

The Safety Representatives Charter

A charter for change

(Adapted from the TUC document)

When Lord Robens produced his report on health and safety in the workplace, one of the principles that underpinned the report was the belief that the involvement of the workforce is crucial to achieving good standards of health and safety, and that health and safety systems work best when trade unions and employers work together. That philosophy also underpinned the Health and Safety at Work Act, with its legal backing of union safety representatives and the establishment of an equal voice for unions and employers on the, then, HSC.

It has been repeatedly demonstrated in studies from a range of countries that worker activity, with union support behind it, is a major factor in reducing injuries and disease at work. Statistics show that better standards of health and safety are achieved in unionised workplaces than in similar non-unionised ones. At the core of this are Safety Representatives. This report will show how safety representatives make a difference in practice and how shortcomings in the present regulations limit their effectiveness.

The benefits of union safety representatives

There are around 150,000 safety representatives appointed and supported by trade unions. A DTI paper published in January 2007, *Workplace representatives: A review of their facilities and facility time*, estimates that safety representatives at 2004 prices save society between £181 million and £578 million each year. This is as a result of lost time reduction from occupational injuries and work-related illnesses of between 286,000 and 616,000 days. It estimates safety representatives prevent between 8,000 and 13,000 workplace accidents and between 3,000 – 8,000 work-related illnesses.

The TUC report, *“The Union Effect”* outlined the benefits of trade union organisation and safety representatives. In 1995 a group of researchers analysed the relationship between worker representation and industrial injuries in British Manufacturing. It found that those employers who had trade union health and safety committees had half the injury rate of those employers who managed safety without unions or joint arrangements. Several other analysis of the same figures have all concluded that the arrangements that lead to the highest injury rates are where management deals with Occupational Health and Safety without consultation. In 2004 a further analysis of the data confirmed that “the general conclusion that health and safety should not be left to management should be supported.”

A study of 1998 figures also confirmed that “unions gravitate towards accident prone workplaces and react by reducing injury rates”. This study showed that where there is a union presence the workplace injury rate is 24% lower than where there is no union presence.

But it is not only injuries that trade unions help reduce. It is also ill-health. Another study in 2000 found that “The proportion of employees who are trade union members has a positive and significant association on both injury and illness rates.” It went on to say that “the arrangements associated with trade unions...lower the odds of injury and illness when compared with arrangements that merely inform employees of OHS issues”.

HSE's own research has reinforced these conclusions. A study showed that the better an employer consulted, the more effective the control measures. Some of the figures were quite dramatic. Where an employer always consulted slips risk controls were deemed effective in 76% of cases, but where there was consultation less often the control measures were only very effective in 40% of cases. For falls the figure was 56% as against 18% and for Musculo Skeletal

Disorders risk controls the figure was 57% and 22% respectively. The same research showed that stress was twice as likely to be recognised as a risk where workers are involved in health and safety management.

In 2003 the Health and Safety Executive (HSE) ran a number of pilots where trade union appointed "Worker Safety Advisors" went in to non-unionised organisations. The report into the pilot showed that over 75% of employers said they had made changes as a result and almost 70% of workers had seen an increase in the awareness of health & safety.

The Health and Safety Commission has produced a declaration on worker involvement which states that "trade union safety representatives, through their empowered role for purposes of consultation, often lead to higher levels of compliance and better health and safety performance than in non trade union systems. We recognise this, support the invaluable contribution they continue to make to health and safety and want dialogue between us to continue and where possible expand into new areas."

On the HSE workers' web page the HSE states "There is a large body of evidence that points to the advantages of involving workers in health and safety risk management. By introducing worker involvement you will be making a significant contribution to:

- Developing a positive health and safety culture
- Reducing accidents and ill health and their associated costs
- Meeting customer demands and maintaining credibility
- Complying with legal requirements

In short, workplaces where workers are involved in taking decisions about health and safety are safer and healthier workplaces."

