



Health and safety in small organisations

Reducing uncertainty,
building confidence,
improving outcomes

Foreword

The Risk and Regulation Advisory Council has been leading an experimental one-year offensive against the mishandling of risk in society. We aimed to better understand the nature of the conversation between public and Government on matters of risk, and how this affects, and is affected by, formal and informal “regulation”. At the request of Lord McKenzie at the Department for Work and Pensions (DWP), and Judith Hackitt and Geoffrey Podger at the Health and Safety Executive (HSE), we agreed to apply our approach to examine the challenges faced by small organisations when managing health and safety (H&S) risks. This report sets out the outcome of our work.

H&S legislation is essential to provide protection for employees and the public. There is a growing consensus, however, that smaller organisations find it difficult to understand how to comply with H&S legislation. Many are struggling to conduct the workplace risk assessments required by law and to apply common sense and judgement to decide what H&S measures should be implemented. This lack of clarity, and confidence, has real and unacceptable costs for business and society, and makes good risk management all the more difficult for these organisations to achieve.

Previous reports identified that small organisations find it difficult to manage their health and safety risks. We have built on existing work by the Better Regulation Executive (BRE), the House of Commons Select Committee on Work and Pensions, and Sarah Anderson’s Review of Government Guidance, adding to the understanding of what drives uncertainty and undermines confidence in small organisations. Our approach was different to these reviews. We have looked at the whole H&S system, the network of organisations, including insurers, the legal profession, standard setters, consultants and the media (all of whom are ‘risk actors’), that influence H&S practices and the response to H&S risk.

As part of our work, we organised a workshop to bring together over forty risk actors involved in the H&S system. It revealed the different viewpoints and allowed each risk actor to consider the role they might be playing in creating uncertainty and undermining confidence, and the impact that other risk actors have on their behaviour.

Our work has shown that uncertainty and confusion are a result of the complex interactions between the risk actors. Therefore, solutions focussed on the role of government alone will not be fully effective. A holistic approach that tackles the influences of all the risk actors, stretching beyond traditional government boundaries is needed. The motivations of risk actors and the interactions between them must be understood. Through this understanding, new insights and previously hidden opportunities to use the support of others for mutual benefit can be found. We have drawn up a map of the risk actors – the ‘risk landscape’ – this is shown on Page 4. This risk landscape can improve understanding of how the risk actors interact and help to identify where interventions will be most effective.

The holistic approach we have used shows that to build the confidence and competence of small organisations in the management of risk, the root causes of their uncertainty and confusion must be addressed, namely:

- the unhelpful influence of ‘risk-mongers’ – those risk actors who inflate the perception of risks, often for their own benefit;
- the proliferation of contrary messages distorting perceptions of risk and its complexity; and
- the lack of capacity, competence and confidence to manage risk in small organisations.

The Government is not solely responsible for the current situation. However the Government is, in part, responsible for H&S outcomes and it is only the Government that has the capacity, capability and influence to lead this work.

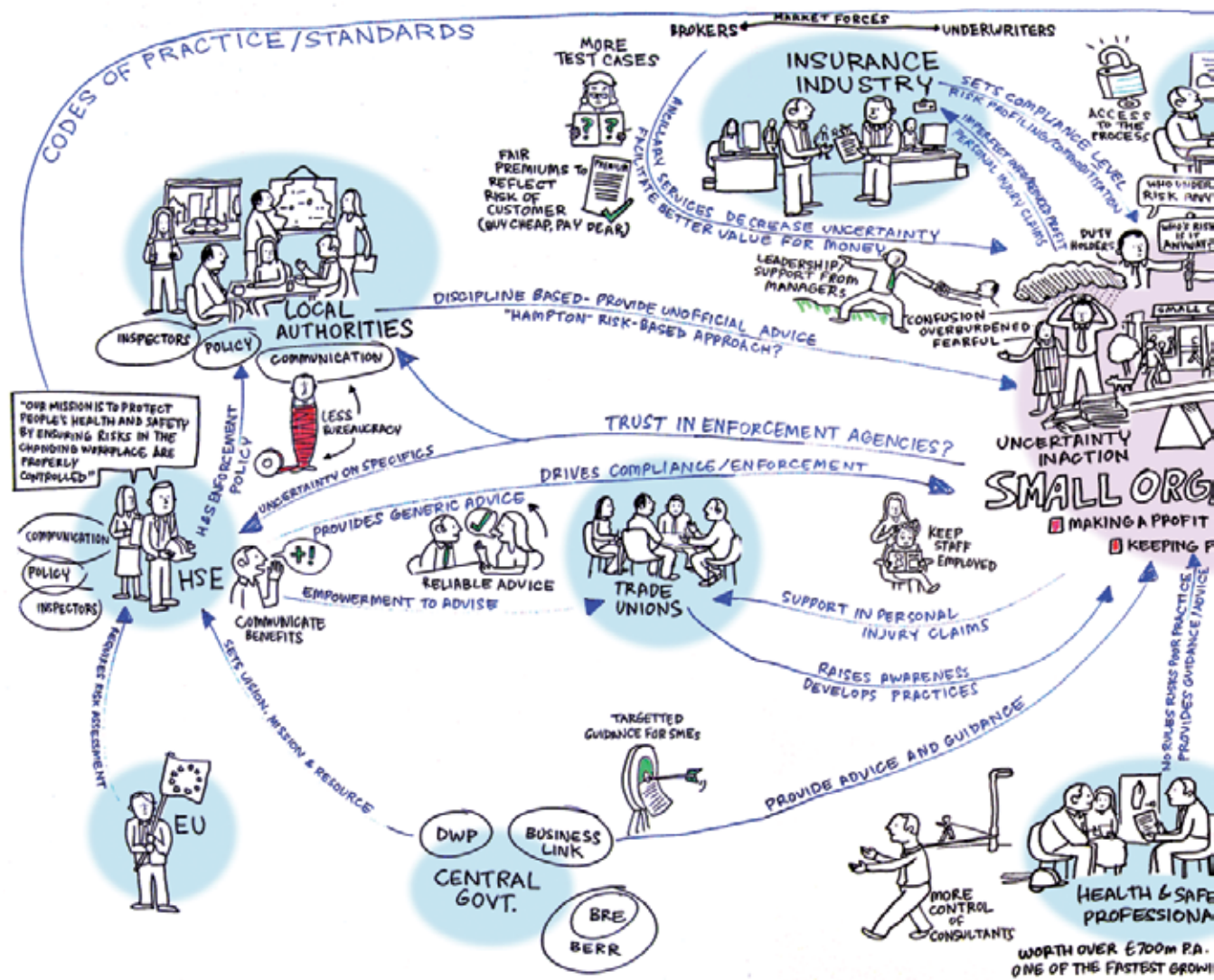
Therefore our specific recommendations are for Government. The most important is for the HSE, with support from Government partners, to take responsibility for engaging with the risk actors to ensure that they actively contribute to the confidence and competence of small organisations in managing risk in a sensible and proportionate manner.

