

The changing legitimacy of health and safety at work, 1960–2015

Report submitted to the IOSH Research Committee

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Overview

This report presents the findings of a research project, funded by the Institution of Occupational Safety and Health (IOSH) as part of its *Health and Safety in a Changing World* research programme. This research was funded in order to ‘*examine public and political attitudes to health and safety at work from 1960 to the present*’ (IOSH 2012). The primary focus of this research was on practices and experiences within the UK context (although some mention is made of European and international influences on the UK, this is not intended to be a comparative or cross-national study) over a period of 55 years. It aimed to provide an overview of changes in the practice of, and context surrounding, ‘health and safety’, during this time, and their impact on the ways in which this issue is viewed and understood, at a practical, political, and societal, level. From this, insights are generated which, it is hoped, can help inform both our understandings of change in this area over time, but also our responses to that change, as we seek to find ways in which the challenges of legitimacy that those working in ‘health and safety’ face today.

The report begins by setting out the parameters of the project and the design of the research. In particular, it sets out a typology of the concept of legitimacy, the central component of this investigation – four bases on which social and public audiences base their judgements about whether practices that are classed as ‘health and safety’ are “*desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions*” (Suchman 1995: 574). On the one hand, these judgements can be classed as procedural, relating to how ‘health and safety’ is done. This includes assessment of the *constitutional* basis (legality and accountability) and the *functional* status (effectiveness and efficiency) of health and safety regulation and practice. On the other hand, they can be classed as normative, relating to the reasons for which ‘health and safety’ is done. This includes assessment of the *democratic* basis (representativeness and coverage) and the *justice*-based status (interests and values pursued). Together, these four criteria serve to organise the analysis of change over time which this report provides.

The substantive investigation begins with an analysis of the available evidence as to public attitudes towards the issue of health and safety, from both existing quantitative sources, and from a qualitative series of focus groups. This establishes that there is

a high degree of concern about 'health and safety', which is broadly perceived in negative terms, but that this masks a broadly positive trust profile for those involved in the area, and an acceptance of the need for, and desirability of, regulation. There is a perception of negative change over time, driven by the increasing commercialisation of 'health and safety' and by the distancing of that system from the everyday understandings of members of the public (underpinned by low levels of engagement and worker involvement). Notions of 'red tape' and risk-aversion have a degree of cultural resonance, but overall, public attitudes are less critical than may be thought.

The bulk of the report then goes on to present an analytical and narrative account of historical and contemporary trends relating to the public and political profile of health and safety during the period 1960-2015, and what historical, economic, legal, and sociological factors have influenced perceptions of legitimacy. A series of 14 cross-cutting themes, relating to the four legitimacy headings set out above, are explored in detail. In *constitutional* terms, the identity and status of the regulator, the accountability of that body to government oversight, the legal bases of the rules and systems imposed, and the influence of the European Union as a policy body were explored. In *democratic* terms, the changing nature of represented industry, the decline of trade unionism, and the representation of health as an issue, were examined and analysed. In *functional* terms, the extension of health and safety beyond the workplace, the role of the safety profession, the importance of expertise, and the changing practices of regulators, were examined. And in *justice*-based terms, the impact of commercialisation, the limits of consensus, and the role of autonomy, choice and identity were explored. In each case, the nature of any changes over time, and their impact, are identified and assessed via reference to both a series of in-depth interviews with key actors and stakeholders from a range of constituencies, and to a very wide range of historical and documentary materials gathered from a significant number of archival sources. Each cross-cutting theme has been selected because of its perceived centrality to the debates, sources, and issues encountered. A range of 18 case studies are also included and presented within the report, as a means of highlighting particular aspects of these themes and of the broader trends that they represent.

The report concludes by presenting its general conclusions, and by setting out some historically- and theoretically-informed policy and practice recommendations. Wherever possible, these learning points are directed to the specific actors and audiences who might benefit most from them.

1. Health, safety, and the problem of legitimacy

The legitimacy of health and safety has become a key concern for many in recent years. Two recent government-backed reviews of the health and safety regulatory system highlighted the problem of negative public perceptions in this area. The Young Review of 2010 identified a key issue: *“since the Health and Safety at Work etc. Act 1974 was passed we have built up an enviable record: today we have the lowest number of non-fatal accidents and the second lowest number of fatal accidents at work in Europe [...] yet at the same time the standing of health and safety in the eyes of the public has never been lower”* (2010: 25). On this account, even while recorded accident and injury rates fall substantially (HSE 2012; 2013), attitudes towards the system do not improve. The Löfstedt Review of 2011 recommended that steps be taken to improve public engagement and understanding of risk regulation, as hostile media coverage ran the risk of negatively influencing duty-holders’ compliance behaviour (2011: 39; 41; 92). Both Reviews reflected a more widespread recognition that health and safety regulation in the UK was the subject of a popular climate of antipathy. This was also reflected in the Government’s ‘Red Tape Challenge’ consultation exercise of 2011-13,⁵ which sought to engage with public expressions of dissatisfaction, and in the Health and Safety Executive’s (HSE, the UK’s national health and safety regulator) ‘Sensible Risk Management’ policy (HSE 2006), which initiated a process of engagement with negative media coverage.⁶

The public profile of health and safety is perceived to be poorer now than it has ever been, something that may be linked to three different developments. Firstly, political actors have been increasingly vocal in attacking health and safety regulation, with Ministers *“determined to stamp out the health and safety killjoys”*.⁷ This has arguably brought health and safety more prominently into the public sphere. Secondly, a vocal anti-regulatory business lobby has called for the removal of health and safety ‘burdens’, for instance via a Government-backed ‘Business Taskforce’ reporting to the Prime Minister’s Office, which categorised the EU’s Health and Safety at Work

⁵ See <http://www.redtapechallenge.cabinetoffice.gov.uk/about/>; for the ‘Health and Safety Spotlight’, see <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/health-and-safety-spotlight/>

⁶ See, for example, the material contained at <http://www.hse.gov.uk/myth/index.htm>

⁷ per. Chris Grayling, Minister for Work and Pensions: ‘Elf and safety myths’ targeted’, *Guardian*, 18 December 2011 (<http://www.guardian.co.uk/uk/feedarticle/10000844>).

Framework Directive as a *“barrier to starting a company and employing people”* (Business Taskforce 2013: 22). And thirdly, the way that health and safety is reported in the popular media has become increasingly hostile. The Young Review observed that *“the papers compete to write about absurdity after absurdity, all in the name of ‘elf and safety’”* (2010: 25). The Löfstedt Review also identified a *“constant stream of stories in the press blaming health and safety [...] for preventing individuals from engaging in socially beneficial activity, overriding common sense and eroding personal responsibility”* (2011: 16). This negative contemporary climate poses a series of important questions, which this research report seeks to address.

A: Research Questions

1. *How and why have perceptions of health and safety changed in Britain since 1960? What historical, economic, legal, and sociological factors have prompted any change in perceived legitimacy?*

This question is central to understanding the situation outlined above; if health and safety and its regulation is regarded differently now than in the past, then it becomes necessary to explore the drivers of those changes, and the mechanisms by which they have occurred. Yet the idea of change at the level of social perceptions or of political legitimisation cannot be taken for granted, particularly since there is evidence that aspects of health and safety have long been disputed (Carson 1979; Esbester, *forthcoming*; Hutchins and Harrison 1912; Long 2011; McIvor 2013; Thomas 1948; Ward 1962). As an area where the state *“interferes with the logic of capital accumulation”* by imposing costs which impinge upon the conditions for economic activity (Hörnqvist 2014; also Ogus 1994), health and safety has long provoked tensions between different economic interest groups. It is important to understand how the parameters of these debates have shifted over time, and the factors which have driven this change.

2. *How far do changes in policy and perception during this period reflect historical continuities, particularly with reference to changing ideas of voluntarism, individual agency, and the role of the state?*

Much recent literature has drawn upon ideas articulated in the work of Ulrich Beck (1992) to explain how attitudes towards risk creation and regulation may have shifted. Beck proposes that a 'risk society' has emerged in the last sixty years, organised around the control of man-made and quantifiable risks. According to this view, the shift to a period of late-modernity has brought about a heightened risk-consciousness in the face of increasing social complexity, and explains tendencies towards precaution and a greater focus on risk at all levels, producing both increasing technical precision and procedural bureaucracy (Black 2005; 2007; Braithwaite 2008; Levi-Faur 2013; Scott 2004). This may have had undesirable consequences in terms of public legitimacy (Black 2000; Teubner 1987); risk becomes politicised, leading to a diminution of the credibility of those who regulate (Hood 2002; House of Lords 2000; Löfstedt 2005; 2011). But whilst this is a useful frame of reference, it is incomplete in key regards. Firstly, the risk society thesis is largely ahistorical (Dingwall 1999; Fressoz 2007; Green 1997). Secondly, little is known about the empirical reality of public debates in this area; how significant are concerns about risk and regulation? Third, if risk-aversion defines late-modernity, why might this lead to opposition to risk regulation in areas like health and safety? The diffusion of 'health and safety' is significant: the scope of state intervention appears to have widened, particularly since 1945 (Esbestor *forthcoming*). In what ways are occupational health and safety provision, and '*health and safety*' conceived more widely, mutually constitutive?

3. *How have public attitudes towards health and safety changed since 1960? How does the public regard health and safety now? Was there ever a consensus as to the social license underpinning health and safety regulation?*

It remains the case that, for all the debate about health and safety regulation, relatively little information has been systematically gathered about what the public think about health and safety as an issue. Public attitudes are a key component of the social context within which health and safety practices occur (Almond and Colover 2010; 2012; Haines 2011; Hawkins 2002). As such, a history of attitudes tells us not only what people think, but also about the world in which health and safety operates. An appreciation of informed public preferences also provides a more secure basis for future policymaking (Green 2006; Hutton 2005) by ensuring it rests upon a basis of public commitment. Firstly, there is a need to interrogate what

is known about public attitudes in this area, both quantitatively and qualitatively. Secondly, it is necessary to explore the social debates that have surrounded the issue of health and safety regulation over the last fifty years; what effects did they have, how were they mediated, and how were they expressed? Crucially for this project, it is necessary to identify whether the supposed hardening of attitudes in recent years has come at the expense of a supportive consensus around this issue, or whether the disputes we see today have always existed.

4. *What are the key factors, events, and trends that exert particular influence over the social profile of health and safety? What are the implications of this for those seeking to shape policy in the next 5-10 years?*

Having identified any processes of change, and determined the key drivers behind them, this project will provide a basis for the construction of a more focused understanding that can feed into future policy and practice. Historically-minded studies of regulatory practices can be valuable in informing future policy initiatives, because they allow for the re-imagining of taken-for-granted assumptions (Balleisen and Brake 2014; Berridge 2010; Cox 2013; History and Policy 2015). By identifying the key drivers of change, and linking them to the prospective challenges that regulators and others in the field of health and safety might face, historically-informed research can help make sense of the future.

2. The parameters and scope of the current investigation

A: The scope of 'health and safety'

This project will examine changes to the legitimacy of health and safety between 1960 and the current day. *'Health and safety'* is a broad and holistic concept that is used to connote a range of activities much wider than a set of written laws. This concept is conceived of as encompassing the law itself, expressed through statute, regulations, and case-law (Baldwin 1987; 1995; Kagan 2001; Selznick 1985); the policies, standards and guidance issued, and the enforcement activities undertaken, by regulators (Hawkins 2001; Hutter 1989); the activities of non-state actors (Gunningham and Rees 1997; Ogus 1995; O'Rourke 2003); but also the wider societal awareness of health and safety issues more generally. The legitimisation of a framework of values and norms is a process distinct from that of any institution (Berger *et al.* 1998: 380; Johnson *et al.* 2006: 56). There are two reasons for taking such a perspective. The first is that regulation has become increasingly decentralised as governments broaden the scope of regulatory control, while also seeking to shift away from a reliance upon state regulation (Bartle and Vass 2007; Black 2007; 2008; Gilad 2011; Morgan 2003). The second is that a project investigating how regulation is understood on a societal level must capture the full nature of these understandings; perceptions of 'health and safety' encompass decisions and actions at all levels, including those that do not involve the formal law. As the Government reviews of the area have observed, much current opposition to the regulatory system is based on *'perception rather than reality'* (Young 2010: 19), thus making these areas of interpretation relevant subjects of study.

B: The scope of 'legitimacy'

Following on from this, it is important to specify that the scope of this project relates to the *social* legitimacy of health and safety. Legitimacy is a multifaceted concept and encompasses the value attached to a social institution by the different audiences that interact with it. Much of the established literature on regulatory legitimacy has focused on its role as a determinant of compliance on the part of duty-holders (Black 2008; Murphy *et al.* 2009; Tyler 1990; 2011; Wenzel and Jobling 2006). A separate literature has grown around the role that legitimacy plays in shaping the social profile

of business organisations via notions of corporate social responsibility (Deephouse and Carter 2005; Kostova and Zaheer 1999; Palazzo and Scherer 2006; Scherer and Palazzo 2007). In both of these cases, the central judgement being made relates to instrumental effectiveness; how must regulators present themselves in order to secure compliance? How must firms position themselves in order to accrue the reputational benefits associated with legitimacy? These are very different questions to the one that motivates the current investigation, being bounded by the interests of different regulatory actors. It is arguable that the judgements reached by social audiences are more influential in shaping the direction of policy because they set the parameters of what is possible and acceptable (Almond 2015; Gunningham *et al.* 2004). This investigation does not seek to engage with the impact of legitimacy upon compliance behaviour. Instead, it asks how the legitimacy of health and safety is constructed in the eyes of politicians, the media, and the public.

C: The historical scope of the inquiry

This research project will focus on the period between 1960 and the present day, seeking to account for changes in the legitimacy of health and safety during a 55-year period characterised by significant changes in regulation and in British society more widely. This period has seen the passing of the last of the Factory Acts (in 1961), the publication of the Robens Report (1972) and the passing into law of the fundamentally important Health and Safety at Work Act (1974), and the development of a self-regulatory framework during the 1970s and 80s. It has witnessed downward trends in rates of workplace injury and death, but also disasters at Aberfan (1966), Flixborough (1974), and Piper Alpha (1988), the Clapham (1988), Southall (1997), and Ladbroke Grove (1999) rail crashes, and elsewhere, and the emergence of new concerns around work-related health issues. Finally, this period has seen significant changes in wider society which have also impacted upon health and safety, with traditional heavy industries and trade union membership both in decline, and a growth in flexible, service-sector employment and the demographic diversification of the workforce (McIvor 2013). The rising influence of new institutional structures such as the European Union (Baldwin 1996; Eichener 1997; Majone 1997; Walters 1996), the diversification of regulatory institutions (Black 2008; Gilad 2011), changes in the level of public trust towards regulators (Löfstedt 2005; 2011), and changes in the political context around issues of welfare and state intervention (Harvey 2005), have

all made this a significant period for health and safety. Historical analysis shows the long-standing origins of questions about the legitimacy of the state's involvement in health and safety regulation (Bronstein 2008; Carson 1979; Esbester *forthcoming*; Long 2011), yet changes since the 1960s have received minimal historical attention. It is necessary to understand how more recent structural changes in British society have impacted upon the perceived legitimacy of health and safety regulation.

3. The meaning of legitimacy

The concept of 'legitimacy' entails assessment of the claims that are made about the foundation of authority, in the form of public validation, which underpins the actions of a public body, or the '*generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions*' (Suchman 1995: 574). This understanding of legitimacy as a subjective quality was advanced by Weber, who emphasised that it depends upon the '*belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands*' held by those subject to them (1914: 215). Legitimacy brings a realignment of self-motivation, because when individuals perceive rules or norms to be legitimate, they internalise them; as such, much attention has been paid to the ability of regulators to portray their actions as legitimate (Black 2008; Thornton *et al.* 2009; Tyler 1990; 2006; Wenzel and Jobling 2006). At the same time, legitimacy has a broader meaning. The burgeoning literature on the relationship between legitimacy and Corporate Social Responsibility demonstrates how far legitimacy judgements are reflective of *social* value judgements about organisational actors (Castelló and Lozano 2011; Palazzo and Scherer 2007; Scherer and Palazzo 2006; Suchman 1995). Legitimacy matters to those on whose behalf a regulator governs, as well as to those it seeks to govern (Black 2008: 144). This support can take the form of an endorsed or extended mandate for action, the granting of greater operational autonomy and/or resources to regulators, a greater political prioritisation, and a positive public profile, which itself may result in an enhanced mandate for action (Gibson and Caldeira 1995; Prosser 2010: 92-3). Regulatory legitimacy is a subjective quality, a *belief* in the authority of a regulator or system of rules (Beetham 1991; Weber 1914) held by the regulated population, political decision-makers, and the wider public (Almond 2007).

A: Defining legitimacy

Empirical belief alone does not provide a basis for the assessment of legitimacy because, as Beetham argues (1991: 11), it provides no justification as to *why* beliefs are held, meaning that this belief might be manufactured via propaganda or superficial regulatory reforms which give the impression of responsiveness to public concerns (Snider 1991; Hall & Johnstone 2005). As such, it is necessary to look to

additional forms of criteria as the basis of any assessment of regulatory legitimacy. Suchman sets out three different legitimacy types: cognitive, pragmatic, and normative (1995: 577; Kagan 2011). Pragmatic legitimacy refers to the self-interested calculation of the benefits that an agency or decision can bring for the audience. For example, a customer may perceive a utilities regulator as legitimate when it succeeds in lowering the price of that utility (Prosser 1999: 205-8; 2010: ch.9). Economic self-interest provides a central driver of organisational compliance (Gunningham *et al.* 2004; Kagan 2011; Thornton *et al.* 2005; Veljanovski 1983), and regulators can exploit this by rewarding legitimacy-granting constituencies, and so slip into 'capture' relationships (Ayres and Braithwaite 1992; Black 2008: 144-5; Makkai and Braithwaite 1992; Suchman 1995: 578). On this basis, a business audience would see a regulatory regime as legitimate when there was an economic 'business case' for regulation, and a trade union would do so when it provided a platform for that body to implement its members' agenda.

The second heading, cognitive legitimacy, relates to the degree to which a regulatory regime is seen as inevitable or necessary. When a regulatory institution accords with the taken-for-granted expectations of society, it is accepted as legitimate *regardless* of whether the assessment of its work is positive, negative, or absent (Suchman 1995: 582). In a sense, it is legitimate because it is a 'common-sense' background element whose presence no longer needs to be justified (Geertz 1975). However, this form of legitimacy can be fragile in the aftermath of an operational failure that brings the actor into the foreground (Kica and Bowman 2012: 22; Palazzo and Scherer 2006: 72). For regulators, it can be rare to achieve this taken-for-granted status, because organisational legitimacy is contingent on both acceptance of the legal framework (Murphy *et al.* 2009) and the way in which they operate. It is the third form, normative (or moral) legitimacy, which best captures issues that relate to the public profile of regulation. This relates to the action taken by a public authority, the goals pursued, and the values it embodies (Beetham 1991; Black 2008: 144; Habermas 1973; Suchman 1995: 579). Conceptually, it has tended to be divided into two core 'families' of legitimacy factors: procedural (or legal) validity and moral (or normative) justifiability (Beetham 1991: 15-25). In broad terms, this can be expressed as the distinction between recognising the *legality* of a decision, and the

rightness of that decision. Different audiences will assess regulatory legitimacy by reference to differing combinations of these factors (Almond 2007; Black 2008).

B: Procedural legitimacy

An actor must be seen to have behaved in line with the rules that govern it if it is to be perceived as legitimate. In particular, the emphasis here is placed upon the need for authority to be seen to be exercised fairly, predictably, and according to due process (Murphy *et al.* 2009; Tyler 1990; 2006; Tyler and Darley 2000). To make such claims about regulatory activities *'is to assert that they are the processes most meriting support according to recognized bench-marks'* (Baldwin 1995: 57). Legitimacy is thus a *content-independent* feature insofar as it relates to how decisions are made (Gibson and Caldeira 1995: 460). Baldwin highlights the importance of procedural factors such as legislative mandate, accountability, due process, expertise, and efficiency in assessing the legitimacy of regulation (1995: 41-7; also Baldwin and Cave 1999: Ch.6; Prosser 2010). These elements are reflected in what Black terms 'constitutional' and 'functional' legitimacy claims (2008: 146).

Constitutional claims relate to conformity with written rules, and the proper exercise of authority; does the regulator or regime have a clear source of authority to justify its actions (Baldwin 1995: 43)? Are there mechanisms to hold it answerable for decisions made (for instance, judicial review: Prosser 2010: 7-8)? Does it follow established standards of even-handedness in decision-making (Baldwin 1995: 43-4; Suchman 1995: 580-1)? These considerations provide a form of 'input legitimacy', in that they reflect the basis on which the regulator is empowered to act (Scharpf 1999: 6; Karlsson-Vinkhuyzen and Vihma 2009: 410), and also of 'throughput legitimacy', in that they place expectations upon the ways in which those powers are utilised (Zurn 2004). The importance of reasonableness and the fair use of power are much discussed in research on health and safety regulation (Bardach and Kagan 1982; Black 2008; Kagan *et al.* 2011; Murphy *et al.* 2009; Thornton *et al.* 2009). Regulatory actors should exercise their power fairly, consistently, and without prejudice or bias, even in contested areas (Murphy *et al.* 2009).

Functional legitimacy claims relate to the way in which the regulatory system achieves its outcomes, demonstrating efficiency and expertise (Black 2008: 146). Does it possess a competence that justifies its decisions (Baldwin 1995: 45-6;

Prosser 2010: 8)? This is a form of input legitimacy, in that expertise provides a basis on which to conclude that a norm or institution has a valid reason for existing, albeit one that must avoid lapsing into 'technocracy' (Radaelli 1999). Expertise carries particular importance within systems of regulation where authority is polycentric; expertise is the basis on which the 'freedom to manage' is given to bodies that sit outside of direct relationships with the State (Baldwin 1995: 45; Hood 1991: 6). Public trust in regulators is also contingent upon the ability of the relevant body to show that it has relevant expertise (Löfstedt 2005). The effectiveness of the rule regime or regulator also matters in assessing whether it is *deserving* of acceptance. Hood identifies three elements of efficiency (1991: 11): that of frugality, avoiding waste, and minimising costs passed on to others. These 'consequential' considerations allow for an assessment of worth to be made (Suchman 1995: 580; also Meyer and Rowan 1991). Taken together, these functional considerations underpin Zurn's 'throughput legitimacy' (2004; also Kica and Bowman 2012: 26), establishing that it is not only *why* regulation is undertaken, and *on whose authority*, that matters, but also *how* this exercise of power is conducted.

C: Moral legitimacy

The second grouping of legitimacy factors reflects notions of normative rightness, whether decisions and actions are *justifiable* by reference to a wider conception of the 'right' and the 'good' (Beetham 1991: 70). Unlike the procedural criteria, moral rightness is *content-dependent*, in that it is the substantive goals being pursued that determine whether decisions demand respect. Typically, this will mean establishing whether they promote prosocial values and societal welfare (Suchman 1995: 579; Black 2008: 145), or conform to prevailing conceptions of justice and fairness. The evaluation of this normative alignment is undertaken by reference to both 'input' and 'output' forms of legitimacy (Scharpf 1999), in that it references the reasons for regulating (input) as well as the nature of the outcomes produced (output). Questions of normative moral legitimacy are particularly important in relation to the social evaluation of public agencies, because they are contexts within which core values are continuously contested (Beetham 1991: 158; Hoggett 2006). Public authorities are evaluated according to whether the organisation is '*congruent with a particular model of democratic governance*' (Black 2008: 146), and whether it demonstrates a commitment to the prevailing values of wider society (Meyer and Rowan 1991: 50).

The first of these two questions relates to issues of **democratic** legitimacy (Black 2008: 146), which look at the process by which the authority makes decisions. Who is represented within the mechanisms that direct action taken? In particular, this notion of input legitimacy draws upon deliberative democratic theory, and the work of Habermas (1973; 1992), to suggest that internal processes of democratic will-formation via open, rational debate ground bureaucratic power in the shared values of the social sphere (Habermas 1992). The procedures used are thus fairer, in that they reflect a process of consensus which respects the views of all participants, and more inclusive, in that a wider range of actors participate in decision-making (Black 2000; Dingwerth 2007; Karlsson-Vinkhuyzen and Vihma 2009: 413; Scharpf 1999: 10; Zürn 2004). But deliberative democratic claims also speak as to validity in socio-political terms, as representing and hearing all constituencies leads to more widely-accepted outcomes.

This places a direct focus on the moral character of the authority (Palazzo and Scherer 2006: 80), and on the **justice** of the outcomes that are reached (the fourth of Black's normative legitimacy headings: 2008: 146). Are values pursued which reflect the interests of society as a whole? Considerations of moral alignment are particularly important within contested contexts like health and safety regulation (Almond 2007; Black 2008); Hawkins observed the influence of normative factors as both drivers and outcomes of HSE's work: *'[p]rosecution, when viewed as right, proper, and appropriate, is legitimate [...] and can therefore make both an expressive claim founded in moral legitimacy and an instrumental claim derived from action in the public interest'* (2002: 417). Regulatory compliance increases when the law is consistent with the moral values of those subject to it (Burby and Paterson 1993; Murphy *et al.* 2009: 3; Skitka 2002). At the same time, regulation provides a means of expressing those values (Almond 2013: 90). The idea of linking regulation to social values does not mandate the pursuit of any particular policy outcomes; an alignment between regulatory values and those of the social audience will suffice.

D: Legitimacy Overview

This schematic outline provides an overview of the concept of legitimacy, as it will be operationalised throughout this research project. It draws on Suchman's (1995) three forms of legitimacy – cognitive, pragmatic (both 'factual') and moral (which has

procedural and normative components: Beetham 1991). Procedural legitimacy encapsulates two substantive legitimacy claims, while normative legitimacy captures two further claims (Black 2008).

- 1) **Factual elements** – the way health and safety (H+S) is viewed; addressed via research into public attitudes (focus groups and quantitative evidence):
 - a. **Cognitive** legitimacy (Suchman 1995): Do the public believe H+S is necessary?
 - b. **Pragmatic** legitimacy (Suchman 1995): Do the public believe H+S fulfils their interests?
- 2) **Moral elements** (Suchman 1995) – substantive reasons for believing H+S is carried out appropriately; will form the basis for our analysis of historical sources and literatures as well as the public attitudes research:
 - a. **Procedural** legitimacy (Beetham 1991) - relates to the legality and validity of how H+S is done:
 - i. ***Constitutional claims*** (Black 2008): input/throughput legitimacy
 1. Is there an authoritative *legal* basis for H+S?
 2. Are H+S actors *accountable* for their decisions?
 3. Are the H+S rules/laws *fair* and *transparent*?
 - ii. ***Functional claims*** (Black 2008): throughput legitimacy
 1. Do H+S actors possess appropriate *expertise*?
 2. Are the actions taken under H+S *effective*?
 3. Are H+S interventions *targeted* competently?
 - b. **Normative legitimacy** (Beetham 1991) – refers to the justifiability and rightness of why H+S is done:
 - i. ***Democratic claims*** (Black 2008): input legitimacy
 1. Who is *represented* within H+S processes?
 2. Is H+S *responsive* to the concerns of constituencies?
 - ii. ***Justice claims*** (Black 2008): output legitimacy
 1. Does H+S reflect the *best interests* of society?
 2. Which/whose *values* inform how H+S works?

4. Research methodology

This research project utilised a mixed-methodology approach to gather a rounded overview of the way that health and safety has been understood and evaluated by policymakers, the public, and society as a whole over the last 60 years in the UK. The project has endeavoured to synthesise the findings of all of these methodological components to produce a coherent, narrative of change over time.

A: Stakeholder Interviews

Firstly, in order to generate new insights into historical processes, and to gather evidence about the judgements and decisions made at different points in time, a series of interviews (n=40) with key stakeholders and historical actors was undertaken. Rather than seeking representativeness in any comprehensive sense, this process was intended to gather a range of perspectives across time, sectors, and areas of activity, each of which would provide a rich and detailed account of each interviewee's own experiences. The participants were recruited because of their range of experiences and prominence in key areas, and in order to ensure that a range of constituencies were represented (regulators, policymakers and politicians, trade union actors, safety professionals and representative bodies, and employer and business actors). Appendix A sets out a list of the interviewees who took part in the project, ordered according to their primary role within the health and safety sphere. In total, 72 people were approached to take part in the interview process, with 40 agreeing (56%). Each interview adopted a semi-structured approach, with a series of questions around which the participant was encouraged to direct and develop the discussion according to their own priorities and recollections. Appendix B sets out the template interview schedule which was used as the basis of this process; this was then personalised according to the experience and activity of the interviewee in question. While it is likely that the information that interviewees provide will be coloured by their own subjectivities and hindsight, and this must be borne in mind, it is also the case that these subjectivities are inherently important information for the project, as they are part of the landscape being surveyed.

B: Archival research

As this is an historical study, it was necessary to engage with a wide range of qualitative historical, archival, and documentary sources. Although limited by the survival and preservation of documents as well as access restrictions on material under 30 years old, material in 17 archives has been consulted, used alongside material available in digital databases (e.g. of historical newspapers). Archival sources included material produced by state bodies, trades unions, employers' organisations, workers, the media and non-governmental organisations such as the British Safety Council and RoSPA, as well as oral history interviews recorded for other purposes but of relevance to this project. Records were selected by availability and a process of initial sampling to gain a broad overview, followed by more concentrated focus on areas identified in oral history interviews and focus groups as of particular importance. The archival research was, of necessity, a labour-intensive process, and could be rather hit-and-miss: sometimes unlikely sounding files would yield surprisingly helpful detail, but conversely files with promising titles on paper often turned out to have little of use. Without checking, though, it would have been impossible to know what the files held. Brief comments indicating coverage of archival research are offered in Appendix E.

C: Public Attitudes research

It was necessary to take account of current public attitudes, and so a two-pronged investigation was undertaken. Existing data sets and empirical studies have been systematically reviewed and analysed by a team based at Nottingham University (Jain and Leka 2015). Further details of the methodology used there can be found in that report. To augment this, a series of focus groups (n=8) were conducted with members of the public (n=67) to discuss attitudes towards the idea of health and safety. These focus groups were conducted in different geographical locations across the country, with participants who were sampled to ensure broad demographic representativeness (see Appendix C for details). They were structured, in that a common outline for discussion was utilised in each (see Appendix D), and were analysed via the development of analytical codes (conceptual clusters of quotes and content that are generated from the bottom-up). Focus groups were used because of their ability as a research methodology to capture the social process of meaning-construction and the presentation of 'lay' knowledge and '*naturalistic*' narratives (Green 1997: 160). As Kitzinger (1994) notes, focus group discussions are

particularly adept at drawing out the ways in which shared meanings are negotiated and contested between participants in a discussion. The focus groups were thus conducted in a semi-structured way, following an agreed template or outline structure (to ensure consistent coverage), but providing flexibility to allow for the capture of spontaneous and conversational content (Kidd and Parshall 2000: 294). The structure moved from general to specific in scope and positive to negative in tenor (Krueger and Casey 2000), so that the outcomes were not unduly led.

5. Public attitudes towards health and safety

Academic interest in public attitudes towards risk and regulation has increased in recent years, following the work of Beck (1992) and others. According to the 'risk society' account, processes of globalisation, flexibilisation, and pluralisation have created a society which poses *"new parameters of risk and danger as well as offering beneficent possibilities for humankind"* (Giddens 1991: 28). While these risks are knowable via professional expertise, and thus lead to the creation of increasingly elaborate mechanisms of risk regulation, perhaps the more influential outcome of this process is the development of much more prominent public insecurity about risk (House of Lords 2000; Hood 2002; Löfstedt 2005). Much of the research on public attitudes towards risk regulation focuses largely on the way that factors like trust, 'affect', and utility affect the evaluation of the *risk* that is presented (Breakwell 2007; Slovic 1986; 1987; 1993; 2000; Slovic *et al.* 1979). Within this literature, public risk perceptions are seen as concrete enough to inform the development of public policy (House of Lords 2000; Löfstedt 2005; Vogel 2012: ch.7).

This part of the project explores public perceptions of the notions of regulation and risk in the field of health and safety. What preferences do the public express in relation to this area? While regulatory interventions in some contexts prompt public support (particularly where the risk is serious), in others there is little support for regulation (Hood, Rothstein and Baldwin 2001: 94-97; Livingstone and Lunt 2007). These variations mean that it is necessary to draw on literature that engages with health and safety rather than other substantive areas of regulation. In particular, this study has the benefit of being able to draw upon the work of Jain and Leka (2015), who have surveyed the available quantitative data sets relating to occupational health and safety regulation at a UK and EU level. They examined thirteen research instruments measuring relevant public opinion (including the British Social Attitudes Surveys, 2001 and 2005, and the ONS Opinions and Lifestyle Survey 2004-10 at the UK level; and the Eurobarometer 'Employment and Social Policies' Survey of 2003 and 'Working Conditions in the EU' Survey of 2014, at the EU level), as well as surveys of working populations and employers (including the Workplace Employment Relations Survey 2011, and Workplace Health and Safety Survey 2005 at the UK level; and the European Working Conditions Surveys of 2005 and 2010, and

Community Innovation Survey 2013 at the EU level). Together, these data sets provide a clear indication of widespread engagement with health and safety issues across the surveyed populations; the Eurobarometer 'Working Conditions in the EU' survey found that, by 2010, 95.1% of the UK working population reported feeling well informed about health and safety at work (EC 2014; Jain and Leka 2015: 28).

A: Policy and academic perceptions of 'perceptions of health and safety'

'The public' feature heavily within many accounts of health and safety policy. Their views have been cited by government and other law-making bodies as providing a rationale for reform of the law (Law Commission 1996: 1.10; Home Office 2005: 6), and regulatory bodies expend a great deal of energy on proactive publicity campaigns that are intended to shape their public profile (HSE 2006; Yeung 2005). As far back as 1972, the Chief Inspector of Factories recorded *that "it is part of the job of the Inspectorate to develop an informed public and to harness the force of its informed opinion to the improvement of industrial conditions"* (Department of Employment 1973: vi). Public attitudes matter greatly to those involved in the field of health and safety regulation for '*exhortation*' (promoting an issue or behaviour), for '*explanation*' (issuing guidance and information), and for '*excoriation*' (publicising breaches and communicating blame) (Yeung 2005: 370-3). Much work examining regulatory enforcement has shown that the deterrent effect of a regulator is tied to its ability to publicise breaches of the law (Ayres and Braithwaite 1992; Hawkins 1983; 2002; Scholz 1997; Thornton *et al.* 2005; van Erp 2010; 2011; Veljanovski 1983). As such, the maintenance of a positive profile in the eyes of those to whom the law applies is central to the success of a regulatory agency, but the nature of these perceptions is often taken for granted. Several studies have documented a perception among safety regulators that the public are critical and demanding of punitive intervention (Almond 2006; Baldwin 2004; Gunningham and Johnstone 1999; Hawkins 2002; Hutter and Lloyd-Bostock 1990), but, in reality, notions of a punitive public are not necessarily convincing when applied to this domain (Braithwaite 2003; Almond and Colover 2010; Slapper 1999).

B: General Public Concern About OHS Issues

What attitudes and preferences do members of the public hold in relation to health and safety? In general terms, corporate crimes are capable of prompting high levels

of concern (Cullen *et al.* 1982; Holtfreter *et al.* 2008; Levi and Jones 1985; Payne *et al.* 2004; Rossi *et al.* 1974; Schoepfer *et al.* 2007), particularly fatal corporate/health and safety-related offences involving multiple, or vulnerable, victims (Almond and Colover 2010; 2012; Cullen *et al.* 1982; Grabosky *et al.* 1987; Rosenmerkel 2001; Wolfgang *et al.* 1985). Chilton *et al.* (2007: 5-6) found that rail accidents (like Ladbroke Grove) and public fires (like King's Cross) were both considered 'dread' forms of risk (prompting a level of fear disproportionate to their statistical likelihoods: Slovic 1987), while accidents in hazardous production plants promoted similar responses to a lesser degree. Crucially, the impact of dread risk was affected by real-life events; *"the media attention and political reaction that followed the Ladbroke Grove accident did have a marked effect on the public's degree of dread concerning rail accidents"* (2007: 43).

Perceptions of health and safety may be fragile and contingent because public awareness is commonly mediated by news coverage in the aftermath of major events (Petts *et al.* 2001; Pidgeon *et al.* 2003). Key factors which affect perceptions of health and safety risks (and tend to make regulation seem desirable) include locality and proximity, such as living near major hazard sites (Walker *et al.* 1998; Lindell and Earle 1983); exposure to past incidents and consequences (Almond 2008; Petts *et al.* 2001; Walker *et al.* 1998: 59); the harmfulness and preventability of a breach (Almond and Colover 2010; King *et al.* 2005: 13-14; Petts *et al.* 2001: 31-4; 41), and levels of knowledge of health and safety. So, for instance, King *et al.* (2005) found broad support for the notion of health and safety, but a greater knowledge and acceptance of *occupational* health and safety than its other forms (2005: 4-5; also Elgood *et al.* 2004: 10; Pidgeon *et al.* 2003: 12-14). This mirrored the findings of EU and UK surveys, where attitudes towards the value of health and safety regulation (80% were satisfied with conditions in the UK, and 23% felt at risk) were more pronounced than levels of knowledge about it (Jain and Leka 2015: 23; 39; 60). In terms of cognitive legitimacy, health and safety is recognised as an area of importance (82% of members of the public were concerned about it: Elgood *et al.* 2004: 3), and seen as socially worthwhile (Walker *et al.* 1998: 81-2). In terms of pragmatic legitimacy, some 75% of Elgood *et al.*'s participants saw *"health and safety as a cornerstone of a civilised society"* (2004: 11), and Pidgeon *et al.* found

that safety regulation was regarded as being in the public interest, and above regular politics (2003: 38-40).

Additionally, 59.1% of the UK working population reported being satisfied with health and safety regulation in 1996 (Eurobarometer 45.1), and the 2001 British Social Attitudes survey found that the proportion of the population thinking more could be done to protect workers from health and safety risks (49%) far outstripped those thinking too much was already being done (3.4%) (Jain and Leka 2015: 37). Almond and Colover found wide-ranging support for health and safety regulation (2012: 1006-7), and strong support for the accountability-seeking role of regulation (Almond and Colover 2010: 336). A normative case for regulation is thus widely recognised by members of the public; it is seen as a matter of guaranteeing basic standards of social citizenship (Prosser 2006) related to a broader set of moral values, such as the seven identified by Zwetsloot *et al.* (2013) within the health and safety literature: interconnectedness, participation, trust, justice, responsibility, development/growth, and resilience. Of these, the majority are reflective of solidaristic, welfare-orientation considerations (2013: 192). While it may be that there is greater public acceptance of individual rather than collective responsibility for general work-related risks, and beliefs in the rightness of state intervention may have declined in recent years due to the influence of neoliberalism (Mascini *et al.* 2013), levels of cognitive and pragmatic belief in the legitimacy of health and safety are perhaps somewhat protected from these trends.

C: Specific Attitudes towards Regulators and Regimes

King *et al.* (2005) found that HSE, as a regulator, was not well known to the public and did not have a clear role or mandate in the eyes of the wider population; individual citizens were only aware of health and safety in the round. Rates of knowledge of HSE and the regulatory regime within Pidgeon *et al.*'s study were also reasonably limited, and were also paired with broadly positive ratings of HSE and of its role and effectiveness (2003: 9-10; 15; also Almond and Colover 2010: 11). But Elgood *et al.* found that 36% of members of the public said they knew a lot or a fair amount about HSE, and 63% rated that body favourably. Jain and Leka (2015) found that UK worker satisfaction with domestic health and safety arrangements exceeded the European average by some way (2015: 37; from Eurobarometer 45.1); and the

2001 British Social Attitudes survey found that the vast majority of British workers recognised HSE as the primary body responsible for upholding health and safety standards (2015: 41). How can these positive ratings coexist with such low levels of knowledge? The notion of ‘critical trust’ (Pidgeon *et al.* 2003) suggests that respondents base their evaluations on their sense of the normative alignment of the organisation (a sense that it tends to do good) rather than knowledge of its particular role. HSE is, like the NHS, a “*valuable public service (essentially altruistic) which, for a number of exogenous reasons, is underfunded or unable to deliver what it is set up to do*” (2003: 31). Effective investigation and the pursuit of legal accountability for duty-holders are central to what is perceived, in functional legitimacy terms, as the desirable role of a safety regulator, and there is a commitment to constitutional legitimacy values of independence, expertise, and proportionality (King *et al.* 2005: 19-23). Where this is not possible, there is support for regulators to be given enough ‘teeth’ to do their job, particularly in relation to powerful industrial interests (Walker *et al.* 1998: 85-6).

Evidence of potentially critical evaluations of the UK’s OHS regime were found within the data gathered by King *et al.*; it had negative functional legitimacy connotations of restriction, interference, and ‘red tape’ (2005: 3-4). This was also borne out in the findings from Pidgeon *et al.*, where the broadly positive profile of HSE and of safety regulation was undercut by a frustration at perceived “*petty or restrictive*” rules, and the lack of ‘common sense’ associated with them (2003: 28-30; also Almond and Colover 2012: 1008-9). In particular, the need to ‘get the job done’ meant that regulations were always assessed in balance with the needs of business; this meant that a greater disenchantment was found in areas where economic prospects were most depressed (2003b: 32). In all cases, however, these negative assertions were offset by a positive assessment of the law and its operation. One key finding from King *et al.*’s data is the emphasis placed upon the ‘workplace’, traditionally understood, as the proper location of ‘health and safety regulation’ (2005: 4). It may be suggested that health and safety is perceived as losing legitimacy when applied outside these confines, particularly via ‘excessive’ compensation claims; some 69% of Elgood *et al.*’s respondents felt that such claims had gone ‘too far’ (2004: 14). Public concern over a ‘compensation culture’ is widely-recognised, and does have

some overlap with health and safety (Lloyd-Bostock 2009; Morris 2007), to its detriment.

D: Other issues relating to Perceptions of Legitimacy

Four findings remain to be relayed from the data reanalysis of Jain and Leka (2015). The first is that, despite broad satisfaction with the health and safety framework in the UK (2015: 44, based on European Working Conditions Surveys; and 49, based on British Social Attitudes surveys), a significant proportion (39%) of respondent felt that standards had got worse between 2009-2014 (2015: 47; EC 2014). The main risks that were perceived were workplace stress, ergonomics and repetitive movements, and lifting/manual handling (2015: 48). This reflects the societal shift towards non-manual working environments, and a possible neglect of risks which are psychosocial in nature. The finding that the principal reason given for risk assessments not being carried out in their workplace was that they were 'not necessary' (61%), rather than because they were too onerous (35.5%), suggests that the changing nature of the workplace, not the burden of regulation, may account for any decline in acceptance (Jain and Leka 2015: 35). Secondly, the role of the European Union within the field of health and safety has proved to be relatively little-appreciated; the EC's Eurobarometer Health and Safety Issues survey (1993) found that only 32% of the UK working population were aware of the EC's activities in this area (Jain and Leka 2015: 21). The UK also had one of the lowest rates of support (53%) for EC activity in this area (against a rate of 30% support for EU membership: 2015: 22). By 2003, Eurobarometer 60.2 found awareness levels of 62.1%, while general attitudes towards the EU had become less favourable (2015: 23).

The third finding is that, on the democratic legitimacy front, the UK has lower levels of participation in workplace health and safety management than other nations (73.4% compared to 81% across the EU: EU-OSHA 2012). A range of further studies confirm that the UK has, at best, very average levels of worker representation and participation, and while rates of awareness about health and safety have risen significantly, to 95% of the working population, rates of consultation with workers in the UK are around 66% (Jain and Leka 2015: 25-8). There is also evidence that health and safety is a greater priority for worker representatives in unionised workplaces than non-unionised ones, and in unionised workplaces is a greater

priority than rates of pay (Jain and Leka 2015: 32). Fourthly, rates of *employer* engagement with health and safety were very high in the UK, with almost 100% of workplaces reporting having a health and safety policy, 95% regularly completing risk assessment processes, 60% raising health and safety in high-level management meetings, and 82% involving line managers in the issue (2015: 52-3). This suggests that the issue has penetrated into practice, even if rates of perceived (by workers) managerial commitment of managers were significantly lower (50% as compared to 85%: 2015: 54-5).

6. Focus Group discussions about health and safety

To try and provide more insight into the reasons why people express the attitudes that they do, a series of focus groups were conducted with a representative cross-section of the public. Discussions were directed towards particular themes surrounding legitimacy and 'health and safety' as a concept; the responses elicited affirmed a series of common conclusions, which are summarised below.

A: The parameters of public attitudes towards health and safety

On each occasion discussions about health and safety were entered into, it became clear that this was an issue about which the vast majority had firm opinions:

"For me, the first word that sprung to mind was 'boring'. I switch off whenever those words are used [...] it's common sense and you just kind of get on with it and take responsibility for what you're doing. Sometimes I think it can go too far [...] it's restricting, it's extreme" (A2: 06.12).⁸

These comments were representative of the immediate reactions of many; a groan of recognition and an instinctively negative reaction to the idea of 'health and safety', backed up with objections to a lack of 'common sense'. The term '*health and safety*' was recognised by all, and is negatively-valenced; key terms associated with it were: 'boring', 'excessive', 'interfering', 'restrictive', 'rigid', and 'ridiculous'. Participants were also adept at citing examples of health and safety stories that confirmed this view, drawn from first- or second-hand experience, or from the media:

"Years ago you were given the common sense to do it [...] for window cleaning you're not allowed to go above shoulder height [...] It's gone absolutely ridiculous now." (G7: 33.18)

It is clear that these opinions are *social* in nature, part of a patterned body of accepted, 'common-sense' ways of seeing the world (Geertz 1973; also Almond 2015), which are shared via social interaction, particularly storytelling and humour, as part of social bonding processes (Boxer and Cortés-Conde 1997; Ewick and Silbey 2000). But two observations are worth making about these opinions. Firstly, they are based upon the confusion about what 'health and safety' encompasses identified in the survey literature (Pidgeon *et al.* 2003; King *et al.* 2005; Almond and

⁸ The focus group references connote: the focus group session code ('A' to 'H'), the participant code within that group ('1' to '10'), and the point in the recording where the comment was made.

Colover 2010). The term health and safety was variously applied by participants to issues of road safety, medical negligence, product labelling, planning law, and recycling, suggesting that it is an imprecise concept. Perceptions were coloured by misunderstandings about the health and safety framework, for example, legal requirements and local practices within a particular company were conflated, giving the impression that the law is more prescriptive than it is. This was recognised by many participants, who acknowledged the limits of their own understanding, or explained how isolated incidents can be perceived as legally mandated rules:

“some lad in a pub over a few pints saying to somebody else ‘I have to do this’ and they take it as gospel [...] and before you know it, two blokes having a moan about their own job, it becomes a law throughout the land” (D1: 11.47).

It was also recognised that misinformation often led to blame being levied on the wrong bodies:

“I don’t know if anyone looks to blame their local council or school [...] They’re going ‘oh, it must be coming in from Europe!’” (F1: 10.37)

Second, it was clear that these opinions were only one part of the participants’ perceptions of health and safety. In line with research into public perceptions of the criminal justice system (Green 2006; Hough 1996; Hutton 2005), a distinction can be drawn between public opinions, and public attitudes. The former are the ‘top of the head’, surface-level views elicited via simple methodologies such as opinion polls; the latter are more considered, reflective, and nuanced judgements which can be captured via discursive methodologies such as focus groups. As discussions progressed, those critical, immediate reactions were often superseded by much more subtle statements:

“you can all see the need for it, like in [C1’s] case, but then you get these really stupid things [...] everybody then looks at health and safety as a bit of a joke, and that’s wrong, it should be treated properly” (C9, 06.32)

These more extreme expressions of hostility towards health and safety on justice-based legitimacy grounds, tended to mask a broader acceptance of it to some degree, with many participants adding caveats or moderations onto their previously-expressed negative views, so as to provide a more balanced overall outlook:

“That’s the problem, it’s the balance” (A5); *“Yeah, it is”* (A2); *“You know, it’s where the balance is, that’s the thing”* (A5: 44.35)

This quote also points to the interpersonal dynamics that drove some of this process. Participants would regularly modify their position as a result of the perceived attitudes of others, often toning down the extremes of their position in deference to views that others might hold strongly, occasionally becoming more entrenched in a dissenting position as they felt outnumbered, and in a few instances recanting statements because someone else in the group had revealed something that made them feel awkward. This occurred noticeably in one focus group, where a critical discussion of people who make compensation claims for injury was thrown into reverse when a participant revealed that she had previously made a claim:

“As long as people are in a position of suing and being able to get ridiculous amounts of compensation, [...] it’s ridiculous” (E8) [...] “it’s a cheap moneymaking scheme” (E6) [...] “it is stupid” (E9) [...] “you said you’d been involved in litigation in the past, would you feel comfortable if there was no recourse?”: Interviewer] “I initially thought I’d do nothing [...] I didn’t look properly as I got onto the bus [...] I had a lot of time off work and added it up and thought, ‘I need to benefit myself.’ I mean, I didn’t get thousands” (E4) [...] “Well that wasn’t an accident, was it, that was negligence. That’s the difference [...] that’s someone’s fault” [agreement] (E8: 59.45-01.02.55)

What this shows is that these attitudes around health and safety are social in nature, constructed via discussion, and in response to diffuse interpersonal information sources. Not only did participants hold two tiers of opinions/attitudes towards health and safety, and move between these two frames according to the audience, but they also recognised that this was the case:

“[The] council worker painting a road sign on a lamppost, but having all the high vis, the goggles, blocking off the whole street, that kind of extravagance [...] But it all falls back to the seriousness of it [...] trying to prevent something whereas everyone else is just standing around pointing and laughing [...] there’s always going to be that conflict” (A3: 15.40-16.13).

This is an important point to bear in mind when assessing the information gathered; negative perceptions do not preclude people from holding much more positive underlying preferences at the same time.

B: Perceptions of change over time

One thing that almost all participants agreed upon was that there had been significant change over time with regards to the social realities of 'health and safety'. The progress it has brought was frequently recognised:

"There has been progress, my granddad died of emphysema because of the mines and he also lost a finger through the pit machines" (A1: 55.34).

This progressivism was linked to the empowerment of individual workers and the rights-giving ethos identified by Tucker (1995), among others:

"years ago you just did what your employer said, didn't you? So health and safety's probably really helped employees, because it's making it safe for them and you can go to your boss and say 'no, I'm not going to do this, it's not safe'" (H2: 59.38).

Other advancements welcomed included working hours regulations (G5: 39.00), lone worker protection (G1: 35.13), compulsory Construction Skills Certification Scheme cards on building sites (C1: 45.57), and better knowledge of risks (D8: 48.31). This trend was also linked to the decline of the industrial sector, which had made some safety practices appear over-zealous:

"they don't seem tailored to the fact that they're talking to a load of accountants in an office, we're not likely to be hit by a reversing forklift" (H4: 48.05).

Some linked the changing job market to health and safety via the fact that 'jobs for life' are largely a thing of the past and moving from job to job, or even industry to industry, has become the norm, making the management of health and safety more complex as traditional, latent modes of expertise acquisition are lost:

"Nowadays I don't think there are the jobs there used to be, people used to be apprentices, used to go and do things and follow rules. Now by the time you're twenty-five, chances are you could have had four or five or six jobs in different things because that's just the way society is [...] you have to evolve much more now" (F7: 50.16).

Change and risk-aversion

The volume of health and safety regulation was perceived to have increased, and it was acknowledged that this shift was a cultural one, with a different set of attitudes to risk now prevalent:

“[From] these elderly blokes on a building site who won’t wear a hat, you go right down to primary school children [...] they’re actually taught every few weeks this stuff, so it’s instilled in these kids” (C5: 58.11).

However, there was a general feeling that society had changed for the worse with regards to health and safety, with the issue losing sight of its original purpose:

“It’s put in place to protect us, but I think it’s just gone a little bit too far and now everybody’s losing respect for it [...] because it’s gone so OTT” (G1: 4.37).

Society was thus perceived to be a more risk-averse place than in the past; the new awareness of health and safety as a part of everyday life was not regarded positively. The primary reason given for this disenchantment was the constitutional illegitimacy of the bureaucracy that the ‘health and safety culture’ had instilled; the legalism and burdens that the law now imposed were seen as having had a detrimental effect on duty-holders, beneficiaries, and society as a whole:

“Years ago, when it was a lot simpler, I went on the course and adapted policies for the workplace, but as things progress and get more and more complicated, it becomes a full time job [...] It’s becoming too much for one person in a small practice to deal with” (B6: 13.23).

Participants described health and safety as a ‘tick-box exercise’ characterised by ‘red-tape’ and burdens (B7, 5.31), mirroring strongly the content of government policy rhetoric and consultation exercises like the ‘Red Tape Challenge’ of 2010-11 (Almond 2015). Small businesses and the self-employed were seen as the victims of this culture, suggesting that the prevailing policy narrative around ‘burdens on (small) business’ had penetrated the popular consciousness:

“it’s a corporate thing, corporate ways [...] But small businesses [...] can’t be like that because the business won’t work [...] if you follow those rules, you just won’t get anything done” (F7: 49.10).

