue of controlling risk. – ‘I think it can become too reactive, where you’ve got the manager and the local branch and he knows that there is a system there and relies on it when he has to, but not a proactive involvement in that system. So doesn’t actively promote H&S or management within his branch…’

• Advisory approach of inspector (interpreting legislation to specific cases) as part of a wider approach by the regulator to raise the educational level of duty holders, especially promoting more effectively the OHS information that is available.

• LAs expressed a lack of faith in the system itself, emphasising the need for duty holders to take personal responsibility for managing risk in implementing the system, rather than relying on the system’s documentary compliance – ‘I must admit when you get to twelve volumes of procedures, I tend to say, no, what would you do, what is your responsibility? If you went out there now and found a problem, what would you do? Oh, I’d tell them off. That’s what we’ve got to start to nurture, to take on that personal responsibility.’

• LAs expressed the benefit of presenting duty holders with OHS information in manageable chunks, so as not to overburden the duty holder with information. – ‘If there are areas that are missing or considerations that they haven’t made that’s when, as you say, it’s the need to know then, rather than give them everything in one fell swoop, you’re not going to get anywhere.’

• LA inspectors try to ground their OHS explanations in the direct experience of duty holders and their peers, rather than in more abstract and general ways – ‘I think that’s where you do use an example because they can actually get a grip on that. It’s something tangible, they know that person or they know that issue happened, so they can see what’s going to happen in reality when you explain how you could have avoided it or what you could have done to remove the risk or whatever is appropriate to that circumstance.’

• There is also a feeling that this depth of local knowledge is not sufficiently acknowledged within LA operational and assessment procedures – ‘That kind of local knowledge and local approach, isn’t necessarily appreciated in terms of the feedback that you get, if you say you know that company and know how it’s going to deal with it. I think that’s lost somewhere along the way in terms of reporting.’

• An awareness of the influence on the wider community through their actions on duty holders is a consideration in LAs’ decision making regarding duty holders – ‘That’s why you quite often struggle to help a company because of its employment to the community and the services it’s providing.’

• The wide range of premises that the LAs have to deal with is felt to prevent the appropriacy of generic approaches to SMS, or presenting SMS information in a generic way. The local/contextual knowledge the inspector has of the duty holder therefore becomes more important in allowing the inspector to present and tailor OHS information in a manner that is appropriate for individual duty holders – ‘…you can’t go into lots of detail and specifics on the policies and procedures side of things, it has got to be more practical and what’s going to actually relate to them. I think that’s a big influence in terms of the range of premises we deal with; you can’t just have a one-size fits all approach to them.’

• A barrier that appears to be increasingly prevalent is the lack of worker representation, which makes it difficult for the LA inspector to communicate directly with the workers.
This is perceived as important as it represents a bottom up approach to dealing with an organisation to influence the management which is becoming less viable – ‘It is, it’s peer pressure by them, so they are a crucial weapon in our armoury, but I think for us it’s very difficult to try and engage with them as we would want to because of this lack of they just don’t happen.’

LA as gatekeeper of information for duty holder. Importance of presenting information to duty holders, explaining the relevance of it, rather than just giving a leaflet. Duty holders will look for elements of generic messages that do not apply to them in order to dismiss the message. Duty holders filter out messages according to their irrelevance, so role of regulator to explain the relevance is heightened – ‘…some of those generic messages can, if you’re not careful, you can lose them, because they will look at that one item and dismiss the rest because they can’t see how it applies to them.’ Perception that a lot of the information from HSE is not geared for the range of organisations for which LAs are responsible for.

3. Assessing Effectiveness of H&S Management

- Potential for generic SMS to fail to account for a specific/local context of an organisation. – ‘Yes, but what tends to happen is it falls down at the local level because the generic systems don’t always take account of that local focus that’s needed to ensure that the peculiarity of that particular location is taken into account.’
- LAs less comfortable dealing with health issues than safety ones. Safety felt to be more immediate/tangible and easier to define. Also more within the duty holder’s realm of control – ‘I think some areas, say dermatitis and things like that, it’s relatively simple. You can go into any hairdressers and the person whose probably got the dermatitis is the junior whose constantly doing the hair washing, that’s almost a given. You can look at that and say that’s an issue, but when you come into some of the other areas it does become far more difficult.’ Exacerbated by perception of lack of OH provision – ‘I think the support within the occupational health network is very lacking and that then feeds this perception that if you want some advice, where can you go to? So you can’t necessarily get the advice, so how can you advise other people.’
- The concept of compliance for LAs is not simply a duty holder conforming to a legislative requirement at a certain point in time, but it is linked to the idea of a sustained change in OHS performance – ‘If we wanted to get them to implement a management system, say a transport management system, what we’ve found recently is that you can’t just serve a notice and then when they comply they comply, if it just fits the bill for that time, because say a transport management system is long term, it involves everyone and it’s to control a serious risk of personal injury.’ This implies there is a responsibility for the regulator to help the duty holder to improve their capability to comply – ‘It’s that sustained compliance isn’t it? You’ve got to look at what interventions do you need to do, to ensure that if a notice has been served or when you’ve left, that whatever it is you’ve asked them to do they do, but that they continue to do that.’
- The idea of sustained compliance also has a benefit for the resources of the duty holder, as they are not repeating the same process with the duty holder whenever an inspection takes place. – ‘…we go two years, three years later, we go back and we know its back down there again. I think there’s nothing more demoralising for field officers if that is the case because you’re banging your head on the wall, aren’t you?’
- LAs presented evidence that the rise in insurance premiums could lead to under reporting of accidents, as duty holders could be motivated to avoid notifying the insurance companies of claims, as this would lead to a rise in their premiums. Instead, there was potential for the company to provide compensation to the injured worker in
secret as this was more cost effective. This has implications for using accident statistics as accurate measures of OHS performance. ‘I think sometimes there are these pressures not to have to declare it in your company report, where you’re dealing with the large companies…we can do them round the back door and we don’t have to make it public, and if our excess is £100,000 well what’s the point, we might as well give you the pay off separately.’