This will allow small organisations to make the most of the flexibility at the heart of H&S legislation. It will reduce the real and unacceptable costs for business and society from unnecessarily expensive demands. But most importantly it will help ensure that good risk management practice is applied more widely so that employees and the public are protected from harm.

I would like to thank Sarah Veale CBE and Lord Jamie Lindsay, who led this work with Pau Castells, Luke Wainscoat and Martin Caunt in the Risk and Regulation Team in the Department for Business, Innovation and Skills, and for the support of Judith Hackitt, Steve Pointer (now at the Engineering Employers Federation) and Tony Bandle in the HSE.

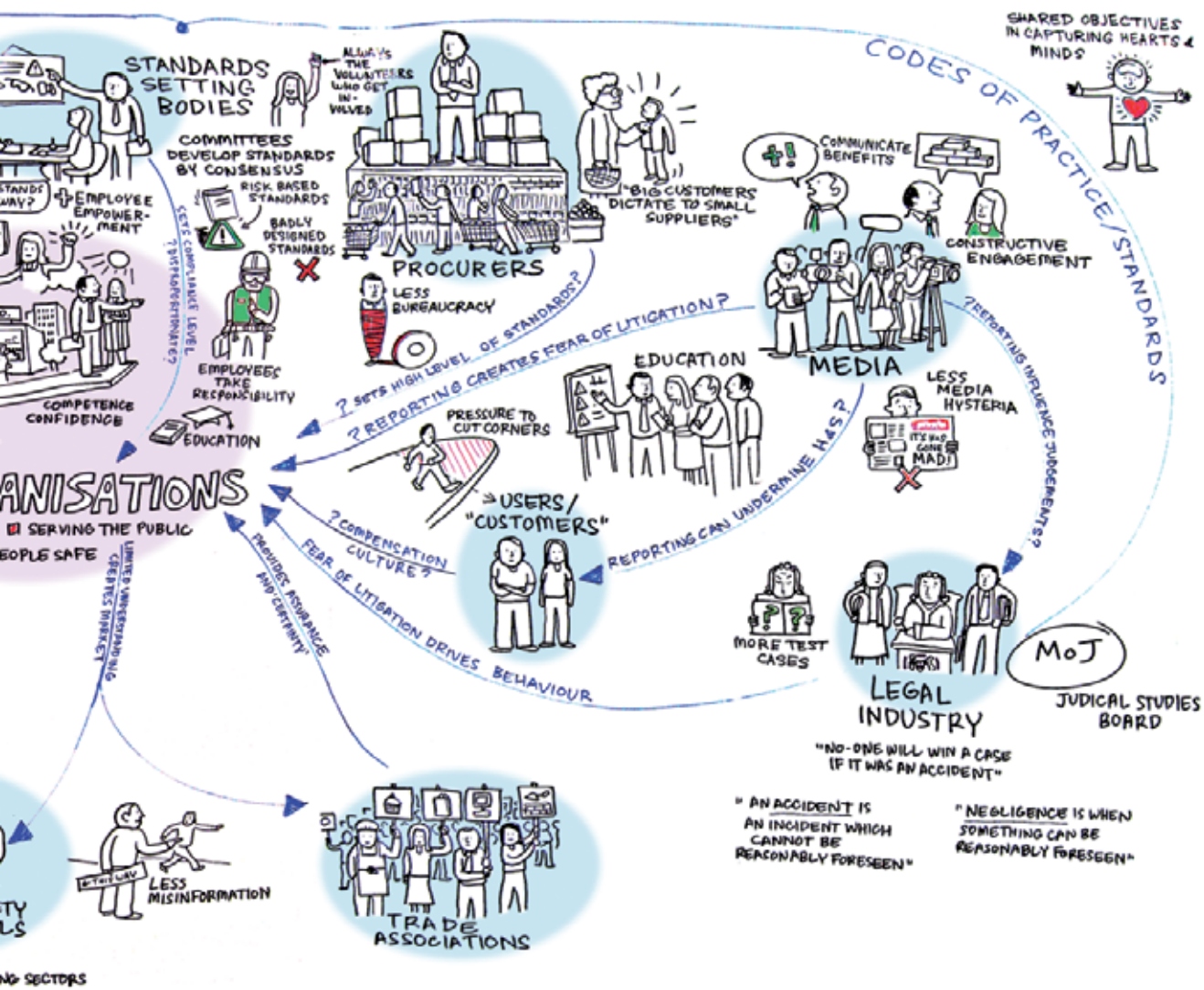
But whilst the Risk and Regulation Advisory Council were the catalysers and conveners of this debate, the real work, and insights came from the forty or more risk actors in the H&S system who were engaged in this debate. Without their knowledge and expertise, and willingness to engage in open and honest dialogue, we would not have developed the depth of understanding of the issues, or the insights into where effort was needed to improve the situation. I thank them all for their commitment and dedication to this worthy cause.