The need for more enforcement

Given the huge difference that safety representatives make in the workplace it is surprising that the HSE has been so reticent to enforce the existing regulations. Although the 1977 Consultation Regulations lay down the requirements on employers in respect of safety representatives and consultation, most of these legal duties can only be enforced by the HSE or local authorities (the exception is time off). Despite the overwhelming evidence that consultation saves lives and prevents injuries, many employers do not consult with their workforce and, despite this being a legal requirement; there has never been one case where an employer has been prosecuted for failing to consult, or for refusing to meet their legal obligations under the 1977 regulations. There have been 15 improvement notices issued under the regulations since 2001, but 11 of them were served by two teams in one region.

The lack of enforcement activity is not because all employers are consulting with their workforce. Far from it. A survey of 71 organisations by Employment Review in 2008, showed that, the numbers of employers consulting their workforce on health and safety has started to decline. Less than half (44%) now consult on health and safety, compared with 68% in 2006. This is despite it being a legal requirement. These were not small micro-employers with one or two employees they were all organisations with a professional HR function, yet even over half of them were failing to consult.

This mirrors estimates made by the HSE in the 2005 paper "*Plans for the worker involvement programme*" which stated "approximately six out of ten workers in Great Britain are not consulted (whether directly or indirectly through safety representatives) on health and safety

matters that affect them.”

The HSE has traditionally seen consultation as an “industrial relations matter” and advised inspectors not to get involved. In December 2006, the Health and Safety Executive (HSE) published a new 'topic pack' *Worker Consultation and Involvement* to advise HSE and local authority inspectors on worker consultation and involvement issues. This topic inspection pack is designed to help staff in HSE and local authorities to: understand what is meant by 'worker involvement'; understand the legal requirements to inform and consult workers, along with the policy position on enforcing those requirements; determine when discussion of worker involvement is appropriate; and promote the benefits of involving workers.

The TUC & BFAWU has welcomed this development, but are waiting to see if it makes a difference in the way that inspectors deal with problems around consultation in the workplace, in particular enforcement.

A key concern of the TUC and trade unions is the lack of support from inspectors for union safety representatives who are denied paid release to undertake necessary safety training and functions. As this is the one part of the regulations where a safety representative can take their employer to an employment tribunal, the view of the HSE appears to be that they should not get involved. However there is a strong case for HSE or local authority intervention. The biggest problem reported by safety representatives is simply getting time off to act as a safety representative, or for training, despite these being legal rights. Many safety representatives also fear victimisation. “Hazards” magazine recently reported that dismissal for raising health and safety concerns was one of the biggest reasons given for claiming unfair dismissal, and the legal system is woefully inadequate in protecting safety representatives.

What do safety representatives do?

Safety representatives are un-paid volunteers. They do not get paid for their work. They are entitled to time-off with pay for their activities and for training, but many choose to do much of the work in their own time. The amount of time safety representatives spend on their activities varies considerably.

In a 2008 survey, safety representatives were asked how much time they spend specifically on health and safety matters. The results show that in the previous week:

- just under half (47%) had spent up to 1 hour
- just over one in three (37%) had spent between one and five hours
- 9% had spent between five and ten hours
- 6% had spent more than ten hours

Most of their time is taken with dealing with queries and raising issues with their employer, however in addition they inspect the workplace, support members, (including sometimes visiting them at home), investigate injuries, check risk assessments and safety data sheets, keep their members informed and liaise with other union representatives.

The evidence is that most safety representatives take their responsibilities seriously with over half having inspected their workplace at least three times in the past year.

Although the DTI puts the financial benefits of safety representatives to the economy at £181 million and £578 million each year, the work of safety representatives adds value in ways that

cannot be costed simply in terms of savings to the employer and the economy. The number of people who owe their health, or even their lives, to the interventions of safety representatives is incalculable.

In addition, it was union safety representatives who recognised and took up many issues which have now been accepted as occupational health concerns in circumstances where employers, and sometimes the HSE, stated that either the problem did not exist or there was nothing that could be done about it. An example is acoustic shock where safety representatives in call centres raised the issue with their union, leading to a national campaign. Likewise the campaigns against violence in both the NHS and retail were begun by safety representatives. It was female firefighters raising the issue with their safety representatives that led to the fire service introducing safety equipment designed for women rather than men. The landmark case which established that employers were liable for work-induced stress illness was taken by a union. Only by safety representatives in the NHS reading of a campaign for safer needles in North America and raising the issue in their own hospitals did the NHS, slowly, begin to adopt safer needles.