4. Variation in Approaches Across Duty Holders

- LAs categorise duty holders according to the HELA risk rating, which determines the length of time between inspections.
- LAs use a variety of approaches, sometimes based on surveys of local resident’s needs:
  - Sector based approach has benefits of more efficient use of resources due to economies of scale, especially in agreeing consistency in terms of interpreting legislation within the sector to be investigated.
  - Priority planning also allowed consistency, and gave officers the chance to broaden their knowledge of certain OHS issues, which allowed them to inform the duty holder more effectively – ‘That way, we’ve found people have said – tell us what we need to do – and then you can tell them a little bit more if you’re looking at this local focus.’ This more holistic approach can involve EHOs having to pass judgement on a wider area, and include issues where they are less knowledgeable.
- Approach by LAs to duty holders partly determined by the size of the LA, and the number of duty holders they are responsible for. Evidence that the smaller LAs claim to have a more in depth local knowledge of duty holders – ‘…we’re a smaller authority with regard to the cities, we get to know our companies very well. We’ve been running the specialist team in ______ for eight plus years now. We’ve got to know them to a point were you walk in – “Oh, is it a year already since you were last here” – but we’ve got that kind of business relationship…. We are fortunate, we have got a good database, we are confident we know where the majority of our businesses are.’
- The small size of an LA can also have negative implications for providing, or having access to suitable training courses for duty holders – ‘…I think that as a city authority we have some major benefits that other people don’t have.’
- Also the categorisation of a LA (e.g. objective one Status) in relation to access to funding impacts upon their resources, and so in part determines the range of approaches to duty holders that are possible. The ability to identify and attract funding becomes a valuable skill. Another consideration is whether there is a dedicated H&S team ‘…some local authorities that have to pay poor relations next to the food team and H&S is added on and they mention a few things when they do the food inspection.’
- Perception of variance across LAs regarding the overall strategy for enforcement. Some LAs very prescriptive – ‘the domino system’. Some criticism of this approach in that it can be resource intensive and takes away the discretion of the individual inspector to mediate the legislative framework to the individual case – ‘I know there are other local authorities who definitely run systems whereby, these are the outcomes that are expected, if there is a contravention, it’s a notice, if there are a series of contraventions, it’s a prosecution and I call it the domino system, that it trips the dominos to fall, irrespective of whether that is best for that business and best for that particular case.’
- LAs’ decision to adopt an advisory approach are mediated by their trust of the duty holder, their perception of the duty holder’s attitude to OHS, the duty holder’s past performance, and their confidence that the duty holder will implement the required actions. The relationship they have with the duty holder provides contextual information to inform their decisions – ‘I know from their involvement in the campaign and I know
the management, how they work, and from what they've put on the accident report, I know there’s no need for me to go out and investigate those accidents.’

- LAs sensitive to the motivations for small companies, e.g. ensuring economic survival. Evidence of a strong commitment to persuading the duty holder to improve their OHS performance, instead of enforcing compliance. Sense of failure if the regulator has to use an enforcement approach – ‘But you know as that area manager has walked out, his concerns are more about how much he’s going to get returned that week, as to whether or not he does a risk assessment and on balance we lost on that. We’ve got him there because we’ve taken enforcement action.’ – ‘My view in the past has been, if we have to prosecute someone, in some ways I thought we’d failed as officers, because we haven’t been able to persuade them to come round to the right way of thinking.’

- Perception among LAs that smaller duty holders prefer a prescriptive approach – ‘I think with the smaller businesses it’s ‘tell me what I need to do’.’

- Perception among LAs that large companies are reluctant to accept the regulator’s claims if this could detract from the public image of the duty holder – ‘...where things are hidden because they don’t want them to know, because they want to present this positive face. We all know certain multiples, that every time you look to take enforcement action, the first thing they do is challenge you and say that they are going to appeal and put the pressure on you as an individual officer, to try and get you to back down...’

5. Intervention Approaches

- With LAs a lot of emphasis was placed on their role to develop relationships with the duty holder as a means of attaining sustained compliance, and the importance of this role is not always emphasised within the legislative framework – ‘It’s all about building relationships, and that isn’t taking into account a lot of H&S, certainly not on a national picture... But it’s always on a personal level, people forget that, we’re not just an enforcing officer, you’re a person as well, and you have to relate to other people.’

- This relationship is developed within the individual inspector’s role as a regulator. The Rubicon for the advisory approach is the consideration of the risk being effectively controlled by the duty holder. Though taking an enforcement approach does not preclude continuing to develop the advisory approach. The flexibility to alternate between the enforcement and advisory continuum is mediated through the personal relationship between the regulator and duty holder – ‘...I never lose sight of that we are regulators and we are enforcement officers and on occasions you may have that conversation a month before and you’ve still got nowhere. Its at that point you think, no, this is notice and this is the reason I am serving the notice, we’ve seen no improvement, there’s a real risk here and then we’ll move it on from there. But by doing that you’re not necessarily losing the chance of building up that relationship...’

- Initial interventions with duty holders focus on control of risk. The experience of LA inspectors in hazard spotting and eliminating risk is used to present the duty holder with the simplest way of managing the risk and eliminating extraneous requirements – ‘If you keep it simple for them they can hang on to it. It’s where you ask them to do a COSHH Assessment, without explaining how simple this would be. It’s the same with manual handling, tell them how to get rid of all the difficult manual handling jobs and then they’re left with the simple ones... Really its inspectors bringing their experience and delivering a how to approach, rather than a prescriptive approach.’

- A number of external influences have provided levers to reinforce the LAs’ attempts to promote OHS compliance among duty holders: management of the supply chain, and the influence of EHOs in gaining a reduction in insurance premiums for duty holders because of their compliance.
• LAs involved in more general OHS awareness raising work as well, the impact of which is difficult to assess, and can be overlooked if their role is more tightly defined in terms of enforcement – ‘We also link in with the chamber; we do the partnership working with other interest groups, care homes. So we do a lot of other work other than number crunching and prosecutions…’

6. Effectiveness of Different Approaches

• An effective method of intervention (for LA) is to target the culture, as this encourages the duty holder to take responsibility for OHS, as they become more proactive the regulator takes a less central role in influencing the duty holder – ‘…you try and develop the culture and get them to engage in H&S that’s how you win over. They start doing the H&S and you stop doing it…’ This is recognised as representing an idealised position, and that enforcement approaches are the only way to deal with some duty holders.

• Some consensus that formal cautions are more conducive to encouraging sustained compliance than notices or prosecutions, as it makes an individual personally responsible for the compliance – ‘He signed it and then we went back a number of months later and the management systems with regard to the handling of goods, all our recommendations had been fully implemented and that gentlemen was saying – “I know they’re doing it right because I keep checking” – because he’d put his name to the piece of paper, that was biggest thing. It wasn’t as a representative of the company or signing the company name, but his own name and that makes a difference, that personal responsibility.’ The decision to use a formal caution instead of a prosecution is taken on balance by the LA enforcing officer according to cost considerations, and a judgement of the likelihood of the action being effective in comparison with other enforcement procedures, e.g. resulting in a sustained improvement of OHS performance.

• Barriers to enforcement action were perceived as lack of access to competent legal advice (especially for the smaller more rural based LAs), and the concern that if a prosecution is not successful then that constitutes a mismanagement/waste of resources. – ‘I think one of the biggest problems I have is the amount of time it takes that resource, out of going out and doing more, that’s the biggest difficulty I have, is the amount of time it will take an officer to go through a complex investigation or to go through putting the prosecution together.’ Perception that certain prosecutions are easier to organise (e.g. food) as they require less reliance on a range of more complex sources of evidence.

• Little criticism regarding legislation failing to provide adequate support for LA’s actions with the duty holder – ‘There’s enough scope to go off. We’ve always said general duties are so general that you can usually bolt anything within general duties and if there are regulations to deal with the specifics…’

• Ways of measuring effectiveness of intervention dependent on ‘number crunching’ (perception of purpose to reinforce/justify corporate strategy) which does not capture the impact of an inspection, and limits the scope and potential of the inspection to promote lasting change – ‘…we want to move away from this and do more quality inspections and have a real meaningful reason for going into a place really. So we’re going to use the new partnership working and everything that’s coming round as a sort of lever to try and move away from the number crunching.’