The second negative impact associated with this change was a cultural one, a new way of seeing the world that participants struggled to comprehend. Risk aversion, a lack of ‘common sense’, and a pervasive (if ill-defined) ‘political correctness’, were all seen as having impacted negatively upon modern life. Health and safety is seen as having eroded of the capacity of individuals to exercise self-protective autonomy:

“health and safety rules, the reality of putting those rules into practice is not always common sense. This country has operated on common sense for many years previous and all of a sudden it’s become politically correct [...] You read it sometimes and you think it’s just craziness” (B7: 7.56).

These concerns about the emergence of a society cowed by a ‘culture of fear’, in Furedi’s terms (1997), was seen as having smothered the capacity of individuals (especially the young) to properly determine and manage risks for themselves:

“I’m glad that my children went to school when they did, because they were allowed to play [...] next door’s got little children, what they say happens, ‘oh they’re not allowed to do this, etc.’. I just think they’re growing up so protected, let them fall over [...] they’ve got to learn, haven’t they?” (H2: 6.58).

The pervasiveness of health and safety risk prevention was also read as a sign that individual voluntariness was being undermined, and that people were more constrained in their choices than in the past. The ‘illiberalism’ of precaution was a challenge to individuals’ ways of life:

“You have to have rules [...] but if you followed everything they said all the time [...] nobody would ever go anywhere, nobody would ever do anything” (F7: 14.35).

“you just lose spontaneity, don’t you, in this country now? Everything’s got to be planned” (H2: 11.54).

At the same time, however, some participants in the focus groups recognised that there was a tension between this libertarian instinct and the reality of modern Britain as a largely rule-bound society. Rather than eroding a culture of self-reliance, others saw over-regulation as consistent with the deference to authority (a ‘Protestant’ culture of obedience to law: Witte 2002) that they almost accepted as a given:

“We’re used to adhering to rules now [...] It’s expected now that no matter what you do or where you go that there is going to be some kind of rule or law you’ve got to stick to” (A6: 57.58)

“over here [...] anything the government says, it just happens. They don’t rebel here, they just moan and take it [...] them places like Egypt where they kick up a stink, that’s my kind of country!” (C3, 1.24.24).

Compensation culture

There were aspects of contemporary legal culture that were seen as problematic by an overwhelming majority of participants, relating to the idea of a 'compensation culture' (Morris 2007), or undue tendency towards damages-seeking following injury or set-back of interests. This was perhaps the most prominently discussed issue within the focus groups:

"There's a real blame culture, isn't there?" (F4: 8.29)

"Everything I see on TV is litigious, it's like claim, claim, claim" (B6, 19.55)

This was also seen as a *new* problem, something that had not existed until relatively recently. 'Health and safety' and 'litigation' were commonly conflated as a single issue, with relatively little distinction drawn between them (mirroring the Young Review, 2010). Interestingly, there was a sense that civil litigation was seen as more of a concern than the 'health and safety' system:

"with health and safety we're lead to believe that there are more rules than perhaps there is, but you live under the fear and the threat that if you don't apply certain things you leave yourself open to getting sued" (F1: 6.29)

"it's part of this awful suing thing that we're in now? [...] we're in such a terrible compensation thing at the moment that everybody's frightened to death just to do anything [...] we've made it like it, the public's made it like that" (H2, 7.45)

Relatedly, there was a capacity to see that changes in the sphere of litigation had distorted the capacity that individuals had to accurately assess the extent of health and safety regulation:

"those adverts about claiming, it's more opportunities, people know about it now [...] there's probably exactly the same number of risks" (F3: 42.08).

That said, 'health and safety' and the 'compensation culture' were closely interlinked:

"which came first? Is it because we've become more litigious that this has grown up, or is it the other way around, is it because the opportunity now exists to sue for breaking a toenail? Is that why health and safety has become this avalanche of nonsense?" (E7: 11.40).

Blame for this state of affairs was attached to three main targets. The first was the legal system (courts, insurers, and employers), who were seen to have encouraged this state of affairs by failing to differentiate legitimate from non-legitimate claims. This was seen as having encouraged both claiming and risk-aversion:

“the courts should throw out some cases where people just sue for no reason, because if they start doing that then workplaces and other people won’t be that paranoid” (C7: 1.13.12).

“we’re in a society now where you can claim for literally everything [agreement]. You slip in a supermarket [...] they come running up to you and it’s ‘don’t sue us, there’s £1000 shopping vouchers’. And I think because obviously insurances have gone up [...] health and safety has just had to whack it on even more” (A6: 45.24).

Claims management companies, ‘ambulance-chasing’ lawyers, and pervasive advertising campaigns were also implicated in this process; it was seen as an unprincipled money-making endeavour pursued for their own benefit.

The second target of blame was the growth of an ‘Americanised’ culture of ‘adversarial legalism’ (Kagan 2001), which has brought a greater propensity towards the exercising of legal rights, particularly via civil litigation:

“We’ve just copied America, haven’t we? Gone a bit mental with it” (H8: 8.15)

“It was the Americans, they started all this suing business [...] They sue for everything over there” (F8: 21.37)

There was significant hostility towards this approach, but also towards the type of society they feared Britain would become. Examples of ‘tort tales’, such as the ‘McDonald’s hot coffee case’ (Haltom and McCann 2004), were cited as evidence that the USA was an example not to be followed. Others contrasted this with the ‘European’ approach of a *laissez-faire* approach to managing risk (contrary to Vogel’s analysis of European and US regulatory cultures: 2012). Interestingly, this was in an uneasy tension with support for exactly the kind of individualised approach to personal responsibility and self-reliance that the ‘Americanised’, market-led system of civil liability ostensibly embodies:

“I love that we’ve got close ties with Europe. We’re nothing like Europe, are we? We’re very much like the US, we’re going down the exact path that the US have gone down. At the end of the day, you’ve got a responsibility to yourself as an individual and sometimes to hold your hand up and think ‘that’s my fault’” (B5: 21.17)

The taking of responsibility by accepting blame and insuring against loss was thus seen as a morally very different kind of responsibility to the attribution of blame and pursuit of compensation via suing.

The third source of this compensation culture was seen as being the public themselves. Following on from the point about responsibility, it became clear that a significant amount of blame was attached to individuals who moved from holding rights to protection, to asserting those rights via the legal system. The morally-contested nature of rights-mobilization (Ewick and Silbey 2003) was reflected here, in that censure tended to attach to those who chose to pursue civil litigation claims:

“you know what my work colleague did at my wedding? [...] spilt her drink, fell on the dance floor, like totally drunk, sued them and got five grand [expressions of shock] and I’ve got to still work with her [...] oh my God, I was fuming [...] I don’t speak to her anymore [...] We all made statements to basically say it is her fault, but she still got paid. That’s where it’s gone mad”
(A6: 46.05)

Claimants tended to be seen as unprincipled and conniving, acting unscrupulously to advance their own self-interest. Participants distanced themselves from this behaviour, leading to (as discussed previously) interesting dynamics of discussion when it was revealed that someone had taken action of this sort:

“I’m ashamed to say that my sister is of this culture of suing [...] I was like ‘oh for God’s sake, you fell over, get over it’ [...] I’m thinking ‘it’s people like you’”
(H2: 1.06.06)

The ‘othering’ of claimants and civil litigation as morally dubious was an area of social consensus; ‘everyone’ agreed that this was a bad thing, and blame was placed onto external agents (the ‘system’) and a few ‘bad apples’:

“It’s to make sure you don’t sue them” (H5) “I wouldn’t dream of doing that, to ruin someone’s life by suing them” (H6) “Other people would though, wouldn’t they?” (H10) “Because it’s so readily available, that’s why” (H3: 13.08)

Missing the mark

Across the whole piece, the changes that were recognised within the sphere of ‘health and safety’ were, although unwelcome, also seen as symptomatic of a failure

to fulfil the aspirations the public had in this area. The issue was often framed as one of a system that was missing its mark, focusing on process rather than outcomes:

“Some of it is just not valid though, is it? How does that measure, you attending that lecture, in what world is that ticking a real box? [...] it is crazy how it’s all monitored and measured. I don’t get that.” (H8: 10.09)

For others, the discontent and disengagement they felt around the issue of health and safety was linked to the sense that excesses were symptomatic of interventions that did not engage with real needs:

“it’s a tick-box exercise. Every year we have to go and attend a lecture and fill an online assessment form out [...] it’s one crappy day out of the year, that’s the limit of my involvement” (H4: 46.48)

This suggests that there is a desire for what health and safety *ought* to be achieving, and that rather than a rejection of the values health and safety protects, disgruntlement instead reflects frustration over those values not being fulfilled. In particular, the pervasiveness of bureaucratic ‘health and safety’ was seen as a barrier, leading to an unsatisfactory adherence to essentially unproductive rules:

“That’s the test [...] we’ve put the notice up [...] because our lawyers tell us, but have we actually advanced a healthier, safer working environment? I’m not sure we have, not as much as we’d like to think” (D9: 59.48).

Similarly, civil litigation was also seen as a barrier to ‘proper’ health and safety:

“This compensation culture has actually made health and safety more difficult [...] so we now, weirdly enough, need all these rules” (H1: 14.24).

C: Critical observance

A key term identified in studies of contemporary public attitudes towards health and safety in the UK is the idea of ‘critical trust’, the notion that support for regulation is shaped via ongoing critical testing of their credentials (Pidgeon *et al.* 2003; Walls *et al.* 2004). Rather than reflecting fixed levels of trust, these judgements are instead made, and remade, as different considerations (actions, risks, structural factors) are weighed up. This allows contradictory opinions to coexist (wanting more protection, but less intervention), as well as ambiguity and a tendency towards grudging, sceptical acceptance (Almond and Colover 2010; 2012). Within the focus groups, there were areas where this ‘critical observance’ of health and safety became clear.

Media mistrust

As discussed elsewhere, a pervasive negative media climate surrounds issues of health and safety, and has fundamentally shaped the policy landscape in this area, as well as wider perceptions of the justice-based legitimacy of this area (Almond 2009; 2015). These negative media stories were recognised by the participants in the focus groups:

“Every year you get “conkers in the playground”, that’s regular” (E8: 21.15).

“There were these cases of people drowning and the response team came and they weren’t allowed to, I mean the chap was only drowning in eighteen inches of water, the emergency crew came and they weren’t allowed to help this chap [...] They stood there for two hours watching him drown until the frogman turned up” (E9: 20.28).

Interestingly, both of these examples were referenced by the Young Review (2010). The responsiveness of the public to negative media stories about ‘*health and safety gone mad*’ was tested within the focus groups; participants were given two exemplar stories to discuss.⁹ The stories were widely recognised, either specifically or as representative of a ‘type’ of story about health and safety, and tended to prompt critical responses in those who read them:

“This scenario is the nanny state gone mad. You know, what next?” (C6: 30.55)

At the same time, however, consumption of these media stories was not uncritical; participants were aware that they were being given only one side of an issue, which had been exaggerated to advance a particular media agenda:

“[T]hey sensationalise things so much so that everyone’s meant to be going up in arms” (D3: 23.55).

They were also more than capable of reasoning around and evaluating the content of the stories presented, advancing alternate, more benign interpretations of the facts. Often, the identity of the news outlet in question was crucial:

“It does depend where you read it [...] if I read it on BBC News I would believe it. Maybe I’m wrong” (D7: 31.03).

⁹ <http://www.dailymail.co.uk/news/article-2541423/Elf-safety-gone-mad-Now-school-bans-RUNNING-playground-case-children-fall-over.html>, and <http://www.dailymail.co.uk/news/article-2495534/Binmen-refuse-collect-rubbish-bin-lid-left-open-ONE-INCH.html>.

Others were seen as intrinsically unreliable (sometimes prompting disagreement):

“it depends on the tabloid it comes from, I mean the Daily Mail, it’s renowned for scaremongering and falsification” (B3: 33.45).

“I’m not trying to be snob, but I wouldn’t read this paper because I know it would be full of this kind of stuff [H7 says she likes the Daily Mail]. Everybody likes their own thing, but I’m not interested” (H9: 27.24).

So, in one example of the ‘critical trust’ dynamic, participants both internalised the content of these stories, and also questioned their veracity. Once the initial amusement or annoyance provoked by a story subsided, a more balanced reflection on the issue emerged. In some cases, the media were seen as complicit in this:

“I’m disappointed with this paper for writing this, because this is just trying to make people have this kind of conversation” (H9: 26.30).

Anti-commercialisation

The second example of this critical trust dynamic relates to the perceived commercialisation of the health and safety agenda. This goes hand-in-hand with the broader perceived trends towards bureaucracy and rule-proliferation. The shift of the constitutional basis of the regulatory framework towards instrumentalism was seen as a negative development:

“it’s gone administrative, I think it’s lost its focus” (D9: 58.47).

This reality was regarded as a ‘safety industry’, a network of interests which had expanded the scope of health and safety and led to an exponential growth in the requirements imposed as a result. Safety professionals and the institutions of this profession were seen as a key part of this problem:

“I think it’s turned into an industry, it’s gone from being rules and regulations that you have to enforce because it’s common sense entrenched in law, to an industry that has generated surveyors, health and safety professionals, a slew of qualifications [...] it’s started being a means for consultancies and firms to generate probably quite a lot of cash” (D10: 10.23).

This perceived ‘safety industry’ was thought to have wielded significant influence in the pursuit of the self-interest of the businesses and individuals involved:

“[Government] have been driven by the big corporate firms [...] there are a lot of jobs in this sector” (D1: 1.25.17).

“It’s almost a whole commercial enterprise [...] there’s so much money being made. That’s why I think we’re going to struggle to [...] stop it” (H8: 1.11.00).

This ‘safety industry’ provoked such negative responses because it was related to a perceived change in the normative positioning of the individuals involved:

“Yeah [it affects trust], you think “how much money are they making out of it? [...] and who’s telling them what they can and can’t do?” (H2: 1.11.21).

“It’s become a job creation industry [...] It’s hard to see that it’s addressing any real risk [...] it’s just encroaching bureaucracy for non-productive, they’re not quangos, but they’re non-productive overseers and it’s nonsense” (E9: 10.25).

The health and safety profession is cited as an example of a self-sustaining bureaucracy that has distorted the day-to-day reality of health and safety practices. This perception of self-interest extended to employing companies, which engage with health and safety to protect their financial interests:

“It’s there to prevent injury, but when you said ‘what is the first thing that pops into your head?’, it’s comebacks, a legal standpoint [...] health and safety law for insurance purposes” (A3: 05.39).

“It is expensive to be safe, isn’t it? [...] they’re not going to make as much profit. We have to value safety above profit” (D3: 1.06.54).

This self-interest extended to using health and safety as an excuse to avoid doing things that were costly or not deemed important:

“they know for a fact customers aren’t going to say ‘let me see your risk assessments’ [...] they just throw any excuse out there, ‘health and safety’, just to speed it along” (B2: 1.06.05).

This cynicism about the motives of actors in this area extended to incorporate a mistrust of safety professionals, insurers and lawyers:

“Health and safety is to protect insurance, that’s the way I see it” (A6: 48.07).

“Solicitors are making money out of encouraging people to sue, people are making a little bit out of claiming, and these health and safety advisors are making a fortune, it’s become a corporate thing” (H9: 1.10.48).

Expertise v. officiousness

What is interesting, however, is the sense of this cynicism being tempered by a broad appreciation of the functional legitimacy of these professions. This

appreciation was not always obvious or complimentary, but it provided an important insight into the drivers of trust in this area. On the one hand, health and safety professionals were perceived as being boring, rigid, and officious:

“We’ve got a whole bunch of health and safety ‘white coats’ [...] one guy who goes around and just talks about health and safety legislation” (H5: 34.18).

“Super cautious” (D8: 45.20).

“you wouldn’t meet them with a smile and go ‘come on in!’ you’d go ‘oh no, what do you want?’ They’d ruin my day” (F1: 32.13).

“They sound like traffic wardens to me!” [laughter] (C9: 54.54).

Interestingly, this also translated into a rather forbidding persona, and this could lead to an adversarial relationship with other workers:

“It’s like a battle, it’s you against them [...] it’s the enemy approaching, so to speak. So there’s never been [...] that good atmosphere because they have tunnel vision” (A3: 41.48).

“Serious, scary sometimes. If they told you, you have to do it. That’s how the facilities managers where I work are, I’m quite scared of her” (G3: 29.06).

Safety professionals are not viewed positively on an interpersonal level. But, for many people, this tension was linked not to a rejection of health and safety, but rather to the pressures around work and productivity that come between the worker and the safety practitioner:

“[Safety managers] seem to be more of a hindrance than a help” (F2: 32.01).

“there’s this kind of human nature thing in industry that the safety officer’s going to slow the job up [...] but it’s there for protection” (G2: 31.10).

Also, this was sometimes recognised as an exaggerated media stereotype:

[“Your image of people with clipboards, is that based on experience?”:
Interviewer] *“No, not really. The consultant that came around was a perfectly normal guy. It’s just a perception based on stupid articles” (D10: 46.33).*

Importantly, a series of features were identified that participants regarded as important in contributing to a positive, trust-based relationship with ‘health and safety’ people. They should be knowledgeable, serious, authoritative, and committed to health and safety. There is an irony in the fact that many of the negative perceptions outlined above (rigid, officious, inflexible) were viewed as positive attributes when it came to the question of trust:

“If you’re a bit blasé about it, you’re not instilling a lot of confidence in people that you’re the go-to guy” (A3) [You said the safety people you’d encountered were stern, rigid, but you trusted them?]: Interviewer] “Yeah, because they’re knowledgeable” (A7) “They’re professional” (A6: 1.17.53).

Embedded within this is the central role of expertise as a factor that legitimates health and safety. The expertise of the messenger was repeatedly cited as a reason for accepting the message:

“if it’s someone’s job I’m going to assume they’ve got more specific knowledge about it than I have so I’m going to trust them” (D6: 1.14.32).

“They’ve got to be genuine and know what they’re talking about otherwise it’s just a complete waste of money” (H8: 1.23.02).

The qualifications that safety people have, their experience of real-world issues, and their capacity to communicate this expertise are all vital features of this trust. In particular, a capacity to get the message across is crucial:

“trust needs to be earned so I think if there’s a health and safety officer or something and they’re telling you about all the health and safety regulations and you’re listening to them and thinking ‘yeah, that sounds right’, they’re going to earn your trust” (D4: 1.10.54).

The motives of the expert, their reasons for sharing their expertise, matter too. This should not simply involve passing on artificial knowledge for self-interested reasons:

“I don’t know what their level of expertise is. [A friend] is trying to go down a career as a health and safety advisor, and I know he’s got no experience at all in the industry he wants to work in, he’s just reading books about it [...] I’ve got my suspicions that it’s about money” (H9: 1.14.42).

D: Underlying normative evaluations of health and safety

Despite the negative attitudes uncovered within the focus groups, the surprising conclusion of the process as a whole was that the idea of health and safety was still viewed positively by the majority of participants:

[“Do you think it’s important to have health and safety laws in place?]: interviewer] “[altogether] Yes!” (G1-7: 43.03)

The normative idea of health and safety was almost universally endorsed, and this was linked to a progressivism in attitudes, as well as a reassurance role:

“as a member of the public you want to know when you’re going somewhere that you’re going to be safe (“Yeah, trust” B3) trust, that’s it! You want to know if you’re going in [a DIY store] that the boxes are stacked properly, they’re not going to fall” (B6: 1.12.38).

Very few participants saw no role for health and safety, rejecting it completely on justice grounds, and the majority of those taking a critical view tempered this with references to notions of proportionality:

[“Do you think that health and safety is important?”: Interviewer] *“Yeah” (H2) “To a certain degree” (H6) “But it should be measured, measured is a good word for it [...] Each thing should be looked at” (H1: 1.05.34).*

A right to safety

Many participants framed this as a justice-based right to safety, and saw it as part of a broader movement towards empowering individuals:

“I think nowadays people are more, you know, ‘well actually I should be, if I’m working here, you have an obligation’ [...] these are things that I think we’re getting more and more aggressive about, which is a good thing” (C4: 1.03.30). “Rights to feel safe, say no to something” (A5: 56.17).

This notion of a right to safety was widely endorsed, but also seen as being in tension with other pressures that also shape how health and safety is viewed:

“I think it’s become a right now” (D3) [...] ‘I think yeah, you’ve got the right to work in a safe environment” (D5) “That sounds just like a poster, it’s true though! You’re not going to feel comfortable, you’re not going to work properly if you’re worried you’re going to get hurt” (D8) [...] “people want that, but I think it’s gone administrative [...] it’s lost its focus” (D9: 58.47).

This right was endorsed in principle by the majority of participants, but not always recognised in practice. In particular, the mobilization of this right (Ewick and Silbey 2003) was positioned in the context of power imbalances in the workplace:

“in industry, health and safety has helped employees, because years ago you just did what your employer said, didn’t you? So health and safety’s probably really helped [...] it’s making it safe for them and you can go to your boss and say ‘no, I’m not going to do this, it’s not safe” (H2: 59.38).

At the same time, undue reliance on this right to safety was also viewed with a degree of scepticism by some, who saw it as a means for employees to gain some advantage (usually work-avoidance) by ‘undeservingly’ using it as an excuse:

“there’s a lot of firms where the employee has got the upper hand [...] being off for stress and things, because now it’s a big thing about mental awareness. Five people [we] had in the last two weeks all gone off” (H8: 1.09.50).

Among the participants, a small number of ‘advocates’ held to strongly supportive views of health and safety, and would try and convince others of their position even in the face of opposition:

“When she fills in a form she doesn’t really consider it because it’s filling in a form” (D9) “But we write them, it’s not like a tick box” (D6) “It becomes an administrative function” (D9) “My feeling is it’s not an administrative function, it’s necessary and I don’t resent doing it” (D6) “As long as it doesn’t take over your job” (D8) “I do understand what you’re saying about it being common sense, but I do think it’s necessary” (D6: 25.31).

“There has been progress, my granddad died of emphysema because of the mines and he also lost a finger through the pit machines. So although on the one hand people weren’t as crazy then about health and safety as it’s been deemed, equally there’s been progression” (A1: 55.34)

So some people retain a strong commitment to health and safety, and are willing to take unfashionably positive positions in supporting it. It may be that this framing of the issue as a matter of a right to safety serves to explain the relative invisibility of procedural issues in the discussions. Respondents did not express a great deal of concern in relation to issues of accountability, mandate, or due process, even when prompted to do so. The European Union, perhaps surprisingly, was not widely referenced as an issue, and even when it was raised, opinions around it were muted.

Good motives matter

Finally, one reason for these surprisingly durable positive attitudes is the trust that participants had in the motives of regulators. The *reasons for* regulating, and the altruistic motives ascribed to those in the area, powerfully impacted on the perceived justice-based legitimacy of those actors:

“power’s a privilege and in this case it’s being used for good. Health and safety is a necessity, it’s a good, positive thing [...] this is an instance where there can’t be such a thing as too much power” (A4: 1.09.06).

A normative appreciation of health and safety and this sense of mission buttresses it against concerns related to procedural legitimacy (due process, accountability, the EU). This perception of socially-beneficial motives extended to HSE; it was seen as trustworthy, competent, and well-meaning because of this lack of self-interest:

“I trust the HSE. When I’ve had meetings with them and they’ve come in to give advice I listen to them [...] I’d rather go and find my own information from a government source that’s directly derived from the law rather than somebody just trying to capitalise” (H9: 1.12.41).

HSE was recognised as having authoritative expertise:

“They just give advice [...] I will look at their advice and they’ll tell me what to do [...] I go to their website as a checkpoint, especially when I’m not alone” (H9: 37.40).

At the same time, however, it was also seen as suffering from a profile problem, being seen as distant from the lives of ordinary people, and suffering from a poor media profile as a result:

“In our whole lives we’re not going to come across them, are we? The trouble is, you only come across the Health and Safety Executive if you have a problem [...] we’re just not interested, we’re interested in funny stories [...] you’re hoping your whole working life you never come across them” (F7: 26.51).

This translated into a sense that the regulators lacked constitutional legitimacy in terms of their transparency. This compromised the degree to which individuals would trust the regulator and obscured the prosocial motives otherwise attributed to them:

“health and safety, they’re a bit of an unknown entity. You never really get the opportunity to see who they are and what is their purpose, what is their objective? I’m accountable to the public I serve and if someone challenges me I have to answer to them. Whereas health and safety...” (C5: 1.13.36).

Cumulatively, this serves to illustrate the importance that the perceived motives of the regulator have in shaping legitimacy; people were happy to forgive transgressions that might otherwise be regarded as fussy or over-zealous so long as

they were able to position them within the context of a public service ethos (see also Pidgeon et al. 2003; Walls et al. 2004). Despite all of the controversies identified in the discussions around the issue, health and safety was generally accepted, and there was a strong commitment to the idea of a right to safety. It appears that claims as to a crisis of the public legitimacy of 'health and safety' may be overstated.

7. Development, change, and legitimacy: health and safety, 1960-2015

The social, political, cultural and economic contexts of health and safety have changed dramatically over the past sixty years. Accordingly, this section of the report provides an overview of some of the most significant features of the period, identifying moments at which issues of legitimacy were debated. As might be expected, much of the existing literature has been produced by academic historians, though literature on the post-1960 era is in its infancy; instead, historians have tended to focus on the 19th century and on safety issues, gradually shifting over the last 25 years to concentrate more on health. Existing literature has also tended to examine traditional heavy industries, such as mining, shipping and manufacturing, particularly in relation to state regulation, though recently there has been growing interest in worker experiences of health and safety (Bradley 2011; Johnston and McIvor 2000a, 2004a, 2004b; Walker 2011). What follows can be only a very brief overview of some extremely complex issues, to contextualise the project's cross-cutting themes. The narrative is broken up into several periods, divided by their significant characteristics, though of course the boundaries between periods were permeable. Whilst it might be tempting to see a straightforward progression from a period of poor standards and very high rates of death, injury and ill-health to a point at which relatively few succumb to accidental casualty or ill-health, this would be misleading. Changes were contingent, the product of multiple factors, and were often contested as opposing schools of thought gained the upper hand, a messy process of ebb and flow which continues today.

Before 1960: The inherited regime

The mechanisms through which occupational health and safety issues were addressed were established well before 1960, and this context is important to understand in order to appreciate the distinctiveness of the post-1960 period. The role of the state in relation to health and safety is generally understood to have grown during the 19th century, albeit slowly and through a process of negotiation between interest groups (Bartrip 1983; Leka *et al.* 2012; Macdonagh 1958; Mills 2010; Roberts 1960: 287-93; Yarmie 1984), and as part of a wider shift from an individualist to collectivist approach (Evans 1978; Greenleaf 1983). Concerns about

health and safety were initially expressed in justice-based moral terms, phrased around the employment of children and women (Bartrip 1983: 68; Humphries 1988; Kirby 2013; McIvor 1997: 126; Nardinelli 1980). Provisions were gradually extended to include adult male workers, though this was particularly controversial, as it was widely believed that the contract between worker and employer was sacrosanct (Kostal 1994: 257-79, 313-21). There was, however, increasing pressure on the state to act, notably in the final quarter of the 19th century coming from MPs sympathetic to the labour cause (Bartrip 1996; Clegg *et al.* 1964; Clegg 1985), although there has been debate about the extent to which wages and conditions were prioritised by trades unions at the expense of health and safety issues (Bartrip 2002; Bowden and Tweedale 2003; Johnston and McIvor 2007; McIvor 1997: 134-36; McIvor 2001: 130; Williams 1960: 51).

Alongside the Factory Act 1833, which established the Factory Inspectorate (Bartrip and Fenn 1988), regulations were passed to control specific issues or processes; over time these accreted into a confusing mass of detail and of overlapping and uncertain regulatory jurisdictions. There were limits to the perceived constitutional legitimacy and acceptability of state action (Bartrip 1983; Carson 1979; Ward 1962: 115); the solution often proposed was that voluntarism and self-regulation were

sufficient to improve health and safety (Yarmie 1984; Esbester *forthcoming*). The practical work of the inspectorates focused largely on reactive investigation and on controlling rather than eliminating dangers via cooperation with employers. This has been seen as a practical response to the limited resources available to the

Timeline of Health and Safety Inspectorates

- 1833: Factories Inspectorate founded
- 1840: HM Railway Inspectorate founded
- 1842: Mines Inspectorate founded (from 1894, Mines and Quarries)
- 1863: Alkali (later Alkali and Clean Air) Inspectorate founded
- 1875: Explosives Inspectorate founded
- 1956: Agriculture Inspectorate founded
- 1959: Nuclear Installations Inspectorate founded
- 1974: Health and Safety Executive founded (merging Factories, Mines and Quarries, Explosives, Nuclear Installations, and Alkali and Clean Air Inspectorates)
- 1990: HM Railways Inspectorate brought into HSE (from Department of Transport)
- 1991: HSE Offshore Division founded (taking over from Department of Energy)
- 2006: HM Railway Inspectorate moved out of HSE (to ORR, Office of Rail Regulation, later Office of Rail and Road)
- 2011: Nuclear Installations Inspectorate moved out of HSE (to ONR, Office for Nuclear Regulation)

inspectorates, as well as a means of persuading employers to go beyond the minimum standards laid down at law (Bartrip 1983: 74; Braithwaite 1985; Dawson *et al* 1988: 208-210, 235; Jones 1983: 260-62; Rhodes 1981). Treatment of health and safety issues during this period left something to be desired in a number of aspects, not least the gap between the laws as enacted and the effectiveness of their enforcement and outcomes (Bartrip 1982, 1983), impacting heavily on their perceived functional legitimacy. Recalcitrant employers, as well as workers who wished to avoid state regulation, had the power to resist implementation at the point of work (McIvor 1997: 126; Mills 2010: 69-97). And sectoral coverage by inspectors was limited; until 1974 a very large number of workers remained outside the remit of the various inspectorates (Leka *et al.* 2012: 9). Before 1960 the focus remained largely on safety issues, as they were more easily amenable to inspection and control. Attention to health issues slowly increased, however, focused on particular 'dangerous trades', roles or substances/diseases such as lead, arsenic, anthrax and asbestos (Bartrip 2002; Harrison 1989, 1990). Finally, gender remained a significant factor, with inspectorates clustered in industries that were often male-dominated. Only in 1893 were the first Lady Inspectors appointed, tasked with examining health and safety issues specific to women (Bartrip 1996; Harrison 1989, 1990, 2004; Livesey 2004).

The 20th century saw the gradual creation of a welfare state, as well as further slow extension of the scope of the health and safety regulatory regime. This was so particularly in relation to the Factory Inspectorate, with acts in 1901 and 1937 attempting to consolidate existing legislation and in 1948 extending limited regulation to some new areas, including building sites. Throughout the interwar years Jones has shown how inspectors continued to prefer persuasion over punishment, with the state hoping that industry would become self-regulative (Jones 1985). This was seen, for example, in the slow and uneven formation of voluntary 'Safety First' councils, often noted as reasons why further state regulation was unnecessary but also providing something akin to an early experiment in tripartism (Jones 1983a: 265; Jones 1983b). Ideas of self-regulation, a focus on hardware such as machine guarding rather than processes and systems; a managerial determination to concede as little ground as possible to trades unions; and a 'victim-blaming' approach, established in the 19th century, remained firmly entrenched (Higgins and Tweedale

2010; Jones 1985: 223-39; Mclvor 1997: 130; Nichols 1997: 12, 53-54; Rhodes 1981: 70). Economic difficulties in the 1920s and 1930s, and the novel dangers introduced by new technologies, meant that that for most workers there was little change in the standard of health and safety between 1900 and 1939 (Jones 1994: 70-71; Jones 1985: 223-39; Mclvor 1997: 125, 131).

The post-World War 2 Labour government paid more attention to health and safety, part of a growth in corporatism and wide-ranging, cross-party interest in consensual relations and improving welfare (Ackers 2014: 64; Mclvor 2001: 227-29; Wrigley 1996: 38-9), enhancing the democratic and justice-based legitimacy of the issue. New inspectorates were established in emergent sectors (such as the Nuclear Installations Inspectorate, 1959) or those where concern was increasing (such as Agriculture, 1956). In addition, nationalisation brought under state control many industries that had been reluctant to engage with health and safety regulation, including the railway and coal industries. In the 20th century, as in the 19th, safety dominated attention, though some health issues were gradually recognised (Long 2011), including surrounding asbestos (Bartrip 1998, 2001, 2014; Greenberg and Wikeley 1999; Tweedale and Hanson 1998; Tweedale 2000) and stress (Melling 2014). A final significant point to note for the pre-1960 period is the emergence of an idea of a safety movement and a professional cadre of health and safety officials. International in its origins (Swuste *et al* 2010), drawing from the USA's 'Safety First' movement (Aldrich 1997), the railway industry introduced the first sustained workplace safety campaign in 1913 (Esbestor *forthcoming*). This voluntary effort spread across other industries; with it came officials later to call themselves 'safety officers'. The British Industrial 'Safety First' Association was formed in 1917, going on to be part of the National 'Safety First' Association in 1923, renamed RoSPA in 1941. From within RoSPA industrial safety officers coalesced to form the Institution of Industrial Safety Officers, eventually becoming the Institution of Occupational Safety and Health; and the British Safety Council was formed in 1957. Such bodies all spoke to the increasing prominence of health and safety issues and practice in the 20th century and played their part in informing debates about health and safety.

1960-1970: Challenges to the existing regime

During the 1960s and early 1970s, questions about the efficacy of the health and safety regime became more pronounced. The Factories Act 1961 had consolidated previous legislation but introduced no big changes, and factories were inspected on a four-yearly cycle, regardless of the relative risks posed by their operations; the law continued to prescribe particular standards, often in minute detail; education remained focused on the ‘careless worker’; and persuasion remained core to the inspectors’ approach, as they still lacked strong enforcement powers. As the Chief Inspector of Factories noted in his 1969 report, *“better compliance for most of the time can be secured in most premises if one persuades the occupier of the need for compliance as a matter of good practice, rather than to avoid conflict with the law”* (Department of Employment and Productivity 1970: xii). Correspondingly, voluntary action remained a core part of the health and safety system, although results appear to have been disappointing: in agriculture the failure to establish active safety committees was repeatedly commented upon¹⁰ and in 1967 a Factory Inspectorate survey revealed only 33% of SMEs (50-500 employees) had joint safety committees in place.¹¹ Similarly, in 1968 the TUC representatives to the Industrial Safety Advisory Council’s Joint Safety Organisation noted that *“existing safety organisation reflects the piece-meal nature of its development and is not capable of meeting present day needs”*.¹² This was partly a product of employers’ continued preference for a narrow conception of the regulators’ constitutional and democratic legitimacy, based upon a dislike of formal bodies that gave a place to unions and which impinged upon managerial autonomy. The trade unions were relatively powerful at this time and although industrial relations were at times tense (Wrigley 1996; Watterson 1988), for the most part the 1960s were marked by a relative degree of cooperation and understanding, though with wide variations across sectors (McIvor 2013: 201-227). There was also a widening interest in the implications of health and safety for efficient management, driven, so far as the state was concerned, by a desire to promote self-regulation (Sirrs 2016: 319-23).

¹⁰ RoSPA, ‘Sixth annual report of Head of Agricultural Safety Division’, 12 June 1964, p. 2 (National Archives Scotland, Edinburgh (NAS), AF59.152); RoSPA, Minutes of the National Agricultural Safety Committee, 24 September 1965, p. 2 (RoSPA Archives, Birmingham, D/266/2/25).

¹¹ Untitled memorandum, Chief Inspector of Factories to Managing Directors and Managers of Firms employing more than 50 (n.d., c.1969), p. 1. Modern Records Centre, University of Warwick (MRC), MSS.292D/146/18/1.

¹² ‘TUC Representatives’ Comments, Industrial Safety Advisory Council, Joint Safety Organisation’, 10 July 1968, p. 1. MRC, MSS.292B/146/17/2.

The most serious challenge to the current regime was posed by the rising numbers of workplace deaths and injuries. 1961 was the third year in a row in which casualties increased, rising from nearly 168,000 in 1958 to over 192,500 in 1961 (Ministry of Labour 1962: 7). At the same time, many millions of workers remained outside the scope of state regulation, and it was known that as many as 40-66% of all casualties went unreported.¹³ By 1969 just under 323,000 incidents were reported to the Factory Inspectorate (Department of Employment and Productivity 1970: xiv). Such rises increasingly challenged the existing regulatory system, suggesting that it was failing to protect workers and failing to keep pace with industrial and economic changes. The old economic bases of the British economy were slowly being eroded, as heavy industries like mining, manufacturing and shipbuilding started to decline. The pace of technological change rendered prescriptive legislation ineffective, as by the time new legislation was enacted, the ill that was being remedied had often been

Case Study 1: Health and safety in a new workforce

Post-war immigration into Britain posed a number of social, political, cultural and economic challenges. One area not often considered is the impact on occupational health and safety. Immigration from Commonwealth countries had been encouraged, to fill labour shortages, and this created new audiences and needs for health and safety messages. A 1963 British Medical Association conference discussed the possibilities of offering “a short course in occupational hygiene, safety and health” to immigrants, as well as creating leaflets to help new arrivals and “for the British people on how to receive immigrants”, as “it was up to us to set a good example”. The question of language was raised, as it was suggested that “many immigrants [...] were unable to speak English”, though this view was challenged.¹ Needless to say, this topic was one in which existing prejudices manifested themselves: in 1960 one Wolverhampton-based group advised employers to treat immigrants “as though they were children, kindly but firmly” and not to employ them “on jobs which involve the use of discretion”. Whilst these views are, by today’s standards, expressed in rather inflammatory terms they reflect commonly held views of the time; yet other points that the document went on to note were perhaps more constructively articulated, and were applicable to all workers – “they should be fully and properly instructed in the job”, “the direct answer to the problem is – Education.” Translation of material into other languages was also suggested, as was involving community leaders to convey health and safety information.² Such points are relevant to this day: it is important to consider how every part of the workforce might be reached by health and safety messages.

(1) BMA Conference ‘The Immigrant in Industry’ (1963), minutes, pp. 4-5. MRC, MSS.292B/141/3/3.

(2) RoSPA Industrial Group Advisory Council meeting, 29 January 1960, minute 6. RoSPA archives, D.266/2/21/1.

replaced by another. As one source noted “*The 1961 Factory Act had not been successful in regulating the use of chemicals [...] the law did not keep up with the*

¹³ TUC, ‘National Joint Advisory Council, Industrial Safety Sub-Committee, notes for meeting 17 November 1964’, p. 1. MRC, MSS.292B/146.17.1.

vast range of new materials and processes being introduced onto the shop-floor".¹⁴

At the same time, other occupations started to grow in importance in the economy, notably office work and the retail sector; inspectors, unions and employers had to negotiate what was appropriate for these new environments. Other challenges were posed by new working populations, including women and immigrants (see Case Study 1).

On the other hand, across this period there remained broad acceptance (if often tacit) of health and safety regulation's cognitive legitimacy as both necessary and important; indeed there was a moral, justice-based legitimacy imperative, as the Chief Inspector of Factories noted in his 1963 report, *"to accept responsibilities that are wider than those imposed by law [...] Legislation cannot be a complete guide to what should be done"* (Ministry of Labour 1964: 47). Although additional inspectors were appointed across this period, by the early 1970s there were still calls for further increases from organisations such as the Dock and Harbour Authorities' Association¹⁵ and RoSPA.¹⁶ There were of course some responses to the changing conditions: most notably, in

Case Study 2: Health and safety beyond the workplace

Whilst deaths, injuries and ill-health took a huge toll on workers, they very often attracted little comment beyond the trades unions or Labour MPs. On the other hand, during the 1960s there were two seminal incidents in which the perils of workplace activities had an impact on the public – both in terms of casualties and in terms of media attention. The first of these was the collapse of a mobile crane onto a passing motor coach at Brent Cross in London in 1964, killing seven and injuring 32. The resulting public enquiry went beyond the incident's immediate causes and made recommendations on civil engineering safety designed to protect the public and workers, and suggested that the public should come under the scope of legislative protection (Ministry of Labour 1966: 30-31), something to be seen in the HSWA 1974. The second incident was at the time the worst public safety incident of the post-war era: the 1966 collapse of a coal spoil tip in Aberfan, South Wales. It engulfed a primary school, and killed 144 people, mostly children – though no workers, so was not formally 'reportable' as a workplace incident under the rules of the Mines and Quarries Act 1954. This highlighted the lines drawn between 'health and safety' in the workplace, and 'public safety' as a more nebulous, less well-defined concept. As a result, Aberfan was regarded as a problem of public child safety and political process rather than occupational health and safety *per se*. As one former Health and Safety Commission member observed: *"Aberfan didn't strike one as being a health and safety issue, it struck you as being a public safety issue"* (Rex Symons interview, para.10). These were issues not easily resolved, and they continued to raise their heads after the 1960s: notably in the Flixborough chemical plant explosion in 1974 and in the debates about the transport of hazardous goods (see case studies elsewhere in this report).

¹⁴ R. Williams, 'A Key Issue', *Work Hazards* 21 (c.1979), p. 5. Samuel Barr Collection, Glasgow Caledonian University, GCU DC 140212.

¹⁵ Written evidence of the Dock and Harbour Authorities' Association to the Robens Committee, n.d. (c.1971), p. 3. TNA, LAB 96/57.

¹⁶ Written evidence of RoSPA to the Robens Committee, n.d. (c.1971), p. 7. TNA, LAB 96/75.

1963, with the Shops, Offices and Railway Premises Act, which extended regulation to an additional one million non-industrial workplaces (Allen 1966: 691) and the establishment of an Industrial Hygiene Unit in 1966 to address occupational health issues more scientifically. The Asbestos Regulations of 1969 reflected ongoing concern about a long-term, though increasingly visible, issue; in his report of the same year, the Chief Inspector of Factories observed that *“at least as much effort must be put into the control of toxic contaminants in the atmosphere as into the elimination of the physical causes of accidents”* (Department of Employment and Productivity 1970: xiv).

Finally, occupational health and safety took on an occasional public dimension, with several major incidents affecting people outside the workplace: but despite events like the Brent Cross crane collapse in 1964 and the collapse of the coal tip at Aberfan in 1966 (see Case Study 2), widespread public interest in occupational health and safety remained relatively limited (McLean and Johnes 2000; Pantti and Wahl-Jorgensen 2011). According to a 1971 article in the *Times*, *“Industrial safety is a dry subject which arouses the passions of a limited number of people directly concerned with preventing accidents at work”* (Spiegelberg 1971: 5). Indeed, there was a prominent impression that there was widespread apathy towards health and safety, even amongst workers and managers; in 1966 one inspector commented that there was an *“almost complete indifference on the part of the individual workers as to their health, welfare and safety during their working day”* (Allen 1966: 691). Nevertheless, from a variety of sources, there was an increasing feeling that the existing health and safety regime was no longer fit for purpose. Whilst several attempts to introduce new legislation in the latter half of the 1960s failed, they did lead to a formal investigation of the condition of the British health and safety system – the Committee on Safety and Health at Work (Robens Committee) (Sirrs 2016).

1970-1979: Robens, the 1974 Act, and the new era

Contextually, the 1970s saw some significant changes, including to the relative importance to the economy of heavy industry and service-sector work. Numbers employed in the textile industry, for example, declined from 309,000 in 1971 to 176,000 by 1981, whereas administrators and managers increased from 923,000 to 1,343,000 in the same period (Mitchell 1988: 107). One heavy industry that saw

considerable expansion was the offshore oil and gas sector. This was a period of significant exploration and production (Brotherstone and Manson 2007), with the Department of Energy responsible for health and safety as well as production, a dual role that would later be criticised (Carson 1982; Paterson 2007). There was a slight increase in the percentage of women as part of the overall working population, from 37% in 1971 to 39% in 1981 (Mitchell 1988: 107). Trade unionism was strong, with membership remaining at around 11 million for most of the 1970s and peaking at over 13 million in 1979 (BIS 2014: 21). Connected to this growth, industrial relations became more conflictual as the decade wore on, with a number of high profile disputes including the coal miners' strike in 1974 and the 'winter of discontent' of 1978-79. There were a number of economic difficulties, including the oil crisis of 1973 and ongoing struggles to control inflation; by the end of the decade, these pressures started to impact on health and safety, noted in HSE's 1978 annual report as producing a functional legitimacy-based, and *"much more overt questioning of the costs and benefits of health and safety legislation"* (HSE 1980: v).

In May 1970, Barbara Castle, Labour MP and Secretary of State for Employment and Productivity, appointed a committee of inquiry to examine health and safety in the broadest possible terms; this was the first time that such an extensive overview had been undertaken. The committee was chaired by Lord Alfred Robens, formerly a Labour MP and at that point Chair of the National Coal Board; it comprised a further six members, including a Conservative MP, a trade unionist and a radiologist. It sat for two years from June 1970 and received written evidence from 183 organisations or individuals, as well as further oral testimony and site visits in the UK and abroad. The Committee's terms of reference were huge: *"to review the provision made for the safety and health of persons in the course of their employment"* and the need for any changes in relation to the law. In a new departure, the Committee was specifically tasked with considering how the public might best be protected from dangers produced in, but extending beyond, the workplace (Robens 1972: v). There were some exclusions, including transport workers (covered by other provisions), the movement of hazardous goods, compensation and environmental pollution, although the Committee noted that these issues were raised in evidence, as *"[s]afety and health at work is not a subject that is easily delimited"* (Robens 1972: para.3). The Committee concluded that the existing regulatory system was no longer fit for

purpose and deaths, injuries, suffering and economic loss were “*unacceptably high*” (Robens 1972: para.456). The “*haphazard mass of law which is intricate in detail, unprogressive, often difficult to comprehend and difficult to amend and keep up to date*” was a significant problem, along with “*excessively fragmented*” administrative arrangements (Robens 1972: para.458).

A new regime was called for, covering more workers as well as the public, with greater flexibility and less prescription. Apathy, a product of the existing approach which encouraged people “*to think and behave as if safety and health at work were primarily a matter of detailed regulation by external agencies*”, was the “*greatest single obstacle*” to improving health and safety (Robens 1972: paras.456-7). Instead the Committee called for greater self-regulation, viewing employers and employees as best placed to ameliorate them. It was recommended that existing legislation be simplified under a single Act to be administered by a new national body composed of many of the existing inspectorates (Robens 1972: paras.91-115). This would be supplemented by additional regulations and voluntary standards and codes of practice “*developed within industry and by independent bodies*”. Aware that this was likely to be controversial, especially amongst trades unionists, it was explicitly stated that “[w]e are not advocating a slacker approach” but one which was “*more flexibly based*” (Robens 1972: para.148). Finally, the Committee recommended that employees be consulted about health and safety matters, but did not call for the compulsory adoption of safety committees as favoured by trades unions (Robens 1972: paras.68-71). At the heart of the Committee’s approach was the idea that there was a natural “*identity of interest*” between employers and workers (Robens 1972: para.66), underpinning the democratic legitimacy claims that the law could make. To this end, it was proposed that key stakeholder groups were “*to play an effective part in the management of the new institution*” (Robens 1972: para.114); these would include industrial managers, trades unions, medical practitioners and local authority representatives. In this way, the Committee bid to secure legitimacy for the new regime from stakeholders by involving them – though notably absent were the public. The approach taken by the Robens Committee and the subsequent Health and Safety at Work Act 1974 (HSWA), then, is generally seen as the zenith of this consensual approach and the corporatist, tripartite decision-making systems that implemented it.

Now at over 40 years' distance from the Committee and Report, it is perhaps hard to give a sense of just how radical they were. The changes they heralded were huge, although a product of their time (Sirrs 2016). Politically, there was broad cross-party support – the 1974 Act stemmed from a Bill introduced by the 1970-4 Conservative government, based on a report commissioned by the 1966-70 Labour one, that was then carried into legislation, with only minor amendments, by the 1974 minority Labour government. Commentators in the press endorsed self-regulation, as in a May 1971 article which claimed *“How far Government should consider itself responsible for safety at work is a highly debateable point [...] If there is any general agreement, it is that beyond a certain point the responsibility must lie with industry”* (Spiegelberg 1971: 5). However, there were voices of dissent, typically from the political left which tended to favour a stronger state role. One Amalgamated Union of Engineering Workers representative told TUC that *“we deplore the suggestion in the [Robens] Report that there is too much law. We reject this entirely. How ridiculous can you get, making a suggestion like this?”*¹⁷ Lady Summerskill, a Labour peer, was reported as arguing that Robens' report *“would bring rejoicing to the hearts of every irresponsible employer of labour who used the voluntary approach as an escape from his obligations”* (Times 1973: 7). Caught in the middle, the Chief Inspector of Factories stated that *“impartial we must be, for no side – employer or workforce – has a monopoly of rectitude in safety and health at work. We must also exercise a strict impartiality if we are to hold – and deserve to hold – the trust of managers and workers”* (Department of Employment 1973: xiii). Academics have criticised Robens' conclusions, arguing that business interests dominated (Beck and Woolfson 2000). Finally, public awareness of and response to Robens' was more muted.

In brief, the 1974 Act followed the recommendations of the Robens Committee closely. It unified most of the multiple existing inspectorates under a body that became the Health and Safety Executive (HSE; the key exceptions to this were the railway and offshore industries). The old prescriptive law was replaced with codes of practice and general duties to reduce risks 'so far as reasonably practicable'. This was intended to allow flexibility in creating and determining appropriate standards, and placed proportionality at the heart of the system, judging the elimination of risks

¹⁷ Verbatim report of TUC conference on the Robens Committee Report, 12 October 1972, p. 36. TUC Library, HD 7273.

against the cost and difficulties of making changes. Coverage was extended to include virtually every worker, and, via Section 3, those members of the public who might be endangered by workplace activities. As well as establishing the HSE, the 1974 Act created the Health and Safety Commission (HSC). This was the management board, tripartite following Robens' recommendations, comprising representatives from industry, trade unions and local government, as well as safety experts and policymakers. This paved the way for some degree of accommodation between interest groups, enhancing the democratic legitimacy claims of the policymaking process while also, to some extent, depoliticising health and safety issues and downplaying issues of justice-based legitimacy. As Rex Symons, a former HSC Commissioner (1989-2002), observed:

"the politics were completely submerged in the issues. The fact that I've sat opposite a trade unionist and he sat opposite me and we probably knew how we both voted didn't make the slightest difference" (Rex Symons interview, para.58).

It has been suggested that the functioning of tripartism in practice was less collaborative, representative or equal than Robens intended (Baldwin 1987: 139; Dawson *et al.* 1988: 202; Hutter 1997: 24). For example, one letter to the journal of the National Union of Agricultural and Allied Workers claimed in 1979 that the HSWA was *"in too many cases [...] sloppy, out of date, ineffectively worded and biased to the extreme in the general direction of the farmer or employer"*.¹⁸ The presence of tripartism did not prevent accusations that Robens and the HSWA remained essentially limited by the political power of business.

In practice inspectors had an additional five million workers to cover, which even despite some increases in resources and staffing led to criticism from the political left: in 1975 the *Morning Star* claimed that *"[t]he present 800 factory inspectors have proved ludicrously inadequate to cope with the safety and health of hundreds of thousands of workers"* (Paterson 1975: 4). Whilst not perhaps stretching to this end of the spectrum, the rhetoric of the identity of interest was noted publicly by the HSE as negotiable: *"it is too simplistic to assume that there will always be an identity of approach between management and trade unions [...]* The severity or extent of a

¹⁸ J. Tubby, 'Safety Act not good enough', *The Land Worker*, April 1979, p. 6. Museum of English Rural Life (MERL), University of Reading.

potential hazard, the costs and benefits of [...] preventative measures and the allocation of priorities are all matters of legitimate discussion between managers, safety representatives and inspectors” (HSE 1980: v). The importance of worker action (in terms of democratic legitimacy) was noted by the HSE and the labour movement (see Case Study 3), and although the compulsory appointment of safety representatives had proven a controversial omission from the HSWA, allowance was eventually made for their appointment in 1977. Some, like an ICI plant manager in 1970s, saw the impact of the HSWA: “I think the unions were very active and effective in promoting health and safety until the advent of the Act [...] whereas at the beginning I hadn’t thought much about it by the mid-1970s everybody’s safety consciousness and health consciousness increased”.¹⁹ As in earlier years, the extent to which trade unions prioritised health and safety issues has been debated, though careful

Case Study 3: Worker representation and safety

Calls for worker representation in health and safety decisions were long-standing, having been made since at least the start of the century; however, relatively little progress was made, for a variety of reasons, including employer fear about employee involvement in ‘managerial’ matters. Following controversy about the HSWA’s lack of compulsion to introduce safety representatives, in 1977 the Safety Committee and Safety Representatives Regulations were passed. As David Eves, later Deputy Director-General of the HSE, recalled “you want [...] employers, and employees’ representatives, usually through the trade unions, to agree that there is a way forward that both sides can agree to. So this is why the Safety Committee and Safety Representatives Regulations were one of the Commission’s first priorities in the 1970s, and they struggled with it at first, it took them three years [...] These for the first time gave safety representatives who were elected by their fellow workers, powers to inspect workplaces themselves, investigate, bring matters to the attention of their bosses” (David Eves interview, para.21). Some involved remembered an initial flush of enthusiasm, muted by the fact that the Regulations were dependent upon trade union representatives, which created problems where unions were weak: “76 safety reps were being trained and there was a huge enthusiasm. I think in the unionised companies that structure worked extremely well, in the non unionised companies sometimes there was very little interest.” (Janet Asherson interview, para.45) This also posed problems from the 1980s as trade union membership and traditional industries declined and newer sectors, less likely to be unionised, became a bigger part of the economy. Despite such difficulties, there is little doubt that the introduction of safety representatives was an important step in improving occupational health and safety.

acknowledgement of the constraints under which unions acted is vital (Bowden and Tweeddale 2003; Higgison 2005; Walters 1996). Safety remained the major focus, though the Employment Medical Advisory Service (EMAS) was set up in 1972 to bring together medical practitioners working within the field of occupational health (Johnston and McIvor 2000b).

