



The role of the state in achieving compliance with occupational safety and health requirements: Some lessons from the British regulatory response in the time of Covid-19**

by David Walters*

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1. *Introduction*

The history of regulatory actions on occupational and environmental safety and health has many examples of how disasters have led to the introduction of stronger measures, or even to the rethinking and replacement of a longstanding approach with a new one, in the light of the experience of catastrophic failure. It is an unfortunate condition of human society that it often requires catastrophes for political will to elicit significant change. The spread of the pandemic caused by the coronavirus means that 2020 will be remembered for such a catastrophe. Whether it is remembered for stimulating radical changes in approaches to regulating occupational safety and health (OSH) remains to be seen. Media and government concerns with the impact of the virus on the economy during the past year demonstrate little to suggest this will be so. Yet, reportage shows clearly that the impact of the pandemic on the experience of work-related risks has been substantial. Failure to ensure proper compliance with regulatory standards by those whose responsibility it is to manage these risks is plain to see.

This account seeks to understand the systemic reasons that help explain the absence of significant state action to remedy this regulatory failure. Using the experience of the UK as a case study, it explores what the crisis brought about by the pandemic says about the effectiveness of current approaches to regulating OSH

* David Walters è Professore emerito di Work Environment, School of Social Sciences, e direttore del Cardiff Work Environment Research Centre (CWERC). WaltersD@cardiff.ac.uk

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and the protections they offer to workers. In particular, it seeks to understand the political economy of regulating OSH and support for securing compliance and achieving best practice on OSH for workers in the UK at the present time.

It addresses three related areas. First, it briefly recounts the current challenge of workplace exposures to the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), known as Covid-19. It demonstrates that they are primarily the consequence of a combination of change in the structure, organisation and control of work and the labour market that has taken place over several decades of globalisation of the British economy and which are responsible for the risk profile of a range of hazards, not only those of exposure SARS-CoV-2 virus. Second, it explores the idea that these changes have been part of the political and economic project undertaken by the British state and orchestrated by successive governments since the late 1970s. In parallel with them and in accordance with the precepts of the neo-liberalism driving them, has been a substantial withdrawal of the state from its former resourcing and regulatory roles in support of OSH. While this has been part of a generic shift in the political economy, with wider and arguably even more serious effects felt across a whole swathe of social and economic life — effects which for example, have undermined the capacity of the health system to cope with the current pandemic — it also impacted on the third area on which this paper focuses. This concerns the development of British regulatory institutions, policies and strategies over the last several decades. The reform of OSH regulation, heralded by recommendations based on perceived limitations of the system in place in the UK up to the early 1970s, was already underway in the UK before its government embraced the radical neoliberalism of the Thatcher period. These reforms of the mid-1970s included a reoriented regulatory framework for OSH, with new regulatory measures, and a remodelled regulatory agency with responsibility for monitoring and enforcing compliance, along with institutions and procedures aimed at supporting the engagement of both employers' and workers' organisations with the regulatory governance of OSH in the UK. However, the paper argues that subsequent decades of further free-market orientated governance influenced subtle shifts in the trajectory of the reforms in UK policies, and the social norms and expectations concerning them, in directions that were neither imagined nor intended by their original architects. Current failures of the state to deal effectively with protecting workers from harmful exposure to Covid-19 are among the inevitable results of this influence.

2. Covid-19 and workplace exposures in the UK

The first cases of illness caused by SARS-CoV-2 were reported in the UK at the end of January 2020. Lockdown measures were eventually put in place on 23 March 2020. The delay in their introduction is now widely acknowledged to have contributed to the UK experiencing one of the largest epidemics of any country at

this stage of the pandemic, when judged both by cases per head of population and mortality per case of infection.¹ By early May, at more than 30,000, the death toll from the virus in the UK was Europe's largest. However, by this time, daily reports of cases had started to decline. During the summer months infection rates remained relatively low, lockdown measures were gradually, but not uniformly, eased and the Government published its plans for 'economic recovery'. But there was worse still to come. As schools, colleges, shops, bars and restaurants reopened and people returned to their places of work, a second phase of the pandemic was underway.

There were numerous local 'hotspots' of increasing infection rates during the summer, a trend which continued and became more pronounced in the autumn. The state initially adopted more selective means to address them with a host of geographically, or time limited, partial lockdown measures being introduced. Results were disappointing and resurgence of Covid-19 became increasingly apparent. By the end of October, the devolved national authorities of England, Wales Scotland and Northern Ireland were once again introducing national lockdown measures of one sort or another, with guidance on working safely and on risk management measures to help protect those whose work could not be done from home. By early November, the UK became the first European country to report more than 50,000 deaths. In December, amid further tightening of efforts to reduce the mounting toll of the disease, including the announcement of the release of the first vaccines, a new variant of the virus was reported and estimated to be 36%–75% more transmissible than wild-type SARS-CoV-2. It spread quickly and by mid-December it had been correlated with the further significant increase in infections country-wide, leading to more stringent lockdown measures. By the New Year, the UK was facing a long period of continued lockdown as infections continued to escalate. On 26 January 2021 the Prime Minister announced on that, since the start of the pandemic, over 100,000 people had died within 28 days of testing positive for Covid-19. Nevertheless, throughout this period substantial numbers of workers have continued to go to work.