• The idea of developing the culture is linked to the way a regulator can teach the duty holder about OHS. Instead of the duty holder being passively told what to do, the regulator can take a more discovery based approach to learning, to encourage the duty holder to engage with the issues more proactively- ‘…you try and get the manager involved in what you’re inspecting, so – this doesn’t look right, what do you think?’
One method of intervention that was deemed an effective use of resources was ‘targeted prosecutions’, as an effective way of emphasising the results of non-compliance, and thus the importance of compliance – ‘Where you can take a case and get good publicity, which is a difficulty because you’re at the whim of whatever is flavour of the day in your local press, or whatever, but it’s to try and work with the press offices to get better publicity so that it then sends out, it’s like putting the pebble in the pond and watching the ripples go out and hopefully the ripples then go out...’

Perception that at corporate level successful enforcement is being increasingly measured by number of prosecutions. This links to the importance of LAs in developing relationships with duty holders, and part of developing a relationship with a duty holder is showing that the regulations are being applied in a reasonable way. There is a perception that the EMM presents a barrier in demonstrating this reasonableness – ‘We’re lucky sometimes, with not having a push with regard to let’s get more prosecutions, we’ve not got that, but it is a delicate balance, and I don’t want to see a lot of hard work that’s been done over the last few years go out the window because some are using this tool that’s gearing us the other way.’

There are also perceived benefits to the EMM as it also provides a useful contextual framework to support the decision making process in terms of consistency and transparency.

7. How Has Regulator’s Approach Changed?

- Increasing amount of work undertaken out of office hours by LAs, to reflect the way the organisation of work is changing in society. This is also influenced by the cultural shift in councils to operate along more commercial/business lines.
- Agenda of LA EHOs linked to wider corporate requirements/strategies of the council, often informed by the needs of the local population, e.g. if the LA is a deprived area and regeneration is a corporate aim, then the enforcement officers will try to link their work to this wider agenda. Therefore there can be considerable variation across LAs regarding their wider corporate agendas and strategies (e.g. trying to increase the CPA rating to secure greater financial freedom), within which the H&S officers are situated, which influences their roles and responsibilities.
- Revitalising has provided a more manageable focus/target for LAs and therefore duty holders, but sometimes at the expense of limiting the scope of the regulator’s role.
- Perception that LAs are being encouraged to take a more enforcement based approach because of the EMM, that restricts LAs in using their discretion to the extent they adopt an advisory approach – ‘If we’d gone in and said – no, we’re going to prosecute you because you were told this six months ago and you’ve not done anything – I personally don’t feel that would have been of benefit for that small company, and that’s where the EMM is a little bit punitive, it does tend to push – its that one strike and you’re out feel...’

8. Change in Regulator’s Approach for the Future

- Regulatory system shifting from prescriptive approach (e.g. inspector listing deficiencies) to encouraging duty holder to take a less passive role – ‘...what that means for inspectors is, you don’t write 4 or 5 page letters telling people what they should do, you say, I have found one or two examples where you are not doing things right, if it is serious enough, you will get a notice, but the thing you have got to focus in on is why you are not getting it right...’
- Need for LAs to look at the risk continuum from low to high risk duty holders, and prioritise interventions based on this continuum, so interventions have the overall...
greatest impact across the range of duty holders, as opposed to rote inspections of individual duty holders. Deal with duty holders at lower risk level more reactively when incidents occur.

9. Opinions of HSG 65

- LA perception that HSG65 is more suitable for larger companies with dedicated management structures. For smaller companies HSG65 needs to be more practically based, and the format changed to allow it to be communicated more effectively, e.g. made as a hub document and starting point, which is sector specific and references other key documents.
1. Understanding of Health & Safety Management/SMS

- Safety management as a practical process – ‘...the process that a business goes through to identify what its hazards are and how it actually manages the risks in a practical way...’
- When considering the risk profile of a company especially the numbers effected, consideration should not just be given to the number of employees, but the number of people who come in contact with the premises, e.g. retail and leisure oriented organisations.
- There was not a sense of a fixed understanding of SMS by the LAs, but rather their understanding was constantly developing, and contingent upon their direct experience with duty holders – ‘...Your approach will change as you come across things you may not have experienced before, and they point you in a slightly different direction and make you reflect on what you are doing.’
- LAs seek advice from other LAs over problem areas (e.g. at County group meetings), rather than formally disseminating examples of good practice. Difficulties in informal access to information can be exacerbated for smaller LAs – ‘I would imagine with very small authorities, it could be extremely difficult. If you are the guy who is doing Health and Safety, you might well be there on your own, and you might actually then be quite isolated from the rest of the county group.’

2. Discussing H&S Management with Duty Holders

- Problematic reaching small companies, especially self-employed. Methods used include: newsletters, mail shots, business advice packs, self assessment questionnaires, websites, training courses.
- Often expectation by duty holder that their H&S needs are addressed by others, e.g. the assumption of personnel’s H&S competence through professional training, and the prescriptive approach to H&S of an inspector telling them what to do – ‘...they want to know if they are doing it right or not, and if they are not doing it right, then want some advice...’
- Official guidance useful for providing lever as to why something should be done – ‘...and it’s handy to have something you can wave under their noses and say ‘don’t argue with me it’s written down here’ and that’s usually a good enough reason for them to do it...’
- The participants were aware of selecting information, and of only presenting information to the duty holder which was commensurate with their OHS understanding and capability – ‘You would only really quote things like that along with other standards, and even academic works and contract research etc if you felt the person at the other end could actually appreciate them.’
- Approach taken by inspector to duty holder partly determined by the size of the duty holder, and how the inspector judges their OHS knowledge and capability – ‘...you know very quickly what your approach to get into assess them will be, whether you can actually talk to them, or it’s actually going to be a waste of time because you’re going to have to do the spoon feeding approach...because it very obviously depends on your reaction to that business, it’s very much a personal thing very often.’
- An important distinction was the presence/absence of formal documented safety management systems. Other distinctions included what the inspector perceived the duty holder as being capable/not capable of doing. This judgement of capability in relation to
the severity of the apparent risks, determined the amount of OHS information given to
the company, and the scheduling of any actions arising from the inspection - ‘…you
have got to try and concentrate on one or two areas at a time…’ - ‘…we tended to
create a time-table for them by addressing the most serious risk first.’

- Another distinction was made between duty holders who are perceived as genuine in the
desire to improve their OHS performance, and those who aim for the minimum
legislative compliance – ‘…they are going to try to pay lip service to your requests
and…try to get away with not doing anything more just to keep you happy.’

- Establishing relations with a duty holder's safety staff was regarded as important – 'I
think we always try to keep safety professionals, if they do have one, very closely
involved.' The possibility of achieving this is seen as rare, due to the lack of worker
representatives and safety representatives within most smaller companies for inspectors
to communicate with – ‘…the vast, vast, vast majority of the premises that we have to
inspect, don’t have any safety reps. The staff do as they are told, or they are sacked,
basically...So although we would love to have a relationship with Health and Safety
reps, its very rare that we get that.’

- The LA inspectors knowledge and information is based on in-house training courses,
and individual qualifications such as NEBOSH, BSC, and Masters degrees.

- Problems with influencing a company can be exacerbated with larger organisations
when a local duty holder is controlled by a central office that is outside the geographical
remit of the inspector.