¹⁹ Brian Watson, interviewed by David Walker, 2005, Chemical Workers Project, Scottish Oral History Centre Archives (SOHCA).

The aspirations of political decision-makers to create a broadly apolitical regulatory body led to HSE's creation as a non-Departmental Government body, remaining within state oversight via a 'sponsor' minister, initially the Secretary of State for Employment. For Robens, this was a matter of ensuring operational independence: *"it should have autonomy in its day-to-day operations [...] it should be allowed to do it without unnecessary interference"* (Robens 1972: para.112). This would ensure that it retained a healthy degree of constitutional legitimacy as both fair and impartial, but also appropriately accountable to government. For politicians, it arguably was a means of insulating issues of health and safety from the cut-and-thrust of wider industrial relations and politics at the time by creating a space for these issues to be settled where neither militant unionism nor deregulatory conservatism could exert undue influence (Wilson 1983: 187). This initial consensus did not extend to the creation of HSE within Whitehall, a process Michael Foot described as *"a first-class Whitehall row"* (Hutter 1997: 27). According to Jim Hammer, first Chief Inspector of Factories under the HSE, the Home Office, MOD and Departments of Health and Education were *"extremely concerned at the thought of the all-embracing obligations being applied to the police, prison service, fire brigades, hospitals, schools, universities, secure Establishments and the armed forces, not any longer to be protected by Crown Immunity."* Perhaps more importantly, departments hosting the existing inspectorates were reluctant to lose 'their' staff: *"every department with an Inspectorate proposed for integration, fought to retain their own"* (Hammer 2014: 1). Unification of HSE was a long-running, and bumpy, process of internal rivalries (see *'A single, central, unified regulator?'*, below).

One of the most significant features of these reforms was the determination to systematise thinking about health and safety which had previously taken place in a rather piecemeal, isolated fashion, spread between inspectors, company safety officers, trade union representatives, professional organisations such as IOSH, RoSPA and the BSC, and on the shopfloor. The HSWA did more than just create a unified regulator; it promoted the *idea* of health and safety and put in place practical measures by which those who had a professional interest in the area might coordinate efforts (Rimington 2008: 3). This included the notion of health and safety as an integral part of good management, in keeping with thinking emerging at the time (seen, for example, in the 'total loss control' system promoted by the British

Safety Council in the early 1970s) (*Industrial Health and Safety Bulletin* 1971: 7). Another fundamental point was the expansion of the scope of health and safety to include the public, which came to be of great importance in the 1980s, and which was very much in line with the beliefs of some in the labour movement; in 1976, for example, trade unionist Patrick Kinnerly noted that in the wake of incidents like Flixborough (see Case Study 4) “[a]gain and again we find that workplace and community hazards are interlinked [...] the task [is] building a united front to fight pollution inside and outside the plant” (Kinnerly 1976: 4, 7).

Case Study 4: The Flixborough chemical plant explosion, 1974

In the post-1960 period, one of the most dramatic instances of workplace dangers was the explosion of the Flixborough chemical plant in Lincolnshire on June 1, 1974. Killing 28 people and seriously injuring a further 36, it caused widespread damage and, following Brent Cross and Aberfan in the 1960s (see Case Study 2), provided another very visible demonstration of the ways in which workplace hazards might affect the public. There was heavy media coverage of the “holocaust at Flixborough” (*Guardian* 1974: 10) and a large degree of public concern. Significantly, it occurred while the HSWA was passing through Parliament (it received royal assent 9 weeks after the explosion), as Janet Asherson, formerly of HSE, recalled: “It was very much a public issue because we had that ghastly explosion [...] that pushed forward the development of the Health and Safety Work Act in 1974. [...] There was a huge sea change in legislation. It was filling a big gap”. (Janet Asherson interview, para.4) This added impetus to what would become Section 3 of the HSWA, imposing a duty to ensure the safety of those beyond the workplace – something that would, from the 1980s, become an increasingly significant part of the HSE’s role and the public discourse around health and safety. But these means of managing the risks to workers and the public created by modern industrial processes had their limitations. In a 1977 interview, Cyril Bell, the then Plant Safety Manager for Flixborough concluded that “we as a whole must accept the view that chances are, that somewhere, sometime there will be a major industrial incident. [...] such a thing is inevitable in the sort of times we are living with our needs for a technological society.”¹

(1) Interviewed for BBC TV programme ‘Red Alert’, aired on 5 July 1977. BBC Written Archives, Caversham.

1979-1990: Burdens, risk, and crisis

In many respects, the trends of the 1960s and 1970s intensified in the 1980s: particularly de-industrialisation and economic crisis and growth. Yet the 1980s also saw significant new challenges and opportunities for the legitimization of health and safety. The economic context of the early 1980s remained difficult, with a continuing push to reduce government spending provoking the HSC to state as early as July 1980 that it would be unable to fulfil its legal obligations if further cuts were imposed (*Times* 1980: 3). Yet partly the focus of attention was political, reflecting an emerging Conservative agenda that would become known as neo-liberalism and which was focused on rolling back the frontiers of the state (Gamble 1994; Harvey 2005; Tucker 1995). This produced an political environment that was increasingly hostile to

regulation; multiple reviews of state involvement in social and economic life, including the White Papers *Lifting the Burden* (1985) and *Building Businesses...Not Barriers* (1986), focused on the perceived disadvantages of regulation and 'red tape', often in largely economic terms, as well as giving business more of a voice in the creation of regulations, and potentially reducing routine inspections for some businesses. Unsurprisingly, this latter point was strongly opposed (*Building Businesses* 1986: 38). What is clear is that the 1980s saw both an increasing dominance of ideas of free-market enterprise and notions of health and safety becoming more contested (Baldwin 1987; Dawson *et al* 1988; Hawkins 2002; Hutter and Manning 1990; Pearce and Tombs 1990).

One of the reasons that the legitimacy of health and safety regulation was increasingly questioned was the perception that it was seen as part of an outdated, interventionist post-war welfare state, and closely connected with declining traditional industries (Beck and Woolfson 2000; Hutter and Manning 1990: 107-110; Leka *et al.* 2012: 32). Broadly, this period saw the gradual decline of consensus politics, including tripartism, as Roger Bibbings, formerly of the TUC, recalled:

"Trades Unions' participation in government had been fashionable in 1972, but no longer was in 1992" (Roger Bibbings interview, para.19).

The 1980s also saw a decline in trade union membership, from the high in 1979 of over 13 million to something under 10 million in 1990 (BIS 2014: 21); there was a consequent decrease in political power enjoyed by the unions, and industrial relations became increasingly fractious, especially in the older, declining industries, with a number of high-profile strikes, like the miners' strike of 1984-85. Existing accounts have stressed the impact of this anti-regulatory environment on HSE during the 1980s, including having to use cost-benefit analysis when creating regulations, increased calls for accountability in decision-making, and reduced resources (HSE 1985; Baldwin 1987; Dawson *et al* 1988; Hawkins 2002). Britain's relationship with Europe was also starting to factor in health and safety matters, though often it was of greater concern to politicians and policy-makers than the wider public. So, John Rimington, Director General of the HSE 1983-95, remembered that:

"By 1986 "Europe" was producing regulations which HSE (under supervision from the Department of Employment and the Foreign Office) had to negotiate...as time went on, several strands of political phobia became

engaged and entangled in the process. These were (1) dislike of “European” interference in “British” law; (2) the idea of the “nanny state”; (3) the traditional Tory dislike of “burdens on business” and susceptibility to the views of small companies” (John Rimington interview, para.66).

During the 1980s the public and public opinion became more prominent in legitimacy debates around health and safety (Almond and Esbester 2016; Burgess 2011; Leka *et al.* 2012: 29). Debate and controversy increasingly took place in the media, and in stretched well beyond those who might have otherwise had a ‘vested’ interest in the area, such as regulators, politicians, trades unionists and employers. Although Section 3 of the HSWA had imposed a duty for the HSE to protect the public from workplace hazards, for the first decade or so of its operation this was a relatively low priority. Partly this was an understandable lack of appreciation of the gravity of this new requirement, and partly a practical response to the need to continue day-to-day service under the new organisational arrangements. It was believed that the views of the public, where relevant, would be captured through the HSC, as was noted in 1982: *“The public interest is still well safeguarded by the local authority representatives on the Commission, especially the general public interest”* (Employment Committee 1982a: para.114). Gradually, though, the HSE came to take on more roles in which the health and safety of the public were a consideration, including, for example, domestic gas safety, the use of pesticides and the transport of dangerous goods by road. The political scrutiny to which health and safety regulation was subjected was of course reported in the media, further heightening the visibility of health and safety in general. So, for example, in 1988 the *Guardian* observed that *“[t]he Health and Safety Executive has been severely cut back [...] Public concern about industrial hazards - from the Chernobyl and Bhopal disasters to the alleged dangers of visual display units - has never been higher. But our capacity to study and control them is being progressively eroded”* (Laurance 1988: 23).

One approach that the HSE developed, responding to public pressures around issues such as nuclear safety, was the Tolerability of Risk Framework (1988a). This model explicitly included as part of its matrix justice-based societal values about the acceptability of hazards, to be balanced against scientific calculations of probabilities and costs of prevention (Bandle 2007; McQuaid 2007). It equipped the HSE with a tool with which to assess and respond to not just risks but also public attitudes,

crucial around controversial issues like nuclear safety (see Case Study 5). Older, heavy industries which had long acted as the established 'front line' in terms of health and safety became a less prominent part of the British economy, meaning that the focus of health and safety concerns altered. This greater diversity of employment arguably meant that day-to-day health and safety issues garnered less immediate public attention. While new frontiers and issues did emerge (workplace stress, display screen equipment), these arguably commanded less unequivocal support as health and safety issues. Health also received increasing attention, including the introduction of COSHH (Control of Substances Hazardous to Health) Regulations in 1988. Beyond

Case Study 5: Public debates about nuclear risk

Civilian nuclear power generation has produced some very public debate about health and safety risks beyond the workplace. Concerns have been evident since the start of the UK's nuclear programme in 1956, but became particularly pronounced from the 1970s. National groups such as Friends of the Earth and Greenpeace, as well as local residents, increasingly challenged the nuclear industry on the robustness of health and safety protocols; the legitimacy of regulators also came under scrutiny. Yet there was greater diversity of opinion in relation to living with nuclear risks than might be apparent. Sometimes opposition groups such as Cumbrians Opposed to a Radioactive Environment (CORE, established 1980) were able to pressure the HSE into acting, as in a 1988 dossier about alleged malpractices at Sellafield.¹ So it was that a contributor to the *Times* could note in 2003 that the HSE "have in part been responding to a public perception of a hazard that, although small, has continually been kept in the public eye by pressure groups" (Spare 2003: 23). On the other hand, some living in the immediate locality of nuclear power have developed understandings of the risks involved that enable them to remain resident, as was noted of the population around Dounreay in Scotland: "the vast majority of the local people [...] were much more aware of the potential risks and the fact that the risks had been maintained at a sensibly low level over the years. So it's extremely helpful having a local population [...] who are able to give reassurance to those who otherwise might feel much more concerned about it" (Paul Thomas interview, para.53). This suggests that attention to local as well as national risk cultures is important.

(1) CORE/ Greenpeace, 'Behind Closed Doors. Malpractice and Incidents at Sellafield' (1988); HSE press release, 'HSE investigation of allegations of safety malpractices and incidents at BNFL Sellafield' (3 October 1988). British Safety Council archive, Mansfield, Pallet 6, box 35.

such changes in day-to-day health and safety concerns, in the late 1980s a series of major workplace and public disasters focused public attention on health and safety and its regulation. These included the *Herald of Free Enterprise* ferry capsizing and King's Cross fire (1987), Piper Alpha offshore platform explosion (see Case Study 6), Clapham Junction rail crash (1988), and sinking of the *Marchioness* on the Thames (1989). All had important ramifications, but the sense of crisis prevailing at the time seems to have given the HSE some degree of protection against the deregulatory agenda, stimulating demands for greater protection.

1990-2000: Managerialism and governance

In many respects, the 1990s opened with a continued sense of profound uncertainty following the high profile disasters of the late 1980s. In terms of regulation, the HSE accrued responsibility for the offshore (1991) and rail industries (1990); previously health and safety regulators had been hosted within the relative government departments (Energy and Transport, respectively) but following Piper Alpha and Clapham Junction this arrangement was viewed by some as a conflict of interest (Brotherstone and Manson 2011). These moves to shore up the constitutional legitimacy of regulation depoliticised health and safety, diminished public and political criticism (albeit only temporarily for the rail industry, with new concerns about regulation emerging at the end of the decade). Piper Alpha was viewed by some as a game-changer – for offshore oil and gas production,

Case Study 6: Piper Alpha, 1988

On the night of the 6 July 1988, a temporary valve fitted to a faulty pump on the Piper Alpha offshore oil production platform in the North Sea failed, triggering a colossal explosion leading to the deaths of 167 workers and rescuers. It remains Britain's worst industrial disaster of the last 80 years. It reopened the debate on safety standards in the North Sea at the end of the 1980s as it revealed failures in safety provision and management within Occidental, the company operating the platform, and within the sector more widely; Peter Jacques, then of the TUC, recalled: *"Piper Alpha actually kicked health and safety back into the centre of [...] industrial life, and maybe [...] political life"* (Peter Jacques interview, para.139). Safety considerations were secondary to the overwhelming pressure for profitability and production within the offshore industry (Carson 1982), something exacerbated by the fact that the Department of Energy had regulatory responsibility for safety, but was also responsible for maximising revenues in the sector. This conflict of interest was indicted by the subsequent investigation (Cullen 1990). The HSE was subsequently given responsibility for offshore safety, and regulation was moved onto a more rigorous safety case basis; Piper Alpha then 'protected' the HSE from government interference by making deregulation politically untenable. It also led to the development of expertise in safety management systems, something that other sectors (such as the rail industry) would draw on and benefit from in dealing with their own disasters (David Maidment interview, para.228), and to a stronger position for unions in the offshore industry.

but also for health and safety more widely, as Peter Jacques, then Head of the TUC's Social Insurance and Welfare Department, recalled: *"I think Piper Alpha actually kicked health and safety back into the centre of [...] industrial life, and maybe [...] political life"* (Peter Jacques interview, para.139).

At the same time, the 1990s also witnessed a shift towards what political scientists have called the 'New Public Management' in relation to government more widely (Hood 1991; Baldwin and Cave 1999: Ch. 6). This approach to policymaking sought greater constitutional legitimacy, via accountability and efficiency, in the public sector, achieved particularly through a movement towards enhanced private-sector involvement through deregulation and privatisation (including the creation of a Deregulation Unit within the Cabinet Office). Decision-making was to be based on

principles of rational cost-benefit analysis, performance targets and monitoring, and a culture of 'managerialism'. In practice this meant that regulators found some of their capacity to act was reduced as businesses were expected to take further steps towards self-regulation. The continued decline of trade union membership (down from 9.8 million in 1990 to 7.9 million in 2000) and winnowing of heavy industries traditionally concerned with health and safety also meant that the political prominence of health and safety also decreased. This was not radically altered even with the election of the Labour government in 1997 (Beck and Woolfson 2000). Health and safety issues did receive some new support, notably in the 'Revitalising Health and Safety' initiative announced in 1999, but the general suspicion of regulation continued.

1992 turned out to be a crucial year, with the enactment into UK law of the 'six-pack' of regulations, wide-ranging regulatory tools that originated in European Community initiatives, and which in some ways marked a return to the pre-1974 prescriptive approach, as opposed to a more risk-based approach (Löfstedt; Rothstein *et al.* 2015; Vogel 2012). With the increasing Euroscepticism that emerged from the mid-1980s, this set of regulations posed further challenges to the constitutional legitimacy of health and safety by establishing it as an area in which European 'interference' was threatening 'traditional' British freedoms. Conservative suspicion also manifested itself in 1992 when the HSC started a review of health and safety legislation, with a view to removing 'unnecessary' regulation. Whilst the principles of health and safety regulation were found to be sound, seven pieces of legislation and 100 sets of regulations were recommended for removal, with further simplification of the health and safety regime also recommended. Finally, the tolerability of risk framework was revised in 1992, tailoring approaches developed in the nuclear industry to lower hazard sectors (Bandle 2007). This reflected the growing importance (in terms of democratic legitimacy) of public attitudes towards health and safety, as well as an increasing recognition of the duties towards the public that exist under HSWA Section 3.

Some of the most significant challenges to health and safety during the 1990s came from the shift from a nationalised to a privatised railway system. Between 1993 and 1996 the entire industry changed, with over 100 companies becoming responsible for various aspects of operation, including, of course, health and safety of employees

and passengers. As in the offshore industry, the 'safety case' regime was introduced to determine permission to operate: plans were submitted by potential service providers showing how risks would be managed, via goal-setting rather than via more prescriptive regulations. However, two major incidents in the closing years of the 1990s called the health and safety system, including the role of the HSE, into question: the crashes at Southall in 1997 (7 fatalities and 139 injuries) and Ladbroke Grove in 1999 (31 fatalities and 523 injuries; see Case Study 7). One further case, beyond the railway industry, was also significant: the Lyme Bay canoe tragedy of 1993, in which four schoolchildren drowned whilst taking part in a trip run by an outdoor activity centre (Wells 2001). The case attracted significant public concern about

Case Study 7: Privatising the railways

The privatisation of British Rail (BR) between 1994 and 1997 broke up the nationalised system, with a number of franchises operating the services and another maintaining infrastructure. Privatisation was predicated on the introduction of safety cases, following the nuclear and offshore licensing regimes, a massive culture change for the railway industry. According to Jenny Bacon, then Director-General of the HSE, privatisation was *"an absolute disaster from a health and safety point of view [...] we ended up with 128 different parties, trying to manage interfaces and get them to talk to each other about health and safety issues"* (Jenny Bacon interview, para.63). It introduced dynamics of contracting and sub-contracting, stronger commercial imperatives to cut costs, and a loss of institutional memory as former BR employees left the industry, all of which had safety implications. These manifested themselves in the series of high profile crashes and derailments in the late 1990s and early 2000s, including Southall (1997) and Hatfield (2000). However, the 1999 Ladbroke Grove crash, in which two trains collided killing 31 and injuring over 520, posed particular challenges to the HSE and HSC's legitimacy; one former HSE policy advisor noted that Ladbroke Grove resulted in public questions *"about the effectiveness of the Commission and more particularly the Executive in terms of carrying out its responsibilities. So, it wasn't just battle over red tape or resources. There was an even bigger political battle in terms of the structure and organisation of HSE and what it should have oversight of [...] one of the consequences was that railway inspectorate was moved out to what is now ORR [the Office of Road and Rail]."* (Neal Stone interview, para.57) These questions and subsequent break-up of the HSE have been perceived as extremely damaging to the HSE's legitimacy, challenging its status and competence and undermining the notion of a single, unified regulatory regime.

perceived risk aversion as well as the limited regulatory oversight of adventure activities. Such high profile incidents temporarily raised the public visibility of health and safety and politicised health and safety further.

2000-2010: Regulating in public

The period after 2000 saw a profound hardening of attitudes – public and political – towards health and safety. Despite some apparently positive moves, the New Labour governments retained a lingering suspicion of health and safety, possibly resulting from a combination of the continuing politicisation of the issues, a commitment to a business-friendly agenda, and growing media hostility to health and safety (Almond

2009; Dodds 2006; Tombs and Whyte 2010). The publication of the ‘Revitalising Health and Safety’ strategy in 2000 marked perhaps the most proactive attempt of the period to shape debate and practice, being championed by the Deputy Prime Minister and with the self-professed intention of *“injecting new impetus to better health and safety in all workplaces”* (DETR 2000: 1). Subsequent HSE enforcement strategies, such as the ‘Fit3’ initiative, sought to proactively address areas and issues of particular quantitative concern (such as ‘slips, trips and falls’). Nevertheless, health and safety continued to fall within the remit of wider reviews of regulatory practice, including the Hampton (2005) and Macrory (2006) reviews, which were couched in by-now familiar terms of reducing burdens upon businesses. The political suspicion of regulation that was established during the 1980s remained in place and even grew, particularly following the start of the economic crisis in 2007.

Intimately connected with this growing political hostility towards health and safety were the democratic and justice-based legitimacy challenges posed by an increasing public scrutiny, mainly expressed via an increasingly hostile media (see Case Study 8). Whilst media awareness of health and safety issues was not new, what was different was the seemingly relentless nature of the negative coverage, particularly in the tabloid press (Almond 2009; Ball and Ball-King 2013; Lloyd-Bostock 2010). So, in an early but extreme articulation, a feature in *The*

Case Study 8: Media myths

In 2004, Headteacher Shaun Halfpenny implemented a health and safety ruling that pupils at his school must wear safety goggles to play conkers.¹ This story has become very well-known; five of the eight focus groups we conducted discussed it, it was cited by nine of our 40 interviewees, has been referenced by the Prime Minister,² and a Google search for the terms ‘conkers health and safety’ produces more than 40,000 hits. There was one catch, however: there was no rule or policy which compelled the Headteacher to make this decision, rather the story was based on a joke.³ Hundreds of similar ‘regulatory myth’ (Almond 2009) stories have been published since then, highlighting the media’s role in politicising health and safety, and demonstrating that the perceived legitimacy of health and safety regulation seems to diminish the further it extends into public life and ‘low risk’ areas. This breeds a resistance to health and safety which is a major problem for those, like local authorities, who manage risks: *“Every time I heard ‘conkers bonkers’ [...] I knew that the rug was going to be pulled out from under my feet”* (Steve Sumner interview, para.63). But it also demonstrates that these tensions and determinations are *manufactured* by the media and those who use it to advance their own political regulatory preferences.

(1) <http://news.bbc.co.uk/1/hi/england/cumbria/3712764.stm>

(2) *“[W]hen children are made to wear goggles by their headteacher to play conkers...what began as a noble intention to protect people from harm has mutated into a stultifying blanket of bureaucracy”*. David Cameron, Policy Exchange, <http://news.bbc.co.uk/1/hi/uk_politics/8388025.stm>, 1 December 2009.

(3) <http://www.theguardian.com/commentisfree/2009/dec/09/conkers-goggles-myth-health-safety>

Times in November 2000 railed against the *“Hitlerite absolutism”* of *“health and*

safety weirdos [who] sit in health and safety headquarters congratulating themselves on their patronising dogmas and total lack of accountability” (Jay 2000: 9[s]). Such stories were readily seized upon by public and politicians alike where they confirmed existing beliefs about the appropriate role for the state. In opposition, elements within the Conservative party became increasingly vocal in their condemnation of ‘health and safety gone mad’: leader of the party David Cameron stated in 2008 that *“this whole health and safety, human rights act culture, has infected every part of our life”* (Cameron 2008). There was an increasing emphasis on the ways in which health and safety supposedly reduced discretion and increased risk aversion, ignoring the principles of sensible risk management which had been put forward by bodies like the HSE for many years (HSE 2006). The rhetoric became so widespread that the HSE felt it necessary to counter the negative press by releasing, from April 2007, a ‘myth of the month’.

Major incidents continued to affect the public, posing significant questions about health and safety. These included the explosions at the Buncefield oil depot (2005), which demonstrated once again the dramatic impact major industrial hazard sites might have. The railway industry continued to incur a number of high profile incidents, including passenger crashes at Hatfield (2000), Potter’s Bar (2002) and Ufton Nervet (2004), as well as the Tebay incident (2004) in which four workers were killed by a runaway wagon. These incidents were widely viewed as indicting both the privatised system and the regulatory regime, and in 2006 responsibility for the railway industry was removed from the HSE and handed to the Office for Rail Regulation (ORR; now known as the Office of Rail and Road). These incidents were one of the drivers behind the introduction in 2007 of the Corporate Manslaughter and Corporate Homicide Act, which criminalised companies which caused the death of workers or members of the public (Almond 2013). The other big change was the formal merging of the HSC into the HSE in 2008, signalling the end of the experiment with a separate corporatist policy-making body. Given the continuing strength of understandings that self-regulation was important, that businesses should play a role in shaping regulation, and declining trade union membership, the ways in which the health and safety agenda was shaped changed significantly in the 2000s. In addition, it was necessary for all actors involved – regulators, employers, trades

unions or health and safety professionals – to take more formal account of public opinion (a trend seen in other areas of political life at this time).

2010 onwards: Red tape and review

The publicly-expressed hostility towards health and safety that mounted from 2000 continued unabated in the period after 2010 (Almond 2015). Similarly, the existing pressures around regulation and the politicisation of health and safety continued to develop, particularly with the Conservatives leading the coalition government after the 2010 election and the ongoing economic crisis. As Prime Minister, David Cameron continued to express the view that health and safety regulation was a problem, declaring his 2012 *“New Year’s resolution: to kill off the health and safety culture for good. I want 2012 to [be] the year we get a lot of this pointless time-wasting out of the British economy and British life once and for all”* (Kirkup 2012). Such extreme statements reinforced the prevailing negative tone surrounding health and safety. One of the early actions of the new coalition government was to commission a review of the alleged compensation culture and the ways in which health and safety law was applied, a move which was seen to *“delight the Tory leader’s spurned right wing, with the issue of over-restrictive rules filling many MPs’ postbags”* (Stratton 2010). Significantly one of the aspects at the heart of the Young Review was the *perception* of health and safety legislation, an acknowledgement of the extent to which its legitimacy was being challenged. At the same time, this and subsequent reviews appeared to open up the area of health and safety to still further questioning. Part of the Young Report (2010) also focused on the rise of the health and safety professional, seeing the need for appropriate professional validation, reflecting wider concerns about the proliferation of unnecessary advice (Young 2010:15). As in the 1960s, legislation was perceived as having become over-complex, and a desire for simplification was expressed (Young 2010:16).

This was followed in 2011 by the Löfstedt Review, commissioned to *“look into the scope for reducing the burden of health and safety regulation on business”* (Löfstedt 2011: 1). Recommendations which were subsequently enacted included exempting some self-employed workers from health and safety law, a review of all Advisory Codes of Practice, and the now-familiar call for further simplification of the regulatory framework. Significantly so far as the legitimacy of health and safety is concerned, Löfstedt expressed concern about the effects of a *“constant stream of stories in the*

press blaming health and safety [...] for preventing individuals from engaging in socially beneficial activity, overriding common sense and eroding personal responsibility" (2011: 16). As in the 1980s and 1990s, for both the Young and Löfstedt reviews business interests were given particular emphasis. Despite the health and safety system being found broadly fit for purpose by these two major reports, the process of review continued, raising questions about the degree to which health and safety was being targeted on the basis of ideological opposition to regulation. In 2011, for example, the 'Red Tape Challenge' was launched, including a specific strand on health and safety, and in 2014 the HSE was subject to a triennial review (Temple 2014). Reflecting the continued saliency of the issue, to this day the (now Conservative) Government retains a policy webpage dedicated to 'Health and Safety Reform', with updates about previous and new initiatives.²⁰

In terms of the day-to-day work of the HSE, there have been some changes as a result of having to operate in this hostile environment. In 2012 the HSE responded to perceptions of over-regulation by introducing the 'Myth Busters Challenge Panel',²¹ intended to allow anyone concerned to raise cases in which they felt health and safety had been incorrectly applied. Economic pressures to reduce costs to taxpayers and to maximise revenue have further developed commercialisation of HSE services, including the controversial introduction of 'Fee for Intervention', the cost recovery scheme under which those guilty of breaking health and safety laws might be charged for costs incurred by the HSE. The HSE has also lost responsibility for the nuclear industry, with the Office for Nuclear Regulation being established in 2011 to bring together all agencies concerned with the civilian nuclear industry and form a single body; it became formally independent of the HSE in 2014. As with the ORR, though, this new regulator has been criticised for handling both economic and safety aspects. Finally, reflecting the push to greater self-regulation, particularly amongst low-risk enterprises, the number of inspections by the HSE has continued to fall, from around 33,000 in 2010-11 to under 22,000 in 2011-12 (DWP 2013). This has led to concerns about the enforcement capability of the HSE, particularly from the political left. In 2015, then, health and safety and its regulation are subject to intense challenges. Some of these have remained the same since at least 1960, if

²⁰ <https://www.gov.uk/government/policies/health-and-safety-reform>

²¹ <http://www.hse.gov.uk/contact/myth-busting.htm>

not earlier: in particular, debates about the constitutional legitimacy of regulation, and the 'appropriate' role for the state, are long-standing, as is the predominance of the notion of self-regulation. Yet the level of media hostility directed at health and safety appears to be a recent phenomenon, and one which has had an impact upon the political debate about regulation.

8. Cross-cutting themes

This section of the report sets out a number of core issues that have exercised a particular influence, and which can be seen as unifying elements of the chronological narrative already outlined above. These are discussed in turn, and are grouped according to four legitimacy headings (constitutional, democratic, functional, justice) according to the sorts of challenge to 'health and safety' that they embody. The schematic diagram below highlights the levels of application across which these cross-cutting themes fall, and allows for the links that exist between different themes to be more readily identified, for instance, it highlights that the roles of trade unions (theme 6), the safety professions (9), and commercialisation (12), all share a common context around the role of stakeholders as a site of implementation. Similarly, it highlights that expertise (theme 10) is a functional issue that primarily affects both regulators *and* stakeholders. Broadly speaking, we can see that constitutional themes relate to the governmental level (input), democratic and functional themes to the level of regulators and stakeholders (throughput), and justice themes to the levels of stakeholders and the wider public (output).

Schema: The relationship between cross-cutting themes and levels of application

Level of application	Constitutional themes	Democratic themes	Functional themes	Justice-based themes
Government (input)	3. Legal framework 4. Europe			
↕	2. Accountability to government			
Regulators (throughput)	1. Unified regulator		11 Regulatory practices	
↕		7. Health	10. Expertise	
Stakeholders (throughput)		6. Changing Trade Union role	9 The safety profession	12 Commercialisation
↕		5. Industry decline/ changing economy	8. H&S beyond the workplace	13. The limits of consensus
Public/workers (output)				14. Autonomy and choice

A: Constitutional Challenges: The Status of Regulators and the Law

A single, central, unified regulator?

One key challenge faced by those regulating health and safety during the middle part of the 20th century was the establishment of a functionally appropriate regulatory infrastructure that could respond to the challenges of a changing workforce and society, which had placed new pressures and demands upon what were, by then, 140 year-old institutional arrangements. Reflecting the contested origins of the Factory and other inspectorates (Thomas 1948: 78; Ward 1962: 115), the approach to inspection and enforcement that emerged was conciliatory and compliance-oriented (Bartrip and Fenn 1983; Bartrip and Hartwell 1997; Carson 1979), enduring largely unchanged until the 1970s (Baldwin 1987; Rhodes 1981). By the 1960s, the Factory Inspectorate was well-established, conducting (taking 1969 as an example) 279,437 inspections or contacts across 208,000 regulated factories each year, and bringing 2657 prosecutions against a fatality rate of 649 *per annum* (Department of Employment and Productivity 1970: 122). However, as the preceding section of the report has noted, its coverage was sporadic, enforcing what were broadly piecemeal statutes and regulations, and it was only one of many different inspectorates with an interest in workplace safety.

1) Amalgamation

These arrangements were heavily criticised in the Robens Report of 1972, which categorised them as ones of *“bewildering complexity”* (1972: para.32), leading to fragmentation and uncertainty, overlap and inefficiency, and bureaucratic inertia at a policymaking level (1972: paras.33-39). This was an issue of both constitutional and functional legitimacy – Baldwin summarises the legitimacy challenges for the new agency, which had to be a: *“self-contained organization clearly responsible for the area; it had to have day-to-day autonomy; it had to be organized in a manner consistent with responsible and accountable management; and, finally, those involved in the area [...] had to be fully involved in managing the new institution”* (1995: 127). The new agency, HSE, was formed as a result of the passing of the HSWA 1974, which created a single safety inspectorate to enforce the new, unified legislative duties that were passed into law. The hope of the Robens Committee was that a single arms-length Agency, under the direction of a formal Executive (Robens

1972: paras.204-5), would provide clarity and accessibility for duty-holders, and accountability and efficiency for government.

More will be said in the following sections about the accountability, independence, and tripartite basis of the new regulator; for now, it is worth reflecting on the first of these points – the challenge of self-containment and clear responsibility. On the face of it, this unification and its promise of consistency and clarity of purpose was welcomed by politicians and commentators, including Neil Kinnock MP: “*A unified inspectorate is sensible [...] a national authority for safety and health at work will provide a much-needed expertise, long-needed co-ordination and a welcome expansion of research.*”²² In the first instance, separate functional (research, planning, etc.) and inspection (Factories, Mines and Quarries, Nuclear, etc.) divisions were retained, which were coordinated by a central Management Board (the division heads, the Director-General, and his Deputy), something that allowed for a gradual standardisation of approach and working arrangements (Rhodes 1981: 83) but which left many problems of integration unaddressed, as David Eves, former Chief Inspector of Factories, recalled:

“we’d now got this cluster of Inspectorates all working you could say all within their own silos [...John] Locke [first Director-General of the HSE] wanted all that changed and [...] he failed, because the Chief Inspector of Factories, for example, couldn’t persuade his own senior staff that this was a good idea [...] the Mines Inspectorate didn’t want it, they were very proud, they didn’t want to be in any position where they might be seen to be ceding sovereignty to the Factory Inspectorate, it was like robins fighting over a stretch of hedgerow.”
(David Eves interview, para.45)

HSE remained a federation of sorts for a few years, and turf wars would continue to fester for some time. One commentator observed in 1979 that “*there is a new attitude and a new way of working in the Factory Inspectorate. Not all inspectors have yet been converted and the mines and railway inspectorates are untouched by new ideas.*”²³ Eves estimated that it was only “*by about 1990, we were beginning to think we had at last achieved a unified HSE*” (para.45). Unification allowed pockets

²² ‘Workers’ Safety and Health’, HC Deb 21 May 1973, Hansard vol.857 cc62-117, 65.

²³ B. England, ‘Discussion’, *Work Hazards* 21 (c.1979), p. 18. Samuel Barr Collection, Glasgow Caledonian University, GCU DC 140212.

of differing practice to endure within the remnants of the Inspectorates that had been amalgamated, as an Inspector (and later acting HSE Chief Executive) recalled:

“The Factory Inspectorate, because it was the biggest, had a lot of attention given to it [...] The Mines and Quarries Inspectorate was a relatively small inspectorate and just carried on doing what they did. Similarly the Nuclear Inspectorate, the Agricultural Inspectorate [...] these robber barons were gradually brought to heel” (Kevin Myers interview, para.9).

Different traditions around inspection and enforcement, and differing approaches to issues of compliance and decision-making, endured, leading to variations in practice (Dawson *et al.* 1988; Hutter 1989). At the same time, others, such as one industrialist (and later HSC Chair), suggested that the depth of these variations were overstated, and related instead to embedded local variation (also Hutter 1997: 38-9):

“I didn’t notice any great difference, one industry to another. We did notice difference from one District to another [...] it wasn’t so much difference in industry, it was difference in the inspector.” (Frank Davies interview, para.12)

Case Study 9: The limits of inspection?

In addition to the challenges posed by the existence of multiple inspectorates and their unification after 1974, one complication was the extent to which Ministry of Defence establishments could be compelled to follow health and safety regulations. Whilst in principal they were obliged to follow the law, Crown employers had immunity from criminal prosecution. This posed something of a difficulty for state inspectors and internal safety officers, as Tom Lee, a Safety Officer at Portsmouth Dockyard from 1963-77 recalled: *“there was always a bit of controversy as to whether the law applied to the dockyards or not. [...] dockyard management on the whole I think thought themselves just a little bit above the law then [...] so although [...] we could quote all these shipbuilding regulations [...] they said ‘yeah, ok, we understand all that, but it doesn’t really apply to us because you know we’re a Government department’”*¹ However, there were ways around such deadlocks. It was possible to apply informal pressure: *“under pressure from the Factory Inspectorate [Portsmouth] dockyard decided [...] they would expand the safety work in the dockyards, so in ‘63 they decided that this one man would become four men”*² And at the immediate point of contact with state inspectors, there is evidence of a constructive relationship. Lee remembered that *“we also had the Factory Inspectors that we could call on. In fact they came in very often themselves and did their own inspections and when they did that we’d accompany them and learn from them what was required.”*³ Another Portsmouth Dockyard Safety Officer, from the 1970s and 1980s, noted of HSE inspectors: *“we can rely upon those people. See, they issue all the rules and everything else, they issue asbestos regulations [...] but within the MoD, if we can improve on that we ... off and off we do. Our orders are often better than the HSE.”*⁴

(1) Thomas Lee, interviewed by Portsmouth Royal Dockyard Historical Trust, comments at 30 minutes. Portsmouth History Centre, PD3/AD/185.

(2) *Ibid.*, comments at 25 minutes.

(3) *Ibid.*, comments at 27 minutes.

(4) Brian Stubbs, interviewed by Portsmouth Royal Dockyard Historical Trust, comments at 57 minutes. Portsmouth History Centre, PD3/AD/123.

Consistency remained a key challenge from this point onward, particularly as the new legislative framework allowed inspectors and inspectorates a degree of

discretion in the interpretation and application of particular measures, which meant that different priorities and modes of regulating could exist at the same time across HSE (Hawkins 2002: 323; Hutter 1997: 77). In addition, just as under the old regime there remained limits to the reach and power of the HSE (see Case Study 9). Some variation has endured throughout the agencies' life, but it is generally thought to be less pronounced now than it was thirty years ago. This may well have had a legitimacy cost for HSE and the idea of 'health and safety', as it renders the notion of 'compliance' and appropriate attainment a little more subjective, and a little less universally acceptable.

It might be suggested that while something was gained in amalgamating multiple inspectorates into a single body, in terms of organisational consistency and accountability, something was also lost, in two ways. Firstly, the new body lost some of its traditional grounding and autonomous capacity (it became more distant from its regulated population by virtue of centralisation). This was feared by trades unions in the wake of the Robens Report: *"my union [the NUM] has a very strong objection to the centralisation of the inspectorate [...] any of you here who wish to go to the inspectorate in your regions with a problem, and the person with whom you used to discuss your problems is not available."*²⁴ Secondly, it became a larger, more substantial government organisation, and hence subject to the associated scrutiny these factors bring. In an effort to alleviate some of these pressures, HSE's Chief Inspector of Factories, Jim Hammer, suggested in 1975 that the HSE's strategy of political containment should be *"defusing criticism before it came by 'selling' the organisation to MPs in times when it was not under attack due to the occurrence of a particular incident."*²⁵ The professional and cultural differentiation, left over from the amalgamation in 1974, did mean that different parts of HSE retained different audiences, and so conflicts within HSE retained the capacity to spill over into political arenas, to the detriment of the agency, as a former Director-General recalled:

"every Mines inspector had managed a pit, every Alkali inspector had managed a chemical factory. So if they were confronted with a reform they did not like, or even if they happened to dislike the Director General, they had many contacts in 'their' industry to which they could go so as to create

²⁴ Report of TUC conference on the Robens Report, 12 October 1972, pp. 44-45. TUC Library, HD 7273.

²⁵ HSE Management Board Minutes, 19 June 1975, Min. 2,a,i. The National Archives of the UK [TNA], London, EF 10/1.

pressure- e.g. on the Commission over the Director General- or they could turn to their erstwhile Departments.” (John Rimington interview, para.37)

This had the effect of politicising disputes around health and safety in a way which weakened the overall message and bargaining position of HSE within government.

2) Evolution

No sooner had the first wave of organisational changes heralded by the 1974 Act bedded in, than a second wave of changes had to be negotiated; following the Clapham Junction rail crash (1988) and the Piper Alpha disaster (1988), HM Railways Inspectorate and the responsibility for regulating offshore installations were shifted into HSE (in 1990 and 1991), mainly as a means of addressing perceived conflicts of interest (tensions between managing safety and productivity/service) that undermined the legitimacy of those bodies in their previous departmental locations, the Department of Transport and Department of Energy respectively (Carson 1982; Hidden 1989). HSE was given these responsibilities so that it could apply the ‘safety case’ regime in these industries, standardising them to best practice models used elsewhere in industry. On the one hand, this helped strengthen the safety regulators’ position, providing a protective veneer to HSE, as one Labour MP recalled: *“for virtually all of Margaret Thatcher’s government, I think that they probably would have liked to have done things with the Health and Safety at Work Act but there were so many disasters, it was very difficult”* (Frank Doran interview, para. 46). A number of actors – including the public, the TUC and the Labour party – put pressure on the Government about HSE’s resourcing; the Director-General of the HSE was reported as smiling *“discretely and welcom[ing] the political weight they are able to put behind his requests for more money and resources”* (Brown 1988: 1).

It thus became very difficult for even a deregulatory government to take action that might be construed as exposing the general populace to risk, and so post-disaster reforms tended to strengthen the hand of the regulators rather than weaken them; at Select Committee hearings in 1988 (after Clapham, Piper Alpha, the King’s Cross fire and *Herald of Free Enterprise* sinking), HSE made its play for greater responsibility in the areas of offshore, railway, and ferry safety (Employment Committee 1988b: paras.20-24). The then-Director-General’s invitation was clear: *“if one has the hands-on experience and is doing the job oneself one knows what is*

*going on [...] that was not the situation created by Parliament [...] we do of course have immense experience of inspection” (Ibid., para.33). By 1992, once railway and offshore safety had been taken over, the same Committee welcomed HSE’s management “back here with responsibilities which we thought you should have back under your belt” (Employment Committee 1992: para.2). This was a means of depoliticising some aspects of regulation in these areas, post-disaster; arguably, this also had the effect of politicising some areas of HSE’s work. As the *Guardian* noted in 1988, additional responsibilities demanded by the Government and funding cuts, “combined with a series of disasters [...] has put worker and public safety high on the agenda and the role of the HSE is being closely examined” (Brown 1988: 1).*

This created some immediate tensions around the development of an appropriately independent inspection force that would apply the approaches that HSE used, but who also had the latent knowledge and familiarity with the industries in question, as then-Deputy Director General of HSE, recalled:

“It was after Piper Alpha and the Cullen Inquiry that the offshore inspectorate came into the HSE [...] that of course brings up the whole business of who do you use to inspect a very specialist industry? All mines inspectors had to have been mine managers [...] very much poacher turned game keeper. It used to be similar for the railways. But the offshore inspectorate certainly depended on people’s specialised knowledge [...] we did our best to, as it were, train them in a ‘control mode’, to be independent. But of course they inspected their former colleagues and friends. It’s not easy.” (Jim Hammer interview, para.73)

These amalgamations also created a new set of conflicts between parts of HSE; for example, as discussed elsewhere (see also Case Study 7, above), the Railway Inspectorate retained a significantly distinctive mode of working (Hutter 1997; 2001), and this placed it in conflict with HSE from the start. In recent years, the Nuclear Installations Inspectorate and the Railway Inspectorate have shifted out of HSE once again, to independent agencies located within the relevant government Departments (the Office for Nuclear Regulation, ONR, and the Office of Rail and Road, ORR); the interplay of commercial and protective pressures and responsibilities suggests that the regulation of safety in these areas is still subject to broader economic, political, and social pressures.

3) *Shared Responsibility*

The most profound element of division created within the new regulator was that between the Health and Safety Commission, and the Executive. The HSC was intended to act as the policymaking body which would give direction to, and exercise oversight of, the HSE, which implemented and enforced the policy direction it received from the HSC. HSC would place different interest groups, particularly the TUC and CBI, at the centre of the regulatory process; it would be unseemly, however, for these interests to be (or be seen to be) too closely involved in day-to-day enforcement decision-making (Baldwin 1987: 136). HSC was to act as a buffer between HSE and the political sphere by providing a forum within which different interests could be heard. In practice, this proved a reasonably constructive arrangement, with a tendency on the part of HSC towards seeking consensus and being led by HSE's guidance, as one former CBI-nominated Commissioner recalled:

"We as Commissioners had [...] very little initiative, we followed what the Executive, Rimington's people, suggested should be done, because they were following it all the time" (Rex Symons interview, para.62).

The resolution of disagreements and the presentation of a unified front was conducted in a manner consistent with the general principles of corporatist decision making (Wilson 1983: 113; Hutter 1997: 24), as senior HSE figures recall:

"In my experience, the Commission never, ever voted. What they did if there was a disagreement, they said we'll refer this back to officials and the officials used to then go and have a word with the employer representative and they'd have a word with the trade unionists and it was either a one lunch or a two lunch job to resolve the impasse." (Jim Hammer interview, para.39)

Similarly, the HSC noted in 1982 that "[w]e have to reach our decisions by consensus because we are aware that once we have agreed on a solution, we have committed those whom we represent to that solution and have to stick by it. Differences of view must, of course, arise and we resolve them through continuous and persistent discussion until we can get agreement" (Employment Committee 1982b: 74). Such accounts position HSC within the cosy institutional framework of Moran's 'club government' model of regulation; interpersonal, 'mutualised', and colonized by powerful, established interests (2003: 137). Over time, HSC came to be seen as something of a liability, as the political benefits of consultation started to be outweighed by the demands of a new governmental context; *"Trades Unions'*

participation in government had been fashionable in 1972, but no longer was in 1992”, as one former HSE Director-General put it (John Rimington interview, para.63). On the one hand, by the late 1990s and early 2000s the HSC was attracting rather than deflecting pressure. In particular, the HSC (and its Chair), by acting as a political buffer and policy lead, faced significant criticism after Ladbroke Grove and other rail disasters between 1999-2002, and the precautionary measures taken, as the then-Chair recalled:

“I was castigated. I was asked to see the Prime Minister [...] There was great concern about the speed limits that it was alleged that we had imposed following Hatfield [...] this series of high profile crashes was politically very toxic. Lots of public interest. I think that’s the time when people were questioning openly whether we had the right approach” (Bill Callaghan interview, paras.26-7).

While the value of having people within the regulatory structure who understood the needs of the relevant constituencies, and could communicate with them effectively, remained clear (Podger 2015: para.12), the benefits of tripartism became less relevant as the industrial relations context changed, and were eventually outweighed by the need for good governance that Ladbroke Grove and other incidents were thought to have identified:

“in carrying out its role of getting both sides in industry to agree, [HSC] was actually eliminating one source of potential political difficulty to government. I think governments became much less interested in having a tripartite HSC/E once, in fact, they believed that they were in charge anyway [...] the various rail crashes, that was the great disaster of HSE [...] that was the point at which ministers lost confidence in HSC” (Senior HSE Source interview, para.22).

On the other hand, the ‘New Public Management’ of the 1990s and 2000s had put a greater emphasis upon formal accountability and robust managerial governance within public bodies and agencies (Hood 1991; Moran 2003). HSC was seen as unable to fulfil these contemporary governance norms, even by those running it:

“the Commission [...] was not a proper non-executive board [...] The job of the Commission is to hold the Executive to account, and that needs proper and robust procedures for corporate governance, and we didn’t have that. We had

nice discussions [...] but we weren't really getting to grips on resource allocation and the Executive.” (Bill Callaghan interview, paras.54-6)

This led to a functional division, and hence a loss of trust, between the HSC and HSE, with the latter, by the late-2000s, having come to see the former as an obstacle to work around rather than with, as senior witnesses recalled:

“the Commission had completely lost confidence in the Executive, the Executive thought the Commission rather tiresome, irrelevant, it ought to go away. It is rather unfortunate that the organisation [...] was completely divided [prompting...] legitimate concerns as to what wasn't getting done as a result.”
(Senior HSE Source interview, para.82)

HSC was merged with HSE in 2008, with some of its functions passing to a new HSE Board and Chairperson. Optimists regard this as a better, more functional managerial structure, but concerns arise about whether some of HSE's political voice and influence may be lost (though the above evidence suggest this had already happened by the 2000s), and whether the new body is actually capable enough to perform this role; the Temple Review of 2014 concluded that the new HSE Board was not *“dynamic or an example of best practice”*, and lacked the commercially and strategically *“necessary competencies/attributes common to all Boards”* (Temple 2014: paras.4.8, 4.12). The HSE Board is not necessarily regarded as containing either the necessary influence in a political sense, nor the competence to initiate ideas and interrogate management, needed to be fully effective (Podger 2015: para.12). Overall, it might be suggested that the new, unified HSE may eventually be more equipped to act in a manner consistent with new governance norms, but may be less well equipped to liaise with and/or represent external political constituencies as a result of its reduced capacity to represent regulation as the outcome of cooperative processes of consultation.

Regulators and government accountability

A related issue of constitutional legitimacy concerns the relationship that HSE and HSC have with central government. This is important in terms of both accountability and independence, elements that are core to the maintenance of organisational legitimacy for a state regulator (Baldwin 1995: 127). HSE sits in a reasonably unusual place, constitutionally, within government; as a non-Departmental agency, it

has a high degree of functional autonomy and a significant, expertise-led technical capacity to implement and develop practice within its area of regulation. The intention was that a 'managing' body of this sort could drive forward the health and safety agenda in a more dynamic way than traditional Whitehall policy delivery, and that the HSE and HSC would remove the day-to-day operations of health and safety from the wider 'high' politics of industrial relations and economic policy (Moran 2003). HSE was part of the civil service, while HSC was a genuinely arms-length body; this changed the constitutional underpinnings of the area. As a 'hyper-modern' and innovative model of regulatory practice, it was received with a degree of hostility:

"John Locke [...] who really created the HSE, he'd gone around arguing the toss with Permanent Secretaries in various Departments [...] so there was a lot of hostility in the early days from other Departments towards the creation of this new-fangled quango" (David Eves interview, para.45).

Creating HSE had meant taking areas of resource and responsibility away from existing government Departments, something that led to resentment. HSE was meant to help avoid the kinds of conflict around policymaking that would emerge around offshore and railway safety in the 1980s, namely that Secretaries of State with involvement in enforcing regulations could be *"lobbied by the industry to make them as easy-going as possible"* and *"tend to under-resource the inspectorates, compared with an independent regulatory body"* (Helen Leiser interview, para.31).

Another area of conflict has been around the role of HSE as a regulator of areas where government, in one form or another, also holds the relevant duty (for example, in publicly-owned industries, or in regimes where approval has to be given for work practices). Offshore provides one good example of this, as does the Bilsthorpe Colliery collapse of 1993, where HSE had to investigate an incident that fell under the oversight of the Department of Employment, and where the Mines Inspectorate had authorised the controversial practices in use. On the one hand, as Tony Benn recalled, demanding an independent inquiry into HSE's role in the Bilsthorpe incident caused *"great anxiety [...] the Chief Inspector of Mines, Mr Twist, looked uncomfortable, but Rimington, of the HSE, looked even more uncomfortable, and Mr Davies, the Chairman of the Commission itself, looked very uncomfortable [...] it scared the Health and Safety Commission, who were terrified that their independence of government would be compromised"* (Benn 2002: 225-6). HSE

would have to tread the fine line between acting as a truly independent investigating agency, and being investigated itself over whether its independence had been compromised. At the same time, when the Secretary of State, Michael Forsyth, gave evidence on the matter during an ill-tempered Parliamentary debate, he fell back on the HSC/E's independence as a means of defending the Government from accusations of improper interference: *"We have listened to a disgraceful speech, a vicious and unwarranted attack on a tripartite body, the Health and Safety Commission [...which] include[s] members of the TUC and representatives of the CBI and of local government. It is a disgrace that Opposition Members should seek to challenge their integrity."*²⁶ Independence from government was clearly regarded as a mechanism that would protect both parties.

At the same time, however, HSE and HSC remained answerable to central government via its sponsoring department, and thus accountable via budgetary controls as well as broader political priority-setting and pressure to address specific issues in particular ways (Jim Hammer interview, para.55). This financial budget-setting was central to the relationship between HSE/C and its sponsoring Department, and would remain the primary means of holding the regulator accountable to central government (here, as elsewhere: Prosser 2010; Rimington 2010), using performance targets and financial audit to analyse HSE's value as an agency, as a former HSE Financial Management team member recalled:

"you had to be able to forecast accurately what your expenditure was going to be month to month, you had to forecast accurately what your income was going to be [...] If you didn't get that forecast right it could result in questions being asked which are very much along the lines of, 'do you know what you're doing?' HSE is constantly under the spotlight when it comes to the sponsor department" (Neal Stone interview, para.31).