The way in which the pandemic has been addressed by the British state has been a source of widespread criticism. Concerns have been expressed over the slow reactions of governance, over failures of its 'too little and too late' strategies to stem the rising tide of Covid-19 cases, over the frequent policy reversals and consequent confusions that have characterised its actions from the onset of the pandemic in February/March 2020. All of this is well documented and its details will not be repeated here.² The focus of this paper concerns exposure and

¹ Johns Hopkins University. COVID-19 map. Johns Hopkins Coronavirus Resource Centre. July 28, 2020. <https://coronavirus.jhu.edu/map.html>

² See for example House of Lords Public Services Committee. A critical juncture for public services: lessons from covid-19. 13 November 2020. <https://committees.parliament.uk/committee/430/public-services-committee/publications>. Also, Cowper, 2020; Watterson, 2020.

transmission at the workplace. Here, the actions of the state have hardly been those of rigorous oversight to ensure compliance with regulatory standards on OSH in the face of the pandemic. As documented in subsequent sections, the result has been that, throughout the pandemic, many workplaces have been significant sites of transmission of infection.

3. The administration of the state response to Covid-19 at work

As an executive agency of Government responsible for Health and Social Care, Public Health England was the lead authority orchestrating the measures to address the pandemic in England for most of 2020. In an effort to further improve the state's response to Covid-19, in August 2020 it combined with NHS Test and Trace to form the National Institute for Health Protection. These are public health bodies, not those concerned with the administration of regulatory requirements for occupational safety and health.³ The primary responsibility for administering occupational safety and health requirements for the whole of the UK continues to be that of the Health and Safety Executive (HSE), an agency of the state situated in the Department for Work and Pensions, the part of the civil administration of UK governance that addresses employment affairs, social security and pensions, rather than that which is concerned with health care and services. The administration of these responsibilities in the case of so-called 'low risk' premises is further delegated to the environmental health departments of local authorities, although the HSE retains overall responsibility and control of national strategies concerning OSH.

In trying to deal with Covid-19, the primary concern of governance in the UK has been to find an acceptable balance between introducing measures to contain the spread of infection while at the same time limiting the damage thus caused to the economy as far as possible (Freedman 2020). A further concern has been to ensure that the resources of the health service are not overwhelmed by the need to treat large numbers of serious cases at any one time (Colbourn 2020). In all these respects the UK Government was not fundamentally different in its aspirations from other governments in advanced market economies. On workplace exposures, however, from the outset those 'essential workers', such as health and social care staff, who were obliged to continue working after the first 'lockdown measures' were introduced, were repeatedly reported to be confronting situations in which their health and safety needs were not met. Yet there was little indication that the HSE was especially concerned about this, regardless of whether it was a

³ In the UK, State responsibilities for public health are devolved to Scotland, Wales and Northern Ireland, but each has an equivalent body for public health to that in England. These bodies have led on Covid-19 in ways similar to their counterpart in England, although their degree of autonomy over the governance of public health has meant slightly different measures have been in place in Scotland, Wales and Northern Ireland to those in England.

question of the inadequacy or limited availability of personal protective equipment, or of poor risk management measures (Watterson 2020), or even the means and extent of reporting of Covid-19 cases (Agius 2020; Agius et al 2020). During this time, exhortations of government and guidance from the regulator mainly emphasised behavioural strategies aimed at individuals' personal responsibilities for 'staying safe', rather than the organisational arrangements to ensure it, that were the legal responsibilities of their employers to deliver. Enforcement action was almost non-existent. In July 2020 HSE admitted:

“There has been no instance of a factory closing following an outbreak because of action taken by HSE” (Hazards 150).

Publication of written guidance produced or co-produced by HSE from May 2020 onwards, while including risk assessment and risk management measures and encouraging employers to 'talk to their workers' about their Covid-19 arrangements, remained largely couched in behavioural safety terms (HSE 2020 a and b.) It ignored existing regulatory requirements on consultation in good time with trade union appointed health and safety representatives, or any suggestion that employers might make some positive use of the 100,000 or so such representatives appointed under these regulations. Indeed, in none of the documents produced or co-produced by HSE are there details of employers' legal responsibilities to their workers, or of their workers' legal rights (James (Ed.) 2021).