3. Assessing Effectiveness of H&S Management

- Little evidence of formal processes for assessing SMS themselves, beyond some use of
tick lists and aide memoirs. Assessment of SMS often based on impressions of
individual inspectors, particularly of negative capabilities – ‘…it's just a judgement that
you make, when you do an inspection you talk to them, you just pick up...more often
than not it’s well this guy doesn’t have any sense of health & safety, and he’s just
getting by on the back of doing the right thing at the right time. But no formal
assessment as such, no.’

- Although the judgement and experience of the individual inspector was emphasised in
assessing H&S management, formal checks and balances are in place across LAs to
ensure that prosecutions are consistent and conform to corporate enforcement policies.

- The question of assessing SMS, lead to the questioning of how regulators can make
judgements of the quality of individual elements of the management system, such as the
safety policy.

- More formal approaches to assessing individual risks within the organisation, especially
if they are subject to complex requirements such as cooling towers or suspended access
equipment.

- Evidence of a variety practical signs of H&S management are sought during inspection
(e.g. risks are controlled), as often absence of any documented approach. An absence of
a documented system was not taken as absence of a system – ‘…on the inspection
you’re looking for, looking at accident statistics, the accident book, obvious signs, or
visible signs, if you know risks are not being controlled, interviewing people, there are
many facets, it's not just one particular thing I don't think.’

- Lack of outcome measures for assessing regulator’s effectiveness, though use of input
measures reported, such as number of inspections, and accidents visited within a certain
timescale. The reduction in the number of duty holders in the higher categories of the
HELA risk rating was also used as a measure of the success of interventions. Some
comparison of duty holder’s competency score for safety between inspections used as a
partial measure of change over time. Some statistical analysis of ratings of duty holders
on a large scale over time. Some data being collected on whether duty holders have put control measures in place by the time of notifying the authority, following an accident. Effective measures of outcomes considered to be a reduction in accident and injury figures, and OH issues. Some outcome measures related to specific risks such as lifting equipment, e.g. were lifts taken out of service immediately, following an unsuccessful inspection.

- Time between inspections assessing effectiveness can be complicated as OHS performance of duty holder can be influenced by many variables, e.g. staff leaving, mergers.

4. Variation in Approaches Across Duty Holders

- The participants emphasised that duty holders were very concerned that demands made on them by the regulator should not create an ‘uneven playing field’ between them and their competitors. Requests to comply with legislation were associated with costs, which if not also undertaken by their competitors, could leave the duty holder disadvantaged. So great importance was felt to be placed by duty holders on the regulators’ consistency in approach between individual companies within the same industrial sector – ‘…the most important thing they wanted to be absolutely certain that their main competitor down the road was being forced to do exactly the same thing, and that we weren’t saying one thing in one place and another thing in another.’ This consistency allows the LA to be perceived as reasonable and equitable in its judgements by the duty holder.

- Judgements regarding the number of people who can be affected by a duty holder’s risk are not just limited to the number of employees, but the number of people who access the site – ‘You could have a small warehouse where there might be 20 staff, but it has a throughput...of 10,000 people a day, so they’re the ones at risk as well, so that’s what governs the approach rather than just simply it’s a big organisation they should know better.’

- It was felt that duty holders who were already operating within a statutory framework were more aware of the legal obligations for H&S, than duty holders who were not operating within such a framework. A similar observation was made for duty holders that the LAs license for the purpose of public entertainment.

5. Intervention Approaches

- The general approach to duty holders that arose from the discussion was of inspectors advising duty holders on the actions to take, unless there was a serious breach, and then an enforcement approach was taken. Within the advisory approach the duty holders were given a certain time to implement the inspector’s advice. If this was not implemented within the set time frame, then a more enforcement-based approach was considered.

- Discussion focused on the variety of methods for approaching the duty holder, as opposed to a single method, the overarching objective being control based, e.g. for the duty holder to control their principle risks – ‘...use every possible tool in the tool box, you try one if it doesn’t work you pull another one out, you work to advise the information all the way through to prosecution if necessary...’

- The criteria for taking the enforcement approach are dependent on the level of risk, and the inspector’s perception of the responsible person’s attitude to controlling the risk. The track record of the company is also used to supplement this judgement – ‘...there’s a combination of what is the hazard risk of the item you are considering the Notice for,'
what is the attitude of the responsible person, and have you got a good attitude from them…’

• There are instances where Notices are not used solely to enforce compliance, but act as proof of an inspector undertaking their legal responsibilities – ‘So you do like to cover your back more than to try and force them into doing something, it is only again in exceptional cases where the risk is very high, very serious, or you’ve got no confidence in their ability to react to it.’

• There was a feeling that larger companies would also be more likely to contest a notice, rather than address the failing at which the notice was directed, as accepting the notice would be admitting culpability which could have a negative impact on their public image – ‘…larger organisations would rather spend money trying to pick fault with the notice than do the work that it contains. And try and get out of the stigma of having a notice.’ Again there is a perception that serving a notice can be counter productive, and that the problem could have been dealt with more effectively in a different way, especially by building a relationship with the person responsible for H&S at the local level – ‘And if you write to their local Health and Safety responsible person, rather than serving the notice, you know you are going to get a better effect anyway…You are wasting your time a lot of the time serving notices because all their efforts are going to go into fighting into it. All your efforts are going to be dedicated to supporting it and the problem could have been sorted out weeks before, if you weren’t in this sort of fight with them.’ Smaller companies are regarded as less likely to contest Notices as they do not have the resources to do so.

• The LAs’ wider remit for environmental health influences their approach to H&S, especially to dealing with the duty holder in a reasoned way – ‘…from the word go an Environmental Health Officer is taught to be what is the reasonable approach in this situation. How can you get the end result that you want through advice, co-operation and negotiation, not thou shalt do it this way, and every aspect of environment health work is that, and you can’t help but bring it over into health & safety…’

• Variety of OH interventions, but limited uptake:
  o OH Advisory Project – referral system for GPs with patients suffering from illness related to their work.
  o OH Help line – for ill health related to work. DSE issues are most common enquiry.

• Passive versus proactive approaches to safety management taken by the duty holder. The participants spoke of aiming to get the duty holders to move from a passive stance (e.g. undertaking H&S processes by rote, as directed by the regulator), to the proactive stance (e.g. the understanding and application of the principles of H&S management) – ‘What businesses actually want is somebody to come in and say you need to do this, this, this and this and that’s all they really want, nice and specific and they can think right I’ve done those I’m okay now. It’s getting them to actually change their thinking beyond that isn’t it which is the real key to appreciate some of the underlying principles that are going on.’

6. Effectiveness of Different Approaches

• Regular visits to a duty holder were felt to be important in developing sustained compliance. The capability of the LAs to visit a company is constrained by resources – ‘…you are not going to go back to them for 4 or 5 years anyway at best. How do you achieve sustained compliance? It has to be through regular visits…’

• Resources also influence the nature of the relationship that the LA can build with the duty holder, which by necessity dictates a more reactive approach to duty holders with a lower risk rating – ‘The only relationship is that they see you every 2/3/4 years,
whenever it is their turn. You don’t maintain a relationship in-between, unless there’s some specific reason for it.’

- Historically the LAs and the HSE were seen as having different approaches to H&S management, the LAs being more advisory based, and the HSE more focused on prosecutions. The approaches are regarded as complementary, and both potentially leading to effective results – ‘...the impression I have is that HSE Inspectors have a more prescriptive way of dealing with things, and I don’t think that is necessarily appreciated by that we do get results, but in a different way.’