This budgetary relationship with the sponsoring Department shapes behaviour in many ways; once a budget is forecast, agencies like HSE are reluctant to under-spend, but the implications of overspending can be serious.

Different Government preferences had influence at particular times, and changes of government filtered down into differing demands on regulators. This was noted, for

²⁶ 'Mines (Health and Safety)', HC Deb 26 October 1993, Hansard vol.230 cc698-747, 703.

example, in the early 1980s when the HSE's funding was reduced: *"it is in line with present Government policy that the health, safety and working conditions of all workers, but especially those in farming, count for less than debating points scored in the political area."*²⁷ At times, such as the late 1980s and early 1990s, HSE has been successful in using political nous to manage central government and deflect review processes (Senior Government Source interview, para.20). There is a constant pressure from politicians to react to new areas of priority, as an exasperated former Director-General recalled:

"Whitehall conducts its business in a different rhythm to a managed organisation. Whitehall is run by Ministers [...] and Ministers have ideas all the time [...] Ideas suddenly come up, within three days either they're dead or you're having to do them [...] they want answers to this, that, and the other, and a brief has rapidly to be prepared, the Minister persuaded that it won't work or the Minister has to be obeyed" (John Rimington interview, para.55).

On the one hand, Government poses problems when it has strong ideological views, which it seeks to impose onto the regulator, particularly when they are deregulatory. This can often mean that pressures come from multiple sources within Government. Indeed, one Senior HSE Source (interview, para.155) identified three separate, different, policy directions and pressures coming from different parts of the 2010-15 coalition Government (DWP, BIS, and Cabinet Office).

On the other, Government can be a source of pressure because it wants to intervene, produce change, and have control of the health and safety agenda, as the Director-General of HSE at the start of the New Labour era recalled:

"[John Prescott] wanted a far stricter regime and he wanted more Ministerial involvement, he didn't want [HSC] doing things, he wanted to be in charge of everything. So that was a different kind of challenge, it wasn't one that said, 'let's cut the resources, let's undermine the regulation', it was the opposite. But in many ways it was just as dangerous" (Jenny Bacon interview, para.45).

It has long been known that HSE is constrained by the outlook of Government and Ministers in making and implementing law and policy (Baldwin 1987: 140-1; Hawkins 2002: 118-9); a pro- or anti-regulation stance on the part of Government has a

²⁷ J. Hose, President of the National Union of Agricultural and Allied Workers, quoted in 'Safety is expendable', *The Land Worker*, March 1980, p. 7. MERL.

significant impact on decision-making, as do demands for a particular political response to an event, as a former HSE Director of Health Policy recalled:

"There's times when you'll get pushed into regulation and you really don't want it. After those canoeing deaths in Lyme Bay, HSE got pushed into the regulation of leisure adventure activities [...] it got dumped on HSE effectively, because of HSE's reputation that it would be apolitical in the handling of things, much more than anyone [...] else." (Tim Carter interview, para.143)

This desire for control, and wish to shape the HSC/E's work in a direct way, led to the politicisation of the agency in the aftermath of Ladbroke Grove, and ultimately to what many interviewees have identified as the greatest crisis of procedural legitimacy (formal government confidence) that the agency has faced in its lifetime:

"HSE was pretty shaken, particularly by Ladbroke Grove [...] some of the railway companies were getting on with doing their own thing and telling us one thing and not doing it. And I think that came out in the Cullen Inquiry." (Jenny Bacon interview, para.72)

The central concern here has been one of who is accountable, for what, and in what way? These issues are of primary importance for those who are involved in decisions about resourcing formal agencies, but also influence wider social attitudes (when decisions are attributed to regulators that they had no hand in: Almond 2015).

One related area where accountability becomes complex is around the role of Local Authorities (LAs) in the regulation of health and safety. The 410 LAs in the UK, as part of their local government function, regulate approximately 1.1 million workplaces, mainly in lower-risk sectors (Work and Pensions Select Committee 2008a: para.187; Löfstedt 2011: 80), undertaking inspections and enforcement action (albeit at a lower rate than HSE).²⁸ This role goes back to the mid-19th Century Factory Acts, but was given greater impetus and importance by the Offices, Shops, and Railway Premises Act 1963, which brought many 'non-industrial' worksites within the scope of the legislative regime. The low hazard/high-hazard division of responsibility was recommended by Robens (1972: para.246), and plays a key role

²⁸ In 2013-14, LAs brought 92 prosecution cases (<http://www.hse.gov.uk/statistics/prosecutions.htm>) compared to HSE's 588, and conducted 6300 proactive inspections and 37000 'other visits' - where health and safety arises via a broader agenda (food hygiene inspections, licensing, training, business advisory visits, etc.) (<http://www.hse.gov.uk/aboutus/meetings/committees/hela/310714/data-collection%E2%80%9393analysis.pdf>). HSE conducted 23740 proactive inspections (high-risk or poorly-performing workplaces) in the same year (<http://www.hse.gov.uk/aboutus/reports/1314/ar1314.pdf>).

in extending the reach of health and safety inspection into many workplaces that would not usually be picked up as part of HSE's risk-targeted inspection programme (Löfstedt 2011: 82). HSE has long taken a coordinating role in relation to LAs, including via a HSE/Local Authority committee (HELA), and its own Local Authority Unit (established in 1983). As such, while LAs are functionally autonomous, the national regulator has a significant centralising role (receiving statistics/reports, issuing guidance/training, promoting strategic goals).²⁹ A desire for closer working here saw the Löfstedt Review recommend (2011: 83) greater central coordination, resulting in a new National LA Enforcement Code being produced in 2012.³⁰

One key problem has been a longstanding perception that LA inspectors are over-zealous in their approach to risk (Dawson *et al.* 1988: 250; Robens 1972: paras.233-4; Young 2010: 26-7), or variable in the standards they apply (Podger 2015: 6).³¹ This tendency was attributed by a former HSE Director-General to the different risk culture within LAs:

“Environmental Health Officers [...] operate to standards of perfection. Most of what they do is inspect food shops and restaurants, where it really is important that things should be exactly right [...] for 80% of the economy, the people [...] administering the Health and Safety at Work Act are not imbued with the idea of reasonable practicability” (John Rimington interview, para.75).

The informality and decentralisation of LA enforcement has been noted elsewhere (Hutter 1989; 1997: 51). Evidence to the Robens Committee in 1970 claimed that *“[p]resent enforcement is shared between too many authorities some of who are completely ineffectual. This is particularly the case with the Local Authorities few of whom are sufficiently competent to understand what is required of them.”*³² Likewise, the National Federation of Professional Workers complained that it *“was only by transferring the duties of inspection and enforcement from local authorities to a central inspectorate that any real degree of uniformity could be achieved.”*³³ It is

²⁹ See details given in annual reports of the HSC; for example, *HSC Annual Report 1985-86* (London: 1988), pp. 24-25.

³⁰ <http://www.hse.gov.uk/lau/national-la-code.pdf>

³¹ A criticism made by the *Redcliffe Maud Royal Commission on Local Government in England* (Cmnd. 4040; London, 1967).

³² Written evidence of P. O’Gorman to Robens Committee, 8 October 1970, p. 10. TNA, LAB 96/36.

³³ Written evidence of National Federation of Professional Workers to Robens Committee, 15 March 1971, p. 2. TNA, LAB 96/697.

suggested that LAs lack the resources (Fitzgerald and Lupton 2015) to perform this role without having to balance it against other priorities:

“in the Local Authority sector we didn’t have effective ways of ensuring consistency. I don’t want to say I’m anti-Local Authority, but it’s much more difficult to achieve consistency when you’ve got an inspectorate which is relatively weak because it’s got all sorts of other pressures on it. For each individual Local Authority, it doesn’t have the collective resources that HSE has” (Bill Callaghan interview, para.39).

HSE has found itself blamed for activities that occur within functionally different organisations. As Bill Callaghan noted, HSE does not have the ability to control what LAs do on a day-to-day level. It must be noted that the extent to which LAs actually are ‘risk averse’ is contested and empirically impossible to verify (something Young 2010 and Löfstedt 2011 did not attempt); it is also likely that this is a problem getting worse as LA budgets recede further (Steve Sumner interview, para.46).

Central government has, over time, found that its capacity to exert centralised, politically-directed control over the workings of the regulator has conflicted with the reduced capacity to do this that exists within an arms-length arrangement (Baldwin 1995; Black 2008; Moran 2003). This is linked to the emergence of a more critical, public-facing, and adversarial tendency around central executive attitudes towards health and safety, as well as to the rounds of Government review that HSE has faced at different times (the mid-1980s; the early-1990s; and between 2010-14). It has, however, exerted significant indirect influence via resourcing, changing legal and political priorities, and pressure upon other bodies like LAs. At the same time, the regulator is increasingly held accountable (formally or informally) for the actions of others – self-regulating duty-holders, safety professionals, LAs and other public bodies. So the problem is that as allocated responsibility outstrips the capacity to exercise independent control, the perceived legitimacy of health and safety suffers.

The new legal framework

Perhaps the most significant constitutional change to have taken place during the post-1960 period has been that of legal form. The framework of laws that govern the area were changed by the HSWA 1974, which followed the recommendations of the Robens Report (1972) in introducing a principles-based, goal-setting regime to

replace the existing, largely prescriptive, system of rules and specific duties (Baldwin 1995; Dawson *et al.* 1988; Gunningham and Johnstone 1999). This difference is generally regarded as one of moving from a system that told duty-holders what to do and how, to one that specified the outcome to be pursued (ensuring the health, safety and welfare of employees and others) but left the determination of how to fulfil this to duty-holders to decide (with reference to industry standards, Approved Codes of Practice, and other guidance). Many limitations were perceived in relation to the 'Factories Act' model of legislative provision, not least that this centred on statutory schemes of detailed regulations and standards which were too inflexible and unresponsive to deal adequately with the pace of change in industrial methods and technology. The result of this was that legislation became obsolete relatively quickly, leading to an ongoing need for revisions (a "*regulatory fatigue*"; Gunningham and Johnstone 1999: 30).

The Robens Committee felt that there was simply too much law, an overabundance of statutory provisions that regulators were unable to enforce effectively, and which had an: "*all-pervading psychological effect. People are heavily conditioned to think of safety and health at work as [...] a matter of detailed rules imposed by external agencies [...] apathy is the greatest single contributing factor to accidents at work. This attitude will not be cured so long as people are encouraged to think that safety and health at work can be ensured by an ever-increasing army of inspectors*" (1972: para.28). Of course, the suggestion that regulations were too abundant was not universally welcomed; the General Secretary of the TUC, Vic Feather, observed that the "*threat of injury and death ought to be met by safety standards that are legally specific, not shadowy.*"³⁴ The prescriptiveness identified by Robens as a problem translated into a regulatory system that was focused on the fulfilment of specified and highly detailed duties. As one example, the Factories Acts made it a legal requirement that factory walls had to be whitewashed or cleaned with soapy water every 14 months.³⁵ Workers were brought up in a culture of reliance on rules, and while this may not have led to the kind of apathy that Robens described (an

³⁴ V. Feather, quoted in 'Both sides welcome Alf's Report', *Safety and Rescue*, September 1972, p. 2. TNA, LAB 96/476.

³⁵ Factories Act 1961 s.1(3). This provision would remain in force until its repeal by the Workplace (Health, Safety and Welfare) Regulations 1992.

assumption described as “*disastrously wrong*”: Nichols and Armstrong 1973: 21), it did filter down, as one nuclear industry worker recalled:

“[in 1971] these little books told you everything, at the time, you thought you should know at the time to be safe [...] there was an element of faith, they would actually protect you, if you followed those rules you wouldn’t go far wrong.” (Chris Marchese interview, para.4)

One side-effect was that engagement with health and safety processes became less widespread; because compliance could be ‘right’ or ‘wrong’, it was recast as a disciplinary matter rather than one of participatory effort (Dawson *et al.* 1988: 9).

The legal form of the 1974 Act had two key features – innovation, and simplicity. Under the new law, general duties to ensure the health, safety and welfare of employees and others affected by work (HSWA 1974, ss.2-3) were imposed; duty-holders must be able to show that they went ‘*as far as is reasonably practicable*’ in pursuit of this goal. More specific requirements and prohibitions were to be imposed via ‘lower-order’ rules, in the form of regulations and delegated legislation, which offered greater flexibility to rule-makers (Baldwin 1995: 131; Hutter and Manning 1990: 112). The ‘So Far As Is Reasonably Practicable (SFAIRP)’ test was the backbone of the new regime, allowing for the balancing of a quantum of risk against cost, time, and difficulty in determining levels of provision, and allowing flexibility in the methods used. Responsibility for determining this SFAIRP performance would lie with the duty-holder themselves, who would more efficiently and effectively find ways to fulfil it than state regulation could do (Baldwin 1987; Dawson *et al.* 1988: 15; Ogun 1995). This has been criticised, not least because it seemed to legitimise employers’ own conceptions of how far they ought to go (Gunningham and Johnstone 1999: 68). Lady Summerskill, a Labour peer, argued in 1973 that the self-regulatory principle that was later to be at the heart of the HSWA “*would bring rejoicing to the hearts of every irresponsible employer of labour who used the voluntary approach as an escape from his obligations*” (Times 1973: 7). One policy observer recalled:

“Robens was a clever compromise, self-regulation was something that the big companies were pushing, they wanted to be allowed to make the rules which suited them and fitted into the way they did things. So they were the loud voices calling for self regulation.” (Andrew Hale interview, para.75)

This reform had a major impact upon practice across industry, once the new law was in place, not least in terms of empowering decision-makers. In 1977, for example, British Rail noted that the HSWA had *“already excited the imaginations of both managers and staff into a new awareness of the general safety problem. Since the employees themselves will be able to take the initiative [...] it would be reasonable to expect a fresh new commitment by the staff to a major reduction in the accident rate of the industry”*.³⁶ The reasons the legislation was so radical in this regard were summarised by a former Deputy Director-General of HSE:

“The great thing about the [HSWA] is that it doesn’t specify the means. It specifies the objective. That means that people have to think [...] The obligation is to do one’s best to use one’s imagination to assess the risks and then to plan for, and take, the relevant precautions.” (Jim Hammer interview, para.49)

Although sometimes contested (notably by trades unions), it is suggested that this model of flexible empowerment, rather than prescription, has had significant legitimacy effects re: the constitutional bases of regulation (Baldwin 1995). Perhaps recognising this, an early stated aim of the HSC was to *“develop programmes stretching much wider than the regulatory framework, programmes designed to convince everybody at work of their personal responsibility towards health and safety which goes far beyond a formal compliance with the law”*.³⁷

Many interviewees discussed this shift, and linked it to two broader trends: the emergence of new regulatory measures, and the development of the safety profession. Sir John Armitt, Chairman of National Express (and former Chairman of Railtrack and the Olympic Delivery Authority), recalled that:

“the [SFAIRP] regime, many people didn’t like it because it required them to think. No longer could you say, ‘oh, I’m doing it in accordance with the regulation’ [...] you actually had to think about the specific task in hand and what were the risks” (John Armitt interview, para.9).

This posed challenges for duty-holders, who suddenly needed to be able to exercise much more informed judgements, based on professional expertise, rather than on a

³⁶ Memorandum to British Rail Board, 16 August 1977. TNA, AN 156/936, p.10.

³⁷ HSC Health & Safety Bulletin, 4 October 1977. MERL, CR3LSA AD9/1/222, p.1.

straightforward ability to fulfil mandated instructions. This meant seeking professional help from people with expertise that went beyond the 'disciplinary' rule-led approach:

"The Inspector's approach would stop [after the '74 Act] being one which was just [...] giving them a list of things to put right to saying [...] you need to introduce a system which [will...] achieve some reasonable standard of compliance. That's where the safety committees and safety representatives would come in to help, and firms could employ consultants if they wished."
(David Eves interview, para.27)

This advisory function for safety professionals existed before the HSWA, as RoSPA noted in verbal evidence to the Robens Committee: *"we who are not responsible for enforcing are asked for a great deal of advice because people feel that not being there to find fault under the law they can consult us without the risk of prosecution immediately. [...] We get about 4,000 queries a year to answer from industry"*.³⁸ The open-endedness of duties under the HSWA magnified the potential need to seek advice. Interviewees recognised that a principles-based system necessarily leads to some loss of clarity, as well as making the idea of health and safety subject to greater expert oversight and bureaucracy.

Additionally, the open-endedness of the law was linked to increases in the volume of guidance and secondary material generated and available to duty-holders, and to an increase in the complexity and scope of the regulatory system (Baldwin 1996: 87). The dynamic here is that general duties pass the need for specificity downwards, rather than removing it completely. The form taken by the HSWA 1974 mirrors continental forms of Roman Law, based on open-ended *principles* to guide conduct rather than mandatory commands. In continental systems, these broad duties are leavened by an understanding that they will not be interpreted in absolute terms, something that the British system precludes (Baldwin 1996: 98; Rimington 2008). This means that some form of additional specificity is required in order to make the HSWA's general duties legally actionable. And this ties into a general political tendency towards distancing delivery from policy creation:

"things in government start with quite tight ideas of what should be done [...] It goes down and down and down from regulation, to approved code of practice,

³⁸ Verbal evidence on behalf of RoSPA to the Robens Committee, 14 June 1971, transcript p. 2. TNA, LAB 96/75.

to campaign with educational materials, to inspection campaign, to leaflet."

(Tim Carter interview, para.97)

So a 1982 review of health and safety in the railway industry recorded that "[t]he proliferation of instructions on safety is a matter of concern to some managers who quote instances where it is sometimes necessary to consult several separate documents in order to find out how a job should be done".³⁹ As a former Health and Safety Commissioner recalled, this led to extremes of guidance-proliferation:

"HSE was providing 60 odd different bits of guidance around manual handling, and one was labelled golf clubs, and one was labelled hairdressers [...] it was just ridiculous [...] that's part of the overburdening." (Sayeed Kahn interview, para.123)

The preference of regulators has been for rules that are precise enough to be easily enforceable; a failure to do a specific thing is more easily actionable than a failure to achieve a general standard (Baldwin 1996: 87; Hawkins 2002: 356). One

effect of this preference has thus been for HSE to tend to develop supporting materials in order to make these general duties more concrete in practice.

The primary legitimacy risk identified here is that open-ended duties inherently encourage variation in practices, and some of this variation will inevitably tend towards the excessive; self-regulation places the decision-making burden onto third

Case Study 10: Corporate manslaughter

One significant change in the post-1974 legal framework around health and safety was the introduction of an offence of 'corporate manslaughter', in 2007. This was intended to create a crime, similar to other homicide offences in its moral status, which would apply directly to organisations which grossly breached a duty of care towards the victim(s), causing death. This was prompted by the failure of several high-profile attempts to prosecute organisations following major incidents (most notably the *Herald of Free Enterprise* sinking), and by a sense that the HSWA 1974, while a serviceable piece of regulatory law, lacked sufficient moral censure when applied to the most culpable of cases, and needed a symbolic and practical legitimacy boost in these areas (Almond 2013; Wells 2001). The new law was the result of a long process of campaigning by unions, pressure groups, academics, and lawyers (Law Commission 1996; Wells 2001), but disappointed many, being seen as unambitious, too narrow, and of limited impact in practice. Others have criticised the law as reflective of a populist tendency towards criminalisation and blame (Baldwin 2004); but this ignores the highly political nature of reform. For, as one observer within HSE recalled, the "massive pressure" from trade unions for manslaughter reform bore fruit only once it had become clear that broader union expectations from the Blair/Brown governments "had failed to materialise [...] the upset was absolutely phenomenal" (Neal Stone interview, para.50). Health and safety-related laws, even the 1974 Act, are the product of their political contexts; in this case, reform was a means of giving a concession to otherwise side-lined interests.

³⁹ British Rail Board (BRB) and HSE, 'An outline report on OSH by the Accident Prevention Advisory Unit', November 1982, p. 17. TNA, AN 16/157.

parties, and this allows for risk-averse decisions to be made within the scope of the health and safety regime (as undesirable as they may be). In particular, many felt that the open-endedness of the law encouraged duty-holders to replicate the prescriptiveness of the pre-1974 regime within their own organisations, leading to risk aversion and poor decision-making. One facetious response in the agricultural sector protested *“I really do not know where to begin and end on this one. How far do we go? ‘Staff should not walk under ladders’ or ‘Staff should take every care that they do not put their foot in a rabbit hole’!”*⁴⁰ The focus group data suggests that this problem was encountered widely – inflexible written policies, rigid internal HR/safety officers, and a sense of pervasive managerialism characterised many accounts, and crucially, this was often located at local, not regulatory, levels. As the 1974 Act had first envisaged, the duty-holder was to be the ultimate, and arguably (in Robens’ view) most preferable, rule-maker. But arguably, this site of regulation is no different from any other, in that a tendency towards prescription and rule-proliferation remains. As the current Deputy Chief Executive of HSE argues:

“the prescriptive legislative regime that we’ve tried to do away with [...] is now being replaced, within parts of our society by, in the name of self-regulation, people writing their own proscriptive lists of what you can and can’t and shouldn’t, wouldn’t, couldn’t do.” (Kevin Myers interview, para.48)

Europe and ‘regulation from outside’

Europe, and the influence of Europe, has been one of the primary sources of concern for policymakers and politicians with regard to the legitimacy of health and safety regulations (Baldwin 1995). European Community interest in health and safety has a history that goes back to the early days of the European project, such as Article 118 of the 1957 Treaty of Rome, which prompted the Commission to promote *“close collaboration”* between member states in areas including *“labour law and working conditions”* and *“the prevention of occupational accidents and diseases”*. This ‘social dimension’ to the EC’s initially trade-based role was one of guidance and coordination rather than rule-creation or legislation, but it came to be somewhat more activist in nature in the mid-1970s, prompted partly by pressures to intervene to ensure equal pay for women, for example. At about this time (1974), a Community

⁴⁰ Land Settlement Association memorandum, 20 May 1976. MERL, CR3 LSA AD9/1/222.

Advisory Committee on Safety, Hygiene, and Health Protection at Work was created to develop and promote Social Action Programmes around emergent hazards and chemical risks (Baldwin 1996: 94). One British Civil Servant (who would go on to be Director-General of the HSE), who worked for the Diplomatic Service in Brussels at this time, and sat on the EC Social Questions Working Group, saw this as an example of a politically-motivated creep of EC competencies:

“it was perfectly clear to me at that time that the Commission were thinking, ‘what a good idea if we became much more involved in health and safety’ because it’s a subject right in the guts of industry [...] the more the Commission could get hold of standards, the more they were smack in the middle of the domestic industries of the member states [...] the Commission were already, in 1974, interesting themselves in this possibility” (John Rimington interview, paras.13-16)

As other areas of industrial policy proved resistant to successful harmonisation, it became politically expedient to seek intervention in the area of health and safety, where it was felt that progress could be more easily made (Wright 2008). But at this time, the EC’s influence remained piecemeal, slow to take effect in member states (seen by the Iron and Steel Trade Confederation in 1998 as a result of the Conservative Government’s use of codes of practice as places *“where the inconvenient aspects of European legislation could be hidden”*),⁴¹ and limited to areas of emergent hazard like carcinogens, and safety signage (Dalton 1998: 40).⁴²

A more formalised law-making role for the EC was initiated by the Single European Act 1986 s.118A, which introduced qualified majority voting among member states, rather than unanimous agreement; Rimington recalled the impact of this change:

“All directives up till that time had been by unanimity. In other words, if we didn’t like something [...] we could veto it. Now that had given us enormous influence [...after QMV] our influence over the shape of European Directives disappeared [...] I told [the Minister] what would be the effect of conceding

⁴¹ M. Leahy, Assistant General Secretary Iron & Steel Trades Confederation, ‘A Step in the Right Direction’, *Focus*, OSH Newsletter for Reps of the Iron & Steel Trades Confederation (February 1998), p. 2. MRC, MSS.36.2000.72..

⁴² *“I vividly remember when the Commission proposed a directive on fire signage [...] that was probably about 1975 [...] the only controversial question, curiously enough, was whether the sign [...] should be a running man, as it turned out to be, or a walking man. [The British thought] it utterly wrong that anybody should run if there was a fire, you walked!”* (John Rimington interview, para.13).

health and safety to qualified majority voting. This was at the Madrid summit of 1987, and I think he understood that there would be a flood of health and safety regulations which we would have little control over [...] the Government used health and safety as a 'loss leader'- an area where they were prepared to make concessions and to accept European proposals that they might otherwise have resisted. We were thrown to the European wolves” (John Rimington interview, paras.77-79).

A crucial point arises here; Europe was *given* competence to impose health and safety laws during political negotiations. In a drawing of the lines between areas of ‘market-related’ regulation (where the EC might be regarded as having legitimacy to intervene) and ‘social’ regulation (where it might not), health and safety was notionally placed on the market side of the equation, at least by the UK. The British Government was prepared to cede its veto in exchange for being able to remain outside other elements of the EC Social Charter, created in 1989 and intended to allow for EC engagement with social wellbeing in general terms. Health and safety was arguably a means of allowing elements of the EC Social Charter (otherwise rejected by the UK) to be implemented via a form of functional ‘spill-over’ effect, whereby the delegation of powers in one policy field creates pressure to expand that authority into adjacent areas (Majone 1997). In this way, the close relations between ‘workplace’ health and safety, and ‘social’ health and safety, which the HSWA had foreshadowed in 1974, would act to allow for the exertion of EC control over an expanding range of issues.

Since this time, the EU has increasingly been seen by politicians, policymakers, and the media as a source of non-accountable legislative unreasonableness, which has fundamentally damaged the legitimacy of health and safety (Baldwin 1996: 99). Europe is often thought to be much more risk-averse than UK and US ‘Anglo-Saxon’ jurisdictions, and to favour precaution and prescription over more ‘proportionalized’ and risk-based modes of regulation (Löfstedt 2011; Rothstein *et al.* 2015; Vogel 2012) and so has been identified as a bastion of over-regulation. So, one factor for deciding what should be included in the HSC’s work programme for 1981-82 was the need *“to respond to, and where appropriate, seek to change European Community or other international initiatives, and to stimulate such initiatives where this will help to ensure that realistic and effective health and safety policies can be adopted in this*

country”.⁴³ For domestic policymakers, there has been a longstanding concern about the translation of this precautionary, hazard-focused European approach into British law, particularly, for instance, those felt by a former HSE Director of Health Policy in relation to specific health risk regulations:

“display screens are a good example, they weren’t a major problem, they were a new technology that a lot of workers were concerned about because they were altering their patterns of work. And the EU regulated it based on the fact that it [...] needed some precautions because it was new and different rather than because there were known risks [...] there’s much greater acceptance of the subjective as a basis for action [...] Whereas the threshold for action here tends to be almost proven accident risk or proven health risk.”
(Tim Carter interview, paras. 167-8)

These differences filter down, leading to concerns over the imposition of regulations which lack science-based justification, and so fail to deliver cost-effective benefits, instead imposing excessive burdens onto duty-holders (Löfstedt 2011: 59-60). For others, however, such as one former HSC Chair, the depths of these differences were overstated, a matter of perception rather than reality:

“They weren’t that different but they did mean we had to change our regulations. They weren’t fundamentally different [...] the CDM regulations were the most resisted [...] I said to [a] French inspector, ‘how are you getting on with CDM?’ He says, ‘we won’t do much for a couple of years and then we will gradually enforce it’. But that’s not our way. We enforced it the day it came in” (Frank Davies interview, para.117)

As far back as 1992, the tension between UK and EC approaches was identified, and contextualised, by the HSC Chair of the day, Sir John Cullen. Given this was a period of both great European regulation-making activity, and of great political tension between the EC and the UK, it is perhaps surprising he told a Parliamentary Committee that the European model was *“very similar to our Health and Safety at Work Act. It tends to be a little more prescriptive and detailed than we would choose to be...[it should not be] a big task to conform with the regulations”* (Employment Committee 1992: para.18). This additional prescriptiveness explains the view within government at the time that EU law, though well-intentioned, was disproportionate

⁴³ HSC press release, 18 June 1981. Mitchell Library, Glasgow, TD914/18/2.

for small businesses to comply with, and thus needed integrating into the UK's existing consensual approach (Senior Government Source interview, para.12). The key moment in the shift towards an interventionist EC approach to health and safety was the adoption, in 1989, of the Framework Directives for the Introduction of Measures to Encourage Improvements in Safety and Health of Workers (Directive 89/391/EEC), a radical step away from piecemeal measures on specific hazards, and towards the adoption of general overall directives and specific daughter directives to impose wide-ranging requirements upon all areas of public and private activity (Baldwin 1996: 95; Neal 1990).

The Framework Directive and its five subsidiaries were implemented in the UK on the 1st January 1993 via six new regulations (the 'six-pack'): Management of Health and Safety at Work Regulations; Workplace (Health, Safety and Welfare) Regulations; Provision and use of Work Equipment Regulations; Personal Protective Equipment at Work Regulations; Manual Handling Operations Regulations; and Health and Safety (Display Screen Equipment) Regulations. As mentioned above, some of these directives brought very fundamental precautionary, social-welfare coverage (Baldwin 1996: 95); they also led to a major shift in perceptions of both Europe, and arguably, of health and safety. The six-pack would come to be regarded as emblematic of issues of 'red tape' and European over-regulation, and posed an immediate legitimacy threat for regulatory agencies such as HSC/E (HSC 1994: para.50; para.137; also Beck and Woolfson 2000; Senior Government Source interview, para.16). As the *Times* noted in 1994, "[g]iven the political sensitivity of Europe, it is perhaps not surprising that the HSE has been accused of being over-zealous (Walker 1994: 22)." Why was this process of implementation entered into by the UK government at all, given this political climate? One HSE insider of the time recalled the political movements behind it:

"Ministers gave very clear briefs to HSE staff to agree those six pack regulations [...] they wanted to concentrate all their fight on opposing hours of work being a health and safety directive, but then let all the others through. Now the real trouble is that the politicians are very good at forgetting those instructions [...] when the actual regulations came in, they then got highly critical of these unnecessary burdens, having instructed officials at an earlier stage to just say yes to it all." (Tim Carter interview, para. 134)

The Working Time Directive, which was intended to form part of this body of health and safety provision, and which was perhaps the most ‘social’ element of EC policy in the area, was resisted by the UK until its implementation in 1998 (under a new Labour government with a policy commitment to social chapter implementation). The Directive aimed to mandate a maximum 48-hour working week across Europe, on the basis of staff health and welfare grounds. In some ways, this may be regarded as a more influential moment in terms of perceptions of health and safety than the six-pack itself, as the HSE Director-General at the time recalled:

“despite QMV, we did win quite a lot of the arguments about approaches to health and safety regulation, which meant that things that were potentially quite onerous, we were able to moderate. The big exception, and the one which I think poisoned the atmosphere a great deal, was the Working Time Directive, which arguably should not have come under health and safety legislation” (Jenny Bacon interview, para.39).

This measure tied some of the other themes highlighted in this report together: voluntary risk-assumption, the overspill of regulation into the private sphere, the open-endedness of the law, and its relevance to new employment sectors, not just heavy industrial ones. It placed ‘health and safety’ on the forefront of a political battle around Europe, and reopened red tape arguments, albeit in an area that the safety profession might not have chosen to fight.

Since the six-pack was implemented in 1993, there has been a double-shift in terms of the role of the EU as a regulatory actor. On the one hand, as Löfstedt documented (2011: 60), the majority of health and safety regulation in the UK now originates at a European level. Europe was seen by many interviewees as a key battleground for (Kevin Myers interview, para.37; Ragnar Löfstedt interview, para.20; Lord McKenzie interview, para.74; Kim Sunley interview, para.123), indeed, as a forum that is perhaps more useful in terms of policy engagement around health activities than Westminster might be. On the other hand, the EU is also seen as having stepped back significantly in its activism and influence from the high-water-mark of the early-1990s; it is seen as less involved in the area now (Janet Asherson interview, para.20; Tim Carter interview, para.178; Richard Jones interview, para.18). Three key reasons for this can be identified. First, inconsistency between member states within Europe (north and south, or now, west and east) has prevented the

development of further regulation (Senior Government Source interview, para.37), as Janet Asherson of the CBI observed:

“the expansion of the European Union has put a brake on the system. There has been [...] a huge tranche of legislation interpreted in very different ways across Europe. It’s coming to some sort of commonality now but even so the new accession states are struggling with it” (J. Asherson interview, para.20).

Secondly, soft law measures and approaches have become more central to EU practices in the area during this time (Leka *et al.* 2012: 55-56; Wright 2008). The flow of directives has been replaced by consolidatory policy instruments of different sorts, not least because of the difficulty of implementing the former into new secession states. So the EU Strategic Framework 2014-2020 refers to ‘social dialogue’ and ‘awareness raising’ as the key measures to be used.⁴⁴ Third, and most tellingly, there has been a shift towards a more pronounced, UK-influenced deregulatory agenda at European level, with greater emphasis placed upon balancing the economics of risk and regulation (Wright 2008). So, for instance, the High-Level (Stoiber) Group on Administrative Burdens recommended the adoption of key principles of regulatory minimalism, non-universality, and economic rationality to tackle red tape across all areas of regulation,⁴⁵ and one of the seven strategic objectives of the Health and Safety at Work Strategic Framework 2014-2020 is: *“Simplifying existing legislation where appropriate to eliminate unnecessary administrative burdens”*. In a sense then, those arguing for a ‘push back’ to bring EU practice more in line with British preferences (2011: 63) are pushing an open door.

Overall evaluation of the EU’s impact on legitimacy is challenging. On the one hand, there are clear signs that it has been seen as having had positive impacts in terms of standards; on the other, that elements of this implementation have been wholly unwelcome. Leka *et al.* (2012: 65-67) highlight that 63% of UK statutory instruments originated at an EU level, at a cost of £2.5 billion to the UK, but that these ‘soft’ EU laws have brought practical benefits, despite being perceived as highly burdensome. This tension is captured by one leading health and safety practitioner:

⁴⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0332&from=EN>

⁴⁵ Formally, the High-Level Group on Administrative Burdens, which recommended, for example, that *“legislation must be designed so as to achieve policy objectives most effectively and at lowest cost to society, citizens and business”*; High-Level Group on Administrative Burdens, *Cutting Red Tape in Europe: Legacy and Outlook* (2014) <http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/08-10web_ce-brocuttingredtape_en.pdf>, 8.

“[there is now] much greater acceptance that it is a properly allocated responsibility of management to manage risk. That that was substantively promoted by the EU six pack, even if one of the sets of regulations was about display screens which are bleeding ridiculous” (Lawrence Waterman interview, para.64)

On the other hand, empirical data suggests that the public remain pretty uninformed and unconcerned about the EU’s role in this area, and the focus groups confirmed that there was very little connection made between health and safety and the EU (see Sections 5 and 6 of this report). While there may be a wider anti-EU agenda in play, this does not always implicate health and safety directly, rather the often similar-looking antipathy to this area of regulation probably stems from a similar ideological source.

It is worth reflecting on the extent and depth of the toxic political legacy that association with Europe via the six-pack and other legislation has had for health and safety; the 1980s and 1990s, and a lurch towards Euroscepticism during this time, ‘poisoned the well’ for domestic regulators, has indirectly created significant legitimacy challenges around issues of mandate and accountability. At the same time, analysis of the relevant legislation, of the information and experiences of policymaking in Europe, and the outcome of various disputes tends to suggest, the UK actually has much more agency in terms of EU-level law-making than many accounts suggest, and has not necessarily been dragged in directions it did not want to go to the degree that some might suggest (Rothstein *et al.* 2015; also Löfstedt 2011: 60). This appraisal was echoed by Jenny Bacon, who saw the six-pack era first-hand while at HSE (as well as by many other interviewees):

“we contributed quite a lot to the debate in Europe. If you look across the safety regimes, health regimes in Europe, they owe quite a lot to our approach. But I also think, in particular in the occupational health area and environmental protection, Europe stimulated us and that was good” (Jenny Bacon interview, para.28).

On this reading, then, it might be suggested that the EU is a political factor shaping the legitimacy of health and safety, and an institutional factor, but has not been quite as relevant at a social level.

B: Democratic Challenges: Health and Safety in a Changing World

The decline of traditional industry and the changing economy

It is well documented that the period 1960-2015 has seen a major realignment of the British economy and workplace; traditional, manual, heavily unionised industries (manufacturing, heavy production, extraction/mining) have declined in terms of their scale and in the share of the workforce employed, and this has led to a number of effects, not least the reduction in the influence of traditional trade unions. At the same time, other areas (notably office, retail and service sectors) have increased their share of the economy. Before considering these changes in detail, it is worth noting some more general relationships between economic performance and health and safety. These are certainly not specific to the project's period, being discussed from at least the 19th century onwards, and it is difficult to draw direct casual links between, for example, the state of the economy or a particular firm's performance and the number of workers killed or injured, as so many other factors are involved. However, it is clear that there are strong associations between financial pressures and health and safety (Genn 1993; Nichols 1999; Quinlan 1999; Quinlan *et al.* 2001; Viscusi 1983), something particularly important in the declining heavy industries which might lack capital to invest in new equipment or processes.

The need to sustain a profit margin acts as a driver in relation to health and safety in many industries, including nationalised concerns. As David Morris, a former HSE inspector, recalled about the construction industry of the 1970s: *"there was an element of anarchy in the industry and the pursuit of the cheapest possible input to the construction process, so if someone could do the job cheaper by cutting corners, they would get the job"* (David Morris interview, para.42) – often with negative consequences for workers. Morris later noted:

"employers will always see the upfront cost of a risk control measure rather than the longer term benefit [...] And it's natural that they should because it's their money that's being spent [...] unless there is a countervailing force to say that, "yes, it's going to cost you X million pounds to do this, but over a ten year period it will save you Y million pounds, and isn't that a good thing?" then you only hear about the [...] cost" (David Morris interview, para.135).

Politics and ideology has, of course, lain behind all of the economic strategies adopted by governments, but in the 1980s in particular the pursuit of profit was noticed as having an impact upon health and safety. In 1988, in the midst of strong economic growth, a 'senior government official' was quoted in the *Guardian* as saying *"A culture which is about enterprise, competition and profitability doesn't want to concern itself too closely with issues of health and safety"* (Laurance 1988: 23). Whilst ideology and the profit-motive might have been important considerations at all times, they became more pronounced during this period of economic downturn. The impact upon business attitudes towards health and safety could be profound, as was noted by RoSPA in the early 1980s: *"It is a matter of concern that so many organisations, in a reaction to the depressed economy, have stopped or severely cut back on training and particularly safety training."*⁴⁶ These effects might be intensified in those industries that were already in decline; in its annual report for 1982-83, RoSPA recorded that *"[t]he economic recession and financial climate has probably hit the occupational safety division harder than the other divisions because so much of its work is with those very industries under most pressure."*⁴⁷

The economic climate also had an impact upon the ability of regulators to pursue their objectives, both in terms of their own resources and the responsiveness of those they regulated. Chief Inspector of Factories Jim Hammer started his 1979 report with a discussion about the economy, including the recognition that in light of a six per cent cut in budget in the coming years *"what the Factory Inspectorate can achieve is obviously constrained by the resources at its disposal"* (HSE 1981: vii). This included a radical new approach, including cost-benefit analysis of where inspection, in particular, should be applied (*Ibid.*, v). The link between the economy and the HSE's regulatory strategies was, to Hammer, clear, and econometric approaches such as cost benefit analysis were understood by the regulated as well as (in some eyes) providing legitimisation for particular enforcement priorities. Returning to the overall structure of employment across this period, Tables 1 and 2 present indicative data which gives an impression of the changes to the economic structure of Britain. The broad trend was one of contraction of heavy industries and expansion of the service sector, though construction is one notable exception to this,

⁴⁶ RoSPA Annual Report, 1981-82, p. 12. RoSPA Archives, D.266/1/2/5/2.

⁴⁷ RoSPA Annual Report, 1982-83, p. 10. RoSPA Archives, D.266/1/2/5/3.

as was recognised by the HSE in its 1977 comment *that “it seems possible for there to be an increase in activity and in the numbers at risk. The prudent view is that unless there is a radical change in the effectiveness of accident prevention in the industry, the accident experience of the past 10 years may be repeated”* (HSE 1979: 33).

Sector	1961	1971	1981	1996	2001	2009
Mining & quarrying	527	257	164	73	69	55
Agriculture	948	718	598	264	282	243
Textiles	466	309	176	174	134	57
Construction	571	554	621	898	1160	1241
Services, sport and recreation	2496	2952	3293	18125	20109	22329

Table 1: Numbers employed in selected sectors, Great Britain 1961-2009 (in 000s). (Aggregated from: Mitchell 1988: 107; ONS 2002: table 7.5; ONS 2010: table 7.5.)

Sector	1961	1971	1981	1996	2001	2009
Mining & quarrying	2.2	0.9	0.7	0.3	0.2	0.2
Agriculture	6.1	4.1	2.5	0.9	1.0	0.8
Textiles	1.9	1.1	0.7	0.6	0.5	0.2
Construction	2.4	2	2.6	3.1	3.9	4.0
Services, sport and recreation	10.4	10.8	13.9	63.1	68.2	71.2

Table 2: Numbers employed in selected sectors as percentages of economically active population, Great Britain 1961-2009. (Aggregated from: Mitchell 1988: 107; ONS 2002: tables 7.1 and 7.5; ONS 2010: tables 7.1 and 7.5.)

These changes were clear to contemporary observers, as was seen in the 1981 HSE report: *“It is by now clear that there has been a long term, not to say permanent, change in the pattern of British industry.”* It went on to note that not only had the once major traditional industries been losing employees, but that *“[t]he safety departments of major companies have felt the same chill wind as other parts of the organisation and in many cases the health and safety function has been amalgamated with other duties.”* At the same time, *“cutbacks in labour have led to a*

noticeable deterioration in maintenance and housekeeping” (HSE 1983: v). As well as having an impact on the ways in which regulators could act, these changes also had an effect upon perceptions of what regulators should be doing. Evidence to the Robens Committee in 1970 noted that *“[t]he point I wish to establish is the naive assumption that an industrial code formulated in the 19th century is applicable or adequate to the needs of British industry and commerce.”*⁴⁸ This was picked up by Peter Jacques of the TUC’s Social Insurance and Industrial Welfare Department (1971-2000):

“much of the reasons for having a lot of health and safety [...] legislation, have disappeared, broadly meaning coalmining, ship building [...] in terms of the hundreds of thousands or tens of thousands of people involved in those industries, steel [...] hardly anything, so I think that quite a lot of that has disappeared. Quite a lot of the work, heavy health and safety, the safety, occupational health stuff has disappeared” (Peter Jacques interview, para.192).

One additional result of these changes has been a reduction in the perceived legitimacy of health and safety provision, as industries where there are clear and established risks, and long traditions of risk regulation, serve to reinforce and validate the idea of regulation as socially important and valuable. This perception was widely reflected in the focus groups. The decline of such industries, it is suggested, has lessened the public and political visibility of occupational ill-health, injury and death from high hazard processes by diffusing these outcomes (although they still continue, albeit at a lower rate than in the past). As Jim Hammer remarked:

“The other reason why people are not so aware of the real importance of health and safety nowadays is that the big industries that used to cause the dramatic, serious accidents, the ship building, chemical works, and big steelworks, in general terms, don’t exist anymore. I know I’m exaggerating, but people don’t have this perception that it’s important to look after working people [any more].” (Jim Hammer interview, para.67)

If the visibility of risk has validated regulation in the past, then the apparent safety of newer sectors may pose problems in terms of the legitimacy of health and safety.

⁴⁸ Written evidence of P. O’Gorman to Robens Committee, 8 October 1970, pp. 6-7. TNA, LAB 96/36.

Further, one of the strengths and enduring legacies of the traditional industries had been that they acted as 'leaders' for the health and safety agenda, developing and disseminating new modes of risk management and expertise. This includes not just the role of major employers, but also the prominence given to health and safety issues by the major unions serving workers in those industries. As industries have emerged they have discovered the pitfalls of their practices; these became sites around which debates about safety and risk were contested. So, for example, in the early 19th century this included the textile industry; in the mid-19th century the railway industry (see, for instance, Hutter 2001); and in the early- to mid-20th century the chemical industry, particularly in relation to synthetics. Leading industries of the day played a role in generating proposed solutions to the problems they were creating, often (for a variety of reasons) ahead of the regulators. Traditional heavy industries could, according to some accounts, represent themselves as carriers of a weighty and substantial body of expertise and influence, and thus engage with policymakers and regulators as partners within a broadly cooperative health and safety regime. Roger Bibbings, former of the TUC and RoSPA, commented:

"Britain has ceased to be a big manufacturing nation. We don't have coal mining, we don't have ship building, we don't have these big centres of economic and political influence which could be deployed in this area to tell ministers, well don't worry too much, we know what we're talking about, we'll come up with a set of regulations, we'll advise the Factory Inspectorate and if there are any dissenting voices off stage we'll be able to sort them out."
(Roger Bibbings interview, para.29)

In the absence of these 'leader industries', it may be harder for those working in health and safety to show and establish the value of what they do; the gap has not yet been filled to the same extent by existing and emerging issues in newer sectors.

These changes in the makeup of the British economy have also seen the emergence of new industries and sectors, which have their own challenges and political contexts (Mayhew and Quinlan 2002; Quinlan 1999; Quinlan *et al.* 2001). The retail and service sectors have grown in importance to the economy and size of workforce; office work is also much more significant in 2015 than in 1960. Whilst concerns about conditions in offices had existed since the early years of the 20th century, the issue gradually became more significant as the number of office-based workers

increased during the second half of the 20th century.⁴⁹ Health and safety issues were often considered under the more general term of ‘welfare’, and were frequently tied to questions of productivity and workforce morale.⁵⁰ Following the Offices, Shops and Railway Premises Act 1963, greater attention was paid to this area by employers, unions and regulators (Local Authorities, in the main). Yet it was also clear that regulation here was under-resourced. It was claimed in 1966 that *“Many local authorities are fully aware that their staff of inspectors falls short of the complement desirable to act as enforcement officers. Their argument is that they cannot afford to appoint more.”*⁵¹ Yet the unions were also criticised for their failure to take the Act, and safety in the premises it covered, seriously, as David Maidment, a former British Rail safety manager, recalled:

“trade unions would fight for compensation but they never said anything to me about the state of the station [...] They used to moan about broken steps and windows and draughts [...] all the housekeeping things, but equally they knew nobody ever did anything about all the minor safety things” (David Maidment interview, para.87).

There is limited evidence as to how regulation was perceived in these sectors which were relatively unfamiliar with regulation. Some groups saw the focus as at odds with the priorities of higher-risk workplaces, at least in the 1960s. The Institute of Directors spent some time in the 1960s considering office conditions, commenting in 1960 that *“[i]n factories conditions can quickly become appalling and of course extremely dangerous. They are kept under control by first class legislation and a first class inspectorate which is a model for the world [...] inspection is of course expensive both in money and trained manpower. It is simply not worthwhile expending the money on office conditions.”*⁵² Early in 1966, white-collar unions pushed for greater enforcement action by local authorities. At the same time, some employers did take action: a British Rail memo of March 1970 notes that safety

⁴⁹ See, for example, the note in the *Observer*, specifically focusing on office conditions for female workers (29 December 1949). Brighton Design Archive, 1685/1.

⁵⁰ See, for example, Institute of Directors ‘outline for aide memoire on working conditions in offices’ (1960), p. 1. Brighton Design Archive, 1685/1.

⁵¹ ‘Justice of the Peace and local Government Review’, 22 January 1966. See also *The Municipal and Public Services Journal*, 4 March 1966, p. 691. MRC, MSS.239/3/1/95.

⁵² Correspondence from B. O’Donovan to Mr Farr, ‘An Office Workers’ Charter’, 6 January 1960, p. 1. Brighton Design Archive, 1685/1.

exercises had been carried out at headquarters in relation to the typing services.⁵³ The change in the economy was recognised by the regulators and legislators, as was noted in 1986 by the retailer WH Smith: *“In the face of new and proposed legislation and a tougher attitude by enforcement authorities, it is important that staff are aware of fire and safety regulations. This is now imperative”*.⁵⁴ Significantly, there is also some suggestion that the extension of regulatory activity to office work from the 1980s, in particular, increased the numbers of people in contact with the HSE and contributed to later concerns about the legitimacy of health and safety:

“lower-risk ‘white-collar’-type employers had new duties of care towards the safety of members of the public who might also be affected, while visiting shops, offices, hospitals and so on [...] They were what we called the ‘new entrants’ when HSE was being set up [...] the risks were different in kind, lower in general, but capable of much panic and disproportionate public and media reaction if there was a case where something went wrong.” (Helen Leiser interview, paras.67-9)

Particular issues of consistency and proportionality have recently been debated in these contexts (Löfstedt 2011; Young 2010); crucially, it remains to be seen how traditional notions of ‘health and safety’ map across into newer sectors such as office work, in terms of making the normative case for intervention, and showing that the delivery of effective health and safety is efficient, proportionate, and of value.

The service sector was also one to which the HSE paid particular attention from the late 1980s onwards. Despite the growth of the sector and the HSE’s interest in it, the 1990-91 HSC report observed that *“[t]he Commission continues to be concerned about the rising number of accidents in the service sector over the past few years”* (HSC 1991: ix) A range of new concerns followed from workplaces beyond heavy industry, something Peter Jacques, formerly of the TUC, reflected upon:

“health and safety is not only about old industry it’s about new industries and moving into areas which previously I don’t think people like me ever took account of. Things like stress...they’re new areas and I think some employers perhaps, and not only employers, are a bit sceptical about whether there is such a thing as stress...a lot of the issues in health and safety now are much

⁵³ ‘British Railways Board Accident Prevention Policy’, internal memorandum, 9 March 1970. TNA, AN 171/550.

⁵⁴ WH Smith Retail Group, Management Executive minutes, 2 January 1986, minute 16. MERL, WHS 1415.1-4.

more difficult to deal with, I think, than the ones when I first started” (Peter Jacques interview, para.192).

Of the new high-risk areas that grew during this period, it is worth dwelling upon the offshore industry. Oil production, in particular, increased massively – up from 87,000 tons in 1974 to 77,671,000 tons in 1980 (Mitchell 1988: 270). Yet whether it adopted a profit-centred motivation from older heavy industries or from the American industry from which it took its lead, production was viewed as privileged over safety (Carson 1982): *“a lot of [casualties] were because of poor practice, probably brought about by the urgency to get the job done that little bit quicker and the culture at that time was [...] get the installation producing, that’s the important thing, everybody was focused on production of hydrocarbons and health and safety perhaps didn’t take its rightful place.”*⁵⁵ At least in the early days of health and safety regulation (whilst inspectors fell under the Department of Energy) there was an acknowledgement that the industry was leading. One inspector recalled *“our management were quite enlightened and said “you know, if you actually work to the rule book, then, you know, you’ll never keep up with the oil industry”, so we were given quite a loose rein [...] as long as we got the work done to the required quality.”*⁵⁶

Yet with the changes in the economy in more recent years, it is important to consider what this might mean for health and safety and for leadership. Jenny Bacon, former Director-General of the HSE, noted of the 1990s:

“the approach to health and safety in small businesses and self-employment did become much more important, partly because that was the way in which the labour market was changing, far more jobs coming out of that sector than were coming out of major manufacturing” (Jenny Bacon interview, para.79).

In terms of leadership, however, the capacity of the self-employed or smaller businesses to influence health and safety regulation, policy and practice is perhaps limited. Instead it is suggested some larger employers (major retail, supermarkets), as well as SMEs, are now leaders in influencing the agenda of government (Senior Government Source interview, para.56), and in setting the agenda for issues that need to be addressed. This was something observed by Bill Callaghan, HSC Chair 1999-2007, as having an impact:

⁵⁵ Martin Thompson, interviewed as part of the University of Aberdeen’s ‘Lives in the Oil Industry’ project. British Library, C963/13, tape 2, side b.

⁵⁶ *Ibid.*, tape 2, side a.

“As we change from being a manufacturing country to becoming effectively a retailing economy, economic power is there amongst big supermarkets and DIY chains and all the rest of it. And they certainly had the ear of government. And a lot of the discussions about proportionality of health and safety enforcement came from complaints from the big retailers. And that of course was the local authority enforcement sector for the most part. But they certainly had the ear of the Prime Minister.” (Bill Callaghan interview, para.30)

The changing nature of employment has posed challenges for regulators. As early as 1981 the Chief Inspector of Factories noted that the jobs then being created were tending to be temporary roles or for sub-contractors, and in smaller firms, and that businesses were focusing only on aspects ‘directly’ related to the product or service they were selling: all reasons why health and safety might not be considered (HSE 1982: v). These aspects have continued in the years since, including further complications of supply chains and increasingly mobile workforces (James *et al.* 2007). With such transient work, it was difficult for employees to accrue experience that would serve them well in relation to health and safety. Jenny Bacon saw this in the 1990s:

“[you] need something slightly different when you’ve got a much more mobile and short term workforce on contracts for services rather than contracts of employment [...] also the instability of the job market, people now have [...] portfolios, they don’t have careers, they’re not in one job for a long time, they’re moving around. It’s much more difficult to get application of health and safety legislation in those circumstances” (Jenny Bacon interview, para.29)

Similarly, it might be the case that within small firms – and even within larger industries, for specific jobs – there might be insufficient work for employees to gain experience of the role. This was even the case in some aspects of the nuclear industry in the 1990s, where asbestos removal work was outsourced because “we actually didn’t have enough work to produce a competent workforce, it was better to employ contractors.” (Chris Marchese interview, para. 45.)