Safety representatives and training

One of the reasons unions make such a difference is that they ensure that their safety representatives are trained. In 1997, a survey for the HSE into the chemical regulations (COSHH) found that Safety representatives were far more knowledgeable than their managers. 90% of safety representatives were aware of the main principles of the main chemical safety regulations. Over a third of managers had not even heard of the regulations. The survey also found that over 80% of safety representatives had received training in health and safety in the last two years, compared to 44% of managers.

Every year the BFAWU trains 100's of safety representatives to the very highest of standards. In those rare occasions where there are non-union safety representatives on sites, they get their training from management, or management appointed consultants, so are less able to challenge what management tell them.

The high quality of training provided is one of the major reasons that our safety representatives have such a positive impact.

The quality of safety representatives training is often acknowledged by management. A number of colleges who provide BFAWU safety representative courses report that, after training the safety representatives, they are approached by the employer who asks if the same training can be provided to the management.

Despite this, one of the biggest complaints from safety representatives is that management will not give them time off to attend training courses. Often it is because they refuse to provide cover for them to attend, or simply refuse time off. This has led to a significant increase in the number of people either taking leave or opting for "on-line" training which they do in their own time.

When things go wrong

Unfortunately having trade union safety representatives in a workplace is not a guarantee that the safety record will improve if employers do not fully engage with them. Because most employers who have trade union safety representatives in their workplace recognise the value,

an estimated 65% of safety representatives feel that if they raise a concern, the employer will normally try to address the issue raised, but a minority report that their employer either does nothing, or does not even respond.

A TUC survey of safety representatives found that only 27% of safety representatives report that their employer automatically consults with them frequently with 24% saying that their employer never consults automatically.

The need for a new partnership with safety representatives

Examples like this will only be avoided if employers, the HSE and the government change their attitude towards consultation, unions, and safety representatives. The 150,000 trade union-appointed safety representatives represent a major resource for improving the safety culture in the workplace and reducing and levels of injury and ill-health. They could also be a valuable tool in warning regulators about “rogue” or dangerous employers.

Consultation should not be seen as an “add-on” which is good to have. It is one of the two pillars that hold up a good safety system, along with risk assessment and management. Given the enormous difference that both consultation and trade union safety representatives make the fact that the majority of UK workplaces have absolutely no mechanism for consultation is appalling.

There are some things that could be done immediately to begin to change this. For instance all inspectors, from both HSE and local authorities should automatically ask employers how they consult. Although a growing number of HSE inspectors now do this, reports from safety representatives indicate it is still patchy, in particular in the local authority enforced sector.

Campaigns should be run to show employers the value of consultation, as well as to remind employers of their legal obligations, and action should be taken against those who do not consult with safety representatives. The HSE should also be more vocal in saying that the union model works best in protecting the health and safety of workers.

The HSE needs to back-up its stated commitment to worker involvement by stronger support for safety reps, for instance by providing materials that are suitable for them. It should also ensure that material for employers emphasises, much more, both the benefits of, and the legal requirement for, consultation on health and safety matters.

Safety representatives also need access to regulations, ACoPs and guidance. As unpaid volunteers they can not be expected to purchase copies of these themselves, yet they often need access to them to be able to deal with problems at work, or to challenge their employer’s practices. Unfortunately most Codes of Practice and Guidance are only available as priced items. This severely restricts the ability of safety representatives to operate and to work with employers to ensure compliance.

There is also a strong case, as has been outlined earlier, for greater enforcement of the consultation regulations.

However we also want improvements to the existing regulations. The BFAWU would also wish to see sanctions available against employers who refuse to give their safety representatives paid release for training. At present a safety representative can take a case to an Employment Tribunal, and some do, however that is little deterrent and employers who do consistently refuse

to allow their safety representatives paid release for training should be prosecuted.