In this respect too, the official guidance has the same orientation of that of the extensive media coverage of the pandemic, which has concerned individuals 'taking care of themselves' in the face of workplace risks in relation to Covid-19. Notably, its key messages bear little relation to what has been widely accepted as good practice on OSH management for more than 50 years. Thus, notions of a hierarchy of control,⁴ seem to have been reversed and focused on what good OSH practice would normally regard as last resort strategies — workers' behaviour and personal protection. Even here, there has been confusion over just how much protection different forms of personal protective equipment actually provided. Part of the explanation for this strange reversal was that the orchestration of the state's response was undertaken by public health authorities with little experience of occupational safety and health but with a strong tradition of deploying strategies of health promotion aimed at changing personal behaviour. It might have been

⁴ For example, the US National Institute for Occupational Safety and Health (NIOSH) indicates an inverted pyramid of priorities placing elimination first and most effective, followed by substitution, engineering, and administrative controls and ending with personal protection and behavioural strategies in a descending order of effectiveness (<https://www.cdc.gov/niosh/topics/hierarchy/default.html#date>), a hierarchy that has been widely accepted among the OSH professionals for decades. In the UK as cases of Covid-19 increased, the safety practitioners' body, the Institute of Occupational Safety and Health (IOSH), along with public figures in Occupational Medicine, all issued reminders concerning these elements of good preventive practice (<https://iosh.com/media/7811/iosh-risk-assessment-guide.pdf>).

easily corrected in the official guidance if the regulator responsible for OSH had itself been seriously engaged. But as already indicated, from the early days of the pandemic, contributions to the discourse from the responsible body – the HSE – were conspicuous by their absence.

This continued to be so, even when it became obvious that the workplace was a significant source of infection affecting many workers, and not only those health and social care workers who were dealing directly with the victims of the disease. During the first phase of the pandemic, evidence mounted that other workers in essential occupations, in transport, in food production and distribution, in education and so on, were also becoming sick at an alarming rate and were passing their infection on to their families and social contacts outside work. For those who cared to listen, trade unions and other groups concerned with the health and safety of workers in the UK provided a welter of examples of these exposures and their consequences.⁵ This has been even more the case during the second phase, as the occurrence of workplace-related outbreaks were increasingly reported in the media. There have been clear opportunities here — indeed there were arguably statutory responsibilities — for the regulator to intervene to demand good OSH practices, and to ensure there were legal consequences for duty holders who failed to follow them. However, when it finally did engage with these issues, the pronouncements of the HSE did little more than endorse the previous statements from the Covid-19 lead bodies concerning workers' behaviour and the adequacy of respiratory protection (see James (Ed.) 2021). According to the *Observer*, a respected national newspaper:

“Health and Safety Executive (HSE) inspectors have not issued any enforcement notices on companies for Covid safety breaches since the start of the latest lockdown, despite having been contacted 2,945 times between 6 and 14 January about safety issues. Just 0.1% of about 97,000 Covid safety cases it has dealt with during the pandemic appear to have resulted in the issuing of an improvement or prohibition notice. No company has been prosecuted for a Covid-related breach.”⁶

This was in January 2021. Questions therefore arise on how to explain the behaviour of a national OSH regulator, once renowned and respected as the first in the world, whose practice and ethos has been considered an exemplary model

⁵ The TUC for example, issues a weekly (sometimes more even more frequently) bulletin – Risks – which reviewed the workplace effects of the virus and provided a sustained and detailed commentary on its development during 2020. Individual unions organising in a host of different sectors where workers were exposed also regularly published accounts of these exposures and their consequences. The Hazards campaign bulletins: Hazards, provides a further rich source of material charting workers' struggles and state failures in the face of Covid-19.

⁶ See ‘Staff pressured to go back to work in breach of Covid rules, The Observer 16 Jan 2021 at: <https://www.theguardian.com/world/2021/jan/16/staff-pressured-back-to-work-breach-of-uk-covid-rules>.

of regulatory inspection of OSH for most of its existence. Why has it failed to command a significant profile in the enforcement of OSH regulation at such a critical time?

The argument of this paper is that the answers to these questions can be found in the effects of a fundamental shift within the political economy, in which strategies of governance on the part of the state have, over several decades, facilitated the emergence of a very different operational practice within the regulatory framework for OSH to that intended by its architects. It is necessary to dig a little deeper into the developments in OSH regulation and their contexts over the past several decades in order to understand both: why the protection of workers' safety and health now stands at some distance from what was intended for it when the outlines of the present system were first articulated; and why the HSE's limited role in controlling the work-related spread of Covid-19 is not just an isolated aberration, but symptomatic of a much deeper malaise in British public administration.

4. Understanding failure

It is important to appreciate the context in which the origins and development of the present regulatory system for OSH occurred in the UK, to account for the diminishing resources provided for its operation over recent decades and to examine how this system has been especially vulnerable to political manipulation. The following subsections consider each of these in turn.

4.1. The origins and development of the regulatory framework for OSH in the UK

Regulatory scholars acknowledge that a major transition took place in regulatory policies on OSH globally, beginning around the start of the last quarter of the 20th century (and possibly sometime earlier in some Scandinavian countries). It resulted from concerns over the continued appropriateness of previous approaches to regulating OSH which, in some cases, had not changed fundamentally since their origins over a century previously. The UK was in the vanguard of this change. The 1970s saw a significant recasting of the British approach to regulating OSH. Changes were heralded by the findings of the Committee of Inquiry into Safety and Health at Work, chaired by Lord Alfred Robens, in 1972 (Robens 1972). Its Report recommended an overhaul and replacement of the prescriptive features of OSH regulation which had developed piecemeal over the previous century or more, with an approach focused more on the principles and processes of OSH compliance, in which it was argued that, although employers remained the main duty-holders with responsibilities for OSH, they shared a common interest in participating together with workers and their

representatives, to manage the improvement of OSH outcomes. As was already the case in Nordic countries, from which some of the Robens' philosophy was borrowed, notions of participatory management were central to the Committee's recommendations.⁷ At the same time, the then quite powerful trade union movement in the UK was pressing for the introduction of regulatory provisions to give consultation rights to trade union workplace representatives on OSH matters.