- There was felt to be a need to explore the effectiveness of these two approaches, and to gain a more systematic evidence base with which to discriminate their use – ‘...I think it needs more support, or we need to have a better idea of why we don’t do it that way and whether it is actually as effective, or perhaps it might be more effective I don’t know than the way HSE do it...’

- The Enforcement Management Model (EMM) was felt to generate Notices against a duty holder indiscriminately, irrespective of whether a notice was regarded by the LA inspector as being the most effective approach – ‘Notices as well are not necessarily the best way of achieving anything ...’ There is the view that more scope exists for using notices with larger duty holders, with formal management structures, where the senior management are involved in corporate governance. This could also be related to individual inspector’s inclination to be more supportive of smaller businesses – ‘It’s the small guy who you have some sympathy with I think, not ABC Plc down the road.’

- The change that takes place within large duty holders (e.g. restructuring, mergers), was seen as a barrier to developing relationships, and thus to encouraging the duty holder to achieve sustained compliance – ‘That re-structure fails to take into account Safety Management...their Safety policy is always out of date. So I don’t think you can make the assumption that large organisations even if you get them to a certain level, sustain any level of improvement.’ The participants were not alerted of duty holder’s restructuring so they could schedule inspections – ‘You would notice when it went wrong. That’s when you look back and find there has been a re-structure.’

7. How Has Regulator’s Approach Changed?

- The Enforcement Management Model (EMM) was regarded as too inflexible and prescribed for the Local Authorities, and would reduce the scope for them to help small businesses – ‘...(EMM) is steering you down to a hardening of attitude which is not going to be necessarily be much help to the small businesses...It is not the way the Local Authorities traditionally do it, and I think there is certainly a feeling that we are being somewhat railroaded into that approach, and we prefer to deal with our local businesses in our way, and that a national approach be it that we are in the HSE’s or not, is not what is called for.’

- The LAs’ approach has become more focused on risk, and the extent it is controlled by the duty holder.

- Disagreement over the influence of the Revitalising agenda. Some felt there had been no impact to their working practices, while others felt it had allowed them to more fully justify their approach.

8. Change in Regulator’s Approach for the Future

- Some criticism was raised regarding the future HSE strategy of separating the enforcement and advisory roles, especially from the stand point of small businesses – ‘...small businesses don’t want 2 people turning up to do 2 complementary jobs. They realise that the Inspector is the necessary evil...’
• Perception that regulators will have to focus increasingly on health issues due to the rise in consumer and leisure services. This is considered problematic as health is regarded as a nebulous concept, and less easily defined than safety, and also that LA inspectors lack sufficient expertise in this area – ‘I think that raises a whole host of problems then because Safety is quite easy to see, to identify and to identify solutions for…and serve notices on, where as Health is, “What the hell do we do with this, and what are we actually looking at?”’

• Historically it was felt that HSE had not previously engaged in a partnership with the LAs. There was criticism of HSE’s commitment to such a partnership, and acknowledgement that the development of a more equitable partnership would need to be one of the future changes to the ways of working.

• The regional characteristics of LAs were not taken into account sufficiently by national initiatives. It was felt that stronger relationships would need to develop between LAs that shared similar characteristics in terms of the risk profiles of their duty holders.

• Interventions linked to wider health issues for the LA (e.g. mental health, anti-smoking campaigns). Development of partnerships with organisations within the LA, e.g. PCTs, seen as a direction the LAs will be working in the future.

9. Opinions of HSG 65

• Perception that HSG65 does not sufficiently address the issue of managing contractors. Managing contractors assumes H&S competency of the client organisation, this can be problematic – ‘...they have enough problems dealing with their own health & safety, and even understanding what they’re supposed to be doing, particularly the very small businesses, never mind dealing with contractors…’

7.7 FOCUS GROUP 7 – LOCAL AUTHORITY STAFF (SCOTLAND)

1. Understanding of Health & Safety Management/SMS

• How they implement their health and safety policy (e.g. competence, training implementation of the policy and auditing procedures).

• Risk management means having the controls in place

• If they’re controlling the risks then you can make the assumption that the management system is working.

• Health and safety inspection approach learned from training and learning on the job - shadowing colleagues, learning by experience, discussing cases at team meetings, supervision. If officers aren’t finding the kind of things you expect them to find maybe go out with them and make sure they are asking the right questions.

• Model (for larger premises) – HSG65

• Model for smaller premises - control of hazards

• Sources of information

  o websites; HSE - ‘fill in blanks’ policy document for small businesses and HSG65 for larger businesses

  o 32 authorities in Scotland maintain good communication links via a Liaison Group and hearing about what is going on in other Local Authorities

  o ‘Pinch ideas from other people, share information across the thirty-two [Local Authorities] so you can find out pretty quickly whether someone has developed some guidance rather than developing your own’

2. Discussing H&S Management with Duty Holders

• Smaller companies
- Want them to understand about hazards to begin with rather than principles of health and safety management
- Looking at controls in place
- Don’t have time to get involved and find out about risk management
- Want prescription/checklist/being told what’s is required
- Inspectors use a checklist

- Larger companies
  - HSG65
  - British Standards
  - They work with what the businesses are working to and if they haven’t got a system would suggest HSG65.
  - They need to do an audit to ensure that the system is working to control risks
  - Establish a rapport with the safety officer
  - Suggest a lead authority partnership

- Focus on priority topic areas and other significant hazards such as gas, electricity, and asbestos.
- Overall they are probably more control than system orientated.
- ‘Although we are at the end of the day the enforcers, rather than wading straight in saying ’here’s an improvement notice’ we say this is what you need to do and give them a chance to work towards it. Fair enough next time round give them an improvement notice if they’ve ignored you. But we try to work with the small businesses.’
- They try to help people understand their responsibilities rather than just writing something because its what the inspector tells them to do.
- Companies will do what they have to, to comply with legislation, not necessarily to fit with HSG 65 – therefore there is a lot of variation. As long as inspectors know how to audit this is not a problem.

3. Assessing Effectiveness of H&S Management
- Depending on the size of company talk to people from senior management to shopfloor to establish what they are doing.
- Observing what’s going on.
- ‘What you see, the housekeeping talking to the manager and if he’s aware of the company’s own systems and can show you things they’ve done, talking to staff, see what training they are given.’
- Asking about auditing and reviewing and ‘asking one or two questions along those lines can catch those who are just paying lip service, can I see your last review and what action came up as a result of it?’
- Housekeeping is regarded as an important indicator; if they’re not looking after the place chances are they’re not looking after health and safety.
- For small businesses it’s whether they have a policy and how they implement it.
- ‘Evidence based inspection to find what they are doing and that reflects the competence. The system might be brilliant on paper but if when going round you’re finding numerous occasions when it’s not being followed. Most of this is evidence based, what you see on inspection. To see that the documentation is either a piece of paper to keep you happy or it’s a working document.’
- Lack of health and safety management competence is evident in premises that have simply reacted to the specific issues raised by an inspector and do not seem to have grasped the concept that it is their responsibly.
- Assess whether they are complying with their own systems.
- Work primarily on a premises basis. For premises that are part of a national company expect the Lead Authority to address management systems at higher level. However, it
was considered important to check their auditing and review procedures to address the possibility that a change of local management could lead to a decline in standards.