At the same time, there has also been some awareness of health and safety as an issue with porous boundaries: where ‘workplace’ ended and ‘home’ or ‘leisure’ started have not been as clear as it might be imagined. In the early 1960s, according to RoSPA “[m]ore and more, progressive and enlightened organisations are taking

*an active interest in their workers welfare at all times. They see safety on the roads, in the home and at work as part of the same problem.*⁵⁷ This cross-over was often related to road risks, but it also applied to asbestos, with the understanding that it spread beyond the factory gate (for example, on workers' clothing) and killed those at home (for example, Gillie and Gillman 1976). Some thought has been paid in recent years to pre-existing conditions that the population have *before* they enter the workforce: *"The mental health issues in the general population are finding their way into the workplace [...] I think there's a great shift in what are the issues in health and safety."* (Peter Jacques interview, para.192). Evidently, then, the last 60 years have seen huge changes in not only the economic structure of the UK, but also the ways in which occupational health and safety have been conceived, regulated and discussed. The implications for the legitimacy of the area are profound.

The changing nature of Trade Unionism and Worker Representation

The period since 1960 has seen great changes in the nature of trade unionism in general and worker representation on health and safety matters in particular, perhaps summarised as a rise and fall of participation. This has brought with it challenges in terms of legitimacy – including responding to long-standing managerial concerns about prerogative in the workplace and trade union power through to more recent issues about the impact of changes upon claims that can be made about the democratic legitimacy of health and safety regulation. Although containing some gaps, Table 3 gives a statistical picture of the position of the unions across the period covered by the project. The key trends are a rise in membership and density of coverage (percentage of working population in a union) until 1979 and a decline thereafter, and the decline of male trade unionism and rise of female union membership. One key feature of the changing industrial context of modern Britain has been the decline of trade union membership, something that has also occurred in other developed European economies during the same period (Ebbinghaus and Visser 1999; Visser 2012). This decline has been reflected in the absence of organised labour as a leading influence from policymaking processes since the 1980s. There have been wider cultural shifts in how labour protection is viewed, how policy is made, and how representation and worker engagement is undertaken.

⁵⁷ RoSPA, 'Off the job safety planning' leaflet (c.1963), p. 2. MRC, MSS.292B/146/2/2.

Year	Total no. of unions	Members (000s)					
		M	density (%)	W	density (%)	Total	density (%)
1960	664	7884	54.2	1951	25.4	9835	44.2
1970	543	8444	58.2	2743	32.1	11187	48.5
1980	438	9162		3790		12952	
1990	327					9810	
2000	237	3752	30.4	3367	29.1	7119	29.8
2010	185	2969	23.8	3561	29.5	6530	26.6
2013		2928	22.9	3522	28.3	6450	25.6

Table 3: Trends in trade unionism, 1960-2013. Figure for total number of unions for 2010 is actually 2008-09. (Aggregated from: Bain and Price 1980: 38; BIS 2014: 21-25; Mitchell 1988: 137; ONS 2002: 118; ONS 2010: 116)

In 1960 there was considerable variation in workforce participation in trade unionism as well as variation in trade union activity on health and safety matters. As might be expected, unionisation was higher in older-established heavy industries such as mining, iron and steel, shipbuilding and railway work, with resulting geographic distributions; some sectors, such as agriculture, construction and shop work were weakly unionised (Jim Hammer interview, para.65; Peter Jacques interview paras.4-18; McIvor 2013: 207). It is likely that this impacted on the prominence with which health and safety issues were addressed within respective industries and workplaces, as they were seen by many as matters of ‘natural’ interest to the unions. Whilst not possible to establish a cause and effect relationship, given the other potential factors in play (such as fragmented and diffused workforces), it is possible to suggest that sectors with relatively restricted union membership were also those in which health and safety issues received relatively limited attention.

Unions acted on health and safety in a number of ways. On a day-to-day basis shop stewards might raise concerns with foremen (and they were usually men) or management, though the ability to do so was located within the local context of industrial relations at a particular workplace; this at a time which one interviewee, a former inspector, saw that “*management/ trade union conflict [...] was very much part*

of the industrial culture in the late '60s, early '70s" (David Morris interview, para.34). Union and worker representatives might be found on voluntary safety committees, though this tended to be at the discretion of the management who constituted the committees. Beyond individual workplaces a series of regional (often RoSPA-affiliated) health and safety councils existed, though it is clear that, in the 1960s, unions occupied an ambivalent place: the Teesside Industrial Accident Prevention Committee, for example, decided to allow unions to join the Committee in 1968 only after some discussion, as they felt *"that many district union officials were out of touch with their members at works level"*.⁵⁸ Unions provided representation at investigations into incidents, including discussing or raising cases with state inspectors, coroners' inquests and legal proceedings, lobbied MPs or raised issues through union-sponsored/affiliated MPs, or approached relevant Ministers directly, as was the case in 1962 when the TUC was unhappy at the slow rate of progress in providing washing facilities at ports: *"unless this was accelerated it was likely that direct representation would be made to the Minister of Labour"*.⁵⁹ From the 1950s a number of unions started to push more vocally for the appointment of safety representatives, and in 1962 the TUC voted for a resolution calling for statutory safety representatives, a departure from the previous support for voluntary arrangements (Grayson and Goddard 1975: 18). Perhaps more immediately, union representatives (including the TUC) had contact with regulators. Peter Jacques recalled his early days at the TUC's Social Insurance and Industrial Welfare Department in the late 1960s/early 1970s:

"we spent a lot of time with Ministers of one sort or another [...] we would get whatever we wanted in a way, but it was like talking to a sponge bag. 'What do you want? Yeah, right-ho Peter.' And then pass them over [...] if you wanted anything real you had to talk to the people who really knew. And initially it was the Factory Inspectorate but later on with the Executive it was exactly the same with the Executive" (Peter Jacques interview, para.40).

As well as securing a place at the table through the tripartite structure of the HSC, the role of trades unions was formalised through provisions for worker consultation

⁵⁸ Teesside Industrial Accident Prevention Committee, Minutes 3149c (20 December 1967) and 3165 (20 March 1968). RoSPA Archives, D.266/2/18/11.

⁵⁹ Note of meeting under the Committee of Inquiry on Anthrax, between Ministry of Labour and worker and trade union representatives, 10 January 1962, p. 5. TNA, LAB 14/957.

(Dawson *et al.* 1988). The unions had wanted the appointment of worker representatives made compulsory and they continued to campaign on the issue after the 1974 Act noted this as 'desirable'. This generated considerable opposition from employers, on the grounds that it would have an adverse effect upon industrial relations.⁶⁰ This long-standing employer opposition to union or worker involvement was noted by the TUC in 1975: *"Most commentators saw 'worker participation in safety effort as solely a matter of discipline'. This fundamentally paternalist view is certainly not dead"* (Grayson and Goddard 1975: 17). The depth of the contest over worker representatives demonstrates the significance to employers and unions of safety representatives, which were eventually introduced under the Safety Representatives and Safety Committee Regulations 1977. The unions gave the regulations a cautious welcome, while recognising the challenges that remained: *"Looking around at all the legislation supposedly affording protection to working people, it might be comfortable to conclude that old-style union organisation and activity are no longer needed. Nothing could be further from the truth. A healthy and safe workplace is not going to be given to you. YOU must negotiate it!"* (Cunningham 1978: 28). In addition, it is worth noting that these new powers applied only to representatives of recognised trade unions: non-unionised representatives had no legal standing, a serious issue given that it was not until 1974 that union density surpassed 50% of the working population (Bain and Price 1980: 38). RoSPA, for example, noted in 1975 that they wanted everybody to have the possibility of participating and to avoid *"the possible political usage of legislation."*⁶¹

However, the evidence suggests that the safety representatives and consultative mechanisms suggested by Robens and the HSWA ultimately failed to achieve the levels of uptake, integration, and impact that was hoped. In October 1978, for example, the management side of Southampton Port Accident Prevention Committee was criticised for poor attendance;⁶² when the Committee was dissolved

⁶⁰ See, for example, the comments of the Cement Makers Federation: 'Safety representatives and safety committees', 16 February 1976, pp. 1-3, in the files of the CBI relating to the HSC's consultation on safety representatives. MRC, MSS.200.C.3.EMP.4.40.

⁶¹ RoSPA Industrial Safety Division, report from Occupational Safety Groups Advisory Council, 14 November 1975, p. 1. RoSPA Archives, D.266/2/24.

⁶² Correspondence of the Southampton Port Accident Prevention Committee, memorandum, 4 October 1978, p.1. TNA, BK 11/60.

in 1982 it was seen as “a rather ineffective and frustrating ‘talking shop’”.⁶³ This risk was replicated in the recollections of Stan Barnes, former IOSH President and veteran ironworks safety manager:

“the great problem with safety reps was getting recognition for them in industry. I don’t think they ever really did fully get off the ground, except probably in local government. It’s a thing which I’m sure was very well intentioned but I never felt [...] it had really succeeded in industry [...] It’s much the same with the safety committees. They’re easily turned into talking shops.” (Stan Barnes interview, paras.87-9)

The attention paid to welfare work, which often included health and safety issues, in office environments was also questioned, as in a 1986 comment by Geraldine Beech, a part-time departmental welfare officer at the Public Record Office, who noted that “for none of us is welfare our principle function [...] the welfare service is hamstrung by the fact that its members’ first responsibility, except in emergencies, is to their “proper” job [...] there is no Welfare budget”.⁶⁴ When safety committee meetings in the railway industry in the early 1980s failed to prompt subsequent change, “the system appeared to fall into disrepute with safety representatives taking the view that there was little point in inspecting and reporting if action was not to be forthcoming”.⁶⁵

Despite an initial flush of enthusiasm from trade union officials for safety representatives, the response from rank and file members was less dramatic. As early as 1981 it was noted that “[t]he post of safety representative is not always a popular one amongst Local Departmental Committee members because of the extra workload it imposes, and at several locations individuals had been persuaded reluctantly to accept the post.”⁶⁶ This remained an issue, as noted by Sarah Lyons of the NUT at interview:

“often [...] in a unionised organisation it’s not a question of people clamouring to do the role, it’s you get asked to do it, and for me it was good because it led on to, to other things” (Sarah Lyons interview, para.10).

⁶³ Correspondence of the Southampton Port Accident Prevention Committee, letter, 28 January 1982, p.1. TNA, BK 11/60.

⁶⁴ G. Beech, report ‘The problems of a part-time Welfare Officer’, May 1986, pp. 5-6. MRC, MSS.381.W.2.1.27.

⁶⁵ (BRB) and HSE, ‘An outline report on OSH by the Accident Prevention Advisory Unit’, November 1982, p. 13. TNA, AN 16/157.

⁶⁶ *Ibid.*, p. 12. TNA, AN 16/157.

There were also concerns about the operation of arrangements at a higher level: whilst there was no doubt that formal tripartism was progress, Peter Jacques questioned whether it was conceived in such a way as to “*keep the unions in place*” (Peter Jacques interview, para. 36) rather than as a good in its own right. How much of an impact contact with the inspectorates had was, of course, variable, as Jacques acknowledged:

“I don’t think we [TUC officials] got on very well [...] with other Inspectorates [beyond the Factory Inspectorate], I don’t think they understood who we were and what we were trying to do. For example I didn’t get on very well with [the Alkali and Clean Air Inspectorate...] They would never do us anything, wouldn’t help [...] The mine working inspectors I was very disappointed with [...] I just thought they were just coasting along nicely to their retirements, I never felt they really wanted to do anything.” (Peter Jacques interview, paras.40-42).

It is necessary to be cautious, then, about viewing the period before the 1980s as one in which the trade unions had excellent access to and influence upon health and safety policy and practice.

For much of the period after 1960 the unions – certainly those in older, gradually declining industries – had to work with employers to balance security of employment with health and safety issues. It is apparent that whilst there was a move away from older ideas of ‘danger money’ for particularly hazardous roles, in certain sectors the practice was hard to eradicate. At the 1969 TUC Congress one speaker noted that “[w]e refuse completely, in the interests of productivity or anything else to prostitute safety for production”; (Grayson and Goddard 1975: 4), yet a comment ten years later demonstrated that the issue was still a live one: “*efforts have repeatedly been diverted by offers of compensation and danger money. Health has been sold very cheap*”.⁶⁷ Handling asbestos in the docks was a further area where danger money was still being applied at least in the 1970s (David Morris interview, para. 28).⁶⁸ At the same time as working around individual members’ interests in economic security, many unions also had to work within a context of declining economic viability of particular industries. So, in one 1980 Joint Industrial Committee meeting the

⁶⁷ George Woodhead, ‘Forge Ahead’, *Work Hazards*, 21 (c.1979), p. 9. Samuel Barr Collection, GCU DC 140212.

⁶⁸ Owen McIntyre, interviewed by David Walker, 2009, Glasgow Dock Workers Project, SOHCA and CSG CIC Glasgow Museums and Libraries Collections; Alfred McMillan, interviewed by David Walker, 2009, Glasgow Dock Workers Project, SOHCA and CSG CIC Glasgow Museums and Libraries Collections.

'reasonably practicable' clause was invoked by employers to argue against the limits on noise levels that the unions were seeking: *"in the wire and wire rope industries there was a great deal of machinery that was somewhat old. The industry could not afford to re-equip in order to meet unrealistic noise levels [...] he felt personally that standards could not be proposed which would shut down a major part of British industry."*⁶⁹ The conditions under which many unions were trying to secure health and safety for their members where, therefore, increasingly difficult into the 1980s.

Unionism has also been heavily politicised and contested during this period, bringing issues of 'high' politics further into the workplace (Moran 2003). In particular the rise of the neo-liberal agenda during the 1980s (Gamble 1994; Harvey 2005) had a severe and lasting impact on the ability of the trade unions to influence policy and practice, in health and safety as in other areas. However, there was an additional problem for health and safety, in that an increasing political antipathy towards health and safety as emblematic of state 'interference' adversely impacted on those areas in which the unions had a more formal involvement. So, the corporatist experiment of the HSC was understood on the political right as a vestige of an increasingly outdated mode of politics. Peter Jacques reflected that:

"it was pretty clear that the trade union position as a whole was going to deteriorate, I don't think there's any doubt about that. And it did [...] I could feel it from the Executive that they were very much more cautious, very much more circumspect about how they were dealing with things and so on. Much more, not respectful but, what's the right word? Attentive to what the employers were saying, a bit loathe to bring in regulatory regimes, wittering on about advice and so on, were we advising people" (Peter Jacques interview, para.149).

Since approximately 1980 trade unions therefore appear to have seen a reduction in their ability to influence outcomes and a marginalisation in the policymaking process, moving from having had some role (however constrained) to vocal, but external, critics. Even the early promise of the 1997 Labour government and the 'Revitalising' strategy was viewed as coming to little, so far as the unions and health and safety were concerned (Neal Stone interview, paras.50-54).

⁶⁹ Minutes of meeting of Joint Industrial Council for the Wire and Wire Rope Industries, 23 January 1980, Minute 100. Glasgow City Archives, Mitchell Collection, TD914.18.1.

At the same time, the apparent relevance of trade unionism at a national level has also suffered, as a result of changes in the occupational structure and focus of health and safety issues in the UK. With the decline of heavy industries the older unions have declined in size and power (though see the offshore sector); there was a shift away from large-scale employers towards small and medium sized enterprises which tended to be less unionised and employer more temporary or casual workers.⁷⁰ Newer sectors, such as office and shop work, were those in which the workforce was less likely to be unionised and health and safety issues were perhaps less immediately obvious (Dan Shears interview, para.80; Ian Tasker interview, paras.10-12). The General Secretary of the National Federation of Professional Workers noted in 1966 that *“the proportion of clerical workers and shop assistants who are organised in trade unions is generally low outside the public services.”*⁷¹ The TUC appears to have focused for much of the 1980s and into the 1990s on traditional ‘core’ areas of concern around the heavy industries, rather than emerging sectors (Peter Jacques interview, paras.60, 178, 192); and whilst occupational health was on the agenda, it remained rather divorced from some of the TUC’s political lobbying and representation, as work was conducted by the Centenary Institute of Occupational Health at the London School of Hygiene and Tropical Medicine (Peter Jacques interview paras.24, 28).

Other voices increasingly entered the health and safety debate, diminishing the extent to which the unions might be heard. The decline in union membership from 1980 meant that policy-makers had to think more widely about whose voices were captured in the decision-making process. It was no longer sufficient to assume that trades unions also represented the public, and from the mid-1980s public opinion came to matter more (Almond and Esbester 2016). It is also possible that the extension of the HSE’s Section 3 activities started to push more traditional workplace health and safety issues – those with which the unions were more directly concerned – to one side. As Jenny Bacon, then Director General of the HSE, noted in 1998, *“[o]ver the past 10 years, or maybe more, I think we’ve been drawn into a lot of interesting high-profile cases about the safety of the public affected by work activities. But worker safety and, in particular, health are things that these Ministers*

⁷⁰ *Focus*, February 1998, p. 2. MRC, MSS.36.2000.72.

⁷¹ Letter from John Fryd to *The Municipal and Public Services Journal*, 25 March 1966. MRC, MSS.239/3/1/95.

are very keen to see us work on [...] it's a slight rebalancing of worker versus public".⁷² It therefore seems that union voices had to fight harder to be heard at a national level from the mid-1980s on. At the same time, health and safety remained a 'day-to-day' feature of business, via representative and consultative measures at the level of individual companies. There was a considerable feeling that the unions were having an impact, and that activity in individual workplaces was a 'safe haven' in which trade unionism might remain relevant, even in times of conflict elsewhere (Lawrence Waterman interview, para.12). Trade union involvement in safety was viewed as *useful*; as people who knew the area and issues, union reps carried a lot of expertise (often more than employers themselves). This was certainly articulated by the unions themselves: the General Secretary of the Amalgamated Union of Engineering Workers claimed in 1972 that trade unions made an "extensive contribution" to accident prevention.⁷³ But it was also echoed by others outside the union movement, such as Tim Carter, a former HSE official, who recalled:

"what you see as soon as you're in HSE, actually on casework and working conditions, most union reps and shop stewards do their best to do a good job" (Tim Carter interview, para.105).⁷⁴

Across the period, part of the day-to-day work of unions and worker representatives was negotiating around health and safety issues. It is important to note here that some of the evidence gathered suggests that safety was used as a negotiating tool for wider goals of extracting concessions, securing compensation for members, or maintaining pressure on employers (David Maidment interview, paras.28-29). Responding to the Robens' Committee claim that "*there is no legitimate scope for 'bargaining' on safety and health issues*" (Robens 1972: para.66), one TUC article in 1975 noted that that "*most if not all major reforms in the field of safety and health at work have been instituted as a result of industrial and political 'bargaining' by trade unions [...] it is essential in the present situation to intensify trade union bargaining on safety issues*" (Grayson and Goddard 1975: 18). When asked whether he felt health and safety was used as a lever by employers or unions, David Morris, an HSE field inspector in the 1970s and early 1980s, replied:

⁷² *Focus*, February 1998, p. 4. MRC, MSS.36.2000.72.

⁷³ Amalgamated Union of Engineering Workers Journal, September 1972, p.395. TNA, LAB 96/476.

⁷⁴ See also Chris Marchese interview para.51 for an example of the positive reception of union involvement by employers, and David Morris interview, para.89 on the influence of shop stewards.

“Oh all the time, oh yeah, absolutely [...] if there is a health and safety issue at the same time as there is an industrial dispute going on, it is bound to be brought into play, but if it’s a genuine health and safety issue then it’s the job of HSE to help them sort it out [...] invariably, the health and safety issue was just part of the bricks that were being thrown from one side to the other and the broader issue was something completely different, and you just had to bear that in mind” (David Morris interview, paras.91-95).

Safety issues thus became part of the ‘game playing’ that all parties would engage in. According to Peter Jacques, this included high politics, particularly in the late 1960s and early 1970s:

“there was the question of what could the relationship between the Labour Government and the trade unions be? [...] if they can’t give you the money what else can they give you? Those sorts of things may be the reason why health and safety had moved up the agenda [...] the reasons for this tripartism weren’t some sort of, ‘oh well this is a good idea,’ it’s knowing what can we do to keep the unions in place? And that was to give them places round the table” (Peter Jacques interview, paras.34, 36).

While the motives behind this engagement were not always pure, the outcomes remained, for the most part, productive; the value of consultation was recognised and endorsed (Paul Clyndes interview, para.62).

As union membership has declined since the 1980s, so the spaces in which consultation occurs have contracted. Arguably a lot of the impetus behind the promotion of health and safety as an issue has arguably been lost:

“in the last ten years there’s been a gradual loss in influence, to the detriment of the management side I feel, from the loss of empowerment by trade unions. In the industry fewer people belong to trades unions [...] Because there are fewer trade union members their organisations are much smaller, so they are not in a position to support their own trades union representatives as much as they used to.” (Chris Marchese interview, para.53)

At the same time there is evidence that over the last ten years a more consensual and cooperative working relationship had emerged in particular areas that are either hostile to unionisation or new to the ‘health and safety’ agenda, such as the rail industry (Paul Clyndes interview, para.32), and the retail and online delivery sector

(Asda, Amazon and Yodel: Dan Shears interview, para.74). Possibly this improved dialogue has resulted from closer working relationships promoted over many years through institutions such as the HSC, and partly from other 'bottom-up' forms of engagement, which are more avowedly pragmatic, and less informed by the high politics of industrial relations, as Dan Shears of the GMB Union suggested:

"it's probably more from the ground up than the top down now [...] we [GMB] will work with you to improve your practices to reduce the risk to our members and your employees [...] the approach that we take is, we'll work in partnership where we can, and if we can't work in partnership we will have to go very hard at this." (Dan Shears interview, para.78)

Whilst too limited to draw strong conclusions from, this appears to suggest that union influence (and corporatism) have had a positive development. It would also suggest that there is still an important role for trade unions in a post-industrial world (James and Walters 2002; Quinlan 1999; Walters 2006), which is particularly pronounced in industries where health and safety is either less immediately relevant (the public sector) or subject to specific risks (construction, extraction).

Health – the forgotten element?

The issue of health has often been cast as the 'poor relation' in the field of health and safety, afforded a lower profile and less attention from regulators, employers, unions and the wider health and safety sphere. The reasons for this have usually been linked to the diffuseness and indirectness of health-related victimisation, and the subsequent invisibility of the issue when compared to the immediate impacts of safety violations. Interviewees testified that a key driver of the relative imbalance had also been the complexity of addressing these issues, and that solutions to health-related problems often tended to be specific and prescriptive, putting them at odds with the overarching regulatory approach. David Eves, for example, suggested that:

"it wasn't so much that health was on the back burner, health was rather more difficult to deal with than safety. You could usually find engineering solutions to mechanical problems [...] other sorts of hazards needed different approaches [...] through the 50s and 60s, there was quite a lot known about industrial health, but the regulatory answer was generally to make the regulations very specific, very prescriptive, and often requiring medical examinations of workers." (David Eves interview, para.19)

So, it was not necessarily that there was a lack of awareness of health issues, but that their ability to act was constrained by a variety of economic, social, cultural and political factors, particularly when compared with what appeared to be more immediately pressing issues like deaths and injuries (see Case Study 11). This was exemplified in a discussion at the Teesside Industrial Accident Prevention Committee in February 1967, which concluded that *“the general feeling of the meeting was that accident injuries were a greater problem than the health hazard [...] Obviously the health hazard should not be forgotten and work in this field should be continued.”*⁷⁵

Case Study 11: (Not) understanding asbestos risk

Occupational health issues have rarely provoked significant public awareness and have received less professional attention than safety. Asbestos was one example of this trend, with sporadic regulation and peaks and troughs of public attention. Rather than a single ‘moment’ which shone a spotlight on the issue, asbestos garnered occasional intense public and political attention – notably around the Acre Mill factory in Hebden Bridge in the 1970s and early 1980s, including the TV documentary *‘Alice – a fight for life’* (1982). Given the interest, the work of the state-appointed Advisory Committee on Asbestos (1976-79) was deliberately conducted very publicly, to *“rais[e] the standard of public debate and the level of public understanding”* (Simpson 1977: 1). At the same time, those exposed to asbestos did not necessarily know or understand the dangers. Testimony from people employed from the 1960s into the 1980s suggests that *“no one knew it was dangerous”* (anonymous interview 2009) and therefore employees were unable either to protect themselves or to fight to reduce the risks. This is an ongoing issue. Dan Shears of the GMB criticised a recent HSE campaign aimed at getting small building firms to work safely with asbestos on the basis that *“what you’re seeing is a lot of people who do work for larger businesses, ‘don’t worry so much about this asbestos, just make sure you’ve got the right gloves and PPE’ [...] That’s quite contradictory to what we would say”* (Dan Shears interview, para.94), namely, that there was no such thing as safe work with asbestos – an old message that is still contested.

Nevertheless, the archival research has shown that, even if health issues did not receive the same degree of coverage as safety, they were still accorded meaningful attention before the 1980s. Particularly in the earlier part of our period, the prevailing approach might perhaps be characterised as reactive, in that actors responded to known health hazards rather than actively seeking out new issues before they emerged; this reflected a longer standing concern with particular occupational diseases, including lead poisoning and lung diseases such as asbestosis, byssinosis or pneumoconiosis (Bartrip 2002; Johnstone and McIvor 2007; Stark 2012; Wikeley 1992). So, in the late 1950s and early 1960s a series of state reviews looked at health in particular industries of concern and anthrax (Ministry of Labour and

⁷⁵ Minutes of Teesside Industrial Accident Prevention Committee, 15 February 1967, Minute 3108. RoSPA Archives, D.266/2/18/10.

National Service 1958, 1959, 1960),⁷⁶ and similar issues were to be found in the reports of the Chief Inspector of Factories on Industrial Health, issued annually between 1957 and 1966, under the Chief Inspectorship of R.K. Christy. It is perhaps indicative of the extent to which health issues were dependent upon the personal drive of those involved that before 1957 and after 1966 health was to be found within the annual report of the Chief Inspector of Factories as a chapter rather than the subject of its own report.

Health issues were also covered by medical agencies and practitioners within and outside the state. Larger firms might employ factory doctors and/or nurses or contribute to Industrial Health Centres, though it was difficult to get smaller firms to subscribe to this arrangement (Johnston and McIvor 2008).⁷⁷ The Appointed Factory Doctor Service started in the 19th century and involved ‘approved’ doctors examining workers for fitness for employment. In 1972 this role was merged with the Medical Branch of the Factory Inspectorate, to form the Employment Medical Advisory Service (EMAS), which although technically distinct from the Factory Inspectorate, worked closely with it. Tim Carter, who occupied several key roles within the HSE including as Head of EMAS and Director of Health Policy, noted that bringing EMAS into the HSE in 1974 brought a legitimacy problem of sorts:

“it had been created with this very broad remit which was almost a pre-tripartite remit, to give advice to everybody, doing everything about occupational health. And when it stood outside HSE there was some chance it could do that, but putting it into HSE immediately put it into the same management structure as enforcement activities and that, not surprisingly, and you can’t really document it, but it clearly affected attitudes to it.” (Tim Carter interview, para.50.)

The creation of EMAS did not end calls for an occupational health service in parallel to the NHS, though this was not to materialise (Long 2010).⁷⁸

⁷⁶ Ministry of Labour and National Service, Working Party on Washing Facilities in Docks (1960-64). TNA, LAB 14/957.

⁷⁷ See, for example, the glum assessment of 1956 that ‘little progress was made among the smaller factories.’ Ministry of Labour & National Service 1957: 88.,

⁷⁸ For example, see the 1978 Trade Union Research Unit paper ‘The need for an occupational health service’, which made its case on the back of a recent EMAS survey of private sector occupational health services. TUC Library, HD 7261.

Although safety was often a more visible problem, there was also trade union input into health issues on some issues, such as byssinosis in the textile industry (Bowden and Tweedale 2003). The TUC established the Centenary Institute of Occupational Health at the London School of Hygiene and Tropical Medicine in 1968, making a financial contribution to its operation for the following twenty years. The unions were increasingly vocal in raising concerns about asbestos (Williams 1979).⁷⁹ In the 1970s the tripartite system, including union input, was noted as working effectively to address the dangers posed by vinyl chloride, but in other health-related areas there was *“a strong feeling that the traditional unions were not looking after their members properly”* (Tim Carter interview, para.50). As might be expected, the focus of attention before the 1980s was on health in the more traditional heavy/manufacturing industries. In private correspondence in 1960 an official of the Institute of Directors compared the hazards of office and factory work, concluding that *“[t]here are probably no office conditions which are actually detrimental to health [...] office conditions simply are not a menace to health although they may be some menace to efficiency.”*⁸⁰ At the same time, from the 1950s there was an awareness of changes in occupational health issues, including ionising radiation and new toxic chemicals (Sirrs 2016). A specific Industrial Hygiene Unit of the Factory Inspectorate was established in 1966, concerned particularly with environmental issues such as noise and dust. The Chief Inspector of Factories assessed the position as he saw it in 1966: *“Today we are left with only the difficult problems; the easy ones have been solved [...] We shall continue to make advances in preventing disease, but each successive advance will be more dearly bought than its predecessor”* (Ministry of Labour 1967: 5).

In terms of the profile of health, the HSWA had marked the beginning of a change (from the ordering of the terms in the title of the statute onwards). While some progress had been made prior to the Act, it did allow for a more proactive approach to be taken around issues like asbestos. Jenny Bacon, who was involved in drafting the HSWA, saw the change: *“The emphasis began to move more to health and away from safety [after the 1970s]”* (Jenny Bacon interview, para.77). At the same time,

⁷⁹ R. Williams, ‘A Key Issue’, *Work Hazards* 21 (c.1979), p. 5. Samuel Barr Collection, Glasgow Caledonian University, GCU DC 140212.

⁸⁰ Letter from Miss B. O’Donovan (Institute of Directors) to Mr Farr, ‘An Office Workers’ Charter’, 6 January 1960, pp. 1, 2. Brighton Design Archive, 1685/1.

there was still confusion over what health issues were. One former BR manager noted that *“[w]hen we talked about health issues even in the ‘80s, the sorts of things that came up were injuries, not health”* (David Maidment interview, para.309). Evidently the process was a long one; the 1990-91 HSC Annual Report remarked that *“[w]e signalled in our plan for 1991/92 our intention to increase the emphasis that we and industry give to promoting occupational health”* before going on to note the introduction of the COSHH Regulations (HSC 1991: x). These regulations, along with the Display Screen Equipment Regulations from the six-pack, appear to have had a big impact upon the legitimacy of health and safety, and it is significant that health played a large part in this.

As noted, the reasons why health has received less attention were varied. The long latency and relative invisibility of health issues were noted by Lawrence Waterman:

“2,500 people died of asbestos related diseases this year. But it’s a bit like road accidents, they die all over the place and they die invisibly in hospitals and hospices and at home. Whereas Buncefield didn’t kill anyone, but was bloody visible, that smoke plume [...] it makes people think about explosive risks.” (Lawrence Waterman interview, para.18.)

Health represents an extremely diffuse set of problems, which are unlikely to be concentrated in a single physical location or within one firm or industry but rather spread through a production process and supply chain, including workers but also sometimes (public) consumers. The difficulty of managing this risk was noted by one agricultural worker in 1980: *“What really worries me is [...] what effect dairy chemicals can have, also animal diseases can have. There are the things the Health and Safety Executive need to be finding out, this is the kind of information I want, not being told how to do my job.”*⁸¹ This quote also highlights the resistance and hostility to regulators that health issues that might be seen as part of ‘day-to-day life’ were capable of provoking. The diffusion of health hazards posed particular problems for producers and regulators, not least of which was trying to work out what its role *should* be. According to Carter, inspectors knew:

“the dialogue to have if there are faulty electricals or faulty machine guarding, it’s much more difficult for them to have a dialogue about bad seating or bad lighting, because they haven’t got easy powers if you’re in contravention [...]”

⁸¹ J.H.Brown of Saltburn, letter to *The Land Worker*, March 1980, p. 8. MERL.

inspectors, like police or anybody else, they're busy people and they want to score quickly and easily and move on, whereas health things are very rarely quick and easy.” (Tim Carter interview, para.68.)

Trying to convey complicated technical standards and having to use specialised medical terminology also made health difficult to understand, for employers as well as in court cases (Jim Hammer interview, para.24). Some problems were common across safety and health, however, including the economic pressures under which all actors were working and the existence of opposition to stricter standards or enforcement from within industries such as asbestos.

The complexity and newness of the science associated with some health conditions (stress, for example: Mackay *et al.* 2004), meant that intervention was later and more complex than might be the case for other issues. Unlike many safety matters, which involved discrete fixes, health often required ongoing monitoring of individuals and their working environment (Tim Carter interview, para.40). One area of change has been the emergence of health issues as a feature of the new workplaces (offices, retail, education, healthcare), particularly since 1980. On the one hand, these new workplaces have developed joined-up ways of addressing health, welfare and wellbeing in holistic terms, as found in the NHS, for example (Ruth Warden interview, paras.24-6); on the other, there remain legitimacy issues about whether these issues are seen as valid, or obscured via their inclusion within general ‘wellbeing’ approaches, as Kim Sunley, of the Royal College of Nursing, suggested:

“from a trade union perspective, and the TUC, we’ve called for employers to take more notice of work related ill health. I don’t know whether that message has got lost somewhere and it’s been translated as health and wellbeing but certainly the work related health isn’t getting that much emphasis on the whole health and wellbeing agenda” (Kim Sunley interview, para.28)

Stress is one health issue to have emerged as a major concern, though the concept (broadly defined) has a long history (Melling 2014). In 1967 it was suggested that *“[i]ndustry may be a psychological hazard [...] more effort should be made to make jobs more satisfying and to make the men happy.”*⁸² The genesis of concern about stress was noted by Janet Asherson, along with the difficulty of implementing this:

⁸² Teesside Industrial Accident Prevention Committee, 15 February 1967, Minute 3108. RoSPA Archives, D.266/2/18/10.

“By the time I left HSE [1986...] stress and psychosocial disorders were just beginning to be looked at [...] I spent most of my lifetime trying to say [...] legislation is not the way to go on stress because of its complexity, so codes of practice, etc., and it took until the 1990s to get the management standards on stress. So politically it was very much there [...] stress didn’t manifest itself at the level of an inspector going into an enterprise. That would not have been high on the agenda.” (Janet Asherson interview, para.48)

Stress also links in to some of the most famous work around workplace conditions and morbidity, such as the Whitehall II studies, which suggested that work pressure, and the psychosocial character of work (job control, status, satisfaction), were linked to diffuse negative health outcomes (Marmot *et al.* 1991). It is also worth raising the question of the extent to which issues such as stress were gendered. With the rising numbers of women in the workforce, and the increasing concentration in office and retail work, it is possible that stress may have disproportionately affected women (particularly given the lower levels of job control they would historically have enjoyed: Marmot *et al.* 1991), though it might also be suggested that women were merely more able to discuss/cope with it, not being bound by codes of masculinity (Frankenhaeuser 2004). In 1982 it was observed that *“[u]ntil recently, occupational stress has not been a major source of health problems for women in comparison with men [...] as an increasing number of women occupy difficult jobs, such as supervisory and managerial positions, stress-related conditions are increasing”* (Steventon and Cox 1982: 65).

As this account of stress suggests, office work was one area where health issues have tended to be raised, both before 1960 (particularly in relation to the welfare of female workers), but also via what would become the Offices, Shops and Railway Premises Act 1963. According to the Institute of Directors in 1961, *“[w]e also consider that the setting of reasonably high standards of environmental hygiene, although initially unpopular, are in the long run the only way of achieving an overall standard of which we can be nationally proud”, especially as “[a]utomation and the use of electrical and other machines is also likely to become much more widespread*

over the next decade.”⁸³ More significantly, the debate over visual display units (VDUs) in the 1980s ensured that occupational health in the office ‘came of age’. Suggestions that VDUs emitted harmful radiation, including sufficiently to increase the chances of miscarriage in pregnant women (later disproven), were widely reported in the press (Moncur 1986: 4), and the HSE produced guidance, albeit criticised as *“too little, too late and not enforced”* (Pearce 1985: 18). Suspicions lingered, and with the European Display Screen Equipment Regulations (enacted into UK law as part of the ‘six-pack’ of 1992), the office became a significant point at which many people encountered health and safety issues, and subsequently began to question the proportionality of regulation, as David Morris suggested at interview:

“we’ve been pushed into regulating some comparatively low risk areas which have high impact on people. I’ve always had slight worries about the Display Screen Equipment Regulations, for example, there’s a good case for saying that prolonged use of VDUs, computers, leads to muscular skeletal disorders [...] But it’s a big step from that to say that every individual work station used anywhere in the country must be properly assessed by a competent person [...] that impacts on more or less everyone at work and people think, ‘fuck this health and safety, it’s a real pain, I just want to get on with my job.’ And once that mindset is there it’s very difficult to get out of” (David Morris interview, para.111.).

As noted elsewhere, there were unclear boundaries between health and conditions of work more generally, additionally complicated by the bargaining process between employers, unions and workers. So, in the chemical industry in the 1970s, trade union activity on health caused *“quite a lot of stress, not so much on polyvinyl chloride but on other chemicals because this younger generation wanted to effectively use chemical risks as a way to get more worker control”* (Tim Carter interview, para.48). This intersection between health and safety, and politics, has also arisen more recently in white-collar work, according to the NUT’s Sarah Lyons:

“the NUT has got a big campaign on teacher workloads at the moment, and that is really linked to health and safety, because it’s stress, it’s bullying, and so in some ways health and safety gets tied in with other areas that might be

⁸³ ‘Comments from the Institute of Directors on the Proposed Bill of Health, Welfare and Safety in Shops, Offices and Railway Premises’, March 1961, pp. 1, 5. Brighton Design Archive, 1685/1.

seen more as conditions of service issues, but they do impact on health and safety, so that helps keep it in the forefront.” (Sarah Lyons interview, para.16)

Health was also an arena in which issues crossed the (loose) boundaries between work and public spaces, particularly in consideration of personal habits that people bring with them from their private lives into the workplace. Smoking would be one key example, noted by Tim Carter about the 1980s:

“There was also huge opposition from inspectors to HSE doing anything on smoking, because if they had things they had to enforce on it they knew they’d meet lots of antagonism [...] voluntarism worked and achieved everything remarkably effectively in quite a short period of time without any regulation, or with quite limited regulation [...] probably wisely, HSE avoided regulation, the regulation came in much more about public places of leisure, like pubs and restaurants.” (Tim Carter interview paras.135-6.)

The need to consider the reception of regulation, and the impact this might have upon the legitimacy of the regulators and the subject area, is clear.

In sum, then, it is clear that the political context around health interventions was a crucial factor – and that without it, difficulties would be incurred:

“sick building syndrome, stress, the effects of smoking at work, all the things that were sort of health related issues, but Ministers were very suspicious of these because they thought it was just all a shirkers’ charter [...] A great deal of Ministerial suspicion of that, but that was the way that things were moving because these were the things that were actually causing people to lose time at work” (Jenny Bacon interview, para.77).

These ‘soft issues’ have attracted criticism and a lack of political support at times, being seen as less legitimate areas of intervention by government, and as a lesser area of importance by experts, unions, and other actors. One upshot of this was that, in some sectors, the emphasis remained upon short-term, ‘injury-type’ health issues rather than long-term illnesses and conditions, some of which are still being grappled with at the current time. Health has also long been a frontline in the balancing of productivity and lost time (with pressure to reduce sick leave taking an explicitly economic character). David Maidment recalled of British Rail in the 1980s the attitude towards multiple days of sick leave: *“the sort of assumption was half of them, they’ve been on the booze over the weekend and it’s Monday morning sickness”*

(David Maidment interview, para.296). All of this has reduced the perceived legitimacy of health as an area – seen as too open-ended, where the needs are not clear enough, and which lacks the immediate, indisputable seriousness of safety and injury.

C: Functional Challenges: What should be Regulated, and How?

Health and safety beyond the workplace

Perhaps the most fundamental change in the field of health and safety since 1960 has been the extension of this concept, and the regulatory system that operationalises it, to areas that lie beyond the 'workplace', traditionally defined. Two main movements will be sketched out in this regard: the broadening of the definition of the 'workplace' which was largely linked to the Offices, Shops and Railway Premises Act 1963's extension of the law to 'new entrant' industries; and the impact of the HSWA 1974 s.3, which imposed a new duty to ensure the health, safety and welfare of people other than employees – sub-contractors, customers and service users, and members of the public. Both have taken the law in this area into new areas, and provoked hostility as a result. Crucially, both are now assumptions that are central to the regulatory system; neither Young (2010) nor Löfstedt (2011) questioned these assumptions, although the former did raise concerns about the application of the law to 'low hazard' workplaces like offices and shops, while the latter arguably invoked the problematization of the concept of 'work affecting others' via its recommendations around the self-employed.

The Factories Act 1961 retained the narrow focus and specificity of application which was typical of all legislation in this 'Factories Act model'. It did not apply universally and only related to specified workplaces, including (in whole or part) building sites (s.127), docks and ships (ss.125-6), and factories where people engage in manual labour related to a number of precisely specified processes (s.175). It was not until the Offices, Shops and Railway Premises Act 1963 that the vast majority of workplaces came within the scope of systematic legal oversight. This Act was intended to establish basic standards for general welfare and working conditions (such as temperature, ventilation, cleanliness, overcrowding, and sanitation) across

the working population (it extended protection to 8 million workers, though left a further 5 million unprotected) and responded to a perceived need for general health improvements in the working population (Samuels 1963). In a sense, this reflected the issues that were contested in industrial relations circles, as one former British Rail safety manager recalled that under

“the Shops, Office and Railway Premises Act [...] the offices had to be at 62 degrees [...] That’s the sort of things that people complained about, was comfort things.” (David Maidment interview, para.90)

This Act also gave a more developed role to local authorities as enforcers of workplace safety conditions (Dawson *et al.* 1988: 214). This was a key moment as it exposed a whole new class of persons to the issue of health and safety, as one former Civil Servant (and later HSE Director-General) recalled:

“the Offices, Shops and Railway Premises Act [...] brought a whole lot more workplaces in that hadn’t been covered before, so some of the early debates about who should be regulated, how heavily should they be regulated, etc., were coming up in a different context, not the sort of heavy industry [...] that it had been in the past.” (Jenny Bacon interview, para.6)

The backdrop to this, which began to change from this point onwards, was a general lack of public priority given to the issue. Concerns over new kinds of workplace and hazard meant that change was needed, as one safety professional recalled:

“[Health and safety was seen] very often not very seriously, as far as the public at large is concerned [...] there was a different attitude to risk [...] you accepted a higher level of risk than you would today, by a long chalk. It was your norm. We knew we had to step outside that.” (Stan Barnes interview, para.13)

The other side of the equation was the extension of the law to the general public, which was brought about via section 3 of the HSWA. This was prompted in part by three key incidents. The first two of these were Brent Cross in 1964 and Aberfan in 1966 (see Case Study 2) and the final one was the Flixborough chemical plant explosion of 1974, during the legislative development of the HSWA, which killed 28 workers but also had spill-over effects on local populations (see Case Study 4). The influence of this on the framing of the new section 3 was spelt out by one former Health and Safety Executive policymaker, who recalled its impact:

“It was very much a public issue because we had that ghastly explosion [...] that pushed forward the development of the Health and Safety Work Act in 1974 [...] There was a huge sea change.” (Janet Asherson interview, para.4)

It was noted five years after the HSWA that *“there is a new line and this is the result partly of new men at the top, but basically of the acceptance by the establishment of ‘major hazards’ (Flixborough type) as a threat to the whole population, themselves included.”*⁸⁴ It seems unlikely that the implications of extending coverage in this way were envisaged at the time. Robens spent some time discussing the risks posed by large-scale industrial hazards (explosive and flammable material processing and storage) in terms (expressing *“Apprehension at this consequence of modern technology”*: 1972: para.296) that echoed later ‘risk society’ models (Beck 1992), and this was the key focus of public safety at this time. A letter to a Communist Party sponsored newsletter argued in 1979 that in *“this day and age the problems posed by chemicals affect the entire population and any discussion on the health and safety problems pertaining should recognise this.”*⁸⁵ As one former Director-General of HSE (who was also involved as a civil servant in the 1974 Act’s passage) observed:

“Robens did envisage that there would be some limited duties towards the public. But I think it’s fair to say that it got extended. Not just in terms of the major industrial hazards and things affecting the public like a chemical plant blowing up [...] at the time when the Act was going through, I don’t think that the very extensive ways in which public health and safety have come into play was envisaged.” (Jenny Bacon interview, para.23)

The subsequent implications of this extension were surprisingly wide-ranging, even for those within HSE who were well-versed in the risk issues of the time:

“section 3 [...] has probably caused most of the opposition to or the denigration of health and safety [...]it] put obligations on [...] people who had never been used to having to take formal responsibility for public safety [...] I don’t think there’s any other European country which has a section 3 type provision” (Jim Hammer interview, para.49)

This led to a degree of neglect on the part of policymakers, who either regarded these issues as outside the scope of their work, or were unable to understand them:

⁸⁴ B. England, “Discussion”, *Work Hazards* 21 (c.1979), p. 18. Samuel Barr Collection, GCU DC 140212.

⁸⁵ P. Goffin, *Work Hazards* 21 (c.1979), p. 17. Samuel Barr Collection, GCU DC 140212.

“The Commission was basically interested in the Health and Safety Act in factories, it wasn't interested in the huge public safety responsibilities that the Act gave to the Executive, didn't understand them. It wasn't so constituted as to understand them” (John Rimington interview, para.31)

As the 1970s turned into the 1980s, more attention began to be paid to issues of health and safety in the wider world as the obligations and powers set out in Section 3 of the HSWA were increasingly realized (see Case Study 12). A TGWU rep claimed that what was needed was “a government-sponsored campaign [...] to sell safety to the whole community”,⁸⁶ and in a 1979 article on the politics of health and safety, it was claimed that there was “a growing struggle to combat hazards – to workers, the community and the environment. This is in part a consequence of the 1974 Health and Safety at Work Act”.⁸⁷

Case Study 12: “Potential bombs on wheels” - moving hazardous goods

In addition to the dangers of workplace activities that took place on fixed sites and extended to the population in the immediate area, some dangers were more mobile: notably the transport of hazardous goods such as chemicals by road or rail. As early as 1960 the Teesside Industrial Accident Prevention Committee recognised that the numbers of incidents involving tankers carrying dangerous substances was increasing.¹ But there was a problem of jurisdiction: the hazards crossed legal and administrative boundaries, something RoSPA noted in its testimony to the Robens Committee in 1971, which recognised the necessity of liaison between local authorities and the Department of the Environment;² the police and Department of Transport were also crucial. The danger remained unresolved even after the HSWA, and in 1979 it was noted that the onward traffic of chemicals from ports presented a risk to the public: “As long as these lorries, potential bombs on wheels, are rolling through populated areas there will always be a degree of risk which we must regard as unacceptable.”³ From the late 1970s the HSC/E became more interested in the issue, and in the 1980s developed a number of regulations to try to control risks posed by the road transport of hazardous goods, including the consistent labelling of tanker contents. One key aim of what John Cullen, Chair of the HSC, called the “modern, flexible system” these regulations introduced was “to get everybody throughout the whole of society familiar with this type of labelling”. This did not do away with the danger – as Cullen went on to note: “The traffic is vast – the potential for disasters is always there.”⁴ But at least under new system, which included better planning, risk assessment, driver training and contingency plans, the impact of any incident would be minimised.

(1) Teesside Industrial Accident Prevention Committee, Minute 2779, 23 March 1960. RoSPA Archives, D.266/2/18/9.

(2) Verbal evidence on behalf of RoSPA to the Robens Committee, 14 June 1971, p. 20. TNA, LAB 96/75.

(3) P. Goffin, ‘Docks and Roads’, *Work Hazards* 21 (c.1979), p. 17.

(4) J. Cullen, speaking at press conference to announce introduction of Road Traffic (Carriage of Dangerous Substances in Packages) Regulations 1986, p. 2. British Safety Council archive, Mansfield, pallet 6, box 40.

Wider attention began to be paid to issues including asbestos, violence at work, leisure facilities and public spaces (late 1980s), as well as major disasters that either

⁸⁶ P. Defries, ‘We need safety committees with teeth’, *Industrial Safety*, September 1972, p. 410. TNA, LAB 96/476.

⁸⁷ R. Williams, ‘A Key Issue’, *Work Hazards* 21 (c.1979), p. 3. Samuel Barr Collection, GCU DC 140212.

affected the public (the sinking of the *Herald of Free Enterprise* in 1987, or rail crashes like Clapham, 1988) or went beyond the 'factory fence', prompted in part by the European Seveso directives, which set out to impose standards of governance over major hazard industries (Baldwin 1996). The *Guardian* observed in 1988 that a variety of factors, including the recent *"series of disasters [...] has put worker and public safety high on the agenda and the role and focus of the HSE is being closely examined"* (Brown 1988: 1). At a domestic level, safety regulation was driven by specific events into new areas of social activity, such as gas safety in the home. In January 1985, an explosion (thought to have been caused by the faulty installation of gas appliances) at the Newnham House flats in Putney, London, killed eight people. The HSE was called in to investigate, the first time the body had dealt with the problem of domestic gas safety (Cook *et al* 1985: 1; *Times* 1985: 1). As David Eves, Chief Inspector of Factories at the time, recalled:

"it really elevated gas safety as an issue [...] everybody became aware that about 30 people a year were being gassed in their homes [...] so we became involved with domestic gas issues. Now I think I'm right in saying this was the first time [...] that we had powers, or even the willingness, to enter domestic premises." (David Eves interview, para.57)

This new focus on public safety is reflected in things like the development of HSE's *Tolerability of Risk* framework. The Sizewell B nuclear power station planning inquiry of 1982-7 prompted HSE to explicitly assess *"tolerable levels of individual and societal risk to workers and the public"* in relation to nuclear power (Layfield 1987). This led to the publication in 1988 of a framework for calculating the 'tolerability of risk' in which regulators would weigh assessments of risk and the costs of prevention alongside a sense of what was deemed socially appropriate (HSE 1988a; McQuaid 2007). This allowed for more principled assessments of risk control to take place in high-hazard areas like nuclear power. As the Chair of the HSC observed in 1988: *"technological change is now probably swifter [...] the public has become increasingly conscious of and knowledgeable about its implications. The reassurance provided by a fully effective and respected state regulatory body is more and more important"* (Employment Committee 1988a: 2).

By the early 1990s, the climate had shifted so that health and safety was increasingly understood with reference to public safety. In part, this was a process

being driven by wider contextual changes, such as the move away from a widespread manufacturing base within the British economy, the open-ended nature of the duties involved, the role of Local Authorities, and the influence of the emergent safety profession. This trend had been underlined by a legal and social movement towards seeking legal and regulatory redress following public disasters, via, for example, corporate manslaughter prosecutions (Almond 2013; Wells 2001). Roger Bibbings, health and safety advisor at the TUC from 1977-1994, recalled that the Director-General of the HSE:

“invited me to come and present from a TUC perspective to get the discussion going amongst his senior colleagues. So I said, ‘oh you need to look again at worker safety’ [...] he put his hand up and said, ‘no, no, no, stop my boy, stop [...] that’s worker safety. That’s a dead volcano’, he said. ‘The live volcano is public safety. That is what’s going to energise everyone’.” (Roger Bibbings interview, para.19)

Of course, the fundamental dynamic that health and safety professionals and regulators were having to grapple with was that a duty to regulate *all* workplaces did not leave much room for defining areas of human activity as outside the scope of regulation; swimming pools (Helen Leiser interview, para.18), public parks (Lawrence Waterman interview, para.59), the armed forces (Paul Thomas interview, para.38), and retail outlets were now areas where the employment of someone working there meant that the risks involved became ‘health and safety’ issues, thus creating obligations to manage them, as a former HSE policy official recalled:

“lower-risk ‘white-collar’-type employers had new duties of care towards the safety of members of the public who might also be affected, while visiting shops, offices, hospitals and so on. The scale of hazards and risks for this newly-protected category was generally much lower, and/or less self-evident to those running these types of organisation [...] the risks were different in kind, lower in general, but capable of much panic and disproportionate public and media reaction if there was a case where something went wrong.” (Helen Leiser interview, paras.67-9)

Many interviewees expressed concern about the seemingly unbounded nature of these areas and duties, which went beyond what Robens/the HSWA had envisaged, and about the implications for practice, particularly agency resources, and the

problem of rolling workplace-oriented standards. Over-regulation was not a live political concern outside of the traditional workplace until the mid-1990s, when Select Committee time was increasingly devoted to domestic gas safety and schools (Employment Committee 1993: paras.15, 22), and in 1994, the emphasis was moved again following the Lyme Bay canoeing tragedy, when four children died on a school outing. By bringing safety in schools and other sectors into the public domain, and by prompting a regulatory response, incidents of this sort laid the foundation for a backlash against ‘public safety’:

"After those canoeing deaths in Lyme Bay HSE got pushed into a lot of the regulation of leisure adventure-type activities. And they knew that was an absolute loser and it wasn't wanted, but it got dumped on HSE [...] the driver is liability and other things, it's not actually health and safety regulations" (Tim Carter interview, para.143)

At the same time this was taking place, however, the Director-General of the HSE recognised that the HSE was a body *"the public find difficult to get into focus"* (King *et al.* 2005).⁸⁸ More attention was perhaps paid to Local Authorities, which, as the principal regulator of low-risk workplaces, were the organisations most heavily implicated in the process of regulatory ‘spill-over’, and that suffered a significantly damaged political, and public, trust profile as a result (Halliday *et al.* 2011; Walls *et al.* 2004; Young 2010). Importing health and safety into these areas is increasingly seen as illegitimate, something that the focus groups reinforced.