These ideas were combined in the Health and Safety at Work (HSW) Act 1974, an enabling Act which replaced the existing prescriptive system. The statute provided the framework for such participatory, principle and process-based approaches and at the same time extended coverage to many work situations that had not been covered under previous legislative regimes. Principles and processes were outlined in this parent Act — while detailed means of their delivery were introduced in Regulations made under it. These were added in the following years, such as for example, the Control of Lead at Work Regulations 1980; the Control of Asbestos at Work Regulations 1987; the Control of Substances Hazardous to Health Regulations 1988; the Noise at Work Regulations 1989 and so on, gradually replacing prescriptive requirements found in older statutes and regulations. Reform of the institutions charged with governance, monitoring and enforcing compliance with regulatory measures on OSH was also addressed by the same statute. The HSE was created, essentially through amalgamating a number of previously separate regulatory inspectorates and support services into a single organisation, equipping its inspectors with a wider range of powers and at the same time creating a tripartite structure for its governance in the form of the Health and Safety Commission.

In the EU, a decade later, the same ideas were combined with those on competent and participative workplace risk assessment to form the pillars of regulatory policy on OSH found in the Framework Directive 89/391 — and transcribed in the UK by the Management of Safety and Health Regulations 1992 and others, under the HSW Act 1974, and continuing in place to the present time. They were also widely adopted in regulatory reforms of other advanced market economies such as in Canada, Australia and New Zealand and were the template for global OSH standards such as those of ILO Conventions.

The introduction of this framework in the UK took place some 50 years ago. The recommendations on which it was based had emerged from a review of previous practices and were founded on assumptions about the underpinning support for OSH that existed at the time of the review in a mixed economy largely based on Keynesian principles. Among other things, these included relatively full and stable employment, with more than half of those employed belonging to trade unions, an economy dominated by manufacturing, heavy industry and coal mining;

⁷ Although the recommendations of the Robens report largely reflected strategies that can be found in the written evidence it received from the then Department of Employment and was very much regarded as a response to a British situation, the Committee made several visits overseas, to the US, Canada, Germany and Sweden.

and a system of tripartitism in the administration of public and economic affairs which involved substantial representation of labour alongside that of employers and the state in its structures of governance and consultation.

However, measures to deliver the new approaches were introduced and operationalised during a period of radical change in the structure and organisation of British society and its economy. These changes, as has been well-documented, were so fundamental that assumptions which could understandably have been made concerning institutional infrastructures of support for OSH when the recommendations for legislative reforms were made, would be entirely redundant within ten years (see for example, Walters and Wadsworth 2014; Walters et al 2011 for a more detailed discussion).

During this time, market orientated neo-liberal political and economic governance increasingly prevailed globally. This initiated a globalised process of unprecedented change — in the structure, organisation and control of work and in the role of the state in regulating the behaviour of employers, their business and the markets in which they operate. The UK, along with the US, was in the forefront of this change and the policies behind it were further influential among the societal and political determinants that helped to transform cultural and social norms as well as social organisation over the same period. These latter changes have continued under a succession of UK governments, in keeping with their wider neo-liberal political and economic aims. Alterations in public values thus brought about, along with changes also implemented in local governance, have further helped to mute resistance to the market orientated strategies of national governance (Almond and Esbester 2019). Indeed, even global economic crises such as that experienced in 2008, failed to alter their broad trajectory. Thus, allowing the orchestration of an increasing withdrawal of state resourcing from its responsibilities for health, social care, education and so on, and its replacement with marketized and generally private alternatives. As Almond (2015) has described, at the same time, successive governments in the UK manipulated public acquiescence to these changes to seek even further withdrawal from their previously held regulatory functions in many of these areas, progressively deregulating them and cutting state funding in accordance with their political and economic precepts. A progressive reduction of funding for institutions such as the HSE and for local authorities, as detailed in the following section, were a small part of the reduced public spending thus sanctioned, as was the withering representation of labour in their administrative structures.