Rick Haythornthwaite
Chair of the Risk and Regulation Advisory Council



This diagram is a risk landscape – a description of the various risk actors and their influences on small organisations' confidence in applying appropriate H&S practices. This risk landscape is a result of the discussion between the attendees at the workshop we held in October 2008. It is a summary of the attendees' views and other people may have different opinions on how it

should be drawn. The risk landscape shows how the balance between uncertainty about health and safety requirements on the one hand, and competence and confidence on the other, is affected by competing influences from many risk actors. Therefore, the most effective intervention will be one that considers all these influences together.



Findings and recommendations

Risk actors turn uncertainty into confusion

This section introduces our main finding and recommendation. In the subsequent sections we will provide further detail on what the areas for priority action are to address this finding.

Our work has explored the reasons why there is uncertainty and confusion amongst small organisations over the scope of H&S regulations and what they need to do to fulfil their obligations. This is important since the confusion can cause unnecessary costs for small organisations through over-compliance and inappropriate risk management, or indeed costs for society if confusion leads to H&S not being taken sufficiently seriously.

“Lots of people are putting out advice including consultants and insurers ... A lot of red tape in health and safety is created by people who are not statutory regulators”

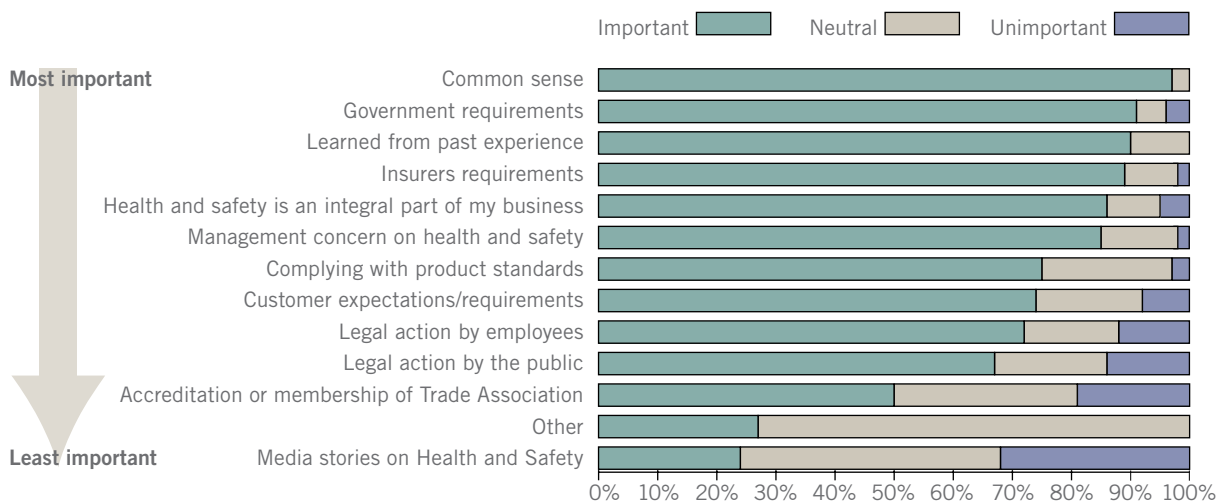
Delegate at the H&S Forum

We recognise that it is the responsibility of the small organisation to try and cut through the confusion and to understand and implement health and safety regulations. However, the government should take reasonable steps to make it easy for small organisations to do so.

The flexibility at the heart of the Health and Safety at Work Act 1974 (HSWA) is a significant factor in the uncertainty that small organisations face. We have found that some organisations

Key factors influencing Health and Safety practices

This bar chart shows how a number of small organisations rated the relative importance of various influences on their H&S practices¹. There are many important influences which can cause confusion if they are not consistent.