Regulators have increasingly come under political and resource pressure to limit their involvement in non-industrial areas, and have attempted to do so at different times, as a former HSC Chair testified:

"HSE's resources were being spread too widely by a concentration on Section 3 issues [...] We were getting drawn into debates about C.diff and MRSA [...] We tried many times [to] put some walls around s.3, but we couldn't." (Bill Callaghan interview, paras.105-9)

One key concern has been the preponderance of negative media coverage, and examples cited in government sources, of ‘excessive’ health and safety interference in the private lives of citizens (Almond 2009; 2015; Dunlop 2014). It must be said that much of the evidence about the practical impact of this is anecdotal in nature (Young

⁸⁸ J. Rimington, quoted in D. Walker, ‘Safe and never sorry’, *Times*, 8 December 1994, p. 22.

2010 for example), but there is a perception that the encroachment of legal requirements into the lives of non-working people, is a significant problem (Ball and Ball-King 2013). Within this critique of the law for extending into these areas, there is also the recognition of two things that offer some degree of constructive way forward. First, there is a sense that a more 'risk-literate' society, where health and safety was better understood and more fully engaged with, might prove better at negotiating this decision-making, regardless of the influence of formal legal requirements (Löfstedt 2011: 94). Second, it is worth reflecting that notions of responsibility for public safety are not new, having been embedded in civil law for many years, and that these ideas are also more widely accepted within society than we might think (the focus group data suggested that people were comfortable with the idea of interpersonal accountability, but did not like it to feel so 'legalised'). Finally, we should also remember that the extension of 'health and safety' into public life is not something that regulators or law-makers have sought to bring about; quite the contrary, in fact. Responsibility for public safety outside the workplace has more often than not been regarded as an inconvenience. Responsibility for the extension of health and safety in this direction must lie elsewhere.

The emergence of the safety profession

Another one of the most fundamental issues to have emerged as important within the different elements of this project is the emergence of the safety profession as a component of the contemporary health and safety landscape. While Robens and the 1974 Act envisaged a three-legged stool (state regulators, trades unions, employers) as the basis of safety regulation and control, the safety profession has emerged as a central player in the contemporary health and safety sphere. By the early 20th century, the 'Safety First' movement from the USA, and the emergence of new bodies such as the Royal Society for the Prevention of Accidents (RoSPA) in 1916, provided a platform for the development of formalised skill in safety management that went beyond the medical profession. New bodies, such as the Institution of Industrial Safety Officers (IISO, 1945), which would later become the Institution of Occupational Safety and Health (IOSH, 1953), and the British Safety Council (1957), emerged and acted as conduits for the development of a capacity to understand as well as manage safety in industry and beyond. It would not, however, become a formalized profession for some time. In 1967, for example, the Head of the Accident

Prevention Department of the British Iron and Steel Federation observed that safety committees *“were mainly comprised of well-intentioned amateurs [...] So, basically, accident prevention problems were being dealt with in an amateur way over probably 10 per cent – 20 per cent of the potential accident field.”*⁸⁹ This was also clear in Stan Barnes’s (a future IOSH President) recollections about his early days as a safety officer in the Yorkshire iron and steel industry in the early 1950s:

“There was a vacancy for an assistant safety officer in the ironworks. I applied and to my amazement, with absolutely no knowledge of industry at all, I got the job. That will give you an idea of what the understanding of occupational safety was at that time, almost nil [...] my boss was the captain of the works fire brigade, and had been an ambulance man before that. This gives you a clue to the origins of the first safety officers.” (Stan Barnes interview, para.3)

There was an informality to the early profession that was to endure until as late as the early 1970s, according to Andrew Hale, Professor of Safety Science:

“when I first started, the face of safety was very much RoSPA in its guise of voluntarism, and safety awareness was a word which was bandied about that they were trying to promote, and it was very amateurish. It tended to be run by people who had a social conscience, a great personal concern, but not any in-depth knowledge.” (Andrew Hale interview, para.51)

The Robens Committee would consider the emergent safety profession in terms of its capacity-building and training functions (1972: para.387), advocating a greater centralisation and coordination via what would become HSE, but in general terms, it is striking now to note how limited the role and influence of bodies like RoSPA, IISO/IOSH, and the British Safety Council seem to have been perceived as being at this time. Although all of these bodies gave evidence to the Robens Committee, they did not feature heavily in its report. Accident Prevention Groups affiliated to these bodies were viewed as *“useful”* (1972: para.91), but Robens view of the future of industry-level activity did not mention the professional bodies at all (1972: paras.94-96). Perhaps in response, the Chief Inspector of Factories, Bryan Harvey, in 1973 stated that *“I have long held a strong personal belief that there should be close ties between the Inspectorate and bodies outside the Government service involved with*

⁸⁹ R. Barry, ‘Accident Prevention in the Iron and Steel Industry’, talk to the Central Metropolitan Group, London Industrial Accident Prevention Committee, 13 March 1967, noted in the minutes of the meeting, p. 3. MRC, MSS.292B/146/2/4.

the same problems” (Department of Employment: 1974: xvii). Robens recognised the role played by safety advisors, but also reflected that these individuals were “undervalued”, often not “of the right calibre”, and varying widely in capacity and status (1972: paras.54-56).

Testimony to the Robens Committee recognised that safety professionals had “to earn people’s respect before they will expect much from us” but at the same time groups like RoSPA had, over the preceding few years “introduced professionalism into the work [and] people are listening to us”.⁹⁰ The Robens model famously saw the basis of safety management as lying in the hands of a tripartite structure of authority and influence, with the state (HSE), organised labour (TUC), and industry (CBI) as the three dominant constituency actors. Safety professionals, insofar as they had a role, were positioned very much within the latter constituency, as an aid to management. At this point, then, the notion of a profession was far from established. Contemporary observers saw that the politicisation of health and safety issues (questions of who should have authority – the state, employers, or workers) had diluted any pressure for professionalization, and the lack of clear subject matter, and unified client base, were the main obstacles to professionalization at that time (Atherley and Hale 1975). This point about politicization is interesting; the safety profession occupies a space somewhere between the three constituencies of tripartism, managing risks for employers, holding a union-like commitment to worker welfare, and occupying a quasi-regulatory role as standard-setters within a self-regulatory system (Dawson *et al.* 1988: 47). In a 1976 discussion at RoSPA’s National Occupational Health and Safety Committee, for example, it was noted that it was “unrealistic to expect the safety officer to be completely independent [of management]. Much will depend however on the calibre of the safety officer.”⁹¹ This ‘divided loyalty’ was seen as problematic: “Until the health and safety specialist makes an unequivocal stand on who his client is, he will always be open to accusation and counteraccusation; from trade unions of being a bosses'-man, and from employers of being an unrealistic humanitarian” (Atherley and Hale 1975: 331).

⁹⁰ Verbal evidence on behalf of RoSPA to the Robens Committee, 14 June 1971, transcript p. 5. TNA, LAB 96/75.

⁹¹ Discussion document ‘The Role and Function of the Safety Officer’, RoSPA National Occupational Health and Safety Committee, 25 November 1976, point 4.6. RoSPA Archives, D.266/2/24.

One thing that Robens and the HSWA 1974 had envisaged was a much more formalised role for trade union safety representatives and mechanisms of consultation with workers. This was formalised under the terms of the Safety Representatives and Safety Committees Regulations 1977, which gave great power to unions to appoint safety representatives (Dawson *et al.* 1988: 19). The politics of this issue would open the door for the safety profession, according to Hale:

“it looked as though the country was going down the road of training safety representatives, and giving them a much more active role [...] the clashes between the trade unions and employers and government poisoned that route, and meant that safety representatives, who had a lot more power and influence in the late ‘70s and early ‘80s, lost that power, and the professionals somehow picked it up. They [...] didn’t have that antagonistic aspect” (Andrew Hale interview, para.62)

From this point on, arguably, the safety profession became better understood and positioned as a preferential bargaining partner for employers, as although they possessed a broad similarity of interest with trade unions, they were also an internal constituency that was broadly responsive to business imperatives as they were compelled to sell their services and skills to management (Dawson *et al.* 1988: 49). By the mid-1980s, a particular role for safety professionals had been carved out – providing a buffer against government ‘red tape’ by embedding proper self-regulatory initiative (auditing and assurance) at a business level (Secretary of State for Employment 1986: para.7.15). As the role of business as a self-regulating entity grew, and the need for more sophisticated management of health and safety grew, so did the demands for qualified, ‘respectable’ professionals to take on this role (Richard Jones interview, para.40).⁹²

The emergence of new, technical, pervasive requirements than needed managing, like the six-pack, particularly the written risk assessments introduced by the Management of Health and Safety at Work Regulations 1992, meant that safety was not a job that anyone could do any more, at least not in large organisations; the associated professional status that came with the demarcation of this specialism also established this as a legitimate arena of practice. Safety management and the safety

⁹² On the need for training and qualifications, see verbal evidence on behalf of RoSPA to the Robens Committee, 14 June 1971, transcript p. 11. TNA, LAB 96/75.

profession are now well-established, and have arguably been entrenched by three interrelated developments: the self-regulatory, devolved model of health and safety created by Robens and the 1974 Act; the continuing emergence of new risks, technologies, and knowledge; and the reduction of the capacity of public regulators to perform an all-encompassing advisory and supervisory function (noted by Jim Hammer as early as 1978, in his report as Chief Inspector of Factories: *“Since inspectors cannot be expected to act as consultants to all industry and all public authorities such bodies have increasingly to establish or find their own sources of expertise”*; HSE 1980: vii. Whereas (in the words of Lawrence Waterman, a leading figure in health and safety management) in earlier times:

“In most workplaces [...] health and safety was seen as the preserve of one or two people that had to go out and check that things were being done in a reasonable way. It wasn’t remotely a professional discipline [...] it was a synthetic subject where someone that had been involved in security or maybe premises management had this responsibility tacked on.” (Lawrence Waterman interview, para.8)

Subsequently:

“the move from officer to advisor has been almost ubiquitous. So the idea that managers manage, but advisors advise, I think is very common. And in all but the smallest of workplaces is the way that it is now [...] you might still get security officers but you don’t usually get safety officers.” (Lawrence Waterman interview, para.64)

Similarly, the professional bodies, like IOSH, RoSPA, and the British Safety Council, have established themselves as bodies that not only accredit and represent those who work in health and safety as ‘risk handlers’, but also as representatives of a broader agenda around health and safety. They are large, visible, and able to speak with a degree of authority in policymaking discussions, and to lead in areas of development. But what overall impact have the new safety professions had upon the perceived legitimacy of health and safety? Janet Asherson, Head of Health and Safety at the Confederation of British Industry 1989-2008, summed up many of the concerns that were voiced in the Young Review (2010) and elsewhere in recent times by government and critical commentators:

“Frankly, it’s a consultant’s paradise because it’s got such low barriers to entry [...] It’s a very brave consultant who would ever say you’re managing that OK. You can always find something that has to be done [...] it’s frustrating to professionals but has also allowed the professional bubble to burst into society and be viewed by society [...as] making things too bureaucratic” (Janet Asherson interview, para.52)

The safety professions have been perceived as a central component in the bureaucratisation of health and safety, at least in the eyes of the public, and of key actors, including within HSE, whose Acting Chief Executive said:

“the reputational stuff about health and safety lies at the feet of the health and safety profession rather than the regulator [...I’ve] plotted the growth in negative health and safety stories with the growth in health and safety professionals and it follows a similar trajectory!” (Kevin Myers interview, para.15)

Safety professionals are still seen as poorly regulated (Young 2010) and sometimes a barrier to good practice, but their positive impact in raising overall standards, and in filling the gaps left as union influence declines, is also acknowledged. But this remains a limited acknowledgement. Public attitudes tend to regard the ‘safety guys’ as boring, jobsworths, people who meddle (Pidgeon et al. 2003), and as early as 1971 RoSPA observed that there was a public image problem around health and safety, an issue seen as ‘stuffy’.⁹³

The focus group findings reinforced this message (see Section 6(c), above), with particular distrust being expressed towards self-interested and overly rigid safety professionals. At the same time, however, there was some recognition of the capacity and potential for safety professionals to position themselves normatively as creators of public value, acting to secure the public good and advance core social values (Moore 1995). Many interviewees, and focus group members, saw a greater need for leadership by professional bodies in committing to securing the social benefits of health and safety, via robust accountability and governance:

“IOSH is weak at trying to manage out poor health and safety advice. It acts more like the trades union for professional members than talking about

⁹³ RoSPA National Publicity Committee minutes, 22 September 1971. RoSPA Archives, D.266/2/4/3, p. 5.

professional standards. And as a chartered body, and a registered charity, it needs to strike a better balance” (Lawrence Waterman interview, para.59)

Lastly, one correlate of public value is democratic engagement and deliberative interaction with a wide range of stakeholders (Moore 1995). There is a need for greater deliberative interaction around health and safety if public support for the regulatory project is to be sustained; this leads to a concrete learning point for safety professionals, summarised by a NHS Employer’s Federation representative:

“health and safety people [...] need to be able to speak the language of the organisation, not just health and safety language [...] because they can be quite niche, and can struggle to explain and persuade others of the relevance in a broader context. And consequently are either kept quite niche or sidelined.” (Ruth Warden interview, para.58)

The value and importance of Expertise

One key factor that seems to be vital in determining the perceived functional legitimacy of health and safety as an idea is the relationship between risk and expertise. Health and safety intervention is respected and seen as necessary or desirable when it is linked to a strong basis in expertise; evidence on public attitudes and from project focus groups points to the centrality of expertise (measured, demonstrated, certified, and experiential) to the assessment of the legitimacy of regulatory actors (Baldwin 1995; Black 2008; Tyler 2011; Pidgeon *et al.* 2003; Walls *et al.* 2004). Acting in an expert way serves to render those processes more legitimate. The primary message around perceptions of health and safety expertise is a positive one; there is a broad recognition that both HSE, and the safety profession more generally, are competent and in possession of significant expertise. Health and safety decision-making is seen as competent, in the sense of being based on technical knowledge and qualifications (formal expertise) that justify the steps taken. Where there is seen as being a limit to this expertise is in the field of application – that decisions lack the quality of ‘common sense’, or fit with face-value, practical knowledge (Geertz 1975). Common-sense here is, on some level, a disparagement of the need for expertise in this area (Podger 2015: 10). Health and safety decision-makers are not seen as being adept at tailoring their decisions to the contextual realities in which they are applying their knowledge, leading to ‘over-specification’ or gold-plating (Young 2010). At the same time, there have been

pressures to regulate health and safety qualifications and standards. So the question is not so much *'is health and safety based on expertise'*, but rather, *'how and where is that expertise used'*?

The concept of expertise has long been important; the Robens Committee commented on the high levels of technical expertise and knowledge that was required of Factory Inspectors (1972: paras.226-230),⁹⁴ and called for a greater degree of specialism within what would become HSE. Expertise was framed mostly in terms of formal academic and technical qualifications, and this was promoted as something to be enhanced, rather than offset by other skills. Aston University's Department of Safety and Hygiene, where new training courses were being created, played a major part in this (1972: para.230), as one Department member recalled:

"in 1973 or 4, we set up the first masters course in safety and hygiene. And our main customer was the Factory Inspectorate. So right from the start of setting up that group in Aston, we were in contact with the regulator, Bryan Harvey, Chief Inspector of Factories [...who] was unhappy at the time with the internal training of factory inspectors, and wanted to open it up and go outside the inspectorate." (Andrew Hale interview, para.10)

Technical training was a natural response to the emergent science of safety that underpinned the risk-based model Robens was advocating, as well as to the context within which this was being done. There is a clear sense that the professionalization of HSE expertise was seen as key to the legitimization of the new HSE at this point in time, particularly in the eyes of new entrants and those in specialised industries. In 1979, writing in a Communist-affiliated publication and questioning the neutrality of scientific advice, it was still recognised that *"[e]xpert opinion (through committees) plays an increasingly important role"*.⁹⁵

By the early 1980s, HSE was well established as a technically adept regulator. It had a strong research base, and was able to contribute effectively to the development of regulations. HSE was seen as competent in what it did, but perhaps not as politically legitimate as a result (John Rimington interview, para.33); appearing technocratic and lacking a certain political awareness did not help in creating smooth relations

⁹⁴ See also the note of an informal discussion between W.J.C. Plumbe, then Chief Inspector of Factories, and the Robens Committee on 21 July 1970, especially pp. 1-2. TNA, LAB 96/210.

⁹⁵ R. Williams, 'A Key Issue', *Work Hazards* 21 (c.1979), p. 4. Samuel Barr Collection, GCU DC 140212.

with other Departments and with central Government. At the same time, however, when it came to concrete issues, expertise could also be a useful weapon, as a former TUC policy officer recalled:

“[Rimington’s] strategy was that whenever there was a crisis in Government about an issue and a high level meeting of officials was called [...] he always sent an expert, someone who was technically knowledgeable [...] don’t say anything to begin with, sit there, listen and when they all start giving opinions about what should be done, step in and say, ‘well you need to take account of X and Y and so on’[...] you then get control of the subject through demonstrating knowledge” (Roger Bibbings interview, para.19)

The most important audience for expertise is of course the regulated population. Displaying expertise shows that the decision-maker in question has a sound and valid basis for its actions (Baldwin 1995: 45). So, for example, an offshore inspector of the 1980s and 1990s noted that working relationships with safety regulators were good because offshore workers and managers *“knew exactly what our job was, they knew that we were professional people [...] with engineering backgrounds, we understood what they were trying to do”*.⁹⁶ Expertise has an enduring, robust, and pervasive importance to issues of legitimacy; it establishes credentials for intervening and for reordering the world. It is clear that the expertise of HSE and of regulators in the field of health and safety is largely accepted, and particularly so in areas of high-hazard and technical challenge, such as offshore (Rex Symons interview, para.64) and the nuclear industry (Helen Leiser interview, para.63). For the most part, expertise is recognised and accepted as a taken-for-granted feature of these bodies and regulatory actors by duty-holders and other observers.

One issue that was highlighted was the potential for a lack of expertise to become apparent in relation to areas of new risk, emergent risk, or new regulatory contexts. For example, when HSE and the Railway Inspectorate were wrestling with the issue of regulating a newly-privatised railway system, with a new approach to safety, observers (such as David Maidment, a British Rail safety manager) felt that the regulator’s expertise had been eclipsed by that of the industry it was regulating:

⁹⁶ Martin Thompson, University of Aberdeen ‘Lives in the Oil Industry’ project, tape 2 side b. British Library, London, C963/13.

“when we did privatisation, we went to the safety case process [...after] King’s Cross and Clapham. We learnt about culture, we learnt about changing the reactive to proactive and we found that we were ahead of any other railway [...] we were also ahead of the Railway Inspectorate” (David Maidment interview, paras.119-121)

Similar dynamics were observed by interviewees in relation to the nuclear and biotechnology industries. But gaps in expertise can also emerge in less cutting-edge settings too. In particular, some of the ‘new entrant’ workplaces, where health and safety is being adapted to fit a new world of clerical, non-manual work, also encountered regulators who seemed to be a step behind, as a former head of health and safety for financial and legal institutions, recalled:

“I’ve always been surprised at some of the competence levels that I’ve been faced with, they’ve never been quite where I’d hope them to be [...] I would expect everybody that faces me to be an expert [...] very mixed experiences with the regulator, particularly with the banks” (Peter Kinselley interview, para.32)

The reasons for this often lie in the capacity and resources that the regulator is able to devote to getting up to speed in new areas; change can come quickly, but take time to respond to. More worryingly, it can also be the case that these pockets are created, via prioritisation and resourcing strategies, or the culture within regulatory bureaucracies, as one former HSE inspector recalled, again about ‘new entrants’:

“when the ’74 Act came in [...] people thought I was mad because I wanted to actually work in the new entrants sector [...] there was a tendency to put people who were less effective at some of the interpersonal skills side of the work, into the ‘less important’ new entrant activities rather than conventional activities” (David Morris interview, para.97)

The further away from the core of the system one goes, the more a lack of expertise seem to become an issue, until you reach the general public, who are often characterised as lacking in basic risk competence, prompting official concern (House of Lords 2000; Löfstedt 2011), and despair in observers of the regulatory system:

“there is a crying need to create a basic ability in people to be able to triangulate what is a hazard, what’s the risk, and what’s the appropriate level of control [...] the failure to educate key people in and around the concept of

risk has been one of the weaknesses which has led to the present cultural impasse between health and safety on one side, and politicians on the other”
(Roger Bibbings interview, para.43)

The sharing of expertise, then, is one key challenge and area where major gains can be made (see Case Study 13). More needs to be done, both in terms of making the health and safety system work better, but also in terms of improving the perceived legitimacy of this area, as *doing* becomes *understanding* becomes *accepting*:

“decisions [...] should be taken actually at the lowest competent level [...] And that’s fundamental isn’t it? We train people, hopefully, we’re increasing emphasis upon competence in culture and we will lose people’s determination to do things correctly if we don’t actually give them the opportunity to exercise that competence and their cultural ability.” (Paul Thomas interview, para.78)

There is a negative associated effect of this imbalance of expertise; that it can lead to bureaucratisation and unnecessary paperwork. In the early 1980s an investigation into British Rail’s implementation of the HSWA noted that some managers *“are dismissive about the [local OHS] statements regarding them as a paperwork exercise which add little to BR’s existing safety effort”*.⁹⁷ There is also a concern that expertise creates systematic, instrumentalised approaches to safety based in technical and impenetrable mind-sets that are hard for lay people to understand (Radaelli 1999; Teubner 1987),

Case Study 13: Informing those at risk

It is worth reflecting briefly on how the way that information is shared from regulators and professionals to workers and the public, has changed over time. At the start of our period, this was very didactic: one witness recalls *“We organised tuition mornings in one of the Cutler’s halls, and all the firms sent apprentices in for health and safety instruction, rows and rows of apprentices in front of you”* (Stan Barnes interview, para.67). The 1974 Act provided a catalyst for the development of more academic, university-based, professional training in health and safety, and imposed a requirement (under s.11 HSWA) for coherent ‘information services’ to be provided by HSE. This provision was technologically-driven, using cutting-edge means of distributing technical materials: Sheila Pantry, who pioneered much of this, recalled that the HSELINE database, created in the late 1970s, actually made use of the European Space Agency’s international computing platforms (a precursor to the internet), the first such body to do so (interview, para.50). Alongside this, the 1974 Act broadened the law’s coverage, creating a need for accessible, non-specialist materials, such as HSE’s ‘DO AND DON’T’ leaflets, written in layman’s language, and the creation of telephone enquiry lines, among other things. In more recent times, however, a concern has been raised by some that the professionalization of health and safety has led to information and training benefiting those within health and safety (‘the converted’), but left the wider public behind (something the Löfstedt report was concerned over). There are examples (such as the British Safety Council’s work on school-level safety education) of wider engagement initiatives – but there is perhaps a need to broaden the scope of ‘safety training’.

⁹⁷ BRB and HSE, ‘An outline report on OSH by the Accident Prevention Advisory Unit’, p. 1. TNA, AN 16/157.

and which create a distance between regulatory issues and regular people (Black 2000). A 1977 British Rail memo noted enthusiasm for health and safety generated by the HSWA, but followed it with a warning: *"It would be a tragedy if, instead, implementation of the Act became a battlefield of disagreement on [...] unreasonable safety standards"*.⁹⁸ This way of seeing is also identified at a regulatory level; the trends towards targets, probabilities, and quantification (Black 2000; 2008), while necessary from the point of view of efficiency and effectiveness, also have costs in terms of the accessibility of the systems that they establish, and thus on degrees of social acceptance. A more positive aspect of the UK's expertise in health and safety relates to the potential that was seen for British experts to 'export' their knowledge to other parts of the world. Many spoke about the need to better inform European processes (also Löfstedt 2011), and about the legacy of British expertise in shaping the six-pack, COSHH regulations, and other European instruments. A better *"recognition that the UK 'does H&S very well' and can use this skill worldwide"* (Richard Jones interview, para. 46) would serve not only to improve standards elsewhere, but also to legitimate the expertise found in the UK; like other parts of the 'knowledge economy', the capacity to 'export expertise' in a particular sector can serve to strengthen that sectors' position within its own jurisdiction (as the Higher Education sector has arguably attempted to do in recent years).⁹⁹

Evolving regulatory practices and profile

One of the most important means through which messages about health and safety are communicated is via the actions of regulators. HSE did not only constitute a new organisational framework for regulation; it also brought about a modernisation of the modes and methods used. Prior to the 1974 Act, Factory Inspectors pursued a conciliatory approach to issues of inspection and enforcement that owed a debt to the first Factory Inspectors. Carson identifies this post-1833 Act model as one of 'conventionalisation', with breaches of the law *"only rarely subjected to criminal prosecution and [...] often not regarded as really constituting crimes at all"* (1979: 38). Inspectors held ambivalent views about the moral culpability of the factory owners they investigated (Carson 1979: 48-49).

⁹⁸ 'Fatal Accidents to B.R.B. Employees', 16 August 1977, p. 10. TNA, AN 156/936.

⁹⁹ See also Sheila Pantry and David Maidment interviews for examples in which expertise has been exported internationally.

By the early 1960s, the Factory Inspectorate was undertaking comparatively high rates of inspection (nearly 283,000 inspections per year), and was responsible for a much wider range (230,000) of industries, workplaces, and rules (Ministry of Labour 1962: 102). But key themes from the earlier years remained. First, there was a great emphasis on the maintenance of relationships between inspectors and firms, and the accumulation of knowledge about the regulated:

“Our district inspector at that time [...] his knowledge was monumental. He had a very good degree. And he was a man with a thirst for knowledge. And, over and over again, he’d ring me up and say ‘is it all right if we come down to the works?’ I said, ‘I’ll just have to clear this with the general manager’. And he said ‘I’m not here inspecting, I just want to see that particular plant’ [...] At one stage he nearly lived on the works” (Stan Barnes interview, para.14)

For many of the Inspectors working at this time, this approach held true, with many referring to the day-to-day process of visiting multiple premises on your ‘patch’, like a Policeman on the beat, getting a feel for the characters and firms, and getting to know about the processes and the specific risks present there (Jim Hammer interview, para.8; David Eves interview, para.25). The *proactivity* of this approach is clear, as is the fine-grained nature of the engagement involved.

This ‘beat policing’ model existed notwithstanding the Inspectorate’s general lack of size and resource, which made it difficult to claim a completeness of coverage, and its relative lack of activity, which undermined its claims as to decisiveness and control (Rhodes 1981: 76). This reflected the largely advisory, informal, approach taken by Inspectors at this time, which was highly dependent on the maintenance of goodwill for its effectiveness (Wilson 1983: 131), as recalled by a former factory director (and later HSC Chair) of the Inspectors he encountered:

“He would come, often by appointment [...] he would walk around and be critical, but he wouldn’t make his presence too heavily felt [...] We were very used to that almost friendly approach, and almost welcomed the inspector to the factory [...] We saw it as friendly, helpful and of course, controlling. If we were wrong, we were wrong and we couldn’t escape it. When the Health and Safety at Work Act came in, of course, it became much more formal.” (Frank Davies interview, para.8)

The other main inheritance from the early days of the Inspectorate was a general reluctance in relation to the use of enforcement action. As Carson (1970; 1979) observed, the use of formal enforcement action, particularly prosecution, remained a tool utilised only in the most egregious of cases. By the end of the 1960s, the Factory Inspectorate was bringing 2657 prosecutions against a fatality rate of 649 *per annum* (Department of Employment and Productivity 1970: 122). Given that rates of recorded violations of the law were much higher, this translated into a prosecution rate of 1.5% (Carson 1970: 391). Formal enforcement action was rare, and penalties were low (David Morris interview, paras.18-24), something recognised, but not necessarily as problematic, by the Robens Committee (1972: paras.259-262). For many, however, including Carson, this represented an example of the Inspectorate steering a “*middle if not altogether ambivalent*” course (1970: 396) between disrupting relationships and maintaining pressure on employers, and one that was very much shaped by existing power relations in the area (Wilson 1983: 131; David Morris interview, para.34).

Following the 1974 Act and the creation of HSE, three main changes occurred in quick succession. First, HSE recruited and expanded rapidly (largely via amalgamation), receiving a resource boost from Government and growing to over 4700 staff by the end of the decade (from maybe 400 at the start of the 1960s: David Eves interview, paras.5-10). Despite this, misgivings remained about the capacity and commitment of the new Agency in terms of enforcement, and these were voiced in a number of locations: the socialist *Morning Star* reported that it was necessary for the unions to “*ensure that the new regulations and codes of practice [...] contain penalties and sanctions backed by an adequate inspectorate*” (Paterson 1975: 4). Fears were also expressed in parliamentary debates: “*the [Robens] report seeks to cajole rather than coerce [...] it makes no recommendations about the size of safety and health inspectorates. It appears to accept without reluctance that extra financial resources from industry and Government will simply not be made available.*”¹⁰⁰ Second, a new approach to inspection started to emerge; more focused, more sophisticated, and more couched in the terminology of risk than of prescriptive precaution:

¹⁰⁰ Neil Kinnock, ‘Workers’ Safety and Health’, HC Deb 21 May 1973, Hansard vol.857 cc62-117, 66. See also *Times*, 31 January 1973, p. 7; *Times*, 4 April 1974, p. 16; *Times*, 22 May 1978, p. 8,

“our inspections under the Factories Act, it didn’t matter if you were Ford Motors employing thousands [...] or this little furniture place in the East End, you would be inspected every four years on a mechanical rota basis [...] we abandoned the four yearly cycle once we’d got the ’74 Act, became much more risk based in our approach, and Inspectors began to assess firms by their ability to manage safety [...] That enabled us to free Inspectorate resources to concentrate on the much riskier enterprises”. (David Eves interview, paras.27-8)

Accordingly, the new legal sanctions that the 1974 Act gave HSE, particularly Prohibition and Enforcement notices, were geared towards a more avowedly prospective risk-management model. Additionally, Robens had voiced concerns about the unfocused nature of inspection (1972: para.219), and HSE was prompted to respond. By 1980, this had crystallised into the Inspection Rating System:

“At every visit an inspector had to judge what the standard of health was, what the standard of safety was and what the standard of welfare was, and they gave values from one to five [...] Then they would judge if the worst thing that happened at the factory, would nobody be killed, would one person be killed or would more than one person be killed? [...] The last question was ‘what confidence have I got in the management’s ability to maintain standards and adapt to change?’. And that was given a figure. Now when you multiplied and added these figures they gave a value between one and a hundred to each factory [...] We then added up all the rating values for every factory across the whole country and then divided that total by the available number of ‘inspector half-days’ to give a rating value above which we should aim to inspect [...] That came out initially at 42.” (Jim Hammer interview, para.31)

Inspection was thus formally rationed on the basis of need and relevance, rather than just Inspector availability,¹⁰¹ and later, this was expanded to account for track record, hazard type, and other data (Dawson *et al.* 1988: 234; Hutter 1997: ch.5).

The third, related change post-1974 was that Inspections were prompted by the terms of the new law to focus more on ensuring a suitably responsible approach was

¹⁰¹ On this see, for example: HSE, ‘Health and Safety, Manufacturing and Service Industries’, report for 1978 (London: 1980), p. v; HSE, ‘Health and Safety, Manufacturing and Service Industries’, report for 1979 (London: 1981), p. vii.

being taken to systemic, managerial issues than on checking compliance with precise, prescriptive requirements (see Case Study 14). The HSE's 1978 annual report for the manufacturing and service industries noted that if health and safety *"is indeed important enough to be of significant concern to the Board then it must be treated in the same way as other management problems"* (HSE 1980: v) This shift of emphasis was part of the Robens Committee's compliance-oriented, advisory model of regulation, but also necessitated by a wider sense that the real issues that needed attention were at a different level, and of a different form, than had been contemplated in the past:

"it was something whose time had come [...] to be trying to do something to improve health and safety, to prevent accidents, to clarify responsibilities, particularly for employers and to take a preventative approach as opposed to a prosecution [reactive] kind of approach. So I think the Robens approach struck a chord" (Jenny Bacon interview, para.15).

This would involve spending more time and attention focusing on improving the competencies of those who manage safety (via advice, guidance, and direction), particularly once ideas of (written) risk assessment became more central to the process. In particular, this systemic thinking did involve the active weighing of the costs and benefits of particular interventions (Rhodes 1981: 85).

What is noticeable is that for much of HSE's history, it has approached the issue of inspection and enforcement as

Case Study 14: The construction industry

As figures elsewhere (Section 8b: *Changing Industry*) have demonstrated, the construction industry has been a major growth area in the UK economy over the last 50 years. This industry has also been a complex one for regulators to get to grips with. Construction sites are highly visible workplaces, containing complex and hazardous processes, materials (like asbestos), and equipment; they increasingly play host to complicated employment structures (contractors, sub-contractors, supply-chains, and casual labour); they are impermanent, meaning that monitoring them can be difficult; and they have long suffered worryingly high rates of preventable death, injury, and disease (HSE 1988b). Regulators have had to respond to these challenges. 'Big' construction firms have been engaged directly, via target-setting, industry consultation, political pressure, and government procurement requirements. HSE has aimed at producing trickle-down effects, from boardroom to building site and from big firms to sub-contractors and smaller competitors, as a former Chief Inspector of Construction explained: *"We started regulating in a slightly different way. Instead of just dealing with site-based things we started knocking on the doors of Chief Executives [...] it wasn't going soft on the industry it was [...] changing it."* (Kevin Myers interview, para.28). Construction is thus an area where notions of 'risk-based' and smart regulation have supplanted traditional proactive, inspection-heavy approaches. That said, the construction sector remains very heavily inspected (because of its large tail of transient workplaces) – suggesting that while good practice lessons about health and safety can be learned from this potential new 'leader industry', it should not be held up uncritically as evidence that 'risk-based', inspection-light, regulatory approaches will work everywhere.

a matter of appropriate resourcing, and this has been reflected in wider debates around the issue. Put simply – how much inspection could HSE do, given the other tasks it had to devote its resources to? In early 1988, the HSE Director-General was telling Parliament that “[o]ne really has got to decide if one can afford [the] scale of diversion of one’s resources” that a more proactive approach would involve, and that “[w]e would not think it necessary to waste a lot of time on a great many of the premises” (Employment Committee 1988: paras.18, 23). As late as 2008, the Work and Pensions Committee was pressing the then-Chief Executive of HSE over whether “less inspection means less safety” and what the proper division of Agency resources should be (Work and Pensions Select Committee 2008b: ev.6-8). As one senior HSE source recalled, disquiet about inspection rates had to be offset against recognition of the wider resource situation:

“[HSE] were always terribly worried they had all these factories they’ve never inspected [...] actually it’s not our job, we are not responsible for what goes on in every single factory [...] what HSE is trying to do is maintain compliance and deterrence in the system. It’s not maintaining the system [...] any other scheme would be extraordinarily expensive to run and wouldn’t necessarily produce better results.” (Senior HSE Source interview, paras.178-180)

One problematic outcome of targeting has been that effort has been directed according to assessments of risk-based priority that sometimes force individuals to target their efforts in irrational ways. Dan Shears, a former HSE inspector, recalled that HSE’s Fit3 initiative, which set out in the mid-2000s to target inspection at particular areas of risk and outcome,¹⁰² had counterproductive effects:

“you got a real disconnect between what the field were being told were priorities and what the inspectors themselves wanted to do [...] There will be a need for better targeting, there’ll be a need for smarter inspection, fine. But it became very much ‘you can go and look at certain things but not other things’ [...] this idea of walking into a workplace, seeing something that looked not quite right but maybe wasn’t an obvious and immediate serious hazard, didn’t sit very well.” (Dan Shears interview, paras.62-4)

Fit3 was scrapped because it proved both unpopular and ineffective, in that the targeted outcomes did not change; the failure of Fit3 was taken by many in HSE as a

¹⁰² <http://www.hse.gov.uk/aboutus/strategiesandplans/hscplans/businessplans/0506/fitfor.htm>

sign of the instrumental failure of inspection as a tool that could never be relied upon to produce measurable change:

“they never tested their interventions by saying, ‘well, if we did this would it actually work?’ They simply assumed if you put more resources into more inspections then there would be inevitably improvement [...] masses of these were done all over the place and the figures didn’t move at all [...] the [inspectors] thought it was rubbish, and the [inspectors] were right.” (Senior HSE Source interview, para.70)

But there are other indirect forms of value that this instrumental approach perhaps fails to take into account, such as commitment-building, resolving low-level (but serious) issues, information-gathering, and general regulatory positioning (Hawkins 2002; Hutter 1997: ch.5). In particular, measuring ‘effectiveness’ ignores the wider impact of inspection upon public perceptions of legitimacy; attitudes around health and safety are influenced by what regulators do (Almond and Colover 2012). Indeed, Pidgeon *et al.* (2003) found that it mattered to the public to know that inspection was being carried out in an effective way, and members of the focus groups who participated in this study also linked their perceptions of trust to the proactive use of those powers, and the perceived expertise, professionalism, and impartiality with which these activities are undertaken. Further, the distance between regulators and the experiences of individual members of the public and workers was identified as a major legitimacy problem; those who saw and understood what safety regulators did tended to hold more favourable views. Many other commentators have also queried whether the rolling back of safety regulators’ inspection and enforcement capacity signals a withdrawal from a previous era’s welfarist commitment to workplace safety (Tombs and Whyte 2013). Inspection here is seen purely as a component of enforcement more generally (a way of detecting breaches of the law). But interviewees from the business community were keen to stress that their perceptions of HSE were broadly positive, and that this related to the face-to-face contact that they had, as one former head of health and safety for a utilities company, testified:

“a good regulator, I think they need to understand what you do, and the nature of the risks [...] well informed, I’d like to think collaborative [...] independent, but knowledgeable, it listens, understands, but then at the end of the day

makes their decision according to the law.” (Graeme Collinson interview, para.75)

Inspection is perhaps best understood as a postural mechanism, in that it relates to the way an agency is evaluated in broad terms, as trustworthy, expert, and legitimate.

Since the early 2000s, there has been a palpable shift in the way that inspection is seen and understood by those making and implementing policy. Issues of efficiency and effectiveness (how much can we do?) have been integrated with a broader appreciation that there are areas of risk which *ought not* to be regulated directly (should we do it?). Dodds (2006) has referred to this shift as one from ‘better regulation’ to ‘risk-tolerant deregulation’ – from setting the limits of intervention by reference to resources and what will bring greatest benefit for least cost (hence targeting via risk: Baldwin 2005; Hampton 2005), to setting them via reference to conceptions of what *sorts* of risk ought to be regulated: not those where intervention is ‘irrational’, or where the risks being regulated are ones we ‘ought’ to tolerate for the benefit of society. In the field of health and safety, we can see the effects of this movement towards risk-tolerant deregulation in the Young (2010) and Löfstedt (2011) Reviews, both of which eschewed discussion of resource allocation in favour of advocating for the removal of regulatory engagement from areas that ought not be regulated – in Young’s case, public life and ‘low hazard’ workplaces, and in Löfstedt’s, the self-employed, and areas of non-quantified ‘hazard’. Both also advocated the passing down of HSE’s targeted approach to inspection to other bodies (specifically Local Authorities).

We can discern a growing sense that regulatory inspection *ought not* to take place in areas of risk that it has no business involving itself in – not just that it *cannot* because of the limits placed on its capacity. The Acting Chief Executive of HSE summed up the agency’s position on the issue:

“the people that are creating the risks are [...] managing and controlling them 24/7. So therefore the idea of actually expecting anybody else other than the people that create the risks to effectively manage them, control them, is cloud cuckoo land. That’s why I get concerned about debates that we need more and more inspections. Well, how many inspections do you need, until you end

up having an inspector in every work place 24/7? So our job is to stimulate industry to self-regulate” (Kevin Myers interview, para.20)

There is a latent acknowledgement of resource limits here – but the core message is that HSE has no legitimate basis for intervening in many workplaces. Arguably, this has been a latent feature of the Robens model since the mid-1970s, but it is now more explicitly framed in terms of the desirability of intervention. So, for example, while HSE’s post-2004 Strategy document framed the inspection priorities by saying that “[e]ven with increased efficiency, HSE and LAs will not meet the[se] demands” placed onto it by public constituencies, it linked the subsequent retrenchment of its activities from workplaces that are well run or where risks are of “low significance”, and (increasingly) areas of ‘public safety’ (HSC 2004: 10). Similarly, HSE’s 2013/14 Annual Report discusses targeting inspections at specified sectors whose risks are deemed serious enough to merit HSE intervention, meaning that 51% of inspections were in the construction industry, and 37% in manufacturing (HSE 2014: 12).

Current political debate about health and safety has tended to reinforce these perceptions – the government has taken a negative public line in relation to health and safety and discussed the proper limits of regulation by reference not to cost, as it might have in the past, but to concepts of ‘interfering’ regulation in areas of public and business life that should remain unregulated (Almond 2015). This has dovetailed into broader debates about risk-based/responsive regulation, new governance models, and procedural legitimacy – appropriating arguments about efficiency and effectiveness to act as foundations of ‘risk-tolerance’ in key areas (Tombs and Whyte 2013). Some degree of normative veneer has been applied to this via public consultations processes (Red Tape Challenge 2011-12, for example), and by references to ‘public’ (read: ‘media’) perceptions and concerns about ‘health and safety gone mad’. The politicisation of ‘health and safety’ as an issue, and the changing conceptions of what the law can and ought to do, have changed the realities around inspection and intervention dramatically, and arguably altered the type of legitimacy messages that it can be used to communicate – which now focus on procedural issues of efficiency and effectiveness, and respect for due process, and less on the normative positioning of the regulator. Fee for intervention (FFI – a charging regime for breaches found during interventions) has perhaps entrenched this change more fully in recent times, as it moves away from seeking to further a

particular vision of the public interest. FFI may be efficient and effective (procedurally legitimate) but is it also pursuing vision of the public interest (morally legitimate)? The Temple Review, a triennial government review of HSE's operations, concluded that FFI ran a serious risk of undermining *trust* in the regulator because regulatory motives were fragile in this context (Temple 2014). This remains a key challenge for health and safety regulators to resolve – what is regulation *for*?

D: Justice Challenges: Whose Values Underpin Regulation?

Commercialisation

One of the most fundamental tensions to exist in the field of health and safety, and which influences decisions about what is legitimate in this area, is the impact of commercialisation upon perceptions of health and safety. This is particularly germane because research has tended to suggest that the normative values that regulation seeks to pursue (essentially welfarist, prosocial, altruistic character and public service ethos) are central to the legitimisation of health and safety as an area of activity (Mascini *et al.* 2013; Pidgeon *et al.* 2003; Walls *et al.* 2004; Zwetsloot *et al.* 2013). The evidence gathered from the focus groups also suggested that the enduring public support for health and safety was linked to its character as a matter of guaranteeing basic standards of 'social citizenship' (Prosser 2006), and that moves which compromised this normative positioning were problematic in terms of perceived legitimacy. In particular, the commercialisation of 'health and safety', as a field, prompted very strong expressions of disapproval. This was seen in the mixed attitudes towards the emergent safety profession. The more it was seen as a 'job creation exercise', as self-serving, and as something that was paid for rather than undertaken because it was the right thing to do, the greater attitudes towards health and safety hardened. Of course, these perceptions are variable and reflect a range of different factors, but they pose a crucial question; what impact has the increasing commercialisation of the field of health and safety had on its legitimacy?

The connection of commercial imperatives to issues of health and safety is not new, of course. The Workman's Compensation Act of 1897 provided for a minimum level of compensation for some injured workers (or their relatives) without the need to

prove negligence on the part of the employer (Bartrip and Burman 1983). This statutory scheme provided many workers with a means of redress which they previously lacked, although it did lead to the distancing of these cases from the criminal law, categorising them as issues of private compensation rather than as public wrongs (Bartrip and Fenn 1988: 66). This created the foundations for a parallel system of non-state 'regulation' running alongside the statutory, state-led oversight of health and safety, one driven by the commercial imperatives of insurance, compensation, and private risk-amelioration (Bardach and Kagan 1982; Hutter 1997: 183; Viscusi 1983). Once a system of compensation was in place, employers started to seek to manage their potential exposure via new schemes of Employers' Liability Insurance (Brown 1931), and this was subsequently made a compulsory feature of health and safety landscape by the Employers' Liability (Compulsory Insurance) Act 1969, which sought to ensure that employees should not be left at the mercy of employers who could not cover the cost of compensating for injury, and to ensure that breaches of any insurance contract by the employer did not rebound onto employees (Simpson 1972). This Act was passed under the same Government which instigated the Robens Committee in 1970 (though it was introduced as a Private Member's Bill), and formed part of an effort to rebalance the distribution of health and safety risk within the workplace.

Commercial imperatives have subsequently acted as drivers of health and safety provision via the competing monetary interests of workers and employers, and the perceived costs of compliance (which have always motivated resistance to regulation). Trades unions have long sought to secure the interests of their members via the use of compensation claims and legal action following injury, although this focus has been viewed negatively, as in 1970, when it was claimed that *"the Unions have made a negligible contribution to accident prevention, preferring to concentrate on the pursuit of compensation"*.¹⁰³ However, they have also used this as an issue around which they can 'organise' and recruit members (Dan Shears interview, para.73). And, like any business cost, employing companies have sought to limit those associated with health and safety (both compliance and breach), through the use of the legal system, professional health and safety advice, and other products

¹⁰³ N.T. Freeman (BTP Ltd), 'Safety in the Seventies', in Minutes of Teesside Industrial Accident Prevention Committee meeting, minute 3248, 25 November 1970. RoSPA Archives, D.266/2/18/11.

and services designed to reduce costs for a fee. It is suggested that in four specific fields, the extent to which considerations of a commercial character have impacted upon health and safety have increased significantly in recent years, prompting considerable disquiet in many quarters.

The first key trend has been discussed previously: the emergence of a safety profession made up of individuals and organisations that profit from their work in this field. IOSH, RoSPA, and the British Safety Council, among others, provide services to safety professionals and duty-holders (training, accreditation, materials, and professional development). At the same time, the self-regulatory, open-ended nature of the 1974 Act has meant that duty-holders have increasingly sought to source health and safety advice, compliance and management services from professionals. This has arguably, in some areas, provided a degree of impetus towards a form of ritualism, with processes of paper audit and policy provision being undertaken as ‘rituals of comfort’ in order to pacify a legal or institutional need rather than to address real problems in a meaningful way (Power 1997; Braithwaite 2008: 141). In the health and safety sphere, some have seen ‘off the peg’ health and safety services as a means of ticking a box for little cost, as Andrew Hale observed:

“every employer had to have qualified advice from a safety professional [...] a lot of companies simply signed contracts for a very small number of hours a year, and said, ‘OK, that’s safety and health solved, I’ve got my person on the books, they come in twice a year, we have a nice cup of tea, and they’re gone before they can be a nuisance’” (Andrew Hale interview, para.65)

In some sectors, particularly those where there is a less well-established interest and engagement with health and safety management, these attitudes have endured, as one former HSE inspector recalled:

“you say, have you got any paperwork? [...] they’ll open up this file and there’ll be something that had been done by a consultant and everything was page 1 of 1. And their belief was, I’ve paid somebody a lot of money to do this and now I’m covered because I can get you a load of paperwork that says this has been done. The fact that it was completely generic and they just literally had taken another company’s name off it.” (Dan Shears interview, para.25)

Insurers, professionals, and other parties also recognised this tendency (Peter Kinselley interview, para.19; Huw Andrews interview, para.135; Young 2010), and

this remains something that the safety profession, via improved governance of professional standards, will have to address. Whether organisations such as IOSH and others should position themselves primarily as commercial providers, or as public-interest advocates, is a complex point of positional politics that has implications for the way the profession is viewed.

The second area where commercial imperatives have impacted upon health and safety practice is in the provision of insurance to employers, and the subsequent influence that insurers have had on the health and safety agenda. Compulsory Employers' Liability insurance was introduced as a 'backstop' to general health and safety provision and management, to ensure that injury claims did not fall out of the system entirely (Leka *et al.* 2012: 10; Simpson 1972), and from the outset, insurers were empowered (under Regulation 2(2)) to recover the costs of any liability that they are exposed to as a result of the failure of an employer to comply with legal requirements. From this point, then, insurers were able to begin exerting a degree of influence over insured employers in terms of their health and safety provision; this involved taking a more proactive approach to the assessment of workplace risks, developing greater industrial expertise to allow for more accurate risk assessment and premium-setting. In the 1970s and 1980s, the changing industrial profile of the United Kingdom, along with the emergence of new technologies of production, meant that insurers had to develop their knowledge base (Leka *et al.* 2012: 12), as one long-serving insurance industry actor recalled:

"the [insurance] industry had developed certain approaches to risk, but in my view it was never sufficiently structured to actually say, 'what are the real risk issues?' There has historically been a reliance on past experience as being a good guide to the future. Which it is if, in fact, the future's no different to the past, but you couldn't guarantee that. I think there was always a belief that there was an amount of regulation out there, it should be helpful, particularly if the regulator is well resourced and is a real regulator and is likely to turn up."
(Jim Wilkes interview, para.20)

Insurers thus became more able and willing to intervene in the maintenance and regulation of workplace safety. As a source of decentred regulation, insurers took on a degree of involvement in setting out expectations around prevention, precaution

and risk management around health and safety, and thus where the parameters of responsibility ought to lie (Black 2008; Ewald 2002; Scott 2004).

A shift in attitude and approach in this direction can be identified in the 1990s (Hawkins 2002: 256; Leka *et al.* 2012: 12; David Eves interview, para.79). At this time, there was perhaps a recognition that unscrutinised Employers' Liability insurance (sold as an add-on to wider insurance packages) had exposed insurers to excessive liabilities; Dalton (1998: 11) cites insurance industry figures from 1994 suggesting that for every £1 of Employers' Liability premium received, insurers were paying out £1.24 in claims and costs. The threat of increased premiums, and a desire to minimise these liabilities, changed the relationship between insurers and their clients, as the head of Casualty Practice for the UK's largest Employers' Liability insurer, observed:

"we're processing tens of thousands of claims every year, we're developing knowledge and insight about what 'good' looks like for their sector [...] there's an expectation from our customers that they will get something to differentiate the insurance proposition and that they see us very much as an advisor to their organisations, that we can improve their performance to minimise the cost of risk in their business." (Huw Andrews interview, para.102)

When combined with the message that the largest proportion of costs incurred following a workplace failure are not actually insured at all (Dalton 1998: 10), this role allowed insurers to reposition themselves as drivers of compliance. It is fair to say that this positive appreciation of insurers has not endured, being superseded in more recent times by a highly critical narrative around insurers who push for standards of compliance that are much higher than those laid down in law, and which require the employment of health and safety consultants (Young 2010). At the same time, there have been concerns that this leads to the sort of specificity and prescription which the 1974 Act was mean to have removed, as one former HSE policy actor observed:

"if you can get your insurance company to insure you by having a list of rules that everybody must obey and a list of rules that says whose fault it is if anything goes wrong, then for an awful lot of busy, small [firms...] It's tempting to have a ready-made code [...] the authorities are blamed for the fact that a lot of it seems nit-picky and disproportionately meddlesome somehow." (Helen Leiser interview, para.69)

Overall, attitudes towards insurers remain highly controversial. Many interviewees voiced very critical attitudes towards insurers, particularly around their tendencies to “*spread risk rather than concentrate[d] on the areas where action needs to be taken*” (Jenny Bacon interview, para.60), to “*over-contest*” liability (John Armitt interview, para.30), and to take an amoral attitude to risk:

“this particular guy had been standing under a vat of acid and the vat opened [...] when I raised that with an American insurance company [...] He said, ‘it’s not costing us money mate, if they pay the premiums then we don’t mind [...] we’re making our money and the rest of it’s their fault’” (Frank Doran interview, para.28)

All of these accusations are refuted by the insurers themselves, however, who see themselves as service providers like any other, and a convenient target for others to blame for any shortcoming in the system:

“It’s a myth. And we seek to challenge it in every way we can. We are a convenient target because historically we’ve never really stood up and argued our case. We also accept that very often it’s legitimate for a company in trying to put through some risk control measure, which is unpopular in a business, to say, it’s an insurance requirement.” (Jim Wilkes interview, para.143)

It is interesting to note the extent to which regulatory myths (and thus media and political discourse) have echoed these criticisms (Almond 2009). After all, it is hard to conceive of a means of controlling risk which is less solidaristic and more compatible with a marketised approach to governance (Ewald 2002); insurance has long been seen as something “*responsible businessmen normally do as a matter of prudence*”.¹⁰⁴ The legitimacy of insurers, as a now-central component of the health and safety system, is deeply problematic (Daniels and Sabin 1997), and thus poses problems for other actors in the system as well.