Such political and economic contexts, therefore, had their own powerful influences on the ways in which regulatory changes were operationalised during this period and on the results achieved. Moreover, the trajectory of change over this time was further influenced by the shifting balance of power between labour and business, where partly as a consequence of drivers in the wider political economy, as well as the structural changes in employment they occasioned, the fortunes of organised labour fell dramatically, while the confidence and power of

capital grew proportionally stronger. Some fifty years ago, as previously noted, when harbingers of the regulatory reform on safety and health at work were originally aired, the membership of trade unions was at a record high and organised labour was a strong presence in the institutions of governance and management of OSH at global, national, sector and enterprise levels. It was largely as a result of the power this conferred on unions that they were able to campaign successfully for a form of participation on OSH in which they were embedded, not only through tripartite arrangements for the governance of OSH at national and sector levels, but also at workplace level, with rights for recognised trade unions under the Safety Representatives and Safety Committees (SRSC) Regulations 1977, enabling trade unions to appoint health and safety representatives in workplaces where unions were recognised (Walters 2006). Nowadays, union membership and density is a fraction of its former strength and its presence and influence in the institutions of governance of OSH is also substantially reduced, as is the membership and recognition of unions at workplace level and the presence and power of safety representatives in these workplaces. Nor has the void this has created in the representation of workers' collective interests been replaced with any significant alternative voice for labour (Walters and Wadsworth 2019).

4.2. Diminishing regulatory capacity

Returning to the question of regulatory capacity — which the 1970s reforms were intended to enhance — the previous section identifies several inter-related factors which have together played an important role in determining that this has not in fact occurred. But the most obvious brake on this trajectory has been the reducing resources of regulatory institutions. In the UK, for several decades, both the HSE and environmental health departments of local authorities have been subjected to repeated rounds of cuts to the resources allocated to them by the state. In the case of the HSE, at the time of its creation in the 1970s, not only did it consist of a number of different regulatory inspectorates, but it also embraced a large part of the public research and information infrastructure for OSH in the UK. Since that time, its capacity for undertaking both its own research, as well as for commissioning research from other sources, has all but disappeared. While its field inspectorate, which was already diminishing in numbers as a result of reduced resourcing from the beginning of the millennium, has been subject to continuing cuts, as is already well-documented (see for example James and Walters 2005; Tombs and Whyte 2007; 2013; Whyte 2020). In October 2010 the government announced, as part of the Comprehensive Spending Review, that the HSE was required to achieve savings of at least 35% over the review period, a requirement which meant a cut in government funding of around £80 million by 2014/15 relative to its 2010 budget. More cuts were subsequently announced that increased the percentage of savings required to 40%. This process of reduction has

continued. For example, it was noted in a March 2020 evidence session held by the Parliamentary Work and Pensions Select Committee that the HSE's budget had fallen in real terms by 14% since 2013/14.⁸ As a result, while in April 2004 there were 1483 'Front-line inspectors' in HSE, by the same date in 2015 this had fallen by 34% to under 1000. There are slight differences in estimates of these numbers caused by what is considered to represent 'front line staff', but there is no doubt about the decline.⁹ Using HSE's own data, for example, from its annual reports for 2009/10 and 2018/19, total FTE staffing is shown to have fallen from 3702 in 2010 to 2426 in 2019, a decline of slightly over a third. In parallel to the decline in field inspectors, further huge cuts in the already much reduced HSE budget for research and other OSH support services also occurred over this period. It is in this context that a much-publicised boost to HSE resources provided by the Government in 2020 in order to tackle the workplace presence of Covid-19 needs to be viewed. In May 2020, the Government announced that an additional £14 million would be made available for these purposes. However, this was a one-off payment. While in contrast, the Government indicated it would make available some £60 millions to local and police authorities to police the introduction of Covid-19 related restrictions on public behaviour.

HSE was not allowed to invest its recent windfall in training inspectors. Instead it has used most of this to acquire extra outsourced call centre capacity from private contractors to advise on workplace Covid-19 (James (Ed.) 2021).

For local authority environmental health departments, the picture is similar. In April 2004, there were 1140 full-time equivalent local authority Environmental Health Officers (EHOs) holding appointments under Section 19 of HSW Act. By 2015 there were 736 – a fall of 35%. As Tombs has further shown in his detailed analysis, the decline of Local Authority resourcing of OSH activities became even more marked from around 2010 onwards as Government cuts to the quite complex streams of local authority funding became more pronounced. Food safety responsibilities were prioritised over those for health and safety and environmental protection and the relationship between EHOs and the HSE also became more distanced (Tombs 2017).

Against this backcloth, not surprisingly, over the period 2003/4 to 2015/16, proactive inspections undertaken by the HSE's Field Operations Division (FOD) fell by 69%, while in the case of EHOs, total inspections fell by 69% and preventative ones by 96%. These declines were exacerbated and indeed

⁸ Evidence from the HSE to the Chair of the Work and Pensions Select Committee dated 1 April 2020. Available at: <https://committees.parliament.uk/committee/164/work-and-pensions-committee/>.