Source: RRAC survey on health and safety in small organisations, 2008

¹ The Risk and Regulation Advisory Council conducted a short survey of 153 small and medium sized enterprises (SMEs) selected from the SMEs Consultation Database maintained by the Enterprise Directorate in the Department for Business, Innovation and Skills (BIS). The sample from the SME Consultation Database is not statistically robust and the survey results need to be treated with caution.

benefit as this flexibility enables them to put in place risk management practices that are tailored to their circumstances without unnecessary burdens. However, when organisations are not confident in their ability to understand H&S regulations, the uncertainty can lead to inappropriate risk management practices.

We found that the interaction between the many organisations that can alter the perception and outcome of H&S risk – the risk actors, in combination with the uncertainty caused by the flexibility of the HSWA can lead to confusion amongst small organisations over what they need to do to fulfil their obligations.

Many risk actors have a positive influence. For example, many H&S consultants provide sensible advice that empowers small organisations to undertake their own risk assessments and manage their risks appropriately. But often the profusion of risk actors adds to the uncertainty and reduces small organisations' confidence.

Some risk actors act as risk-mongers – by taking opportunities to inflate the perceptions of risk, often driven by self-interest, thanks to the confusion and uncertainty that can exist amongst small organisations. For example, whilst some health and safety consultants have a positive influence, others can inflate the perception of a risk leading to higher, unnecessary costs and further business for the consultant.

The risk landscape on Page 4 is one way of viewing the risk actors in the health and safety system. It demonstrates that there are many different influences on small organisations.

These influences have a significant effect on whether small organisations are confident in applying health and safety risk management practices or whether they feel uncertain and confused, leading to inaction.

However the risk landscape is drawn, the impact of risk actors is a complex one, involving many interactions. The most effective way of improving the outcome of a complex system is by analysing the system as a whole. The Government is the only organisation with the ability to analyse and coordinate action involving all the risk actors. Within the Government, the HSE are best placed to do this given their knowledge of H&S and their responsibility for H&S outcomes.

Recommendation

1. The HSE should take responsibility for engaging with H&S risk actors to ensure that they actively contribute to the confidence and competence of small organisations in managing risk in a sensible and proportionate manner.

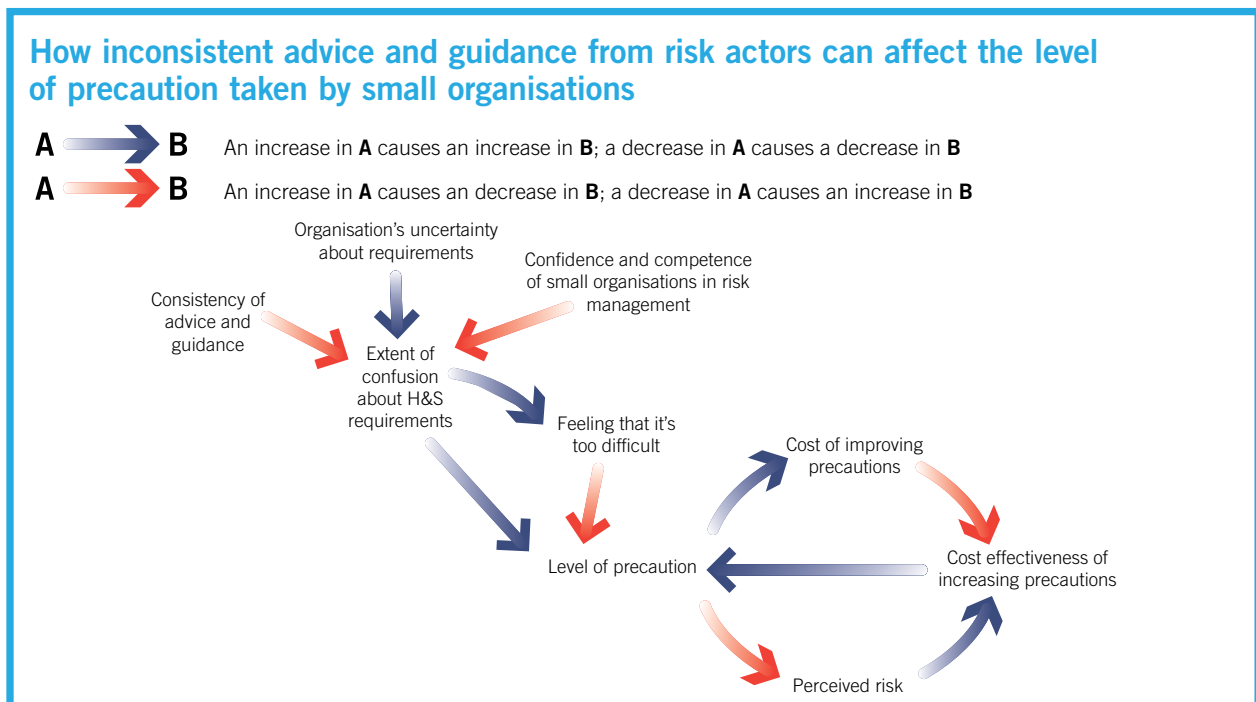
The rest of this report explains how the activities of specific risk actors impact on the behaviour of small organisations. This leads to more detailed recommendations explaining where the priorities lie for improving the confidence and competence of small organisations in applying appropriate health and safety practices.