The third key shift is one which is closely linked to that of insurance – litigation and the pursuit of compensation for injury and ill-health. At the end of the 1960s it was estimated that no more than 20% of injured workers pursued civil liability claims for negligence or breach of duty (Simpson 1972: 68). But in recent years, concern has grown over the emergence of a ‘compensation culture’, the perception that society has become increasingly litigious and blame-focused, that the numbers of personal

¹⁰⁴ Lord Drumalbyn, H.L. Deb., Hansard Vol. 304, col. 1061, 23 July 1969.

injury tort cases and the amount of compensation awarded have increased markedly, and that the result has been a diminution of notions of personal responsibility and an increase in risk-aversion (Morris 2007). Both the Young Review (2010) and Löfstedt Review (2011) engaged with this issue as a matter of course, prompted in no small part by a very pronounced political agenda of resistance to civil liability in this area (Almond 2015). While the empirical data on rates of claiming lends little support to assertions that this has been a major development in recent years, there is evidence that a *perception* of excessive claiming has had an influence over health and safety decision-makers (Wright *et al.* 2008). As we have seen, those in the insurance industry are typical of many, in that they regarded lawyers and claims management firms as having driven much of the ‘problem’ of risk aversion:

“claimant lawyers, they are seeking to expand their businesses. Why wouldn’t they? So they’re always looking for areas that perhaps could develop claims [...] some of the advice we’re able to give to people, it’s not so much just health and safety, but it’s to say, by the way, these are the areas that a claimant’s lawyer may seek to attack you on” (Jim Wilkes interview, para.105)

In common with other groups (particularly the general public), those within the health and safety sector saw civil compensation as a new, pervasive problem, and were quite censorious in attitude towards those who make claims, and those who facilitate them in doing so, as this former HSC Commissioner illustrates:

“there is an issue around blaming work, and that ethos, rightly or wrongly, has changed in the last 50 years, from workers putting up with all sorts of terrible conditions [...] to where we are now [...] looking for someone to blame. ‘It’s not my fault, somebody’s done it to me’ [...] that’s led to the increase in litigation, and it’s not that people are successful, it’s just the, the term that’s widely used, about the have-a-go culture.” (Sayeed Kahn interview, para.74)

For a long time, regulators tended to distance themselves from the issue of civil litigation, seeing it as something that did not properly concern them:

“the Commission said, ‘our job is to deal with the criminal side and not to get involved in the civil side’. We should just leave it, it wasn’t our responsibility [...] the unions [...] would see the role of compensation and the unions pursuing compensation claims as a key element of the health and safety system. A lot of the flak that was coming HSE’s way [...] should be directed

rightly or wrongly to those who were taking compensation cases” (Bill Callaghan interview, para.113)

Callaghan makes an interesting historical connection here; that for a long time, the pursuit of compensation was something that was driven and facilitated by the trade unions as a means of protecting and advancing their members’ interests. The benefits paid to injured employees had for some while been viewed with suspicion, both in terms of encouraging ‘malingerers’ (Leneman 1993) and as being overly generous: to one meeting of accident prevention officers in the railway industry in 1967 it *“seemed significant that in certain respects, viz. industrial injury benefits and income tax rebate, it almost paid a man to be off from work due to an accident.”*¹⁰⁵ But, in contrast to previous eras, the resistance in more recent times has been less one of scaling back worker’s rights to compensation (although see the Löfstedt Review’s recommendations around strict liability (2011: 91) and the subsequent Enterprise and Regulatory Reform Act 2013 s.69) and more framed in terms of preventing undeserving claims in the area of health and safety beyond the workplace. It is not now directly asserted (for the most part) that workers should not be compensated for injury; rather, objections focus on the public as ‘undeserving’ participants, mirroring the focus group discussions.

The effects of compensation claims were most clearly seen and felt in the field of perception and preventative activity, rather than actual litigation case-load. In general terms, it is argued that companies and duty-holders have become more cautious and restrictive in their activities, and to be unduly led by a desire to preclude liability. This was seen as having made companies unduly risk-averse, and also resistant to the cooperative agenda of the health and safety regulators, who were now cast as potential prosecutors. This also led to a tendency to resist engagement with post-incident investigations. An associated effect has been a tendency towards producing local, self-imposed sets of highly prescriptive and restrictive rules for duty-holders and employees to follow. Partly, this links to a legalistic approach to defending and contesting responsibility by reference to specific requirements and rules:

“I put it down more to the lawyers than the safety professionals, that this picture of gold plating and rules which were not necessary, because that fitted

¹⁰⁵ British Rail, Meeting of Regional Accident Prevention Representatives (16 May 1967), minute 1. TNA, AN 208/218.

into the compensation culture. You had to have simple rules which you could prove people had broken, otherwise you wouldn't get compensation out of the company. So it was more in the interests of the lawyers to have the detailed regulations, rather than the safety people.” (Andrew Hale interview, para.63)

This would constitute an example of a process of juridification, the process by which legal requirements become more precise, detailed, pervasive, and numerous over time (Teubner 1987). One of the potential negative effects of juridification of this sort is a reduction in the perceived legitimacy of the law, which becomes more self-referential, insular, and less understandable and accessible as a result. This was observed in the early 1960s: *“the danger we have to guard against today is of passing the point of diminishing returns so far as legislation is concerned. Once we get past this point there is a risk of the law being brought into disrepute and this is a situation against which we must at all times endeavour to protect ourselves.”*¹⁰⁶ All the elements of the commercialisation agenda set out here have arguably had similar effects; the degree to which perceptions and expectations have driven the agenda here demonstrate that this distancing might underpin concerns around health and safety.

The fourth element of commercialisation to have impacted upon the legitimacy of health and safety is the status of the regulators themselves. The pressures upon the inspectorates to develop beyond being ‘just’ an enforcement agency are surprisingly long-standing. The Robens Committee asked witnesses *“whether the [Factory] inspectorate can or should be turned into a consultancy as well as an enforcement agency”*. One of the RoSPA witnesses replied: *“the Inspectorate feel like the Police – they do not want to be restricted to enforcement. They want to be able to consult and to advise [...] they want to be thought of in a positive role instead of in a purely negative one”* before agreeing that a consultancy role would be appropriate.¹⁰⁷ At a lower level, newly introduced charges for HSE guidance notes met with complaint in 1979, with one concerned individual noting that a deposit of ten pounds before orders would be accepted *“in effect stops any shop steward getting them.”*¹⁰⁸ Whilst

¹⁰⁶ T.A. Swinden, paper presented to Joint Industrial Conference on the prevention of accidents, 13 November 1962, p. 10. TUC Library, HD 7273.

¹⁰⁷ Verbal evidence of W.G. Alexander on behalf of RoSPA to Robens Committee, 14 June 1971, transcript pp. 4-5. TNA, LAB 96/75.

¹⁰⁸ E.C. Parker, letter to *Work Hazards* 21 (c.1979), p. 17. Samuel Barr Collection, GCU DC 140212.

certainly not as deep a challenge as more recent moves, the linking of income to inspectorate activities has been an ongoing process.

However, in recent years, HSE has been pushed towards an increasingly commercialised position, with elements of its work either charged for, or reorganised along commercial lines. Newly 'marketised' regulatory strategies, such as 'Fee for Intervention', whereby HSE will undertake cost recovery when it intervenes in response to breaches of the law,¹⁰⁹ arguably shift the regulator into a new relationship with regulated firms. On the one hand, in certain areas, a 'payment for approval' relationship has been a relatively longstanding feature of specialist industries (nuclear, offshore) where site licensing has long been a prerequisite to operation. These measures reflect the high degree of specialisation, and the particular needs of the regulatory relationship in those sectors, and constitute a particularly onerous arrangement, as a former HSE Director-General explained:

"[it was] an absolutely necessary feature of a very strict safety regime [...] It's a very severe thing in several ways because it means that you can take away someone's livelihood [...] In general HSE have never been in favour of licensing arrangements, because, in effect, they transfer the responsibilities and much of the liability for an accident on to the regulator whereas the central principle of the Robens arrangements is that the responsibility for safety must lie on the operator" (John Rimington interview, para.89)

It is clear that, over time, government has sought to redraw the limits of these relationships, seeking to pass the costs of regulating from the public to the private sectors wherever possible, and expanding the rationality of commercialised service-provision to a wider range of workplaces. Indeed, Select Committee hearings of the early 1990s asked whether HSE could be privatised entirely and its operations passed on to private organisations and voluntary bodies (Employment Committee 1992: paras.41-59). The Director-General of HSE voiced significant reservations about this proposition: *"That raises very great difficulties. We do charge for certain activities. We charge wherever we issue a license [...] in principle, anyone can charge for anything, if he has a statute saying he could do it, but we could not charge fairly"* (John Rimington interview, paras.47-8).

¹⁰⁹ See <http://www.hse.gov.uk/fee-for-intervention/> and Temple (2014) for discussion.

Later in the decade, individuals working within HSE were being pushed again to look at charging regimes. According to one offshore inspector, within the HSE *“there was unease [...] because we felt that [...] if a company has to pay for coming along and having a meeting with us to talk about something where they’re going to be proactive in terms of health and safety that that might actually discourage these sort of meetings, you know, and [...] the full interchange of information.”*¹¹⁰ Similarly, senior figures within the regulatory infrastructure were also sceptical of such arrangements, such as Sir Frank Davies, HSC Chair 1993-99 and a very experienced businessman:

“I disapprove, very strongly, of charging. All the time I was [at HSC] I was under pressure from the Government and from the HSE to charge [...] my Commission resisted it and we did not let it in. Once I went charging started [...] it’s made things very unpopular. I think it’s a bit tough if you’re charged, because we’re going to prosecute and we’re going to charge you while we collect the evidence. I can tell you this, the big companies I’ve associated with, don’t like it.” (Frank Davies interview, para.66)

Davies’s concern was twofold; that the difficult and sometimes tense relationship between HSE’s facilitative and investigative functions (Hawkins 2002: 286-293) would be damaged, and that the motives of regulatory actors would become be seen as less legitimate, if they were tied to a commercial imperative to intervene.

By the 2010s, this move towards charging had re-emerged in the guise of ‘Fee for Intervention’ (FFI), a policy which proposes that all firms that are subject to regulatory inspection should be charged for the costs of processing and addressing any ‘material breaches’ of the law that were found as a result of HSE intervention or investigation (see Case Study 15). This was prompted by a pressure from government during the post-2008 ‘austerity’ era for HSE to become more self-financing and to recover a greater proportion of its operating costs from its business activities rather than Treasury underwriting. The issue of fairness was invoked in relation to ensuring that regulatory burdens are placed upon those who ‘deserve’ to bear them, something that the current HSE Deputy Chief Executive was keen to reiterate:

¹¹⁰ Martin Thompson, University of Aberdeen ‘Lives in the Oil Industry’ project, tape 4 side a. British Library, C963/13.

“FFI is the health and safety equivalent of the polluter pays. We have got limited resources at our disposal and so therefore it is right, in my view that we ought to focus those limited resources on the people that are most in need of those resources [...] There are risks in terms of managing that Chinese wall - you can’t be a consultant one day and a regulator the next day” (Kevin Myers interview, para.61)

However, many (such as business organisations)¹¹¹ were critical of the new arrangements, characterising this as a form of ‘safety tax’ on businesses, which would fatally undermine the impartiality and neutrality of HSE inspectors, who would now become revenue-collectors. The Temple Review, a triennial government review of HSE’s operations, concluded that this perception ran a serious risk of undermining trust in the regulator (Temple 2014).

These concerns about commercialisation were mirrored elsewhere in relation to perceptions of the legitimacy of regulators themselves,

Case Study 15: Charging for use

HSE has been pushed in recent years to recover the costs of providing advice, guidance, and enforcement through mechanisms such as ‘fee for intervention’, introduced in 2012.¹ This has proved controversial, with many (including the Temple Review, 2014) voicing concern about whether it will erode the perceived legitimacy of HSE inspectors, making them seem more like revenue-raisers than impartial regulators. Such concerns are not new; as long ago as 1967, the National union of Agricultural Workers was voicing concern over the “*bad psychology*” of Ministry of Agriculture inspectors holding conflicting advisory, enforcement, and production-oriented responsibilities.² Fee for intervention built on the charging of fees for licensing arrangements within high-hazard industries, which started in the nuclear industry and then, in the late 1990s, was extended to other industries that used safety-case regimes (railways, offshore, major hazards). But there are a couple of differences between these eras; in the 1990s, according to those in HSE who implemented these changes, a government commitment to making big business bear the costs of operating was opposed by industry voices, but they were won round over time (Neal Stone interview, para.37). The focus was on major risks that ‘deserved’ regulation, and took place during a political era where ‘redistributive’ measures were widely seen as socially acceptable. In 2012, however, FFI was introduced in relation to all duty-holders, even those in ‘low-risk’ sectors who might be seen as less ‘deserving’ of intervention, and at a time when the idea of passing on the costs of public activity was driven more by austerity than idealism. This changing context has significant ramifications for the perceived legitimacy of the measures.

(1) <http://www.hse.gov.uk/fee-for-intervention/>

(2) National Union of Agricultural and Allied Workers, Legal Department, Memorandum to Executive Committee following meeting with Minister of Agriculture, 21 March 1967, p. 2. MERL, SR 5NUAW/B/XXI/4.

with some observers suggesting that the ongoing commercialisation agenda would undermine the credentials and effectiveness of the regulator:

¹¹¹ For example, the Institute of Directors: <http://www.iod.com/influencing/policy-papers/regulation-and-employment/hse-proposal-for-extending-cost-recovery>, and the CBI (in 2004): <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmworpen/456/456we42.htm> (at para.20).

“HSE is being turned into a delivery agency with a significant element of self-funding [...] what is lost in that potentially is the ability of the civil servants who run it to think about improvement and think about how things can be done differently and better. And I think there’s a great danger at the moment that HSE will not be able to [...] exercise the level of creativity required to take health and safety forward” (Roger Bibbings interview, para.35)

Commercialisation has been broached in terms of ‘monetising’ the expertise of HSL, the specialist HSE laboratories, as well as realising the value of assets and other forms of revenue-raising activity (publications, products, etc.). HSE has done this for many years,¹¹² but has been pushed to redouble its efforts in this regard in the last five years, something that regulatory insiders have expressed concern about:

“I’m not in favour of the commercialisation agenda of HSE [...] which has been forced on them by Ministers. There are things they can sell, but they should be careful because once you go past a certain point they will both get conflicts of interest and opportunity costs.” (Senior HSE source interview, para.168)

For the most part, stakeholders indicated that they saw commercialisation as a legitimate means of extending the reach of the regulatory system, and thus as a good thing. But this balance is difficult, because doing so does change the terms and conditions on which health and safety engagement occurs. Public attitudes suggest that the perceived moral stance of those working in health and safety is one of the key strengths that those bodies have; this is lost when there is a sense of undue commercialisation. The other aspect of commercialisation is the notion that it renders health and safety a service to be paid for, rather than a process to invest in – that companies outsource it, and pay lip service as a result. As we have already seen, these risks have been identified and have been realised at different points in time as well. There is thus a need for the relationship between ‘health and safety’ and commercialisation to be carefully reviewed, and for ways to be found of pitching the role of the external ‘service provider’ or expert in a way that avoids the toxic associations that can arise.

The Limits of Consensus?

¹¹² As the D-G of HSE pointed out in 1992, “we charge for about a hundred things we do [...] we sell a lot of publications [...] certificates [...] licenses”; *Employment Committee, The Work of the Health and Safety Commission and Executive* (1991/92 HC 263), Minutes of evidence 12 February 1992, para.49.

As the historical narrative section of this report makes clear, the idea that a ‘consensus of interest’ between political parties and stakeholders existed during the middle part of the 20th century, is one of the foundational tenets of the field of health and safety. Most of the literature casts the formative period and the major reforms between 1960 and 1980 in this light (Baldwin 1987; 1995; Dawson *et al.* 1988; Hutter 1997; Sirrs 2016), and indeed, the idea of an ‘identity of interest’ between affected parties was core to the Robens philosophy (Robens 1972: para.21). What that historical narrative has also made clear is a sense that this consensus and agreement was more patchy, partial, and problematic than might be thought, with disagreement, variation, and tension existing just beneath the surface (also McIvor 2013). Sometimes this disagreement was more explicit, as in this summary of the Robens Report by Neil Kinnock MP during Parliamentary debate in 1973: *“the report has a grievous deficiency which makes it an inadequate basis for the kind of action required. Audacity, the quality that is most sorely needed in bringing about a meaningful change in this sphere of affairs, is completely and totally absent from the report [...] The report is afraid to give any support to the concept of giving workers any meaningful power in matters of health and safety [...] these major defects are the direct consequence of a fundamental confusion about the reason for the shortcomings in the present system”*.¹¹³ The sense of health and safety as an area of disagreement is also borne out via historical (Carson 1979; McIvor 2013) and critical literature (Beck and Woolfson 2000; Dalton 1998; Tombs and Whyte 2010; 2013; Tucker 1995) that demonstrates the roots of these conflicts in the enduring tension between capital and labour interests. As such, we have to exercise great caution before accepting that there was ever a true era of ‘consensus’ around health and safety (or indeed post-war politics more generally: Kerr 2005). That said, there is evidence of some form of substantive change, in both the nature of debate, and in where the frontiers of conflict are drawn, over time, and it is generally thought that this shift has been towards a fracturing of consensus. But how far is this true?

¹¹³ ‘Workers’ Safety and Health’, HC Deb 21 May 1973, Hansard vol.857 cc62-117, 65.

To begin with, it is worth reflecting on the degree of consensus that surrounded the major changes that were introduced in 1972-4; there were points of conflict and disagreement, to be sure, and many who felt that either Robens or the 1974 Act (or both) gave an undue advantage to the interests of those on the other side of the political spectrum. For many trade unionists, the lack of a developed role for safety representatives, and the emphasis on ‘too much law’ and ‘worker apathy’ were unpalatable; for many conservatives, the extension of state oversight via such a wide-ranging Act ran contrary to their small-state instincts. The Labour government of 1974 sought, when introducing the Act, to position it as a socialist project, partly as a response to the fact that development of the legislation had occurred under a Conservative administration: *“The first author of the Bill, indeed the author of many*

good things, is my right hon. Friend the Secretary of State for Social Services [Barbara Castle]. It was her decision to invite Lord Robens to preside over the Committee on Safety and Health at Work [...] It would have been the one disadvantage of that happy outcome [Labour winning the 1974 Election] if in the process the Bill had been lost [...] We believe that it is a good idea that this Bill should have been

Case Study 16: Agriculture – in or out?

The agricultural sector provides an interesting exception to the general story told about the consensus surrounding the passing of the 1974 Act. The Agriculture Inspectorate was founded in 1956 and had long wrestled with the particular challenges that this sector threw up, including isolated workplaces, the employment of casual workers (often children or migrants), and the use of hazardous heavy machinery which intersected with the activities of the public (particularly children on farmland).¹ The passing of the 1974 Act began under a Conservative government, who responded to the concerns of bodies such as the Country Landowners’ Association about the impact of including agriculture within the scope of the 1974 Act; the Ministry of Agriculture thus retained responsibility for agricultural safety *per se*, while HSE would enforce ‘general safety’, which might apply here as elsewhere. The concerns of the National Union of Agricultural and Allied Workers, and others,² meant that the minority Labour government who brought the Act into law following the 1974 election included agricultural workers within the Act, but withdrew them again at a late stage (in order to preserve cross-party consensus). As a result, *“agriculture was always different, it had its own ministry and problems”* (Jenny Bacon interview, para.14). Archival sources reveal both the significant conflict that occurred around this issue, around the difficulty instituting adequate tripartite relations in the agricultural sector, and also the long post-1974 process of negotiating over the implications of the new legislation and its general duties (which would apply to self-employed workers and those on farms in any case). The Robens-era ‘consensus’ around tripartism, unification, and the general duties was always shaky and limited; reform involved ongoing negotiation and dispute.

*brought forward.*¹¹⁴ The general tenor of the debates around the Bill were positive, with opposition MPs speaking in its favour.¹¹⁵ There was a broad acceptance of the

¹¹⁴ Michael Foot, ‘Health and Safety at Work Etc. Bill’, HC Deb 3 April 1974, Hansard vol. 871 cc1286-1394, 1287.

¹¹⁵ William Whitelaw, Conservative, *ibid.*, 1302; Cyril Smith, Liberal, *ibid.*, 1322.

need for reform, and of the direction being taken. But this was not the whole story. There were some issues where attitudes did diverge; one of which was the exclusion of agricultural workers from the scope of the Bill (see Case Study 16).

Overall the process of passing the new Act was relatively unproblematic because of the extensive Robens review process and the sheer volume of stakeholder input that went into the law's creation, as Jenny Bacon, who worked as a civil servant on the Bill during its passage (and who later became Director-General of HSE) recalled:

"I've had dealing with several bits of legislation during my civil service career and this was, by far, the easiest [...] because a lot of the groundwork had been done by Robens and then by a good follow-up consultation process. Actually getting it through the House of Lords and the House of Commons and into the Act was far easier than one might have expected for a potentially controversial area" (Jenny Bacon interview, para.14)

Where the HSWA 1974 did prompt friction, the 'first-class Whitehall row' mentioned by Michael Foot during this debate, it was around the problems of reshaping existing government infrastructure. The politics of implementation was more complex, as Jim Hammer, HSE's first Chief Inspector of Factories, recalled:

"the [1974] Bill was the most bipartisan operation in Westminster and the most divisive one in Whitehall [...] Whitehall was up in arms. How can you steal from the Home Office the explosives inspectorate? How can you take the mines inspectorate from the Department of Power, the nuclear inspectorate from Power, the agricultural inspectorate from Ag and Fish [...] they were very reluctant, it was very much resisted." (Jim Hammer interview, para.45)

Part of the political success of the 1974 Act, and the HSE, was the creation of the Commission, which served as a forum within which decisions about health and safety policy could be made at one step removed from the cut and thrust of partisan politics and the frontline of wider industrial relations. Unlike in other areas of policy, decisions were insulated from the emergence of new interest groups and from bodies, less politically moderate than the CBI and TUC, who were not part of the tripartite system; these actors and the issues they flagged, which engaged with the 'high politics' of social justice or industrial relations, were not functionally compatible with HSC/E's operational dynamics and focus on the 'low politics' of day-to-day decision-making (Klein 1990; Moran 2003: 138).

As the overview of HSC confirms, it functioned as a successful ‘steering mechanism’ for many years, diverting potential political disagreement into a forum of manageable social interaction (Almond 2007; Habermas 1976; 1988). This ‘consensus by committee’ was to endure well into the 21st century, as a senior HSE figure recalled, explaining how certain voices were ‘inside the regulatory tent’ and others were not:

“industry weren’t worried by HSE at all. They were perfectly happy [...] the fracture was between the more mainstream unions who, on the whole, still believed in tripartism [...] and didn’t ‘cause trouble’, and people like UCATT and [the Centre for Corporate Accountability] who were peddling a particular view of the world and sought to regard HSE as the great enemy, these people got no political support [...] It was people who held that view speaking to people who held that view” (Senior HSE Source interview, para.114).

In general terms, the greatest feature of HSE and the health and safety system has been its enduring character and stability over time; even changes in the broader political culture have not always impacted on regulators or on the wider politics of the issue as directly or profoundly as might have been expected (Bill Callaghan interview, para.16). To a lesser or greater degree, there has been a broad acceptance of the regulation of health and safety as a general idea, and a tolerance of the mechanisms by which this is done. As the current Deputy Chief Executive of HSE points out, were it not so, things would have changed a long time ago:

“I actually think there is an underlying recognition of the legitimacy of health and safety regulation [...] if there wasn’t would we have survived [...] the Thatcher administration?” (Kevin Myers interview, para.59)

Most influential in this regard is the support given to health and safety regulation by employers and business actors, who have to some degree protected HSE via their engagement with the regulatory system, something recognised within HSE:

“the thing which affected Chris Grayling [...] the reason why HSE is still there today is purely because, in my opinion, in political terms, ministers have never managed to get British industry to say they don’t want it. It’s as simple as that. Industry, CBI, IoD, whoever, do not say to Ministers get rid of HSE. If they did, HSE would be dead in the water.” (Senior HSE Source interview, para.147)

Many respondents spoke about the perceived role of a *broad* acceptance of health and safety on the part of major employers and large companies in shoring up

political and social support for HSE and the UK legislative system. This support can be understood in two ways. On the one hand, from an economic perspective, regulation has always involved the maintenance of the conditions governing access to markets (Braithwaite 2008; Carson 1979). It ensures a level playing-field for agents within a marketplace, and acts to exclude others who may wish to enter that market but who cannot yet achieve the standards required (Braithwaite 2008: 17). This would certainly account for many of the trends encountered around the limits in practice of EU regulation (as actors from new entrant economies struggle to meet extant standards). On the other hand, business support can be understood in terms of the desire to ensure that businesses run as smoothly as possible, avoiding costly incidents and legal conflicts (Senior Government Source interview, para.54).

That said, from the 1980s onwards, there is ample evidence of a breakdown of political consensus around the issue of health and safety, at least at the level of party politics, ideology, and media coverage. Many interviewees testified to the contested nature of policy in these areas, and the changing political fortunes of 'health and safety' at different times. Particular individuals and governments have been more or less open to health and safety at different times:

"When I was appointed [to HSC], at my interview I was questioned, what was the point of it and why was it necessary. There was no doubt there was some scepticism about it." (Frank Davies interview, para.146)

As well as the ideological and policy preferences of Ministers and governments there is a perception that a broader political shift has occurred towards the language and terminology of a neoliberal settlement (Almond 2015; Beck and Woolfson 2000; Gray 2009; Tombs and Whyte 2010), something that goes beyond immediate policy issues, and beyond health and safety itself, to encompass a new way of seeing the world. The most obvious influence of this shift has been towards a restriction of budgets and the 'desirable' role of the state in regulating business, and an antipathy towards 'burdens on business', as one HSE insider of the time recalled:

"We were very used to promises of 'bonfires of regulations'. We used to be subject to investigative inquiry about every three years. Because the HSE was a nice compact unit of about 4000 people, it could be reviewed fairly quickly. Also it was generally not particularly well known, not very popular and could

easily get turned over [...] these regular inquiries were also aimed at reducing the number of senior people” (Jim Hammer interview, para.57).

Over time, similar concerns would become entrenched across the political spectrum; New Labour governments would also become fixated on the reduction of regulatory ‘burdens’ and on a view of the public/private divide that envisaged a much less prominent role for state bureaucracies like HSE in overseeing the economic and business sectors (Beck and Woolfson 2000; Dodds 2006; Tombs and Whyte 2010). Most recently, it is asserted that the post-2010 Conservative-led governments of David Cameron have shown a much more pronounced resistance to the notion of health and safety regulation. Discussion around the rolling back of ‘red tape’ and state-led regulatory burdens has intensified, and there have been concerted efforts made to more narrowly target interventions and cut the financial cost of regulating in the area of health and safety (Almond 2015; James *et al.* 2013). In many ways, a consistent and enduring commitment to ‘risk-based’ regulatory approaches (Black 2005), and principles of accountability and review (the New Public Management: Hood 1991) can be discerned, which amounts to a continuation of previous Governments’ approaches (as found, for example, in the Hampton Review of 2005). What has arguably been more noticeable during this period has been the degree to which the ideological climate has hardened, particularly as reflected in government rhetoric, towards a broader rejection of a welfare-oriented outlook. This has peaked at certain points (2010-12) and is arguably more pronounced than in the past, as Lord McKenzie, Labour’s Health and Safety Minister from 2007-2010, argued:

“the rhetoric of this government has shown an antipathy to health and safety; the rhetoric at the highest levels. I’m sure the previous government would never have done that, simply it’s not in their DNA to do it. Now I sense that probably some messages have got through to the highest levels, we haven’t heard so much of it as we used to” (Lord McKenzie interview, para.51).

So while established governmental tools of review and efficiency drive were deployed again during this period, the thought processes that were guiding them were more explicitly *political* in nature, in that they sought to produce outcomes that mapped onto a specific worldview based around support for individualised (rather than mandated) decision-making, rationalized (rather than universal) intervention, and business-oriented (rather than welfarist) regulation (Almond 2015: 221).

Underpinning this approach, which has arguably moved some way away from some of the principles (state-mandates, universality, welfarism) of the ‘Robens approach’ and the ‘consensus-era’ approach to health and safety, leading to a much more populist, aggressive rejection of *the idea* of health and safety regulation, not just of the means by which it had traditionally been pursued. For some commentators, such as Lawrence Waterman, Director of Health and Safety for the Battersea Power Station development and former Head of Health and Safety for the 2012 Olympic Delivery Authority, this reflects a return to a deep-seated antipathy towards solidaristic, welfare-oriented issues on the right of British politics:

“[health and safety] never really got on the Conservative Party agenda, and ever since they’ve been [...] ‘God, we really didn’t mean to join Europe and we’d like to leave’. ‘We didn’t really mean to support the Health and Safety at Work Act and we’d like to move backwards.’ So why not express it in those terms? Because that would make them sound as though they’re callously indifferent to injuries to workers, which they probably, in the main, are” (Lawrence Waterman interview, para.10).

Health and safety has thus potentially moved from the realm of ‘low politics’ of implementation and enactment, within a broadly consensual, closed field of known interests and considerations, to become a more prominently discussed feature of the ‘high politics’ of the day, and imbued with some of the wider ideological meanings that this might imply. The media interest in ‘regulatory myth’ stories, and the desire of a wider public constituency for this kind of coverage and discussion, have ‘politicised’ much of the debate around health and safety in a manner which has called the legitimacy of the issue into question. This has reflected to some extent a newly-prominent, determinedly right-wing and ‘anti-political correctness’ thread within popular culture which has gained ground in the last decade; some central threads of this position (anti-European, anti-health and safety, ‘common sense’, the *Daily Mail*) combine in former Top Gear presenter Jeremy Clarkson’s reference to HSE as *“having done more damage to British industry than the Luftwaffe”* (also Sayeed Kahn interview, para.123).¹¹⁶ Ragnar Löfstedt, reflecting on the reception and impact of his Review, argued that politicians’ self-interested willingness to pander to this constituency has proved to be relatively resistant to evidence-based input:

¹¹⁶ <http://www.dailymail.co.uk/news/article-505788/Jeremy-Clarkson-Prime-Minister.html>

“there is still belief amongst certain politicians, and more on the right than the left, as we’ve seen post-Löfstedt review, they still say that health and safety is a problem [...in 2012] I was asked on the spot what I thought of the Prime Minister’s discussion on health and safety that’s published in the Evening Standard, and I said it was very unfortunate because it wasn’t true [...] why are some politicians trying to win political brownie points with health and safety?” (Ragnar Löfstedt interview, para.49)

That said, the evidence gathered about public attitudes does remind us of the need to separate these political currents from the general attitudes of the public; there remains a deep-rooted acceptance of the idea of health and safety, and recognition of the right to safety, although these preferences are embedded beneath a layer of negative public opinions, which obscure them. This is also, to some degree, true of the political sphere – health and safety is not really ever rejected *outright*, except by the most extreme sceptics. Health and safety retains a grounding of popular and political acceptance and support. The project is not as badly perceived as might be thought. There remain areas where conflicts arise, and these do tend to cluster around pinch points where the needs of the job, and the tension between safety and profit, collide. While this has long been the case, this also opens doors for improvement where the business case for safety can be demonstrated.

Notions of autonomy and choice, masculinity and femininity

One enduring feature of health and safety as a social issue is the status of voluntary risk assumption: the extent to which individuals fully understand the hazards to which they are exposed and take them on either willingly or in exchange for some additional benefit. This remains a powerful idea affecting perceptions of issues around risk. As in other areas, it has an extremely complicated interaction with wider cultural and societal values, in this case notably including expectations of ‘appropriate’ behaviours for men and women. There is considerable evidence to suggest that for most, if not all, of the post-1960 period, many workers in the largely male-dominated traditional heavy industries perceived some aspects of health and safety as unmanly and therefore as illegitimate. Prevention, protection, and precaution were thus often negatively associated and so limited in their reach and capacity. Female workers were also subject to pressures to act in particular ways, including legal restrictions on what tasks they could undertake at work, as well as

informal cultural expectations of roles and actions. Whilst the ability of individuals to determine their health and safety has been constrained in particular ways, the idea that people can and should be responsible for the risks they apparently voluntarily assume, and a notion of victim-blaming, can still attach to public perceptions of health and safety; (other) people should take responsibility for their own safety.

Framing many of these debates were long-standing ideas about ‘free labour’ being

able to negotiate (as equals) with employers about their contracts and terms of employment (Almond 2013: 94-7; Bronstein 2008; Kostal 1994; Tucker 1995). Accordingly, workers knew about risks ‘inherent’ in the job and should take action to negotiate a higher wage (see below) or refuse to take the job. Elements of this outlook remained far into the 20th century, deeply ingrained in long-established heavy industries. Recalling the 1930s one Portsmouth dockyard worker stated “*It was a hard environment, a dirty one [...] But that was all accepted as part of the job, you know.*”¹¹⁷ In 1968 one

Case Study 17: “Every man his own safety officer”

Trying to promote widespread ‘buy in’ to health and safety messages and engage shopfloor workers has long been seen as a challenge – often one that employers have claimed can be met through voluntary adoption of ‘safety consciousness’ (however problematic a concept). One means employed since 1913 has been safety education (Esbester *forthcoming*): trying to persuade people to change their behaviour, often using media such as posters or films. Education was based on the understanding that improving safety and health was a cooperative endeavour, in which, in the words of RoSPA’s 1966 National Industrial Safety Campaign, ‘we all shoulder a responsibility for safety.’ So it was that in 1970 one senior British Rail Safety and Welfare Officer stated that the intention was “*to make every man his own safety officer*”.¹ Yet using education to spread messages about safe and unsafe work practices and to change behaviour has been, and remains, fraught with difficulties. The voluntary approach has been criticised as placing the lion’s share of responsibility for health and safety on individual workers, who were often not in a position to make fully-informed decisions or had insufficient power to change all the factors involved in producing unsafe and unhealthy work environments. Too often material has been produced by people, well-intentioned but lacking in expertise in the challenges posed by behaviour change. RoSPA recognised this in the 1960s, bringing in experienced advisors from the worlds of public relations, advertising and design to help produce safety education.² How successful this was is impossible to judge – measuring the effectiveness of safety education is notoriously difficult – but it attempted to speak to the shopfloor worker, and to create individual experts who fitted within a system of self-regulation.

(1) Correspondence written by D.A. Verdon-Smith, 9 June 1970. TNA, AN 174/1522.

(2) RoSPA, ‘RoSPA’s experience with posters as an aid to accident prevention’ (1968), p.2. MRC, MSS.292B/146/17/2.

Glaswegian shipbuilder observed that it “*is within the province of nightshift to protest against unsafe conditions and request alternative work*”,¹¹⁸ therefore any who

¹¹⁷ Thomas Lee, Portsmouth Dockyard worker c.1933-81, including as Safety Officer c.1963-76. Recording 1, c. 22:00. Portsmouth History Centre, PD3/AD/185.

¹¹⁸ Letter from Assistant Shipyard Manager to Shipyard Convenor of Shop Stewards (18 April 1968), p. 2. Samuel Barr Collection, GCU DC 140115.

remained were assenting to the dangers of the role. Something that developed (in the 19th century) alongside this view of the willing assumption of risk was the idea of the 'careless' worker, another concept which found long expression in the 20th century. Education was increasingly seen as the solution from approximately 1913, intended to 'stop carelessness'.¹¹⁹ Health and safety were therefore often cast as personal problems, to be resolved by individual action (see Case Study 17).

However, this focus on personal choices obscured other, more structural factors that often lay outside the control of the individual. Some of these were formal: perhaps most significantly, the distribution of power in the workplace. The idea of employer and employee as workplace equals was belied by the reluctance (certainly in older industries, such as the railways) to involve unions or workers in management decisions over health and safety. The defence of managerial prerogative was seen perhaps most visibly in the debates over the introduction of safety representatives in the 1970s.¹²⁰ This was manifest in the oil industry, which was extremely weakly unionised before Piper Alpha in 1988; in the early 1990s one platform's management were characterised as "*old hands' who feared that [Safety Reps] would open the door to unionisation.*"¹²¹ This fear of loss of control was played out on the ground in various ways. One former HSE inspector noted of the 1970s and early 1980s that employers were unwilling to allow inspectors to talk to workers unaccompanied:

"I think it's a question of power relationships. The inspector is in a position of power, as is the employer [...] the employer's relationship with the inspector increases the power of the employer vis-a-vis his or her workers. The inspector talking to and getting information from the workers has the potential to undermine the employer's power so [...] that might explain it." (David Morris interview para.87)

So, in some industries (particularly those involving unskilled labour) the ways in which management responded to health and safety issues could have an impact on how able workers were to prioritise health and safety, limiting choices and ideas of voluntary assumption of risks.

¹¹⁹ K.R. Allen, 'Training for Safety', talk given to Central Metropolitan Group of the London Industrial Committee (9 November 1963), p. 2. MRC, MSS.292B/146/2/3.

¹²⁰ See, for example, employer responses to the HSC's consultation on the issue, at MRC, MSS.200/C/3/EMP/4/40.

¹²¹ Report to HSE, 'The effectiveness of offshore safety representatives and safety committees' (1993), pp. 70-71. TUC Library, HD 7269.

The notion of the voluntary assumption of risk is further complicated by the distribution of knowledge of dangers across workplaces. A consistent feature of worker testimony about the earlier part of the project's period is the lack of awareness of health risks, notably surrounding asbestos. Interviewees recalled working without any form of protective clothing and even playing with asbestos in the 1950s and 1960s: *"it was bags of asbestos and if it burst open the dockers enjoyed playing with it – sticking it up as a beard, side whiskers [...] no one knew it was dangerous."*¹²² Another docker went further about the dangers, which were *"[u]nknown tae us at that particular time but the employers have known since 1947 how dangerous it was. But omitted to let us know. Still not a word from the employers"*.¹²³ In his mind, then, the risks were *not* assumed voluntarily. Power relations might also be gendered, with a particular impact upon occupational experiences of health and safety. In the mid-1980s it was observed that *"old problems have emerged as new health and safety issues for women. Sexual harassment is one example [...] Not only is it humiliating, unpleasant and distressing to most of us, it can make us anxious, stressed and affects our work."*¹²⁴ In this articulation, then, there were dangers to safety and health experienced by women in the workplace which were not voluntarily assumed and could not be reasonably foreseen.

There were also cases in which workers were ordered or expected to continue practices potentially detrimental to their health and safety. At a 1966 meeting of British Rail's accident prevention officers *"attention was focussed on malpractices which were tacitly permitted at local level. Regional Accident Prevention Officers must continue to press Management about the need for safe practices at all times"*.¹²⁵ One Glaswegian recalled an incident in the late 1970s in which a former worker tried to warn about the dangers of asbestos: *"he wanted tae come in and talk tae the dockers but the foremen wouldn't let him come in just tae tell us about the*

¹²² Anonymous interviewee, interviewed by David Walker in 2009, about his work at Glasgow docks. Glasgow Dock Workers Project, SOHCA and CSG CIC Glasgow Museums and Libraries Collections..

¹²³ Thomas O'Connor, interviewed by David Walker in 2009. Glasgow Dock Workers Project, SOHCA and CSG CIC Glasgow Museums and Libraries Collections.

¹²⁴ 'Danger: Women at Work', *GLC Women's Committee Bulletin* (23 March 1985), p. 48. TUC Library, HD 7268.

¹²⁵ British Rail, Minutes of meeting of Regional Accident Prevention Officers, 28 September 1966, minute 11. TNA, AN 208/218.

stuff “Naw, naw, communist,” you know, things like that [...] daft.”¹²⁶ This is not an historical problem, either (Gray 2009). Paul Clyndes of the RMT was concerned about pressures that might be applied to rail workers in 2015, noting that if they refused to do something they judged dangerous the manager would “*get someone more vulnerable to do the task. He’s going to find some way of putting pressure on that individual*” (Paul Clyndes interview, para.65). At the same time, some employers evidently felt compelled to act in ways that endangered worker (and sometimes public) lives. One key factor was economic, including the pressures of production and the profit motive. David Morris observed that health and safety “*was ignored where it was convenient to ignore it and far too often it was convenient to ignore it, particularly safety, health has always been another issue*” (David Morris interview, para.44.) This was particularly acute in industries that were operating on the margins of profitability. One inspector in the 1990s saw this in the offshore industry, a volatile international market:

*“the main operating costs are people, so the tendency is to slim the crews down to [...] as low as actually needed, and of course there’s a fine dividing line that they must not cross because once you start removing people then [...] something has got to give [...] the regulator needs to keep on top of things to make sure they don’t actually go beyond the bounds of this line of going from a safe, very efficient operation to a ultra-efficient operation.”*¹²⁷

David Morris also saw this in the construction industry in the 1970s, with cost of work as the determinant of health and safety measures and a pressure to be competitive by ‘cutting corners’ (David Morris interview, para.42).

Of course, economic factors did not just affect the actions of employers, but also had an impact upon employees. Workers exhibited a variety of sometimes contradictory responses to health and safety issues, demonstrating elements of choice in their actions, as well as the impact of external constraints beyond the individual employer. The ways in which financial imperatives might encourage risky behaviours were clearly important. Piecework was one aspect of this, as was noted in 1972: “*There is little doubt that the method of payment tends to affect workers’ attitudes to safety,*

¹²⁶ James McGrath, interviewed by David Walker in 2009. Glasgow Dock Workers Project, SOHCA and CSG CIC Glasgow Museums and Libraries Collections.

¹²⁷ Martin Thompson, interviewed as part of the University of Aberdeen’s ‘Lives in the Oil Industry’ project. British Library, C963/13, tape 4, side a.

*particularly if the work itself is such that it can be expedited by failure to observe safety precautions or by using improvised equipment.*¹²⁸ There might also be financial implications that discouraged employees from reporting incidents, observed in relation to the recent past of the nuclear industry:

“What is the onus on the individual to actually report a [medical] condition that might invalidate the particular work that they actually need to do? This is probably a new area that we’re facing” (Chris Marchese interview, para.49)

In a number of settings, and across the project’s period, there is therefore evidence that economic factors have reduced the choices workers felt they had open to them.

The place of health and safety within bargaining has been a controversial one. A 1974 Trade Union Research Unit publication aimed *“to demonstrate how concern over safety and industrial accidents can be brought constructively and effectively into collective bargaining.”*¹²⁹ This is certainly one area in which worker agency was demonstrated. According to one former ICI worker and TGWU shop steward in the 1970 and 1980s, *“if you can bring safety into an issue, no matter what it is, a wages issue or a conditions issue of God knows what, if safety is there and you are on firm ground it is a major part of your artillery.”*¹³⁰ The management at the Upper Clyde Shipbuilders Yard appeared resentful of this: *“I feel that some undercurrent exists whereby they are prepared to make the most of all or any problems which may and will crop up despite our best endeavours.”*¹³¹ In the railway industry it took the major crash at Clapham Junction in 1988 to change the prevailing culture:

“We said to the trade unions, ‘we want to take safety out of the negotiating machinery and have safety reps who do nothing other than safety.’ And the trade unions actually said, ‘well, we’ve been telling you about the importance of staff safety for donkey’s years.’ So we had to eat a bit of humble pie but they agreed to take it out and have dedicated safety reps and that was a fundamental shift in about 1990.” (David Maidment interview, para.33.)

¹²⁸ Written evidence of the Dock and Harbour Authorities’ Association to the Robens Committee, n.d. (c.1971), pp. 4-5. TNA, LAB 96/57..

¹²⁹ Trade Union Research Unit, ‘Safety, accidents and collective bargaining’, 1974, p. 1. TUC Library, HD 7262-7262.5.

¹³⁰ Doug May, interviewed by David Walker, 2005, Chemical Workers Project, SOCHA/022/Doug May.

¹³¹ Letter from Assistant Shipyard Manager to Shipyard Convenor of Shop Stewards, 18 April 1968, p. 1. Samuel Barr Collection, GCU DC 140115.

Just like other areas where perceptions of self-interest have clouded attitudes towards what is often felt to be an area of altruism and the 'greater good', there is some suggestion that the use of this issue as a bargaining tool has had some impact in terms of the legitimacy of health and safety, although in employment relationships, where economic rationality and financial motives might already predominate, the extent of this may be a little less pronounced in practice than elsewhere.

Officially, bargaining by using health and safety did not mean 'danger money', but instead using health and safety issues as a tool to extract improvements to working conditions. However, as late as 1979 workers were reminded that *"union journals should emphasise prevention rather than compensation and that negotiators should seek safety not danger money."*¹³² There is no doubt that dangerous or dirty jobs could be a welcome source of money for employees, though how far this form of incentivisation should be considered as voluntary assumption of risk is questionable. David Morris recalled that he *"was certainly conscious when inspecting the docks in London, donkey's years ago, that the trade unions' principal interest often appeared to be getting danger money for their members rather than reducing or eliminating risk"*, something which reflected *"the nature of society at the time. If you did a high risk job you got more pay for it and that was your compensation for the risk of injury"* (David Morris interview, paras.28-30.). This was also played out in other ways: one Glaswegian docker recalled that even in the late 1970s workers who refused to unload asbestos cargoes were put to the *"back of the queue"* and would *"only be utilised in another job if required"*.¹³³ Faced with the prospect of no work at all, it is little wonder that some opted for dangerous roles. Employers were also known to plead that the costs of making changes would threaten the economic viability of a firm or plant: *"ICI being ICI said, 'well, if we've got tae dae all these things it's no going tae be viable so the plants will probably hae to shut doon.'* And you've got young guys in there with mortgages and families [...] the argument was blown out of the water."¹³⁴ Clearly these are factors that influenced worker behaviour but which lay well outside the sphere of things that they could influence.

¹³² 'CHASM', *Work Hazards* 21 (c.1979), p. 19. Samuel Barr Collection, GCU DC 140212.

¹³³ Alfred McMillan, interviewed by David Walker, 2009, Glasgow Dock Workers Project, SOHCA and CSG CIC Glasgow Museums and Libraries Collections.

¹³⁴ KG, interviewed by David Walker, 2005, Chemical Workers Project, SOCHA.

Wider social and cultural attitudes might also have an impact on the legitimacy of health and safety. In male-dominated heavy industries there was an acceptance of the normality of occupational casualty and ill-health, at least before the HSWA. So, in 1959 the Barrow Docks Safety First Committee were prepared to write off 16 injuries as *“of a normal pattern on a dock undertaking”*,¹³⁵ and in 1970 a shipyard council meeting on Clydeside was told that by a management representative that *“He personally felt that the hazards were being exaggerated and were no worse than those encountered in normal shipbuilding.”*¹³⁶ Given such attitudes, it is unsurprising that many workers appear to have paid limited attention to the possibilities of improving their working environment. According to one former HSE inspector:

“it was understood that, particularly manual labourers, would almost invariably be damaged by the work they did and their retirement, if they had one, would be fairly brief. That sounds horribly harsh but it was just the nature of society at the time.” (David Morris interview, para.26; also David Eves interview, para.15)

This testimony was reflected in archival comments such as that from 1968 which claimed that *“no one is obliged to work on nightshift and anyone who feels he cannot face up to the normal hazards of this form of occupation can request a change.”*¹³⁷ It is questionable how many men would have admitted that they could not cope with what was portrayed as a normal working environment – this might have been taken as a challenge to masculinity in what was still a macho workplace. The social and cultural expectations of maleness were significant in shaping men’s behaviour for much if not all of the project’s periods.

¹³⁵ Minutes of Barrow Docks Safety First Committee, 1 October 1959, p. 1. TNA, BK 9/48.

¹³⁶ Yard Council Meeting (Upper Clyde Shipbuilders Yard), 14 April 1970, p. 2. Samuel Barr Collection, GCU DC 140115.

¹³⁷ Letter from Assistant Shipyard Manager to Shipyard Convenor of Shop Stewards, 18 April 1968, p. 2. Samuel Barr Collection, GCU DC 140115.

Such notions of masculinity were reflected across the more traditional industries, including construction,¹³⁸ offshore,¹³⁹ and the railways.¹⁴⁰ In the steel industry in 1963 it was publicly reported that *“Steel men say safety hats make them look ridiculous. Safety helmets were not worn by some workmen because they felt that they looked like ‘guys’”* (Scarborough Evening News 1963). In the report for the same year the Chief Inspector of Factories it was argued that *“[w]here protective clothing is provided, he should wear it [...] His example is of vital importance to the young who are extremely sensitive to ridicule and to being thought ‘cissy’ by older workers”* (Ministry of Labour 1964: 50). Acceptance and buy-in to health and safety regulation was thus heavily patterned by wider social attitudes towards masculinity. At the same time, on rare occasions, masculinity could also help ‘sell’ precaution (see Case

Case Study 18 : Hi-visibility masculinity

Some of the ways in which occupational health and safety were shaped by wider cultures of masculinity were nicely demonstrated by the introduction of high visibility clothing for railway workers in the 1960s and 1970s. Men who maintained the tracks were particularly vulnerable, as they worked in amongst moving trains. Experiments to make track workers more obvious to train crews with hi-vis clothing were made from 1964, but it was noted that *“[s]ome men were reluctant to wear H.V. garments. This appeared to be related to a psychological feeling of being over-conspicuous and as though some element of deliberate disregard for safety demonstrated a brave approach to their work.”*¹ It should be stressed that these attitudes were not the ‘fault’ of the individual worker: they operated within a complex set of social norms that were difficult to challenge. Nevertheless, it did present a problem. Compulsory use of hi-vis clothing was considered, but rejected for fear that resistance would mean *“the garment will be instinctively associated with a dictatorial managerial attitude. Men will devise ways of wearing it when under observation and discard it immediately after.”*² Great care was taken by BR in trials of hi-vis clothing and in consultation with the workers and unions, with a gradual roll-out of hi-vis garments from the late 1960s. By 1971, when further use of hi-vis was proposed, it was noted that *“[h]igh visibility clothing was at one time very unpopular with the staff due to its anti-social appearance. However, this has now been largely overcome by building and other workers who are frequently issued with similar clothing and it is considered that the staff reaction will be favourable.”*³ When faced with societal norms of behaviour (masculine or feminine) which threaten individual health and safety, one key challenge is how to effect change both within a workforce and wider society.

(1) ‘High Visibility Clothing’ memorandum, 9 May 1967, p. 1. TNA, AN 171/683.

(2) *Ibid.*, p. 2.

(3) ‘High Visibility Clothing’ memorandum, c.May 1971, pp. 1-2. TNA, AN 171/683.

Study 18). Such examples were atypical, however; much more common was the way in which men were expected to be strong, silent and stoical. This was evident in one case when a more proactive approach was taken with regard to the health risks from vinyl chloride in the 1970s:

¹³⁸ John Armit interview, para.52.

¹³⁹ Martin Thompson, interviewed as part of the University of Aberdeen’s ‘Lives in the Oil Industry’ project. British Library, C963/13, tape 4, side b.

¹⁴⁰ David Maidment interview, paras.17-19.

“[the] workers knew they were at risk and the trade unions were actually being very supportive of them, but this group, the one thing they hated was having to discuss it with their wives, families, children and so on, because it was answering impossible questions. I remember one guy [...] got sent to Coventry by all his mates for about a month because he’d appeared on the local radio station talking about the risks.” (Tim Carter interview, para.40)

Cultural assumptions about appropriate roles also had an impact on the health and safety of women workers. Indeed, for much of the period, the typical worker was assumed by most parties to be a man:¹⁴¹ *“health and safety often concentrates on the risks men face, because of the way the labour market used to be. Work has changed, and women’s health and safety should be addressed just as much as men’s has been.”*¹⁴² For a considerable period there were legal restrictions in place, limiting women’s employment at particular times or in particular roles. These were increasingly contested from the 1960s onwards; at the end of the 1970s the Equal Opportunities Commission looked at women’s status in relation to health and safety. The CBI’s response was that *“all the present restrictions on the hours of women are archaic and irrelevant in present day conditions and are certainly an impediment in many situations on equal opportunities of employment for women.”*¹⁴³ This was in a context of trying to increase women’s participation in the labour force:

“there weren’t enough people to fill all the jobs, so they were trying to get women into employment. So there were views around about the kinds of job that it was safe and appropriate for women to do, from a health, safety and welfare point of view.” (Jenny Bacon interview, para.6)

Much of the debate continued to focus on health risks to women’s reproductive role:¹⁴⁴ *“It is interesting that we have neglected women’s general health in favour of their reproductive health [...] while we must care for women workers and their unborn children, we must also move beyond the popular myth that reproductive hazards are*

¹⁴¹ For example, when Threshold Limit Values were set for exposure to chemicals and other causes of ill-health, only one value was given, based on a man, ignoring the physiological differences between men and women. J. Denning, ‘The hazards of women’s work’, *New Scientist*, 17 January 1985, p. 13.