⁹ In its own description, for example, HSE recently indicated 1066 of its staffing constitute 'inspectors and visiting health and safety staff'. But it includes in this a number of 'outreach workers' who are not in fact regulatory inspectors, as well as those not yet fully trained and others. In contrast, the trade union that organises HSE staff has indicated that there are in fact only 390 full-time equivalent main grade inspectors for the whole of mainland UK. (Prospect 19 August 2020 <https://prospect.org.uk/news/hse-how-do-you-solve-a-problem-like-14-million/>).

institutionalised through the decision in 2011 of the HSE's parent Government Department – the Department for Work and Pensions (DWP) – to identify whole sectors of economic activity as 'low risk' and thereby prohibit proactive inspections at local authority and then at HSE level. No rationale was provided for what constituted 'low-risk'.¹⁰

As James and Walters pointed out in 2016, if the number of inspections (18,000) carried out by HSE in 2015/16 is considered in relation to the number of premises for which its inspectors have enforcement responsibility (some 900,000), then statistically the average workplace could expect an inspection once every 50 years. To put this in an historical context, in 1973 HSE and HSC related agencies undertook over 503,000 workplace visits while in 1977 local authorities conducted over 534,000 (Dawson et al 1988).

While reduced resourcing for inspection and other activities is a tangible and fairly obvious measure of falling capacity to support securing compliance with OSH, a host of further more subtle influences have been applied to the HSE by a succession of governments generally aimed at pressuring the regulator to develop more 'business friendly' approaches in its efforts to ensure compliance. Again, this is a long story, and only its outlines can be sketched here, but over the last 20 years, and with increasing determination, successive Government initiatives have sought to modify the enforcement priorities and practices of its regulators. Thus, the deregulation strategies of previous governments led to the establishment of the policy of 'Better Regulation' which, among other things, effectively limited the production of new OSH regulations to those required under EU obligations, even these being subject to strict cost-benefit criteria in regulatory impact assessments. Regulators such as HSE have been required to make regular Business Impact Target reports concerning the economic impact of their regulation on business. New enforcement policies and strategies, of which inspectors are mandated to take account, have been published. The language used in these documents talks about proportionate enforcement action and indicates a need to comply with the Enforcement Concordat of the Better Regulation Executive. The Regulators' Code of 2014 also indicates what regulators must consider when engaging with those they regulate. HSE's own rules for its inspectors when seeking compliance have been developed taking account of these wider policies of regulatory governance, all of which stress consideration of the needs of business in regulatory practice.

Given this mix of resource and strategic constraints, it is hardly surprising that HSE has not been very conspicuous during the Covid-19 crisis. It simply does not have the resources to meet the potential demand for its services that might result from a higher profile of regulatory intervention. Instead it has allowed Public Health England and its Scottish, Welsh and Northern Irish equivalents to occupy the front line in guidance on workplace behaviour during the crisis. This has

¹⁰ An analysis by Hazards magazine found that of the 258 reported worker fatalities in the 19 months which followed the change, 53% were in 'low-risk' sectors.

created a contrast, now starkly apparent, between the approach to monitoring compliance with new Covid-19 rules for the public, with that towards achieving regulatory compliance from employers with longstanding and clear duties in this respect. As the Hazards Campaign has recently observed:

“At a time when money should be spent preventing the spread of infections in schools, care homes, hospitals, meat processing plants and offices, the government has chosen to set aside £60m for police and local authorities to enforce the new laws. However, when workers are inside their factories, offices and other premises, there is little money being spent on enforcing safe control of the transmission risks and ensuring their health, safety and welfare.”¹¹

It is important to realise that this is not the ephemeral result of a confused Government reaction to a recent crisis, but the consequence of a long-term and deliberately orchestrated withdrawal on the part of the state from the protection of citizens whose work is the basis of the economy.

4.3. Compliance and the political economy. One step forward, two steps back

The general character of the state’s strategies for the governance of worker health and safety is therefore no different from that of those it has applied to economic governance in the UK more widely. Indeed, its approach OSH governance and regulation is a minor constituent element of these wider strategies and entirely consistent with their aims. But such approaches fail to serve the interests of workers who find themselves situated in positions of vulnerability amid conditions of work and employment largely created by the same strategies. As has been well documented across a range of literature concerned with measures of health and wealth in the UK during this time, while such policies may benefit a minority of people in higher income brackets who stand to gain further from the profitability of business ventures in which they have invested, at the same time they have contributed to growing inequality within British society and a widening gap between rich and poor (see for example Marmot, 2016; Wilkinson and Marmot 2003; Wilkinson and Pickett 2009). And it is no surprise that workers and their families who are in the lowest income brackets, have the most insecure jobs, and experience the greatest measures of social deprivation, are also among the groups where the highest incidence of Covid-19 has been reported (Bambra et al 2020). Yet there has been relatively little discussion of these issues within the literature

¹¹ <http://www.hazardscampaign.org.uk/blog/well-be-policed-all-the-way-to-the-factory-gates>.

focussed either on occupational safety and health or in that addressing regulatory compliance more widely.

