

## Common Sense, Common Safety

The authors of 'Managing Risk in Play Provision: implementation guide' submitted evidence to Lord Young's review 'Health and Safety and the Compensation Culture'. Their submission is presented below.

The result of the review was the report – accepted by the coalition Government' - 'Common Sense, Common Safety'. Its recommendations included:

- Taking a 'common sense' approach to health and safety.
- Shifting 'from a system of risk assessment to a system of risk-benefit assessment' with regard to children's play - an approach that the report says it 'would like to see developed more widely'.
- Considering reviewing the Health and Safety at Work etc Act 'to separate out play and leisure from workplace contexts'.

### Text of our submission to Lord Young of Graffham

Dear Lord Young,

#### Review of Health & Safety laws

We write to you to express our deep interest in the current review and to offer any assistance we can. We are the joint authors of the Government-funded publication *Managing Risk in Play Provision: Implementation Guide*, and also have extensive experience reflecting our individual and shared interests. We are particularly concerned about the way in which an industrial safety culture has spilled over into public life and the impact it is having there. Our experience involves the impact of this culture on the public life of children and young people in particular, but also extends to many other aspects of public life. This experience is based on years of work for agencies such as the HSE, DCMS, DCFS, the Risk and Regulation Advisory Council, through direct involvement in court cases such as *R v Porter* and the recent *R(HSE) v North Yorkshire County Council*, and through publications, research and everyday contact with those on the front line. These encounters lead us to a number of points which we believe may be largely consistent with your own position.

In particular, we are of the view that:

- existing UK legislation (the HSWA and the Occupiers' Liability Acts) is eminently sensible with its emphasis upon reasonableness and reasonable practicability and does not need to be changed (indeed, we should be very upset if it were changed substantially)
- that there has been a creeping tendency during the last decade for regulators and health and safety practitioners to reinterpret 'reasonable' as risk minimisation or even risk elimination, a position which goes beyond the law and likely does more harm than good
- that much that goes under the banner of 'health and safety' actually is about minimising the risk of injury and ignores health benefits of public life. Essentially, safety from injury is sought at the expense of public health and wellbeing
- that an error is being perpetrated when the requirements of the law are seen as 'minimum standards.' This is particularly harsh upon public life when what should be done is to strike a balance between the benefits of public space and activities and the risks which they pose

- that the culture of risk minimisation can in part be traced to the lead regulator, the HSE, through its policy position as set out for instance in 'Thirty years on and looking forward' and 'The health and safety of Great Britain'
- widely-used HSE documents such as HSG65 promote a particular management style which has autocratic tendencies. This is not necessarily the preferred style for public bodies such as local authorities, schools and health services, but the HSE acts as if it is the only style (as in *R(HSE) v NYCC, 2010*). Democratically-elected agencies should have the right to choose their own management style. Further, according to news items, the cost implications of this imposed management style appear to be leading some councils to spend more time on meeting regulatory 'requirements' than attending to public needs
- that the Management of Health and Safety at Work Regulations impose a huge workload on public bodies because of the requirement to write down one's risk assessment. There are serious questions about the utility of these written risk assessments in enhancing safety
- that professional bodies and commercial interests have captured the task of assessing risk which formerly was carried out through the application of common sense, informed professional judgement and experience. It is not obvious that the use of experts in this way is beneficial. In public life the expertise of experts is also largely confined to consideration of hazards and certainly not about the health benefits of public activities, a recipe for unbalanced decision making
- that whereas the HSE says that risk assessments are simple, do not normally require special expertise, and should not consume vast resources, in those cases where accidents happen there is an immediate demand for the full Monty which drives agencies and insurance companies to expect that these things will be done, hence generating mountains of bureaucracy.

Measures which we consider worthy of consideration include the following:

- whether the HSE, which is without any question expert in and well-suited to industrial risk management, is the appropriate agency for managing risks in public life
- whether the use of risk assessment is appropriate in public life when it is arguable that what should be done is to balance risks and benefits (i.e. what we call 'risk-benefit assessment')
- whether the requirement to write down risk assessments of public life, which some advocate must be done even for egg and spoon races, is in the public interest
- How to support notions of common sense and informed professional judgement in the face of pressures towards what Michael Power (in his book *The Risk Management of Everything*) calls 'an empty form of defensible compliance'
- whether the recent merger of the HSC and the HSE was in the public interest. Previously, the HSC could take an independent overview of HSE policy developments and offer a steer based on the wider aspirations of society
- whether documents like HSG65 should be revised in the light of their preference for a particular management style
- ditto 'Five steps to risk assessment' which in its attempt to be easily read puts out confusing and inconsistent statements
- HSE's policy on prosecution. Recent failed prosecutions (e.g. *R v Porter* and *R v NYCC*) benefit no one, fuel the litigation culture, and consume huge amounts of public money.

In conclusion, if we are able to assist in any way in your inquiry we should be happy to do so,

Yours sincerely,

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