- Accident investigation in premises of a national company would involve addressing systems above that premises.
- Concern expressed about earned autonomy and the possibility of a change of local management to a ‘poor manager’. It was felt that premises should be kept on an inspection programme.
- Similar concern raised that premises rated low risk are not being inspected – management could change.
- Accident book considered in assessing health and safety.

4. Variation in Approaches Across Duty Holders
- Greater expectation for formalised systems and documentation in larger companies.
- Different expectations of health and safety policy according to size but it ‘Has to be working document.’
- Barriers
  - High turnover in management.
  - Time perceived as constraining what they can do.

5. Intervention Approaches

Inspection Visits
- General approach for scheduling visits is that recommended in LAC 67/1 on priority planning. However, it also depends on what is felt to be appropriate for individual premises when they are visited, whether they are visited more or less frequently depending on an officer’s assessment of the health and safety.
- Initiatives that focus on certain premises, e.g. tattoo parlours.
- Confidence in management is an issue
- Lower risk premises
  - Not being visited due to lack of staff resources.
  - Different authorities have different methods for dealing with these premises (e.g. letters, Self Audit Questionnaires). It will be in the next couple of years Local Authority information regarding the success or otherwise of these is expected to be available.
  - High turnover of management can mean that many premises rated as lower risk could now be higher risk but will not be visited for a number of years.

Advice
- Use HSE’s small firms health and safety policy document - Fill in blanks.
- Serving an improvement notice may address specific safety issues but it doesn’t usually improve management.
- Some of their input was felt to constitute training in hazards, risk, and controls. This was felt to have greater chance of improving health and safety than just giving leaflets which are thought to just go in the bin.
- Experience and trust – Need to gauge their attitude and extent you can trust them to do something.
- ‘We have a kind of three strikes and you’re out thing. First time we go to any premises, we always phone them in advance sit down with them and talk about their business and guide them to what the main hazards are, what they need to do. Second visit check their progress, give them an update if there’s anything else in the legislation. Third visit, if its not done they get an improvement notice.’

Leaflets
Scottish border council produced leaflets (sector specific) for small businesses (e.g. takeaways), use in addition to HSE leaflets as well.

Use HSG65 leaflet for larger premises - to give them an idea of what's involved before they go and buy it.

**Improvement Notices**

- Initial inspection visits generally take an advisory route unless there are issues such as uncontrolled hazards that warrant an improvement notice.
- Following an accident investigation if there are failures which need addressing.
- Talking to staff and find out that they have been complaining about something but nothing has been done.

**Prosecutions**

- Not usually the first course of action.
- Influenced by EMM, previous health and safety record, and seriousness of breach, severity of injury, public risk (e.g. current problem with tanning salon admitting 13 yrs olds).
- 'Most of the prosecutions we take are due to non-compliance with a notice or after an accident where you're maybe not prosecuting directly for the result of the accident but for failing to anything after.'
- Any potential prosecution would be discussed at a fairly high level, officers don’t make decisions in isolation.
- One participant stated that they don’t take many prosecutions in Scotland. In England enforcers take their own prosecutions – In Scotland they have the procurator fiscal to convince (e.g. 2 in ten years for one Authority).
- Cost is an issue – there is some plea-bargaining on charges.
- They don’t use formal cautions.

**Enforcement Management Model**

- EMM is felt to push them down a slightly tougher route than their first reaction would be and tends to push them down the prosecution line.
- Used to justify decisions rather than inform them.
- They use their discretion in taking action the EMM guides them towards but make sure they document it.
- Working to an EMM itself is not new or a problem for Local Authorities.

**Health and Safety initiatives**

- Scotland's Health at Work (SHAW) is an award scheme that encourages employers to promote health at work.
- Two initiatives by NHS Scotland.
  - Safe and Healthy Working is a new occupational health and safety service for small and medium sized enterprises in Scotland. It provides health and safety advice/consultancy to SMEs. It was felt that they trust a third party more than the Local Authority.
  - The Healthy Working Lives campaign addresses workplace health promotion and the work environment.
- Dry cleaning initiative – As part of the transfer of dry cleaning from HSE to Local Authorities, training & joint HSE & LA inspections were conducted. Along with training in the theory and practice of dry-cleaning from trade representative. This was regarded as a very successful joint working initiative resulting in notices being served and an improvement in health and safety.
- HSE helped to fund training by Scottish health and safety revitalising forum – training on priority topics but its difficult to get small business along.

**Website.**

**Telephone helpline.**
Training via the License Trade Association.

6. Effectiveness of Different Approaches

- Increased compliance - Over period of time – ‘long term rather than snapshot’.
- Risk rating improvement.
- Reported Accidents - but number may go up because more people are reporting.
- Time taken to sort problems.
- Sustained improvement comes with confidence in the management system.
- Primary role and the most effective way to improve health and safety standards for employers and the public is by getting out there and inspecting premises on a prioritised programme basis and in response to enquiries, complaints, etc.
- Lead authority partnerships viewed as beneficial to the companies and LAs. Officers can go to a national company and just concentrate on what they find at a local level and not have to ask difficult questions about the health and safety management system because they would hope that the lead authority had already asked these questions and gone through it in some detail at a national level.

7. Changes in regulatory approach (past/future)

- More focus on priority topic areas within medium to larger premises in the last two years focusing on the risk assessments associated with the priority topics; if they’re performing well on these it’s assumed their risk management is working.
- Greater focus on health issues now but perceived as more difficult to assess the management of health than safety.
- Where priority topics (manual handling, stress) are discussed with managers there are difficulties recommending improvements or to take enforcement action; Lack of knowledge and information is felt to be an issue
- ‘I think it’s just easier to deal with the safety side. Enforcement focuses more on controlling safety risks.’
- Very few occupational health investigations - ‘I’ve had one in twelve years’.
- NHS - GPs are not identifying occupational health cases; One Local Authority contacted the NHS to try and find out the extent of occupational health problems locally (e.g. asthma).
- Scope for better links with the Scottish Centre for Infection and Environmental health who also address occupational health issues (e.g. legionella).
- For smaller companies deal with stress reactively (e.g. employees off with stress).
- Emerging occupational health issue - Smoking in public places – Scottish Executive.

Premises/sector changes

- ‘Different areas of Scotland have slightly different problems, our problem has been the mining industry, ex-miner all opened up shops, went to the wall, a load of new businesses to deal with.’
- Leisure activities a big change/increase (adrenaline sports, private gyms) – hasn’t meant a change in approach but the lack of specific guidance particular trades has been an issue (e.g. body art).

Relationship with HSE

- HSE perceived as having the luxury of being dedicated to health and safety whereas for Local Authorities health and safety is a small part of their business.
- Suggested that there is a role for HSE & LA joint partnerships along the lines of Lead Authority partnerships.
- ‘There has been a suggestion made that perhaps HSE should look at the health and safety management of the 350 companies. I feel that may not be the right approach to take particularly with our experience of the lead authority partnership scheme
expertise. This council deals with probably one of the largest employers in Britain and so do other councils so Local Authorities are used to dealing with in the big companies and used to dealing with them at quite a high strategic level as well as well as on the day to day inspections on the shop floor.'