Despite this disturbing picture, it is important to acknowledge that since the early 2000s, in its strategies to secure compliance, HSE has explored a wide range of responses to the consequences of change in the structure, organisation and control of work. Indeed, in this respect its documented strategies have been in the vanguard of innovatory approaches to support securing compliance with OSH standards in contexts where traditional methods of inspection are unlikely to reach more than a minority of duty-holders (Walters 2016). An interest in using ‘multiple tools’ to achieve improvement in the ‘atypical work scenarios of the new economy’ has been prominent in its policies in recent decades, in which communication, using intermediaries, identifying business benefits, and so on, are advocated. They thus seek to exploit the roles of organizations, individuals and processes in intermediary positions between the regulatory agencies and the hard-to-reach small firms, temporary workers and migrants, thought to be beyond the reach of conventional inspection. The aim is to ‘cascade’ good practices to situations that are difficult to access through conventional inspection (Walters et al 2011). Promoting a more advisory role for the HSE has been part of this. While critics (see for example Tombs 2017) point to the potential this has to reduce enforcement actions, in reality this view may be over-simplistic, since it is equally true that when employed strategically it may extend the reach of the influence of regulatory scrutiny (see for example Blanc 2012 a and b). In addition, the reorganisation and restructuring of work and employment has also changed the risk profile of work, leading to a greater presence, for example, of psycho-social concerns that are not easy to either manage or regulate by conventional means – posing further challenges for traditional inspection and reasons for innovation. HSE has also placed an increased emphasis on private regulation or public/private mixes of regulation in recent decades, such as in relation to supply chains and in industries, such as construction, where regulatory duties are imposed on actors in these chains. Another strategy it has adopted quite extensively is to channel inspection resources in ways that target more risky workplaces or processes. In parallel, new public sector management initiatives that place greater emphasis on ‘evidence-based’ strategies and require the evaluation of performance against targets have prompted a strategic interest in measurable outcomes. To some extent this is also indicative of the overall trend towards ‘risk-based regulation’, or strategies which ‘involve the targeting of enforcement resources on the basis of assessments of the risks that a regulated person or firm poses to the regulator’s objectives’.

In all of this HSE is pursuing strategies widely discussed in the burgeoning regulatory literature of recent decades in which, for example, responsive regulation (Ayers and Braithwaite 1992); risk-based regulation (Black and Baldwin 2010); smart regulation (Gunningham and Sinclair 2017); smart enforcement (Blanc and Faure, 2018); strategic enforcement (Weil 2010) and a host of other terms

describing innovative strategies have been suggested as more effective approaches to securing compliance in the light of the challenge of change in advanced market economies. Despite this, recent studies have acknowledged the existence of an enforcement gap, and especially in relation to the needs of precarious workers (Vosko et al 2020). In this respect, HSE's strategies are also in line with the recommendations of bodies such as the ILO as well as with those of the EU Senior Labour Inspectors' Committee, of which until recently the HSE was a prominent member (see ILO 2017; SLIC 2017).

The problem, however, is that while these strategies may all be potentially effective in addressing challenges for regulatory compliance in the current contexts of change in work structure, organisation and control, they are neither intended nor effective substitutes for reduced resourcing. Yet there is little doubt that this is how they are used in the UK, where the regulator has been obliged to 'do more with less' in recent decades. And alongside this, as we have recounted in the previous section, has gone increasingly strident government demand for the adoption of more business-friendly strategies across all aspects of regulation, including in its design, coverage, implementation and enforcement. When adopted under such pressures, the kind of innovation in strategies to secure compliance recommended by scholars and international organisations to address current challenges of change, have unfortunately merely served to undermine the value of the regulator for the people it is primarily intended to protect. The argument of this paper is that, in the face of this systematic and long-term reduction of its regulatory capacity, the absence of effective action from the HSE during the current Covid-19 pandemic is an entirely predictable and inevitable consequence.

5. Conclusions. Unacceptable workplace risks and an uncertain future

The thesis advanced in this paper has been threefold. First, it has argued that the context in which the Covid-19 virus has achieved its devastation in the UK is one where the resilience of the institutions of social and health protection have already been seriously undermined by the effects of longstanding economic and political policies that have driven a market orientated and deregulatory political economy over several decades. Second, this economy has created a set of business and employment practices that have helped to promote the vulnerabilities of particular groups of workers. Third, the seeming unwillingness on the part of the state to effectively address the blatant and repeated failure of duty-holders to manage workplace exposure to Covid-19 according to well-established principles of good practice and basic regulatory requirements, is entirely in-keeping with these wider factors.

A more complete understanding of this position is found in the failure of the tenets of the wider regulatory system to provide adequate protections for workers from the risks of their work. This system, which has its origins in attempts

to develop a regulatory approach that would address perceived inadequacies of OSH regulation as they were understood more than 50 years ago, has been repeatedly exposed as inadequate in addressing the protection of workers from risks arising from their work in the 21st century. The present account suggests that a large part of the reason for the failure of the last 50 years lies in the way the requirements of the system have been an easy target for political manipulation, subverting them to suit the needs of the economically powerful at the expense of workers, whose power, while never equal to that of business interests, has been substantially eroded over the same period and by the same processes of subversion that have been applied in the case of regulation and regulatory enforcement.