We also believe that the general “time-off” provisions need to be expanded. Many occupational health issues fall between “health and safety” and “human resources”. This includes issues around workplace stress, management of sickness absence, bullying and workplace organisation. As a result many safety representatives find themselves spending more time dealing with issues in conjunction with other union representatives such as stewards and equality representatives. The current regulations laying down the functions of safety representatives are silent on this point and as a result safety representatives are, on occasion, refused time off for meetings with other union officers or representatives.

There is also a problem getting line managers to engage with safety representatives, even when, at corporate level, there are good structures. Safety representatives often report that line managers either ignore representations or fail to address concerns raised. At the moment safety representatives can raise any safety matter they want with their employer – but there is no legal duty to respond. To get round that, many unions have managed to get their employer to agree to a system of “improvement notices” (also called Union Inspection Notices) whereby the employer agrees to respond to items raised by a safety representative. These however have no legal status unlike in Australia where safety representatives can issue a form of improvement notice called a Provisional Improvement Notice (PIN). This system has led to increased compliance and is broadly supported by both sides of industry, and the government.

If there was a legal requirement on employers to respond, and a duty on the enforcing authorities to react to any complaint from a safety representative that the employer has not responded, or failed to respond adequately, this would go some considerable way towards improving the dialogue between safety representatives and line managers. When the HSE consulted on the issue in 2006, 72% of employers and their representative organisations who offered an opinion answered that there should be a new duty to respond to representations.

The issue of trade union involvement in risk assessments has also been raised on a number of occasions. While many employers do consult on risk assessments, and discuss the risk management controls that arise from them, a large number do not. Given that safety representatives generally know what actually happens in the workplace far better than management, this is a major failing which should be rectified as soon as possible.

There are also restrictions on those workers a safety representative can act on behalf of. Since the current consultation regulations came into effect in 1978 there have been great changes in the world of work with more small employers, more contracted out staff, more agency workers. If you have employees working in the same workplace, but with different employers, then the safety representative can only represent the workers employed by his or her own employer. This is clearly at odds with the reality of working life in the 21st century and need addressing. The 1977 regulations accepted that some workplaces were going to be problematic because employees may be on short-term contracts, freelance, or move around a lot which is why they specifically stated that two unions, Equity and the Musicians Union could appoint representatives who were not directly employed in the place of work. The same arguments apply in other sections of the entertainments industry as well as sectors such as construction, agriculture and even finance and Regulation 8 needs to be extended to encompass these sectors.

Where unions have negotiated agreements with employers that the safety representative covers workers employed by other employers within the same workplace, or the safety representatives

cover a range of workplaces they have been a considerable success.

The BFAWU also believes that, where a workplace is clearly unsafe and a serious injury is likely to take place, a safety representative should be able to stop that work taking place. At the moment individuals do have the right to stop work if there is “serious and imminent” danger, but this almost never happens as, individually, they fear the repercussions from the employer. If safety representatives had the right to do it, with full protection against victimisation, dangerous practices could be stopped immediately.

Non-union areas

There are no easy solutions to areas with no union recognition. Management in these workplaces can decide to consult through “Representatives of employee safety”. Any representatives appointed through will not have access to independent support and will be totally dependent on their employer for training; however the number of representatives appointed under the 1996 regulations (non-unionised areas) is extremely low.

At present most employers that do not recognise trade unions have no form of consultation, despite it being a legal requirement. While the regulations allow employers without trade union recognition to determine how they consult either through representatives of employee safety or individually most choose to do neither.

However the BFAWU would contend that it is not practical for medium and large employers to consult meaningfully with their workforce individually and it should be a requirement that they have some representative structure along with a safety committee.

Both the BFAWU & TUC would like to see a legal requirement on all employers with more than 20 employees to have safety representatives, and all employers with over 50 employees to have a safety committee. Systems would have to be put in place to ensure that these representatives had access to independent training and had protection from victimisation.

We also believe there is a case for a new kind of safety advisor for SMEs. In 2002 we supported a one-year pilot of union-appointed safety representatives who would go into small workplaces to act as safety advisors. Unfortunately we were not successful. It concentrated on six sectors that were notoriously hard to reach and which needed particular support in encouraging the partnerships and joint working fundamental for improving health and safety. Some 88 employers participated. Surveys before and after the pilot showed that the involvement of these union supported advisors led to improvements in small, non-unionised, workplaces' approach to health and safety. Nearly 73% of employers said awareness of health and safety matters had increased and a third said communications had improved. Over 75% of employers said they had changed their approach to health and safety and nearly 70% of workers observed an increase in the amount of discussion on health and safety. The Pilot facilitated the creation of safety committees in some workplaces and joint working on risk assessments and training.