- New legislation and approaches - Have found series of one-day training exercises run by HSE to be useful – would like more of this.
- ‘I think there might be more recognition by HSE that we are doing the same sort of work. HSE over the years have rolled out lots of in-house training to their own inspectors and if it means that local authorities get a piece of that either by going to the same training or if it could be organised specifically for local authorities.’

8. Opinions of HSG 65

- It’s not the easiest of things to pick up and read; better to dip into.
- The more recent version in better, it is quite straightforward.
- It’s presented in language that you could probably sell the benefits of good health and safety performance to the chief executive or whoever is holding the purse strings.
- How can HSE say there’s a definitive way to do health and safety management when other parties will sell their own version (e.g. BSI, ROSPA).
8 APPENDIX 3 – INTERVIEW SUMMARIES

8.1 INTERVIEW WITH HSE’S RISK POLICY UNIT STAFF (LONDON)

1. Understanding of Health & Safety Management/SMS

- Underpinned by HSWA.
- Distinction between risk management and H&S management (but acknowledged that this can be a false distinction) – ‘They are both equally important.’
- Area of expertise relates to risk management - ‘We are a layer removed from health and safety management.’
- Focus is on risk management and the decision making process for controlling risk- ‘The first stage of the process really, deciding what you have got to do.’
- Putting these decisions into practice is conceived as H&S management – ‘The next stage is actually doing what you have decided to do.’
- R2P2 provides the framework of understanding for risk management – ‘It’s all a matter of informed common sense.’ Designed to apply across the range of industries.
- ‘5 Steps to Risk Assessment’ and ‘Case Studies’ outline approach to RA for small firms.
- Major incidents perceived to be the result of human factors.
- Debate regarding the efficacy of applying the R2P2 framework to health issues.

2. Discussing H&S Management with Duty Holders

- Limited experience of dealing directly with duty holders, more likely to be industry groups.
- The same principles for risk management apply to different duty holders, but proportionality is important in relation to the nature of the risks that have to be managed.
- Distinction made between duty holders who have a positive attitude to H&S, and those who ‘want to be left alone.’
- Another distinction was for internal/external hazards that are faced by a duty holder, e.g. risk to the work force, and risk to the public. The principles for addressing these two types of risk by the duty holder were regarded as the same.

3. Assessing Effectiveness of H&S Management

- Managing physical hazards is perceived as less problematic than accounting for the human element in H&S management - ‘...people are not as predictable as machinery are they?’
- Health issues regarded as more outside the control of the duty holder than safety ones, so debate that risk based approach might not be appropriate, especially for stress.

4. Variation in Approaches Across Duty Holders

- Distinction between large and small duty holders. Perception that small firms prefer a prescriptive approach, and so more reliant on good practice – ‘...just give us a tick-list and we’ll do it.’

5. Intervention Approaches
• ‘Our philosophy is to push good practice…they have to find out what the relevant good practice is and act to make up any deficiencies.’

• Another approach is based on ‘first principles’, and Cost Benefit Analysis for interventions.

6. Effectiveness of Different Approaches

• Perception that good practice is less appropriate for larger, more complex duty holders, and higher risk duty holders – ‘…good practice will take you so far but it won’t take you all the way….’

7. How Has Regulator’s Approach Changed?

• Greater interest in risk by central government, especially the efficacy of risk management in the light of issues such as BSE.
• Perception that the central government focus on risk management is more concerned with the control of financial risk.
• More focus on research into behavioural aspects – ‘…we know all about guarding machines, and stuff like that.’
• Perception of pressure on HSE (by addressing Section 3 of HSWA) to broaden its remit by more focus on risks to the public.
• Also more need to account for public perception of risk, e.g. licensing for adventure holidays, and tool for gauging societal concern.
• The potential for duty holders to over ride safety systems, is seen as a direction for research that can have an impact.

8. Change in Regulator’s Approach for the Future

• Other considerations are ways of assessing the effectiveness of risk communication.
• Health issues becoming more prevalent. Need to address the differences in latent and chronic effects.
• Work being undertaken to develop the risk framework to health.
• Increased need for strategic horizon scanning (multi-disciplinary), in order to adopt a precautionary approach to future hazards.
• Need to account for societal change, e.g. society’s attitude to regulation by the government could change.

9. Opinions of HSG 65

• HSG 65 produced before ‘risk’ was defined in such a central role in the regulatory framework.
8.2 INTERVIEW WITH NEW HSE INSPECTOR

1. Understanding of Health & Safety Management/SMS

- FOD H&S policy guide. FOD guide details processes and how inspections should be tackled.
- Course notes for EMANI 2 (effective management and intervention) course. Corporate level intervention – details how board of directors works, and how to influence board – how to influence at corporate level. New course for B1,2, some B3. EMANI 1 course details FOD policy guide for inspection (hasn’t done this), but used notes – shows how to analyse documents, worked examples, gives case studies. High opinion of these courses. Applied the information to ‘real life’.
- The management of the whole business, but in relation to H&S. How they look at H&S from the top and instil it into the workforce, their own responsibilities and accountabilities, and how they take ownership of that.
- HSG65 used to understand the different components of SMS, e.g. what comes under the umbrella of control, or communication. Found it difficult to get my head round, - had to read repeatedly.
- In EMANI 2 course presented various ways of discussing SMS: – intervention with BP at Grangemouth, talking through the HSG65 headings with duty holder, another was to talk about one risk control system and analyse certain documents, especially implementation of RA on shop floor, asked for duty holder to provide action plan.
- Not actually given a prescribed way of conducting an intervention ‘I’m assuming we can use whatever we want’. – ‘We don’t know how we’re supposed to be doing it, we’ve never been told.’
- ‘I’ve learned the different ways of doing it, and I’m just going to use my own way. I’m going to try out different ways of doing it myself, which might not be all of those, I might develop my own way as well. I’m going to use my own techniques as I go along, because we haven’t been told a strict way of doing it. Unless we use the FOD guide which takes a lot of resources.’
- The issue of looking at SMS in companies should be addressed from the start of inspector’s training. The basic inspection course involved what to look at, and who to meet on site. This should include the management of H&S, relating to FOD guide (‘which we’ve all put on the shelf’). A course dealing with HSG65 would also have been beneficial in first year of training that was similar to EMANI 1 course. EMANI 1 course not well advertised – low awareness.