The result is that both the social organisation that previously supported labour and hence its collective economic power, has been deliberately and systematically dismantled, as social and economic relations have become individualised and workplace roles in relation to safety and health increasingly responsabilized (Gray 2006; 2009). The pervasive success of this political approach has been felt far more widely than solely in the institutions of workplace industrial relations and can be seen in the individualisation of society and its social norms more widely.¹² When coupled with the structural and organisational changes in the way in which work is carried out, which are also inseparable from the wider changes in the political economy, this means that workers, and especially the increasing proportion of them whose work is situated at the margins of the economy, are vulnerable to greater risk inequalities. The argument here is that what remains of the means of supporting compliance with OSH standards cannot provide adequate protection for these workers from work-related exposure to Covid-19 or its consequences – consequences that are made even worse by the systematic reduction of state support for health care which has been a further leitmotif of governance over this period.

The critical questions that should be asked about the regulation of OSH in the UK are therefore not about whether the British regulator has been sufficiently innovative with its deployment of regulatory compliance strategies. Rather they are firstly, whether it has been obliged to seek both more generic and innovative ways of undertaking its mission because it has been denied sufficient resources to deliver more focused and conventional intervention. Secondly, they should enquire about the extent to which, in determining this mission, the regulator has been subject to manipulation from government policies insisting on ‘softer’ and more business-friendly approaches to securing compliance in accordance with neo-liberal precepts. Thirdly, they must seek to establish whether the other pillars of support necessary for the effectiveness of principle and process-based regulation have been undermined and subverted by the effects of these precepts, to the extent that they can no longer be assumed to provide such support. If, as this paper has argued, the answers to all these questions are affirmative, then the conclusion that the British

¹² As is well documented by social theorists (see for example, Giddens 1991 and others).

state and its regulatory apparatus is likely to be ineffective in protecting workers from workplace risks of exposure to the SARS-CoV-2 virus inevitably follows. That this is not a recent failing of a particularly inept Government in dealing with the Covid-19 crisis, such as it is frequently portrayed in the media, is equally inescapable. Rather, it is the consequence of a quite deliberate and long-term strategy of a succession of governments that have placed the economic gains of the minority of the UK population who benefit financially from the greater freedoms of business before that of securing and protecting the health of the wider population.

This returns us to arguments found in the work of early criminologists with a grasp of social history, like W.G. Carson (1985), who had traced the conventionalisation of OSH crimes to the early days of OSH regulatory enforcement in the mid-19th century. His work demonstrated a continuing ambiguity in societal understandings of OSH ‘crime’ seen both in the actions of regulatory agencies and their inspectors, as well as in influential public discourse on OSH regulation. Such ambiguity has continued to the present time and been particularly exploited by the ideologically driven reforms of successive neo-liberal UK Governments since the late 1970s. The consequences of this are much in evidence in the case of regulating workplace exposures to Covid-19, where there has been little sign of notions of criminality being applied when regulatory non-compliance has resulted in high levels of workplace exposure and subsequent fatal cases of Covid-19.

To remedy this, urgent regulatory reforms are required that effectively address the emergent characteristics of the economy in the 21st century, along with a resumption by the state of its responsibilities for the adequate and effective resourcing of means to ensure compliance with them. This paper opened with the observation that in previous times, workplace disasters had been the stimulus for radical regulatory reform. The Covid-19 pandemic is of course more than a workplace disaster – but it is this too. Whether it provides the stimulus for reform of OSH regulation and its resourcing, however, remains a moot issue. But it seems an unlikely outcome while the wider politics of governance in the UK remain characterised by their present values.

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Abstract

Il saggio analizza la problematica del ruolo dello Stato nel Regno Unito con riguardo alla tutela della salute e della sicurezza nei luoghi di lavoro nella contingente situazione di emergenza sanitaria. L'A. mette in evidenza, in particolare, il fallimento delle politiche governative nella protezione dei lavoratori dai rischi legati al Covid 19, ritenendo che ciò non abbia carattere episodico ma sia sintomatico di un processo di deregolazione in materia. Come rimarcato, infatti, gradualmente il sistema di protezione, fondato su interventi normativi molto incisivi che avevano costituito un modello anche per altri paesi, è stato sostituito da un diverso approccio basato sul metodo partecipativo, con il coinvolgimento soprattutto del livello individuale di partecipazione e senza il concorso delle organizzazioni sindacali. L'attenzione è rivolta anche alla riduzione delle risorse destinate a finanziare le ispezioni del lavoro per il rispetto delle misure di sicurezza.

The essay analyzes the problem of the role of the State in the UK with regard to the protection of health and safety in the workplace in the contingent health emergency situation. The Author specifies the failure of government policies to protect workers from the risks associated with Covid 19 and argues that this is not episodic but symptomatic of a process of deregulation in the matter. As noted, in fact, gradually the protection system, based on very incisive regulatory interventions which had also constituted a model for other countries, was replaced by a different approach based on the participatory method, with the involvement above all the individual level of participation and without the cooperation of trade union organizations. Attention is also paid to reducing the resources intended to finance labor inspections for compliance with safety measures.

Parole chiave

Pandemia, salute e sicurezza, regolazione normativa, ruolo dello Stato, risorse finanziarie

Keywords

Pandemic, health, safety, regulatory measures, role of the State, financial resources