Delivering consistent advice and guidance

Small organisations often receive conflicting messages about their H&S requirements through inconsistent advice and guidance from the Government, consultants, insurers, standard setters, lawyers, the media and other sources. A survey we commissioned found that over 50% of the small organisations we questioned had received conflicting messages about H&S². This supports similar findings in the BRE's report "Improving Outcomes from Health and Safety" which we refer to here as the BRE report, and in Sarah Anderson's report "The Good Guidance Guide: Taking the uncertainty out of regulation" which we refer to as the Anderson report. We believe the inconsistent advice and guidance from these many sources contribute to the confusion and uncertainty felt by small organisations. The simple systems diagram below shows how this can happen and why this can result in inappropriate levels of precaution taken by small organisations. This diagram will be developed throughout the report, highlighting the importance of a holistic approach.

The insurance industry is one example of a risk actor providing advice relevant to H&S regulations. Sometimes this is unhelpful. An insurance company could benefit from lower claims if it requires or advises its clients to be very cautious. This, in turn, might benefit their clients if it leads to proportionately lower insurance premiums or better insurance cover. However, when the insurer does not explain how its requirements or advice may differ from the requirements of the HSWA, it is likely to increase the confusion about the HSWA.

Whilst we believe that small organisations have a responsibility to consider who is giving them information and why, we support the recommendations in the BRE and Anderson reports to make Government guidance more consistent. However, we believe this will only be fully effective in improving the confidence of small organisations if this guidance is also broadly consistent with the messages from all the other risk actors.



2 The Risk and Regulation Advisory Council conducted a short survey of 153 small and medium sized enterprises (SMEs) selected from the SMEs Consultation Database maintained by the Enterprise Directorate in the Department for Business, Innovation and Skills (BIS). The sample from the SME Consultation Database is not statistically robust and the survey results need to be treated with caution.

Recommendations

2. The HSE should lead the debate on how to ensure that the advice and guidance provided by risk actors to small organisations is clear; and that the relationship between the advice and H&S regulations is also made clear.

3. The HSE should work with the Association of British Insurers (ABI) and the British Insurance Brokers Association (BIBA) to jointly examine whether insurers are providing advice and guidance to their customers that leads to greater confusion about what their H&S requirements are. The HSE should ask the Financial Services Authority (FSA) to examine this issue if progress is not made by ABI and BIBA.

Some employers fear that taking advice from government sources could result in an inspection and others simply do not realise that advice exists. This reduces the effectiveness of government advice and helps lead to confusion among small organisations about their H&S requirements. As shown in the diagram on Page 8, confusion can affect the level of precaution taken by small organisations.

Recommendation

4. The HSE should review its inspection and enforcement approach to consider how they can create a culture of compliance and encourage firms to feel confident about asking for advice. The HSE should review good practice from other regulators such as the Environment Agency and some Local Authorities with a view to consolidating advice within one source.

We welcome the Government's partial acceptance of the Anderson report's recommendation to provide access to a tailored, insured advice line, as long as it results in greater confidence and capacity of small organisations to undertake risk assessment

and management themselves. This would help to reduce small organisations' confusion, as shown in the diagram on Page 8. It would be counter-productive if the advice line led to small organisations becoming solely reliant on it and its insurance rather than exercising responsibility themselves. We are also mindful that take-up of this service may be hindered by its association with government as it may be viewed as a potential path to enforcement activity.

Recommendation

5. The insured advice line proposed by the Anderson report should be implemented in a way that helps to build confidence and competence of small organisations to apply their own judgement and undertake their own risk assessments.

Linking H&S performance with insurance premiums

There is evidence that the insurance premiums that relate to H&S of small organisations are rarely linked to actual H&S performance. It also appears that premiums are not strongly linked to the likelihood of making a claim. However, there are cases in which insurers have done so, for example see the box on Page 10. In at least one case, it appears that a firm reduced its health and safety risks leading to lower premiums. If this could be applied to a wide variety of small organisations and the premiums could be reduced significantly, it would make increasing precautions more cost-effective.

We agree with the recommendation in the BRE report that the insurance industry should do more to link premiums to performance or the likelihood that a firm will make a claim. The Department for Work and Pensions (DWP) and HSE have been working with the insurance industry on this issue. However, there are still few examples of H&S performance or likelihood of making a claim being linked to insurance premiums of small organisations.

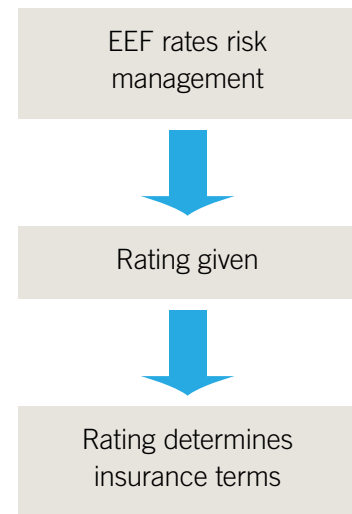
Linking performance to premiums

This box briefly explains how one scheme to link H&S performance to insurance premiums has worked.