Unfortunately, the Worker Safety Advisor pilot was followed by a three year “Challenge Fund” where the link with unions was broken and much of the advice was linked to private consultants. It is generally accepted that the challenge fund was far less successful than the original pilots with the exception of construction and food manufacturing/distribution, where the union link was retained.

The BFAWU & TUC believe that the appointment of union-appointed and supported safety representatives who have a roving remit to support employers and workers in non-unionised areas where there is currently no consultation would have real and lasting benefits to the health and safety culture of SMEs. A similar system in Sweden is considered by both employers and the government to be a success.

We believe that these changes would have a significant effect on the safety culture within both the non-unionised and SME sectors and would lead to a significant reduction in ill-health and injury.

Trade Unions also playing their part.

It is individual unions like the BFAWU along with the TUC that have supported and developed safety representatives. In addition to the training that takes place, most unions provide regular briefings for all representatives, have information on their website and have a regional or national structure for ensuring that individual advice and support is available when required.

On our courses we supply a comprehensive manual for all our safety representatives covering all the main areas they are likely to encounter in their role.

The TUC also publishes a weekly newsletter for safety representatives. In addition the TUC has produced materials to ensure that safety representatives are involved in government initiatives such as the Work Health and Well-Being programme. That includes a guide to occupational health issues including access occupational health services and rehabilitation.

Without this support safety representatives could not operate independently of their employer. Only by getting access to advice, information and training from their trade union can safety representatives have the understanding and confidence to challenge the assumptions and practices of management.

In conclusion

Cultural change will not be achieved through timidity. The scale of the problem is immense with 650,000 new cases of occupational ill-health and over a quarter of a million reportable injuries every year. Given the affect full consultation and the presence of union safety representatives can have on an organisations' serious injury rates a major extension of these would be the most significant and effective development in occupational health and safety since the 1974 Health and Safety at Work Act.

Safety representatives are not something to be feared. They should be allowed to fulfil their full potential as an invaluable resource that can help employers improve the safety culture and win the confidence and "buy in" of their workforce. They can also complement and support the work of the HSE and local authorities in ensuring that health and safety regulations are complied with.

The BFAWU does not want safety representatives to take over the role of inspectors. They recognise the limitations of their role. However we believe that the ability of safety representatives to function is severely hampered by current regulations and the benefits of consultation are considerably limited by the failure of the HSE and local authorities to enforce the law.

That is why the BFAWU & TUC wants to see:

- ***All employers should be asked how they consult with their workforce***
- ***A campaign to show employers the value of consultation and remind them of their legal obligations***
- ***More support for safety representatives from the HSE***
- ***A recognition that the union model is the most effective one in protecting the health and safety of workers***
- ***Free access to all ACoPs and guidance for safety representatives***
- ***Increased training for both HSE and local authority inspectors on the role and function of safety representatives.***
- ***Greater enforcement of the consultation regulations***
- ***Sanctions available against employers who deny safety representatives paid release for training***
- ***Penalties against employers who victimise a safety representative***
- ***A new legal duty on employers to respond to issues raised by safety representatives***
- ***A duty on enforcing authorities to react to a complaint from a safety representative that their employer has not responded adequately***
- ***A specific requirement on employers to consult safety representatives on risk assessments and controls arising out of them***
- ***An extension of Regulation 8 to cover other industries with large numbers of short-term, temporary “self-employed” or freelance workers***
- ***An extension of the ability of safety representatives to act outside their immediate workplace or employer in certain circumstances***
- ***The right for safety representatives to stop unsafe and dangerous work taking place***
- ***A legal requirement on all employers with more than 20 employees to have safety representatives and all employers with more than 50 employees to have a safety committee.***
- ***Continuation of the Workplace Advisors scheme in construction***
- ***A national worker advisor scheme for SMEs using union appointed and supported safety representatives***