¹⁴² TUC, ‘Restoring the balance. Women’s health and safety at work’, n.d. (c.1999), inside pages. TUC Library, HD 7268.

¹⁴³ Equal Opportunities Commission, ‘Health and Safety Legislation: Should we distinguish between men and women?’ (March 1979), p. 80. MRC, MSS.222/AP/5/102.

¹⁴⁴ Council of Service Unions, ‘Health of women at work’, 2 March 1982, pp. 1-3. MRC, MSS.381/W/1/4/10. .

specific to women workers” (Denning 1985: 14-15). So, as well as masculinity, societal constructions of femininity had an impact on exposure to risks.

Despite this, workers retained some degree of autonomy, and were able to take action to reduce some risks, sometimes through formal routes (such as the post-1977 Safety Representatives and Committees, or through collective bargaining) and sometimes through more informal means. Underlying much of this was the belief that workers had the responsibility to safeguard themselves, as seen in the 1963 talk which claimed that the aim of training was that *“[e]very person must be made personally aware that accidents can happen to him and will unless her [sic] personally does something to stop them happening.”*¹⁴⁵ Section 7 of the HSWA 1974 also placed a duty upon employees to *“take reasonable care for the health and safety of himself and of other persons”*, thus further formalising and legalising this notion of self-reliance (*‘responsibilization’*: Gray 2009). In terms of formal methods, workers might make concerns known to management committees, but these channels of communication were dependent upon the largesse of employers. Alongside formal mechanisms, there existed a number of less formal techniques that workers might use to raise health and safety issues. Some workers such as Tom Smith in Portsmouth dockyard improvised solutions to dangers as best they could, showing a reluctance to accept risks: *“The only thing you used to do for your own convenience was put a piece of rag tied round the back of your neck and over your nose.”*¹⁴⁶ Some more outspoken workers might refuse dangerous work, as in the case of a chemical worker in the 1970s: *“If I thought something was unsafe I wouldnae do it and I had many rows with managers and supervisors o’er this, ‘you want tae do it, you do it’.”*¹⁴⁷ One dock worker who refused to work with asbestos in the early 1970s simply stated that *“I thought my health was more important than money.”*¹⁴⁸ Gradually asbestos was phased out of Royal Dockyards like Portsmouth as well as some commercial docks as a result of concerted worker action. However, this had an unintended consequence: hazards were pushed further down the chain,

¹⁴⁵ K.R. Allen, ‘Training for Safety’, talk given to Central Metropolitan Group of the London Industrial Committee (9 November 1963), p. 1. MRC, MSS.292B/146/2/3.

¹⁴⁶ Tom Smith, Portsmouth Dockyard worker c.1950, transcript p. 15. Portsmouth History Centre (PHC), PD3/LF/3.

¹⁴⁷ KG, interviewed by David Walker, 2005, Chemical Workers Project, SOCHA.

¹⁴⁸ Owen McIntyre, interviewed by David Walker, 2009, Glasgow Dock Workers Project, SOHCA and CSG CIC Glasgow Museums and Libraries Collections.

onto sub-contractors.¹⁴⁹ Nevertheless, this demonstrates some of the ways in which workers might assert control over their working environment.

Regulations under the 1992 Management of Health and Safety at Work Act have also conferred some powers to employees, enhancing their ability to refuse to under dangerous tasks through ‘work safe’ policies. According to Paul Clyndes of the RMT, these policies are widely used in the contemporary railway industry:

“workers will say ‘no, I am not going to do that, I am not going to undertake that task and they have a right not to be dealt with by the employer in a disciplinary way under those procedures.’” (Paul Clyndes interview, para.64.)

Although sometimes limited in practice, and also subject very much to countervailing economic and management pressures (Gray 2009), these mechanisms provide a route through which workers can attempt to push back against workplace dangers. However, worker autonomy (howsoever circumscribed) has brought with it a countervailing factor – the ability to choose also means it is possible to select unsafe work practices. In some heavy industries there appears to have been a dislike of being told what to do: one Portsmouth dockyard safety officer said *“we’re trying to sort of protect them, some people might think it’s their, you know, their liberty [...] keep a check on them, goodness knows what”*.¹⁵⁰ The Barrow Docks Accident Prevention Committee was, in 1978, reminded that use of safety helmets *“was primarily aimed at securing the safety of the individual and it was incorrect to view any such regulations as an infringement of personal liberty.”*¹⁵¹ Similarly, safety interventions encountered resistance when they rubbed up against competing worker preferences; for instance, wearing noise protection equipment prevented factory workers from conversing or listening to the radio (Frank Davies interview, paras.32-4). Whether or not workers objected on the grounds that they were being told what to do by management (via what workers dismissed as *“boss’s rules”* in Frank Davies’s experience: para.36) is unknown, but it is clear is that for a variety of reasons, workers sometimes acted in ways contrary to those advocated by management.

¹⁴⁹ Thomas O’Connor, interviewed by David Walker in 2009, Glasgow Dock Workers Project, SOHCA and CSG CIC Glasgow Museums and Libraries Collections; Tom Smith, transcript p. 16. PHC, PD3/LF/3.

¹⁵⁰ Brian Stubbs, Portsmouth Dockyard worker c.1955-c.1980s, including as Safety Officer. Comments at c.1 hour 2 minutes. PHC PD3/AD/123.

¹⁵¹ Minutes of Workington Safety Committee, 7 November 1978, minute 5. TNA, BK 9/14.

While it may be the case that historically macho attitudes have been associated largely with more masculinised, manual, industrial settings, and the idea of *'just getting the job done'* (see McIvor 2013 for example), this is not to say that similar issues have not existed in other sectors. In a 1985 article, healthcare workers were one prime example of employees who were sacrificing their wellbeing in order to deliver the best care to their patients (Denning 1985: 12-13). These trends have also not disappeared as this employment context has changed. For example, in healthcare and education, this voluntary assumption of risk has become increasingly prominent and recognised as an issue of concern: professionals on the frontline sacrifice their own health to service the needs of those whose best interests they are committed to serving. The job remains more important than the person, increasingly, however, this manifests itself in more 'feminised', caring settings:

"in the NHS, there is a culture of looking after the wellbeing of patients but not necessarily the wellbeing of ourselves [...] it's an odd imbalance, that you would have somebody who will put themselves out for a patient, do everything they can to get them better, but not look after themselves." (Ruth Warden interview, para.72)

As such, it is worth reflecting that the acceptance of health and safety as an issue is intimately linked to the social context and values of the time, around gender, individual choice, and self-identity. While this has always been the case, and while many of these values have changed, the debates that they reflect have not gone away; instead, they have taken on new forms around new sectors and issues.

9. Conclusions and recommendations

A number of research questions were posed at the start of this report; it is necessary now to look back and address them directly and succinctly. This section will thus begin by briefly summarising our overarching conclusions with regard to the stated research questions. It will then summarise the learning points that can be drawn from these insights. This learning has been translated into the form of recommendations that are intended to help inform thinking about where health and safety stands today and where it might stand in the next five to ten years. We have attempted to specify particular stakeholders where possible, so that they may consider 'championing' the relevant recommendation within their sector; of course these are not exclusive, and many recommendations are relevant to multiple stakeholders. It should be noted that these conclusions are based on analysis of the data and materials that we obtained, some of which will inevitably reflect the interests and subjectivities of participant individuals and organisations. Despite this, they are our own, and do not necessarily reflect the views of any other parties.

A: Overarching conclusions

- 1. How and why have perceptions of health and safety changed in Britain since 1960? What historical, economic, legal, and sociological factors have prompted any change in perceived legitimacy?*

Perceptions of health and safety have, in general terms, remained relatively stable over time. There have been consistent challenges, particularly surrounding the role of the state, though these have varied in intensity (often around moments of crisis). There have also been changes in the way the health and safety is conceptualised, arising from changes in the law and the economy: notably the HSWA 1974 and extension of coverage under s.3 to include the public, and the declining economic importance of heavy industry coupled with the rise of newer sectors of employment and their radically different health and safety challenges. Political and media discussion of health and safety has become increasingly polarised, certainly in the last 20 years or so. At the same time, the principle that protecting people (at work or beyond) from death, injury and ill-health is a good thing has rarely been contested, even if the form of that protection has been debated.

2. How far do changes in policy and perception during this period reflect historical continuities, particularly with reference to changing ideas of voluntarism, individual agency, and the role of the state?

A key continuity across the period would be the degree of variation of state policy: as political parties have changed, policies towards health and safety have changed – just as they have done for the preceding 150 years or more. Here a key example would be the movement towards a more consensual policy in the 1970s contrasted with a shift to a much more fractious relationship in the 1980s. In this sense, the period since 1960 has followed a much older pattern, and one which we could reasonably expect to continue in the future. The notion of voluntary solutions to occupational health and safety issues was long-standing and has continued to underlie much of the thinking since 1960 – articulated (albeit in slightly different terms) in Robens' influential conclusions about self-regulation. Central to this narrative is the understanding of individuals as possessing sufficient rationality and autonomy to be able to safeguard their lives and health. Such ideas have continued to remain influential as they are, put simply, attractive to most people, who like to think that they are capable of judging risk and taking care of themselves.

3. How have public attitudes towards health and safety changed since 1960? How does the public regard health and safety now? Was there ever a consensus as to the social license underpinning health and safety regulation?

Public attitudes towards health and safety have perhaps bifurcated in the last twenty years or so; there is evidence of an instinctive, surface-level antipathy and hostility towards 'health and safety', but also of an enduring, underlying acceptance of the importance of health and safety as an area of provision and activity. The right to safety is endorsed, and levels of awareness are relatively high. When hostility is expressed, it is centred upon core issues that symbolise particular moral conundrums around choice and responsibility (such as the 'compensation culture'), and certain trends towards commercialisation and overspill that might be thought to be more recent issues of concern. But this kind of contest around health and safety is not new, and was present right through our period of study, even the 'consensus era' of the 1970s. Those on the right have always contested it as an interference in the autonomy of individuals and of business; those on the left have always valorised

it as a progressive undertaking; and many people have accepted an uneasy bargain or balance between these two principles, seeking the capacity to earn money and freedom from bureaucracy, while also demanding to be safe. The only differences now are that these conflicts are played out and settled in a much more public, media-driven, and occasionally politically opportunistic manner than in the past, and arguably with a less visible and developed welfarist lobby to argue in favour of regulation and protection.

4. What are the key factors, events, and trends that exert particular influence over the social profile of health and safety? What are the implications of this for those seeking to shape policy in the next 5-10 years?

The principal implications and recommendations to flow from this investigation's findings are addressed below (see *Recommendations*). In 2015 one of the most significant factors influencing public discussion of health and safety is undoubtedly the media, which has an impact across the social and political spectrum. Shaping the public presentation of health and safety issues is therefore a key challenge for those seeking to influence policy and practice in the future, and a number of suggestions relating to this goal are set out below. Spectacular moments of crisis (e.g. Aberfan, Piper Alpha, Ladbroke Grove) propel health and safety issues briefly to the top of the agenda; but longer term attitudes are derived from more mundane, day-to-day experiences of health and safety. Striking a balance in response to each side of the equation is therefore an important consideration for policy-makers. Finally, perceptions of the proportionality of regulation and health and safety protections have in recent years had an increasingly important part to play in defining the social profile of health and safety.

B: Recommendations

Constitutional: Promoting health and safety as a policy area

- i. **Differentiate legitimacy:** Procedural legitimacy issues (such as the efficiency of regulators and the democratic validity of law-makers) tend to be important factors that underpin the levels of buy-in and support expressed by those *within* the regulatory system (where due process, accountability, and outcome efficiency matter most), but there are indications that these factors matter

much less to those whose involvement in this process is more distant or secondary. Government may err towards procedural forms of thinking, but public constituencies make judgements on the basis of different, more *normative* factors – do they support the goal? Do they buy in to the *idea* being put forward? Do they attach importance to the benefits and needs being addressed? What this suggests is that messages about what health and safety has, and can, achieve, should be constructed and packaged differently for different audiences. Efficiency and the ‘business case’ for safety work for government and business, as do arguments about transparency and accountability. But this is not always the right message to present to the wider, social sphere, or indeed to workers and the beneficiaries of regulation.

Of particular relevance to: sponsors of health and safety legislation; the HSE and local authorities; policymakers; professional organisations (such as IOSH, the BSC and RoSPA); health and safety professionals; sector-wide employers’ organisations; trades unions; individual firms.

- ii. **Controversies as successes:** Where there are issues of legal and structural legitimacy that are perceived to be controversial by those within the health and safety policy sphere, there has perhaps been a tendency to play these issues down or to distance ‘health and safety’ from connection with them (the role of Europe would be one example of this). But there is substantial evidence to suggest that, actually, these are not seen as possessing the toxic character that is often thought. For example, Europe was rarely if ever cited by the public as a problem, but it was often referenced negatively by those within regulatory agencies and the safety profession. In fact, the history of these areas is one of clever diplomacy and effective leadership, significant innovation, and of important principles of universality and effective protection. The UK has pushed, rather than been pulled, rather more than might be thought. It may be time to consider presenting these steps more directly as success stories, rather than as potentially toxic heritage.

Of particular relevance to: regulators (including local authorities); trades unions; employers’ organisations; health and safety professional organisations; sponsors of health and safety legislation.

- iii. **Differentiate ‘health and safety’:** one major issue that did stand out were the ‘leaky boundaries’ that the concept of health and safety seems to have. In particular, there are major problems of ‘branding’ and perception associated with the overspill of health and safety into non-workplace areas (public services and spaces, the private sphere). It would be worth exploring the possibility of establishing a different branding for health and safety outside the workplace – for instance as ‘common sense safety’, something which could be more clearly understood as functionally different from ‘occupational health and safety’. Jurisdictions that talk in terms of ‘OSH’ (like Australia and New Zealand, where ‘occupational’ is central to the terminology used) may appear to be better equipped to sustain this distinction, avoiding some of the negative publicity and associations that the catch-all phrase ‘health and safety’ encounters in the UK. Again, the realities and impact of an effort at rebranding here, including the potential limitations of dissolving existing workplace/non-workplace links, need more focused research and evaluation.

Of particular relevance to: regulators (including local authorities); health and safety professional organisations; employer / sector-wide organisations.

- iv. **Deal with prescription and variation:** one key historical insight to emerge within the different crosscutting themes identified, is the recurrent problem of prescription. Robens (1972) had sought to move away from prescription towards duties and principles-based regulation, and different industries, and regulatory approaches, have subsequently sought to move away from prescriptiveness. But experience around new industries and low-risk workplaces, around the public sphere of safety, and in the fields of insurance, litigation, and self-regulation, suggests that prescriptiveness has not gone away. Rather, like the air in a blow-up mattress, prescriptiveness will *always* pop up somewhere in the system, despite all efforts to squeeze it out. For example, the concept of ‘blue tape’ – requirements that are self-imposed or imposed by other commercial actors¹⁵² – is an emergent issue, as is the tendency for organisations to self-regulate via prescriptive rules. Regulators and policymakers need to be aware that this occurs and appears to be

¹⁵² <http://www.telegraph.co.uk/news/politics/labour/10650716/Blue-tape-is-holding-business-back.html>

inevitable – and, rather than weighing in against it, need to work with safety professionals to create ‘sensible’ prescriptiveness, which meets the needs that the drift towards prescription reflects, but stops short of imposing the costs linked with this trend.

Of particular relevance to: regulators (including local authorities); policymakers; health and safety professional organisations; health and safety professionals; employer / sector-wide organisations; safety representatives.

- v. **‘Don’t panic!’:** One of the crucial findings of the project as a whole was that there is much more stability and robustness around health and safety as a policy issue (in the eyes of public and stakeholder constituencies) than might be expected. As Suchman observes, one fatal reaction to a legitimacy challenge is a panic-led *‘threat-rigidity response’* (1995: 599) which leads those involved into defensive corners. In this context, that might involve dissociating from public-facing activity and seeking to remain engaged only with the ‘core audiences’ for health and safety (professionals, stakeholders) on the basis that they appear more sympathetic and understand health and safety issues better. Health and safety has endured as an area for almost 200 years, and has been remarkably stable, all told, for the last forty. It continues to be regarded as a ‘social good’. There is no need to slip into a ‘siege mentality’ and risk further alienating people – though there is also a need to champion health and safety on a day-to-day basis (see Recommendation xvii).

Of particular relevance to: regulators (including local authorities); health and safety professional organisations; health and safety professionals; businesses; all those involved in public discussions about health and safety matters.

Democratic: Building better understandings of health and safety

- vi. **Designate ‘leader industries’:** As traditional ‘leader industries’ decline, there is a need for new leaders to emerge in sectors and contexts i) where the benefits of regulation can be made explicit; and ii) from where new modes of working can be developed and disseminated. Bodies like IOSH have an

important role to play in supporting this development via, for example, broader recognition strategies around ‘best practice’, but also around what health and safety means to people, as a form of public good, in these areas. The construction and agriculture industries have the potential to perform this role, not because of their spotless records, but because they offer the opportunity to demonstrably reinforce the fact that health and safety *matters* and is an important issue for everyone at work. At the same time, most people now work in other, lower-hazard sectors (retail, clerical/office-based, service sector) and so there is a need to also valorise and establish the lessons that can be learned from these settings, as well as the reasons why health and safety should be a ‘taken for granted’ issue of importance here too.

Of particular relevance to: health and safety professional organisations, in collaboration with regulators, trades unions and employer organisation, collectively to identify and approach new leader industries/ firms.

- vii. **Share expertise:** Expertise is a key asset of the health and safety regime – but like many social assets, it has tended to be distributed very unevenly. There would be benefits from seeking to redistribute this more widely (as Löfstedt 2011 identified), helping a wider population of workers and the public to better understand, assess, and respond to, risk. While experts should retain their status as holders of *expertise*, a basic competence around risk and safety decisions should not be the preserve of a few. Expertise needs to be trickled-down more effectively than it has been in the past, via the training and empowerment of a wider range of people, recognition of the agency and decision-making capability of those at the frontline, and a willingness to engage in dialogue and mutual problem-solving (rather than rigid, hierarchical approaches). One interviewee related an example of this, which arose in response to workers identifying and discussing a problem:

“you need to wear eye protection on a construction site [...] we say that you don’t need to wear eye protection if you’re working outdoors and it’s raining, because [...] it gets covered in rainwater and makes it harder for you to see [...] safety practitioners need to be alive to this and allow more choice, more flexibility.” (Lawrence Waterman interview, para.68)

This fostering of agency has the potential to lead on to greater buy-in and engagement by frontline workers. The work carried out as part of this research programme by Cranfield University, on research leadership, and by Loughborough University, on SME engagement, also speaks to the value and benefit of a more dialogic approach.

Of particular relevance to: health and safety professionals; safety representatives; health and safety professional organisations; trades unions; sector-wide organisations.

- viii. **Choose your words carefully:** while expertise is one of the major strengths of the health and safety sector, and should be promoted, it is dangerous when it creates a barrier between ‘safety professionals’ and workers or the wider public – particularly when there is a failure to communicate about why it is being exercised, or where this expertise is inward-facing and unduly self-referential. This can easily appear self-serving and thus illegitimate. At the same time, the choice of language used by regulators and those who lead on implementing and creating health and safety practice/policy can also be alienating (too technical, too pedantic, too unappealing). Simplification, as framed in recent policy initiatives, may be one important part of this, but the real challenge is to communicate *differently* – in a more inclusive and engaging manner. It may also be worth exploring the possibility of training safety professionals in these communication skills in a more direct, proactive way, so that they can ‘sell safety’ more effectively.

Of particular relevance to: regulators; health and safety professionals; health and safety professional organisations.

- ix. **Establish public fora:** Further to the notion of sharing expertise is the need for a greater determination to involve a wider range of voices in the process of setting, directing, and evaluating health and safety as a part of everyday life. Writers such as Moore (1995) identify the concept of ‘public value’ as a goal of regulatory/government processes – the pursuit of goals and outcomes that are of value to society as a whole. Governing for public value involves providing fora for the debate and discussion of competing values and interests, and which are permeable to input from the public sphere.

Essentially, this means talking more, and more widely, and trying to reach some form of understanding about what government can and should try to do. The 'red tape challenge' of 2011-12 was a very limited example of public engagement around health and safety; there is a lot to be gained from a wider engagement that embeds a more positive public framing of 'health and safety'. In particular, the health and safety profession, and the bodies which represent it, can play a key role in these processes as 'core mediating spaces' between regulator, employer, worker, and public.

Of particular relevance to: regulators; health and safety professional organisations; health and safety professionals; trades unions.

- x. **Encourage questioning:** Building on current (rather top-down) practices around regulatory 'challenge panels', which allow for the proactive questioning and interrogation of 'health and safety' when used by service providers and others as an excuse, there is a need to encourage individuals to ask more questions face-to-face when they encounter this in practice. Health and safety has never been accepted unproblematically, even by those who are embedded within this area, but whereas there may have been greater recourse to debating this acceptance in the past, it seems that the greater problem now is a 'closing down' of conversations about the issue by those who wish to avoid scrutiny. Crucially, while 'challenge panel' arrangements attempt to do this, it is not at all clear that HSE and other bodies have the moral legitimacy to adjudicate on such matters (Podger 2015: para.14); but individuals, as workers and citizens, do. Health and safety has always developed through explaining itself – so encourage and empower individuals to question the reasoning of those who invoke 'health and safety', without fear of retribution for doing so. There needs to be a safe space for those affected by health and safety to query its use – and if it has been implemented properly, the reasoning behind it will convince, and build confidence in the decision-maker. There are no perfect solutions and conflict can never be avoided – so it is realistic to expect this and to relish the chance to explain!

Of particular relevance to: employees and the public (in terms of being sure to question decisions if necessary); businesses, local authorities and trades unions (in terms of encouraging a greater willingness to question decisions).

- xi. **Promote role engagement:** It remains the case that structured worker engagement with health and safety is a major component of efforts to legitimise and improve health and safety provision (James and Walters 2002; Walters 2006). But there is a problem with the transition of this model into sectors and workplaces where union representation and activity is less well developed, or indeed into a world where union membership in general is lower than in the past. This is borne out by the figures on the level of worker representation in the UK, where 95% of workers are aware of health and safety (high), but only 66% are consulted about it (low: Jain and Leka 2015: 25-8). There is room for much greater worker engagement with health and safety – and this needs to be pursued via adequate, active, and genuine modes of consultation and representation. There is also a need to make these roles (as safety representatives) are recognised as important and valued roles and viable in order to ensure that they are filled effectively. This would enhance both the democratic and functional legitimacy of health and safety, and should be pursued as a priority area of future policy and research.

Of particular relevance to: employer / sector-wide organisations; businesses; trades unions. Additional support and encouragement would usefully be provided by regulators.

Functional: Managing health and safety in practice

- xii. **Sell your expertise:** Expertise remains a fundamentally important feature of 'good' health and safety. It is apparent that there is no widespread concern around perceptions of expertise in this area – in fact, this was identified as a major strength of the health and safety system. As such, the promotion of health and safety as a policy area should maximise the legitimacy benefits that expertise brings by, for instance, publicising the exporting of expertise from the UK to other jurisdictions – 'selling' the value of contributions to the global knowledge economy within domestic political debate is something that the University sector (for example) has relied on in the past. Similarly, it may

be worth showing publicly the links between ‘common sense’ and expertise – that, actually, much of what we take for granted today as basic precaution that ‘goes without saying’ has emerged via the expertise of health and safety professionals, researchers, and knowledge workers in the past.

Of particular relevance to: the HSE; health and safety professional organisations; health and safety professionals; policymakers.

- xiii. **A transferable ideal:** Despite changes to the world of work, there are still audiences and demands for health and safety in offices and service-sector industries, which need to be approached in new, context-specific ways. Resistance in new sectors and areas generally concerns the ‘low politics’ of local issues (the costs of adaptation to new technologies, roles, and structures), but the ‘high politics’ of the ideal remains relevant, even in these new settings. Those working in health and safety in these areas can sell the idea of health and safety, even in the face of dispute about its proportionality and relevance, and should not avoid making moral arguments about its value. Similarly, there is a challenge in promoting health and safety in a way that transcends the technicalities of implementation (which has tended to be a traditionally masculine area of activity) and relies instead upon the much more universal message of welfare, protection, and a right to safety.

Of particular relevance to: health and safety professionals, health and safety representatives, trades unions, employer/ sector-wide organisations, who might all usefully work together to develop new approaches/ approaches appropriate to newer workplaces and sectors. Health and safety representatives based in individual firms would also be a target audience for this recommendation.

- xiv. **Embrace the geek:** Do not be afraid to demonstrate expertise – and to be unpopular at times. No-one can ever be supported or accepted all the time on every decision they make – but the concept of legitimacy is all about building trust and acceptance in the overarching approach, values, and robustness of the process by which decisions are made (e.g. not always agreeing with the decisions of Parliament, but accepting the decisions it makes as lawful). Expertise is the greatest asset that safety professionals have. Showing

appropriate expertise (i.e. providing good reasons for actions and decisions) and communicating effectively about the motives that underpin it, is one major part of the process by which individuals can show their legitimacy, because it builds confidence in them as a decision-maker. *'Knowing what they are talking about'* was emphasised as a major factor for the focus group participants in prompting health and safety buy-in, and ensures that the project of safety management is accepted as legitimate, even if specific policies are not.

Of particular relevance to: health and safety professional organisations; health and safety professionals; health and safety representatives.

- xv. **Policing the Profession:** The counterpoint to these ideals of establishing a more convincing and publicly-engaged safety profession, and body of people who can advocate for, and 'sell', health and safety, is the need for that profession to have the internal integrity which merits and supports this role. A commonly-voiced concern among interviewees was that memberships of bodies like IOSH were not policed or quality-assured to the extent that was needed or desired. It will be for IOSH and the other bodies to determine what constitutes suitable and sufficient oversight for their members, based on institutional factors, appropriate evidence, and consultation with relevant stakeholders. But it is clear that there is an external audience which *perceives* a lack of effective oversight, and so perhaps more can be done to proactively respond to concerns, demonstrate oversight, and address this perception? In pursuit of this goal, it would be desirable for the performance and effectiveness of the OSHCR register maintained by HSE (<http://www.hse.gov.uk/oshcr/>) to be monitored and reviewed.

Of particular relevance to: health and safety professional organisations.

- xvi. **Be realistic:** Many of these recommendations are phrased in terms of rather idealistic language, particularly an emphasis on establishing the values that underpin health and safety, creating and sustaining dialogue and participation, and promoting positive messages about what those in the area do. But at the same time, it is important to be realistic and pragmatic about what is achievable and what individuals and organisations can do in this area. For example, there is a strong, positive story to be told about the role of trades

unions in the modern world of work, taking more bottom-up, issues-led approaches to problems that concern them, their members, and employers as well. This is in contrast to the somewhat fractured and limited capacity they now possess to shape the top-down, 'high politics' of health and safety as part of industrial relations (something that Governments continue to curtail). But pragmatism, the recognition of the power of small-scale, localised change, is a valuable part of making health and safety work, particularly against a backdrop of media hostility and policy conflict at the level of 'high politics'.

Of particular relevance to: trades unions; health and safety representatives; health and safety professionals.

Justice-based: Positioning and selling health and safety

- xvii. **Signal and Noise:** Public perceptions of health and safety have two tiers; *opinions* (immediate, critical, transient), and *attitudes* (considered, positive, enduring). The difference between these can easily be understood as that between the sort of statement someone might laugh at or agree with, and propositions that they might be prepared to vote for. When people stop to think about what health and safety means, their attitudes are much less critical. So, a key aspect for all to consider is *how* to get people to stop and consider health and safety more fully. It is important for those engaged in 'selling' health and safety to separate 'signal' from 'noise'; there is no need to always leap in to engage with, and contest, '*regulatory myths*' (see Recommendation v). There *is* a need to contemplate how the countervailing message (about the importance of health and safety, about preventing exploitation and suffering) can be put forward, without stepping too far into the realm of scaremongering.

Of particular relevance to: regulators; health and safety professional organisations; health and safety professionals; trades unions; health and safety representatives; employer / sector-wide organisations; individual businesses.

- xviii. **A 'right to safety'?:** How can a higher profile for the *problem* of health and safety be achieved? Making the extent of the problem much more widely

known might make it easier to show the need for action. In the past, major incidents and disasters have provided a platform for these messages to be put forward. In the recent past, we have enjoyed a relatively disaster-free period, where health and safety-related loss of life has not impacted upon the public consciousness, and upon the decisions made at a governmental level, as much as in the past. Some commentators have suggested that (unlike environmental regulation, which sits under a wider 'green' agenda) 'health and safety' lacks an appealing or easily-understood overarching public narrative (Moran 2003; Rothstein *et al.* 2015), something that has insulated it from political interference to a degree (at least until the last ten years or so) but has also made it harder to relate to. While this is a longstanding problem, it is worth reiterating that the development of such a narrative would be beneficial in the long run. Ideas such as that of a '*right to safety*' are ones which have the potential to work as powerful public framing tools.

Of particular relevance to: regulators; health and safety professional organisations; trades unions.

- xix. **Deliver on promises:** A central component of trusted interaction with 'health and safety' personnel is for there to be a clear connection between what is promised, or held out to be available, and what is ultimately delivered. It may sound trite, but delivering on stated promises and policies, and following up on actions that are requested, matters a great deal in creating legitimacy. Sincerity in interaction at all levels is important, particularly where the message to be delivered is a negative one (see Recommendation xviii, above), and where there are compromises to be made. Explaining why a decision was made (see Recommendation xvi, above), even if only to explain why a proposal might not be carried forward, creates the kind of communication channel that underpins an increased legitimacy in the eyes of participants. So, for example, one limitation in the effectiveness of safety representatives, and a major point of conflict, had been a sense that reporting incidents 'made no difference' and was not taken seriously; similarly, safety professionals and managers expressed frustration at 'closed' decision-making processes at organisation or regulator level, where information they provided

was not acted upon. Publicising outcomes and the reasons underpinning them is of similar importance as the actions taken.

Of particular relevance to: regulators; health and safety professional organisations; trades unions.

- xx. **Bargaining happens:** Bargaining between different interest groups over health and safety provision was regarded by the Robens Committee as having “*no legitimate basis*” (1972: para.21). The acceptability of terms like ‘danger money’ and the use of health and safety as a ‘lever’ appears to have declined over time, however, there is clear evidence that it has occurred, and will continue to occur in the future. Offsetting risk and reward, or voluntarily assuming exposure to one health and safety hazard in order to secure advances in provision relating to others, still plays a part. Regulators, safety managers, and employers, need to be aware of this seeming reality. After all, prioritisation and targeting are central components of a risk-based regulatory regime. Crucially, it becomes vital to try and ensure that all parties have sufficient knowledge and information to make good, informed decisions and bargains, and overcome any latent asymmetries that may endure (Recommendation xxii will assist in this). Even in new industries and sectors, there is scope for better understandings of the risks that people are already taking to be built and discussed.

Of particular relevance to: regulators; health and safety professionals; health and safety representatives; businesses; trades unions.

- xxi. **Remain altruistic:** Commercialisation of health and safety needs careful management; it erodes the most fundamental pillar of public legitimation that the idea of health and safety possesses – the sense that it is engaged in and undertaken for the public good and with humanitarian motives in mind. The safety profession, and regulators, need to fight to retain this ‘normative position’, even as their roles change over time. How can commercial imperatives, and the need for sustainability, be balanced with the preservation of a sense that this is not the primary *reason for* acting in the pursuit of health and safety? What messaging is needed to preserve the appearance of altruism on the part of those responsible for health and safety? In particular,

how can bodies like IOSH establish a public service ethos as a core part of what its members do, and publicise this element of professional service? It may be that more can be learnt from approximately equivalent bodies in the spheres of medicine and healthcare, for example.

Of particular relevance to: regulators; health and safety professional organisations; health and safety professionals.

- xxii. **Designate ‘safety champions’:** Along with the development of publicity strategies that draw on lessons and good practice learned in ‘leader industries’, there is a need to help improve the public profile of health and safety via a more persuasive, example-led strategy. Suchman, drawing on Weber, identifies (1995: 581) the power of personal legitimacy, based on the charisma of individual organisational leaders. This has particular capacity as a means of distancing an organisation (or idea) from negative stigma and association. As such, it would be valuable to identify and establish ‘safety champions’ who can advocate publicly, and persuasively, for the benefits of health and safety protection. The lack of visible, effective spokespeople for ‘health and safety’ was bemoaned by many interviewees: *“the big challenge with the safety profession is that there are not many people that’ve been seen in visible leadership positions [...] we fail on how we promote ourselves as a profession. There is almost [an...] embarrassment.”* (Peter Kinselley interview, para.78). Organisations in the area should try to establish and promote effective, credible, charismatic advocates for health and safety. Even among the general public, such advocates exist (see focus groups) – so champions could be created at all levels. There is a need for further research to establish the potential effects that this legitimacy tool could have.

Of particular relevance to; health and safety professional organisations; health and safety professionals; trades unions; health and safety representatives; employer/ sector-wide organisations; businesses.

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11. Appendices

Appendix A: List of project interviewees and selected key affiliations

Regulators

1. Bill Callaghan (TUC Chief Economist 1979-1997; HSC Chair, 1999-2007).
2. John Rimington (Department of Employment/Civil Service 1970-1977; Manpower Services Commission 1977-1981; HSE 1981-1984, Director-General, 1984-1995).
3. Jim Hammer (HM Factory Inspectorate 1953-1974; HSE, Chief Inspector of Factories 1975-1984, Deputy Director-General 1984-1989; NEBOSH, Chair 1992-95).
4. David Eves (HM Factory Inspectorate 1964-1974; HSE 1975-1985, Chief Inspector of Factories 1985-1988/1992-2002, Deputy Director-General 1989-2002).
5. Tim Carter (British Petroleum, Medical Officer/Chief Medical Officer 1974-1983; HSE, Director of Medical Services 1983-1992, Director of Field Operations Division 1992-1996; Maritime and Coastguard Agency, Chief Medical Advisor 1999-2014).
6. Jenny Bacon (Ministry of Labour/Department of Employment 1967-1992; HSE Deputy Director-General 1992-1995, Director-General 1995-2000).
7. Senior HSE Source [Anonymous] (Regulatory roles; HSE role).
8. Kevin Myers (HSE 1976-2000, Chief Inspector of Construction 2000-2005, Chief Inspector, Hazardous Installations 2005-2008, Deputy Chief Executive 2008-present/Acting Chief Executive 2013-14).
9. Helen Leiser (TUC Economics Department 1968-1973; Department of Employment 1974-1983; Cabinet Office 1983-1985; HSE 1986-1993; Department of Trade and Industry, 1995-2003).
10. David Morris (HM Factory Inspectorate 1971-1974; HSE 1975-2002; HM Railway Inspectorate/Office of the Rail Regulator, Deputy Chief Inspector of Railways 2002-2010).
11. Steve Sumner (Local Government Association; HSE Local Authority Unit).
12. Sir Frank Davies (Alcan Aluminium (UK) Ltd 1967-77, Director 1977-83; HSC Chairman, 1993-1999).

Safety Professions/Representative Bodies

13. Neal Stone (HSE 1992-2005, Policy advisor to HSC Chair 2005-2007; British Safety Council, Head of Policy 2008-2014, Acting Chief Executive 2015-present).
14. Roger Bibbings (Amalgamated Union of Electrical Workers 1972-77; TUC, Health and Safety advisor 1977-94; RoSPA, Occupational Health and Safety advisor 1994-2014).

15. Richard Jones (Rolls-Royce 1998-2000; IOSH 2000-2011, Head of Policy and Public Affairs 2011-present).
16. Lawrence Waterman (Olympic Delivery Authority, Head of Health and Safety 2008-2013; Battersea Power station development, Director of Health and Safety 2013-present).
17. Sayeed Khan (Large manufacturer 1992-2002; Engineering Employers Federation, Chief Medical Advisor 2002-present; HSC Commissioner/HSE Board member 2005-2011).
18. Stan Barnes (IOSH president 1978-1979).
19. Peter Kinselley (Abbey National 2003-2005; Linklaters, Health and Safety Manager 2005-2013; Mondelez, European Safety Manager, 2014-present).
20. Sheila Pantry (United Steel Companies Ltd.; National Coal Board; HSE, Head of Information Services 1977-1993; Sheila Pantry Associates, founder and Managing Director 1993-present).

Trade Unions

21. Sarah Lyons (National Union of Teachers, Pay, Conditions and Bargaining Department, Health and Safety policy lead).
22. Kim Sunley (GMB; Royal College of Nursing, Senior Employment Relations Adviser, UK Policy Lead on Health and Safety 2007-present).
23. Paul Clyndes (ASLEF 1999-2004; RMT Health and Safety Officer 2004-present).
24. Dan Shears (HSE 2000-2008; GMB National Health and Safety Officer 2008-present).
25. Ian Tasker (Clydesdale Bank 1977-2001; Scottish TUC, Assistant Secretary 2001-present).
26. Peter Jacques (TUC Social Insurance and Industrial Welfare Department, 1968-1993; HSC Commissioner, 1974-1995).

Businesses/Employers

27. Janet Asherson (HSE 1976-1986; CBI, Head of Environment, Health, and Safety 1989-2008; International Organisation of Employers 2008-present).
28. Graeme Collinson (ICI 1978-1992; AstraZeneca 1992-2003, Head of Health and Safety 2003-2008; Centrica, Group Director – Health, Safety, Environment and Security 2008-2013; HM Government Office of the Chief Scientific Advisor 2013-2014; Siemens 2015-present).
29. Rex Symons (ICI 1958-61; British Drug Houses Ltd. 1961-1981, Managing Director 1981-1989; Merck Deputy Chairman 1989-1991; CBI Health and Safety Group member 1991-2002; HSC Commissioner 1989-2002; Better Regulation Taskforce member 2002-06).
30. John Armitt (John Laing Construction 1966-1988, Joint Managing Director/Chairman 1988-1993; Union Railways, Chief Executive 1993-1997;

Costain Group, Chief Executive 1997-2001; Railtrack Chief Executive 2001-2002; Network Rail Chief Executive 2002-2007; Berkeley Group, Director 2007-present; Olympic Delivery Authority, Chairman 2007-2014; National Express, Director 2013-present).

31. Chris Marchese (Central Electricity Generating Board/Nuclear Electric Plc. 1971-1993; Magnox Group 1994-2000, Head of Operations 2000-2004; British Nuclear Group Ltd., Chief Operating Officer, 2004-2007).
32. David Maidment (British Rail 1960-1990, Head of Safety Policy 1990-1996).
33. Rear Admiral Paul Thomas (Royal Navy 1963-1990, Director, Nuclear Propulsion 1990-1994, MoD Chief Strategic Systems Executive 1995-1998; BNFL, Director, Environment, Health, Safety and Quality 2001-2008; Rail Safety Standards Board, Chairman 2008-present).
34. Ruth Warden (NHS 1992-2010; NHS Employers, Assistant Director, Employment Services 2010-present).
35. Jim Wilkes (Zurich Insurance, Senior Underwriter) and Huw Andrews (Liberty Mutual Insurance 1993-1998; Engineering Employers Federation 1998-2000; Citex 2000-2003; Zurich Insurance, Head of Casualty Practice 2003-present).

Policymakers and others

36. Ragnar Löfstedt (University of Surrey 1994-2002; King's College London, Professor of Risk Management 2002-present).
37. Andrew Hale (Institute of Industrial Psychology 1966-1972; University of Aston 1972-1984; Delft University, Professor of Safety Science 1984-2009, Emeritus 2009-present).
38. Baron McKenzie of Luton (PriceWaterhouse 1980-1998; Luton Borough Council, Leader 1999-2003; Lord in Waiting (Government Whip) 2005-2007; Parliamentary Under-Secretary of State, Department of Work and Pensions 2007-2010).
39. Frank Doran (MP, Lab., Aberdeen S. 1985-1992, Aberdeen Central 1997-2005, Aberdeen N. 2005-2015; Shadow Energy Minister 1988-92; Minister, Department of Energy 1997-2000).
40. Senior Government Source [Anonymous] (Government Department role, Parliamentary role).

Appendix B: Interview schedule template

“As you will know, the purpose of this interview is to find out a little more about your perceptions and experiences relating to the legitimacy of health and safety as an area of activity, regulation, and law. We’re hoping to draw on both the views that you have formed during the course of your working life; and also on the recollections you have of specific events along the way”.

So perhaps to start us off, when was the first time that you can remember being aware of ‘health and safety’ as an issue?”

- Prompt discussion of family, childhood, parents’ occupations, education (brief)
- How far did health and safety matter to you, family, those you knew?
- How important was OHS in general at that time? Examples or awareness of bigger picture?
- How did you first get involved in working in the area of OHS?

1. Career working in Health and Safety

“The first thing to ask about is the nature and the context of health and safety regulation that existed in the area you have worked in.”

- What were the key issues in OHS when you first started working in the area?
 - Were these issues that were in the public sphere – ones that people more generally were aware of?
 - Probe into the political debates (local, national, institutional) about health and safety at the time?
- What was your role/tell us about your role
- Who did you perceive the main OHS/policy actors to be at this time? Trade Unions, EU, government, regulators, media?

2. Specific events and developments

To be tailored and specific to the interviewee and the areas they worked in.

- Focus on the specific features and events from the history of OHS that occurred in interviewees’ area/period of activity (identified prior to interview).
 - Regulatory reform events
 - Enforcement/regulation in action, deregulation, self-regulation
 - Major events/disasters

- Social/contextual changes
- Changes in workplaces/technology/industry
- Why key events they were involved in took the course that they did
- Understandings of the particular groups and actors involved
 - Probe around issues of i) the mandate/right they had to act; ii) the motivations/stance they took; and iii) the manner of their involvement.

3. Change over time

“The next thing to ask about is how the area of health and safety has changed.”

- How is health and safety different now when compared to the early days of your career?
- Main changes witnessed?
 - Standards, attitudes, compliance?
 - Industry practices and policies
 - Growth or decline of trust in regulators and actors?
- What do you see as the main drivers of these changes?
- What are the main challenges and obstacles to successful OHS?
- Interviewees awareness of controversy/discussion over regulation, legislation or policy (e.g. relationships between trade unions and government regarding exclusion of safety representatives from HSWA)

4. Media coverage and current debates about Health and Safety

“The next major thing to ask about is your perception of the contemporary public or social landscape around health and safety regulation”.

- What are the main challenges and problems facing ‘health and safety’ now?
- Do you have a sense of what you think ‘the public’ (if we can identify them) think about health and safety now?
- How do you see/characterise current political debate around OHS regulation?
- How might you explain current climate of opinion around the issue?
 - Role of media
- Do you think OHS currently has a problem with its perceived legitimacy?

Appendix C: Focus Group details

Group ID	Location	Date	No. of participants
A	Leeds	27 March 2014, PM	7
B	Manchester	28 March 2014, AM	7
C	London	02 April 2014, PM	9
D	Reading	03 April 2014, PM	10
E	Windsor	04 April 2014, AM	9
F	Southampton	09 April 2014, PM	8
G	Bristol	14 April 2014, PM	7
H	Bath	15 April 2014, PM	10

(67)

Demographics

Gender	Male: 31	Female: 36
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Age	18-25: 9	26-35: 25	36-45: 9	46-55: 14	56-65: 8	66+: 2
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Ethnicity	White British: 50	White other: 5	Asian/Asian British: 5	Black/African/Caribbean: 5	Mixed ethnicity: 2
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Occupational /social class	A: 5	B: 20	C1: 20	C2: 11	D: 7	E: 4
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Appendix D: Focus Group schedule

“As you will know, the purpose of this focus group is to find out a little more about the views and concerns you have about health and safety regulation. So perhaps to start us off, what sort of ideas first spring to mind when you hear this phrase?”

- Prompt for discussion of example issues or cases
- Where do you get your information about health and safety from?

Media coverage and debates about Health and Safety

“The first thing to ask about is the debates about health and safety regulation that are often reflected in the news media. Many people have quite strong views about this issue – and I’d like to get to know more about your views of these debates.”

- What examples of recent H+S stories in the media are you aware of?
 - *Prompt for familiarity with myths/H+S gone mad cases?*
 - What about cases where things have gone really wrong and people have been hurt?
- Are you aware of any of these recent example stories (*distribute examples*)?
- What kind of reaction do you have to these stories?
 - *Prompt evaluations of evidence as well as message*
- Have you heard anything about any changes to health and safety regulation made in response to these issues?
 - *Prompt for Red Tape Challenge/recent cuts/reforms*

Personal experiences

“The next major thing to ask about is how much you know about the law itself, and what kind of experience you have had of it within your own lives. It doesn’t matter if your experience or knowledge is limited – that is also useful to know!”

- Do you know where the safety laws that apply in workplaces come from?
 - *Prompt awareness of HSWA, Euro regs, guidance, company policies.*
- Any direct experience of the law in the workplace – seen it enforced or used?
- Other personal experiences – events where H+S was relevant?
 - Accidents or injuries sustained or witnessed
 - Work in particular hazard professions
 - Responsibilities taken or obligations imposed
- How about when you think back to your parents/grandparents’ working lives – what was health and safety like for them? Was that better or worse than now?
 - What did your parents/grandparents think about issues of safety?
 - *Prompt for any details re thoughts about why H+S has changed*
- Have you heard of the HSE? What do you know about them?
 - *Prompt – Factory inspection, prosecution, investigation, policy-making, science/testing*

- Who else regulates safety?
 - *Prompt role of employers, employees, LAs*
- Do you think that health and safety regulators are visible enough? What kind of profile do they have?
 - *Prompt for perceptions/preconceptions of what they are like.*
- What do they do that they shouldn't (or do less of)? What should they do (or do more of) that they don't?

Trust and values

“One thing we are really interested in is how far you feel you support or identify with the concept of health and safety regulation, and whether there are things that might help or hinder those feelings of support.”

- How important do you think it is to have health and safety laws? Do you agree with the goal of safety regulation?
 - Why do the laws exist? Would we be better or worse off without it?
- Has this changed over time at all? If so, why?
 - *Prompt: discuss own values/politics and those of society*
 - *Prompt: material changes (decline of industry/economic change)*
- What qualities do you think make a good regulator of safety/system of laws?
 - Would you prefer to have precision (lots of detailed rules) or flexibility (open-ended/unclear)?
 - *Prompt: experiences, examples, things from own life?*
- Do you think that regulators have too much power to intervene in businesses or other settings, about the right amount, or not enough power? Why?
- Do you trust safety regulators to handle with these issues effectively and appropriately? Why?
 - Who else do you trust? Employer, H+S pros, colleagues?
 - *Prompt: specific factors that might damage trust in regulators and the law – events, examples, disasters, other.*
- What would be important to you in deciding who to trust in terms of health and safety decisions? What do you look for in making those decisions?
 - Does it matter what kind of issue we are talking about? Major hazards versus day-to-day employment?
 - Does this issue of trust affect your actions? Does it change whether you follow rules at work or not?

Key concerns

“The last things to really discuss are any areas of concern or issues that affect how you feel about this issue. What makes you have reservations or concerns about the law in this area, and what might you prefer to see done differently?”

- *Canvass opinions and ideas that are raised – follow up and discuss.*

- One development has been the extension of health and safety to cover members of the public and settings outside the workplace. How does this affect your views on the topic?
 - Should it cover social places and non-work environments?
 - Should it apply in schools and hospitals?
- Do you feel that safety regulators and decisions are sufficiently accountable? Who do they answer to, and who takes responsibility?
 - Is there enough Government accountability for health and safety regulation?
 - *Prompt: does Europe play a role in this?*
- Do issues of 'red tape' play a role? If so, why?
- Overall, would you say that you had broadly positive or negative views of health and safety? Or is it more mixed?

Appendix E: Archives used and indicative coverage

Those archival documents and materials quoted or referenced directly in the project report are documented fully in the associated footnote. However, many hundred more items were consulted, in order to achieve as representative spread of coverage as possible. An indication of the coverage of the research is provided here, listed by archive/ type of document consulted, and noting some of the most significant material.

BBC Written Archive, Caversham: The working archive of the BBC; searched for scripts of broadcasts and production notes relating to programmes on health and safety. Much related to road safety, but there was some useful material on workplace issues, particularly around events such as Flixborough.

Brighton Design Archive, University of Brighton: Limited detail around health and safety from the perspective of office work. Files of the Institute of Directors related to the insufficiency of safety legislation covering offices in the 1960s, while Design Council files relating to office design provided some insight into ergonomics and health and safety, particularly from the mid-1960s.

British Film Institute, London: Searched for film and TV material relating to health and safety; relatively little content, though did hold a useful publicity film produced about the HSE soon after its creation.

British Library, London: Source of some otherwise difficult-to-find state reports (e.g. on occupational health), newspapers in hardcopy, and repository for some oral history recordings (in particular, the University of Aberdeen Lives in the Oil Industry project).

British Safety Council archive, Mansfield: An as-yet uncatalogued collection of material generated or used by the BSC, mostly dating from the 1980s, but with a reasonable degree of coverage of the 1970s and 1990s. Includes the offshore industry, ionising radiation, nuclear issues, transport of hazardous goods, press cuttings, DSE/ VDU issues, and rail privatisation.

Glasgow Caledonian University Archives, Glasgow: Material of value was found in the Samuel Barr Collection, relating to shipbuilding and health and safety, mainly

in the 1960s and 1970s. Included some material from the Communist Party, providing insight into left-wing views.

Mitchell Library, Glasgow: Limited content, including minutes of meetings of engineering workers shop stewards, 1970s, and material relating to wire rope production, early 1980s.

Modern Records Centre, University of Warwick: A huge number of files, largely relating to trades unions, but also including some employers organisations. TUC files, particularly from the 1960s and 1970s, touching on safety representatives, industrial relations, local government and the Industrial Injuries Advisory Council. Miscellaneous papers on individual unions and responses to health and safety legislation, including the British Iron and Steel Federation and National Federation of Professional Workers.

Museum of English Rural Life, University of Reading: Records consulted here were primarily of agricultural unions, including minutes of health and safety committees (largely 1960s to early 1980s) and the journal of the National Union of Agricultural and Allied Workers. This archive also holds the papers of WH Smith, although these were disappointingly unrevealing so far as the project was concerned.

National Archives Scotland, Edinburgh: Various state files, largely pre-dating c.1984 (on account of the 30-year closure rule), relating to topics including the relationship between the NHS and occupational health, mine safety, the Scottish TUC, the offshore industry and the relationships between Scottish and English national power.

National Archives of the UK, London: Further state files, also mostly pre-dating 1984, relating to the National Coal Board, HSE, British Rail, nuclear issues, anthrax, health and safety in ports/ dock work, and in particular the evidence submitted (in writing and verbally) to the Robens Committee, 1970-72.

Newspapers: *Times*, *Guardian*, *Daily Mail*, *Daily Express*: Searched c.1960-present, via digital databases and web content. General searches (e.g. 'HSE', 'asbestos'; these were then refined as they produced large numbers of results) and searches for particular events (e.g. HSWA 1974, Flixborough).

Portsmouth History Centre, Portsmouth: Holds interviews and transcripts of two oral history projects conducted in the early 2000s about work in the local corset factories and recollections of dockyard/naval workers. Useful perspectives on worker attitudes to health and safety in the Portsmouth area.

Portsmouth Royal Dockyard Historical Trust, Portsmouth: Hold copies of *Trident*, the Portsmouth dockyard newspaper produced between 1969 and 1990. Generally an officially-sanctioned view of activities; health and safety appears increasingly following the HSWA.

Royal Society for the Prevention of Accidents archive, Birmingham: Extensive internal archive, including annual reports and minutes of RoSPA committees (covering agriculture, general occupational health and safety, industrial safety) and affiliated groups (like the Teesside Industrial Accident Prevention Group). Also included miscellaneous press coverage. 1960s-1990s.

Scottish Oral History Centre Archives, University of Strathclyde: Repository of oral history interviews, conducted for other projects but containing relevant material in interviews by David Walker with former dock and chemical workers.

State papers: Largely available through digital databases or online, this included parliamentary debates, bills and acts of Parliament, state reports (e.g. annual reports of Chief Inspector of Factories and HSC/E) and minutes of state committees (e.g. select committees). 1960s-present.

Trades Union Congress Library, London Metropolitan University: Variety of material produced by the TUC, individual unions and Labour Research Department, 1960s-90s. Pamphlets, correspondence, minutes of meetings, conference transcripts. Valuable material related to asbestos and women's work.

Wellcome Trust archive, London: Contained limited material relating to occupational radiation exposure (1980s), but otherwise tended towards the scientific/technical side of research.

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Registered charity in England and Wales No. 1096790
Registered charity in Scotland No. SC043254