- Engineering Employers Federation (EEF) is a manufacturers organisation
- Teamed up with insurers to provide EEF insurance services
- EEF uses risk management scorecard to assess firms' health and safety, and risk procedures
- Firms are graded Red (worst), Amber or Green (best)

Results of the scheme

- EEF has attracted almost £2 million of premium income
- EEF claims members save 25% of premiums on average
- Incentive to improve health and safety management to reduce premiums



Recommendation

6. The HSE and DWP should continue to examine whether a cost effective way of providing lower insurance premiums to low risk small organisations can be found in partnership with ABI and BIBA.

Building confidence in H&S law

The legal system has a substantial effect on H&S practices. We have heard a number of concerns relating to the legal system.

Firstly, there is widespread concern amongst businesses, and society more generally that no-win, no-fee lawyers are producing excessively risk averse behaviour by abusing the regulation of personal injury services and giving the impression that anyone who suffers from an accident is able to sue someone for substantial damages. As shown in the augmented systems diagram on Page 11, those lawyers who give this impression act as 'risk-mongers' since they take advantage of uncertainty and increase the perception of a risk for their own benefit, leading to higher levels of precaution being taken.

Some of the experts we have spoken to believe that the benefits of public activities are not always fully taken into account in judgements involving H&S in public places. This would increase the level of precaution that judges deem reasonable and

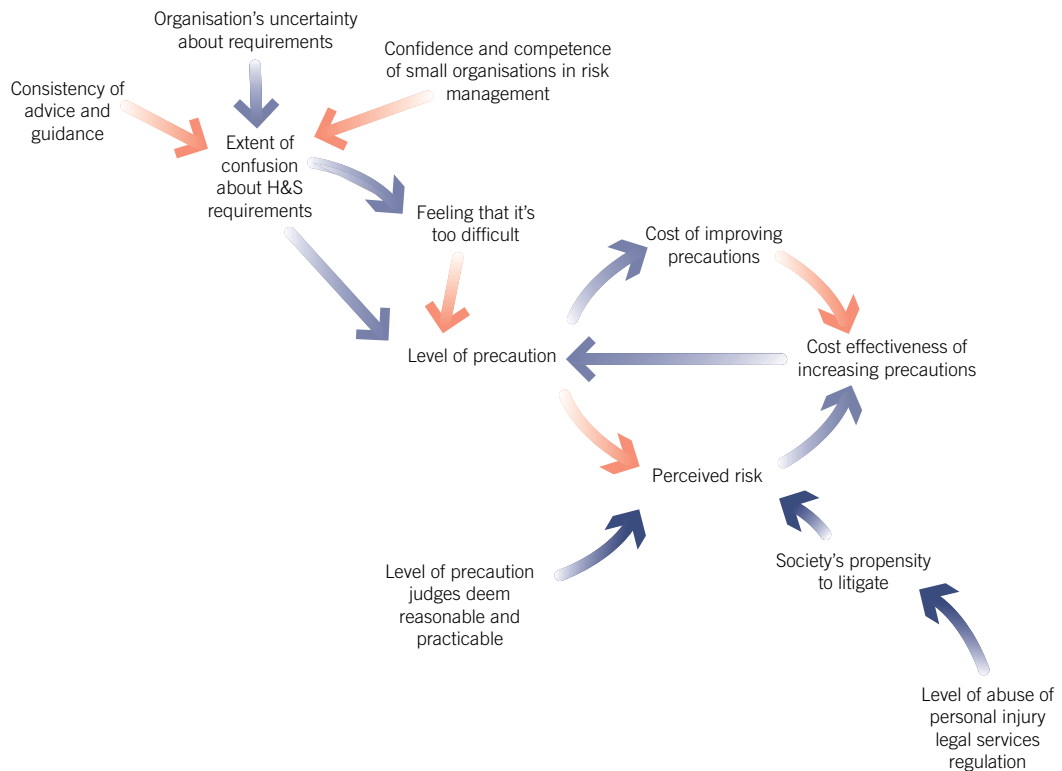
practicable, thus leading to a greater perceived risk as shown in the diagram on Page 11. This could contribute to overly risk averse H&S policies being applied in public places which the Compensation Act 2006 aimed to prevent.

Complying with the HSWA does not mean that a firm cannot be sued for personal injury if a court finds that the employer was directly or vicariously liable for an accident or causing ill health or injury. Personal injury is a complex area of law and court judgements can seem, and occasionally are, inconsistent. The lengthy appeals process can add to the uncertainty for employers, both in cases taken under statutory H&S law and in personal injury claims. This causes confusion about the scope of H&S law which may increase, or decrease, the level of precaution taken by small organisations as shown in the diagram on Page 11.

Lord Woolf in his final Access to Justice Report of July 1996 recommended the development of pre-action protocols which are statements of best

How the legal system can affect the level of precaution taken by small organisations

- A** → **B** An increase in **A** causes an increase in **B**; a decrease in **A** causes a decrease in **B**
- A** → **B** An increase in **A** causes a decrease in **B**; a decrease in **A** causes an increase in **B**



practice about conduct before legal action takes place. Amongst other things, the protocols list a number of documents the parties should exchange before a hearing. It has been suggested that these protocols are putting unnecessary burdens on small organisations because they are leading H&S consultants to advise that very large numbers of records need to be kept in case an organisation is taken to court.