2. Discussing H&S Management with Duty Holders

- Importance of communication with employees and employee intermediary groups.
- The participant has not discussed management at great level before with companies. Was not made aware of this approach during inspections. Previous on the job training with inspectors and PIs, no-one talked about management issues in great depth. HID seemed to use this approach, as opposed to FOD, which used more old style approach of inspections as spot checks. Learning from colleagues did not involve looking at top level documents like policy statements and then working down. Participant is now critical of previous approach which did not consider management.
- Importance of talking to senior management, and involving them in inspection. MD and directors have to take on ownership of, and understand H&S management, and why it should be a high priority for business. Talking to a Director is rare depends on availability, usually a senior manager or H&S personnel.
• Doesn’t refer to HSG65 directly with duty holders, talks about what they should be doing ‘off the top of my head’, but using the HSG65 model/headings.
• Would not talk to small company directly about HSG65, but get round it in simple terms without going into technical details.
• Focuses more on competent person – ‘If they don’t have a clue, telling them they should get in a consultant or somebody in company should go on the appropriate course’. Focus on competency for small companies ‘as they have to have that knowledge there to be able to manage their H&S, ‘even if it doesn’t need to be written down’.
• The participant would take an enforcement approach if the advisory approach had failed, and after further persuasion the duty holder was reluctant to acknowledge the advice offered. ‘As long as you’ve done everything you can, and they’re still not doing it, then you’d have to go down the enforcement line.’
• Difficulty of getting directors to accept responsibility. Often see responsibility for H&S on shop floor belonging to line management.
• Belief that the inspector can show duty holders the importance of improving their SMS in most cases - ‘I don’t know how you can get through to them, I’ve tried and tried, and its only after the prosecution when they are fined…that they suddenly realise. I do think there are occasions when you aren’t going to get through to them, and you have to realise that you can’t get through to everybody…There’s always going to be one you can’t get through to.’
• Powers of persuasion of individual inspector to motivate duty holder are a key consideration. Interpersonal skills. Success at this level due to own personality, and experience of working in a manufacturing background which allows empathy with the duty holder’s business concerns.

3. Assessing Effectiveness of H&S Management

• OHS performance depends on the level of competence of the people at the site, and site culture.
• Focus on competency for small companies ‘as they have to have that knowledge there to be able to manage their H&S, even if it doesn’t need to be written down.’ Dependent on their own knowledge of risks, as these don’t have to be documented for <5 employees. Focuses more on competent person – ‘If they don’t have a clue, telling them they should get in a consultant or somebody in company should go on the appropriate course’.
• Distinction in talking to senior managers and shopfloor staff. Getting employees to open up., ‘need to be a certain person to do it’. Senior managers require confidence more formal –‘without getting jelly wobbles in your legs’. Shop floor not so interested in the high level technical stuff. Selection of information. Greater use of humour to get them to open up, establish points of commonality ‘talk about the football the rugby, and then get on to H&S’. Less formal with the employees as that is how they operate on shop floor. This also applies to the level of clothing that would ideally be worn.

4. Variation in Approaches Across Duty Holders

• Don’t go into same level of depth with small company as with large company – ‘Perhaps we should’.
• Some idea before visiting inspection due to checking records, and knowing size of the company, and previous problems. Distinctions made on size and individual competency – ‘the type doesn’t matter’. Approaches don’t vary according to the sector. Past experience has influenced approach.
• ‘A lot of the times its our judgement anyway, whether we take forward an action. We are supposed to follow the EMM. If you ask lots of people it is down to our judgement...so it is the same with this...it is our own judgement according to how far we take the audit process, and how full scale we do it. It would be nice to have some guidance on different methods – and then decide on the level we would need to take depending on the size of the company and how evolved their system is already’.

• Participant is planning to do an intervention with a food company with four sites. Feels the company justifies a central intervention due to the attitude of the directors, and occurrence of an accident.

5. Intervention Approaches

• A full scale corporate intervention with site audit.
• The inspector does not feel she has enough experience to describe the ideal approach to intervention. ‘I really don’t know, I have to try different ways of doing it myself’. The approach for the current intervention with the national printer is dictated by the size of the company, and so needs to be co-ordinated with inspectors across the country.
• Other colleagues are now doing audits of SMS at management level, but all doing it in a slightly different way. One colleague is doing the audit on her own, by looking at accident stats and going into the company for a day. Another will go through HSG65 headings, look at the documents. 6 inspectors involved in the ___ audit: – looking at shopfloor, interviewing whoever is around, not formal. The differences in the approaches chosen are determined by the inspectors, which depends on how they have done audits in the past, and general differences in approaches between FOD and HID.
• Perception of lack of communication between LA and HSE - ‘My impressions are we work completely differently’.

6. Effectiveness of Different Approaches

• Reorganisation will influence long term contact with companies and interventions.
• Lack of time to search every company they visit on FOCUS.
• Expressed approval for the ‘earned autonomy’ approach. One concern with this approach is that a company might regress if they knew they were not to receive contact with HSE.
• The leading and lagging performance indicators. Always a problem with validity of measurement, e.g. to say ‘yes this is now effective, this company has now improved’. This is difficult – can’t just rely on one source of data, e.g. accident stats. Feels there is an over reliance on accident stats.
• Thinking of using safety climate tool, and attitude survey to gauge improvement over time (e.g. test/re-test) – on advice of more experienced colleagues. Current company for intervention is reluctant to use the safety climate tool because of the resources needed.
• Importance of talking to safety reps in large companies, ‘their attitude and vibes’ that give a good feeling about the company. Just looking at the shop floor is a poor indicator. Bad attitude defined as -‘we (duty holder) haven’t had an accident here, so we don’t really need to do that (inspector’s recommendations)’.
• Attempts to talk to workforce without management presence. Asks if there are any issues they want addressed, the training they have had, if there is a committee, if they are involved in RA and accident investigation (how they are consulted on and involved with H&S), and their understanding of their own responsibilities. Inspector would not have gone into this level of detail before she became involved in management issues. Now is aware of the importance of employees’ attitudes and beliefs, and cultural aspect. Feels this gives a better level of understanding. Attributes this approach to personal
experience, not initial on the job training, and also increasing awareness and critical reflection on how inspection techniques were working or not.

- The director’s attitude is regarded as salient to the success of an intervention – ‘if they don’t understand, you haven’t got a hope in hell’. It is important to stress to directors their responsibility for H&S, and legal liability – ‘the fear tactic is sometimes the only way you can get through to them’.
- The effectiveness of the intervention was dealt with on the EMANI course, which acknowledged that an intervention may have no impact, e.g. no improvement, so there may be occasions when enforcement is the only option. The inspector has done everything they can, e.g. auditing, talking to employees, issued action plan, and given the duty holder sufficient opportunity to address shortcomings.
- Work commitment (e.g. workload) to existing audits can constrain approaches taken to new inspections, e.g. no time to interview staff, so limits level at which inspector can get involved with company. Workload with current intervention is high as participant is conducting all the audits herself, but feels that this is beneficial for the consistency of the audits.

7. How Has Regulator’s Approach Changed?

- Perception that this is changing in FOD, but HID has been using this auditing approach for some time.
- Encouraged to do unannounced visits, but not so applicable to SMS, as company will not have necessary documents available. It is best to make an appointment in order to have an in depth look at a company’s systems.

8. Change in Regulator’s Approach for the Future

- Would appreciate more formalised training, especially being given a variety of methods to use, so that the inspector can choose the most appropriate one for the individual company. Especially more guidance about making this decision. Also more consistent formalised approaches in terms of protocol, e.g. always send a letter to the head office, and not just local site to be inspected - ‘We should be doing more than just hazard spotting in companies, we should at least get the company to put together an action plan of what they are going to be doing in terms of their targets and KPIs…this needs to be made clear to inspectors’.

9. Opinions of HSG 65

- A set of categories to break down information. Used in conjunction with FOD policy. ‘Found it difficult to get my head round, had to read it repeatedly.’
- HSG65 confusing in layout – difficult to summarise such complex information.
- Only used HSG65 as a set of headings related to both Health and safety, no distinction made for only safety, especially in relation to current audit.
- Nobody used HSG65 during on the job training.
9 REFERENCES