Recommendation

7. In light of the current consultation by the Ministry of Justice (MoJ) on the activities of claims management companies, the bodies that regulate and represent the legal profession, including the Association of Personal Injury Lawyers (APIL) and the Law Society, should consider whether action short of regulation could be taken to stop no-win, no-fee lawyers from abusing the current light touch regulation in this area of law. If this is not possible or is ineffective the MoJ should consider options for statutory regulation.

Recommendations

8. The MoJ should examine the evidence as to whether benefits to activities are taken into account appropriately in health and safety judgements involving public places, and take action if necessary.

9. The MoJ should examine how far personal injury litigation is being used, in effect, to extend health and safety law beyond the boundaries of the HSWA. The MoJ should also re-examine pre-action protocols to determine whether they are imposing unnecessary administrative burdens on small organisations.

Recommendation

10. The MoJ should evaluate the impact of Section 1 of the Compensation Act 2006 on personal injury and H&S cases and assess whether it met the aim of ensuring normal activities are not prevented because of the fear of litigation and excessively risk averse behaviour.

Ensuring proportionate and appropriate non-statutory standards

Many risk actors impose non-statutory requirements on small organisations either directly or indirectly. From the perspective of a small organisation, these can appear to be equivalent to H&S regulations. For example, small organisations are often required to demonstrate compliance with some H&S standards in order to bid for contracts. There are two main problems here. Firstly, there is evidence that H&S requirements from pre-qualification schemes differ unnecessarily. Secondly, the variety of standards and lack of clarity about why they are being imposed leads to greater confusion about what H&S regulations require as organisations are not clear what is required by law and what comes from other sources. As shown in the diagram on Page 13, confusion about H&S requirements can affect the level of precautions taken by small organisations.

The HSE has undertaken important work in this area, concentrating on the construction industry. The HSE are now in a position to apply the learning from their work in the construction sector to other sectors.

Recommendation

11. The HSE should review the H&S compliance pre-qualification schemes in public sector procurement to:

- a. Identify whether there is any evidence that H&S compliance pre-qualification schemes in public sector procurement are imposing unnecessary costs.
- b. Roll-out best practice in the public sector that standardises H&S pre-qualification criteria where possible, working with relevant partners such as the Office of Government Commerce (OGC).
- c. Use best-practice to open a debate with BIS, the Federation of Small Business (FSB), the Confederation of British Industry (CBI) and key trade associations on wider roll-out of this best practice.

Many non-statutory demands on small organisations are based on standards developed by standard setters. Sometimes standards are applied inappropriately by risk actors who do not fully understand the standard they are applying. This can lead to disproportionate H&S practices as standards can affect court judgements or insurers' and procurers' requirements as shown by the final, full systems diagram on Page 13. In the case of court judgements, we have found that lower courts sometimes do not fully take into account the basis for the standard being used. Duty holders, quite rightly, take the judgements these courts make into account, leading to inappropriate H&S requirements.

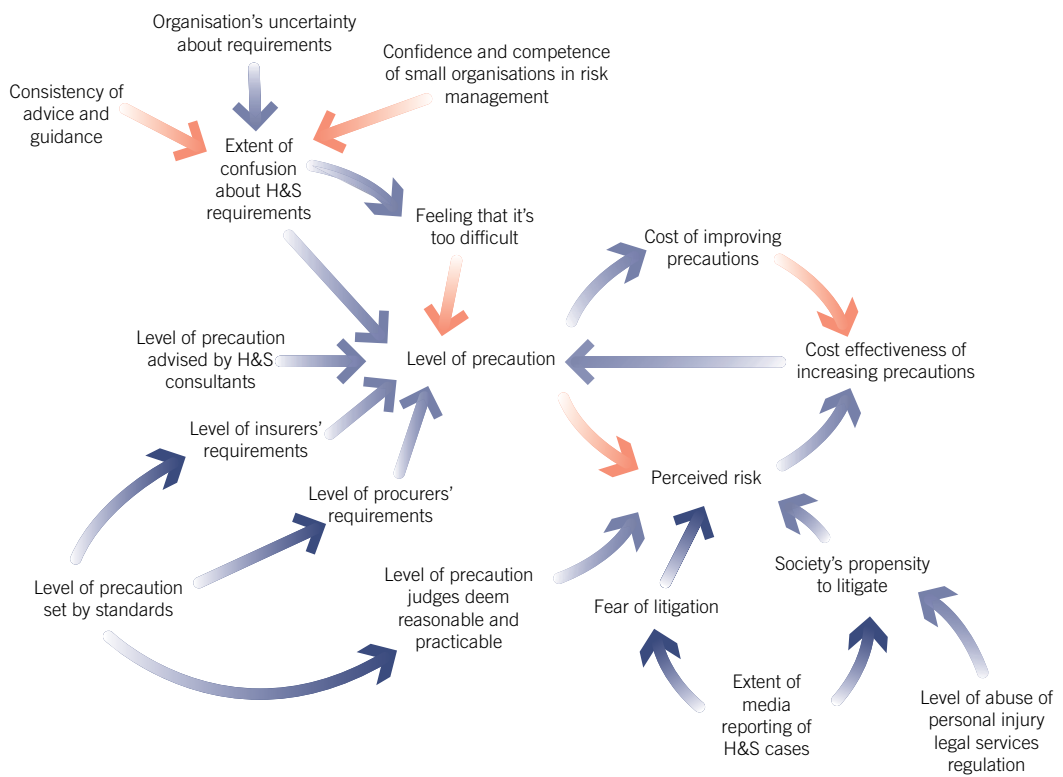
Recommendation

12. The HSE should work in partnership with BIS to ensure standards set out clearly what the basis of the standard is, what they should be used for and how they relate to H&S law.

How the media, standard setters and procurers can affect the level of precaution taken by small organisations

A → **B** An increase in **A** causes an increase in **B**; a decrease in **A** causes a decrease in **B**

A → **B** An increase in **A** causes a decrease in **B**; a decrease in **A** causes an increase in **B**



Building confidence and competence

H&S consultants are undoubtedly a key part of the H&S system. We have found conflicting evidence on whether or not H&S consultants provide small organisations with good quality advice. This might be because small organisations find it difficult to assess the quality of their consultants' advice. When small organisations do not understand their H&S requirements, a H&S consultant could benefit from providing advice that makes H&S regulations seem complicated, leading to more business for the consultant but disempowering the small organisation that is being advised as they no longer need to understand the law. This can cause greater confusion for small organisations about what is required of them – this can increase or decrease the level of precaution they take as shown in the systems diagram on Page 13. The diagram also shows that H&S consultants can influence the level of precaution taken directly by providing advice about what level of precaution is required.

We support efforts by DWP, working in partnership with H&S professionals, to develop a self-regulated accreditation scheme for H&S consultants³. The box on the right hand side explains one way that accreditation and certification might work. Done well this will provide small organisations with information that will help them choose a consultant and understand better whether they are receiving good advice or not. We believe that the HSE should have a role in ensuring advice provided is appropriate, and that the rules of association should include a requirement to inform organisations when expert advice is not needed.

Accreditation of Health and Safety consultants

Current System

- H&S consultants are certified by a non-accredited body/system.

Possible System

- The United Kingdom Accreditation Service (UKAS) is the sole national accreditation body recognised by government to assess organisations that provide certification, testing, inspection and calibration services.
- UKAS could accredit one or more organisations to certify H&S consultants as competent to provide advice to businesses that is proportionate, well-informed, impartial and not 'over-zealous'
 - for example, the Institute of Occupational Safety and Health (IOSH) could carry out the certification.

Certification

- The certification would define exactly what is required of a consultant, in terms of knowledge, qualifications and experience etc, to ensure advice is proportionate, well-informed, impartial and not 'over-zealous'.
- All parties should agree on the details of the certification before it is implemented.

Surveillance

- There would have to be annual surveillance of the certified personnel to ensure compliance.
- There would have to be annual surveillance of the certification bodies to ensure a consistent service.

³ Any accreditation scheme should be subject to an examination to ensure that the benefits outweigh the costs of the scheme and to ensure that costs are kept to a reasonable level.

Recommendation

13. The HSE and DWP should continue to work towards accreditation of health and safety consultants. They should ensure that the accreditation leads to competent advice being given to small organisations.

Stories about health and safety in the media often portray H&S regulations as having a much wider impact than is actually the case, and give the false impression that a wide variety of activities are banned by H&S regulations. This can increase small organisations' fear of litigation leading to greater precautions being taken as shown in the diagram on Page 13, especially if they are already unsure about what the regulations mean.

The HSE have done a considerable amount of work to inform small organisations of their health and safety requirements, for example through myth-busting and the Better Business internet site. However, we back the recommendation in the BRE report to seek an improved tone and impact of media coverage of H&S. We believe this must go further than simply the media, who will continue to print stories that readers are interested in, to include educating and informing small organisations through all possible routes including trade associations, chambers of commerce, etc.

Recommendation

14. The HSE should evaluate the impact of its information and education programme on small organisations' perceptions of their H&S requirements to inform future campaigns that support delivery of HSE's new strategy.

As shown in the systems diagram on Page 13, another way to tackle small organisations' confusion is to improve their competence. For example, if small organisations are properly informed and are competent, they will not be affected by spurious 'elf and safety' stories in the media.

Many organisations are already active in H&S training such as the HSE, trades unions, the Royal Society for the Prevention of Accidents (RoSPA), the Institute of Directors (IoD), FSB and Business Link. Part of the HSE's suite of training (including the HSE's tools) is online which improves its accessibility. However, through our stakeholder consultation, we found that this training is currently not as effective as it could be in building the competence of small organisations.

Recommendations

15. The HSE should work with strategic partners (such as the CBI, IoD, FSB, trades unions and trade associations) to ensure that small organisations have access to coaching or training that builds competence and confidence; allowing small organisations to determine what practices are sensible and reasonable for their specific workplace.

16. The HSE should engage with small organisations to review the effectiveness of the training opportunities they offer on and off line.

Annex A:

Summary of recent work on health and safety regulation in small organisations

The UK's Health and Safety ("H&S") regulatory system has one of the most successful records in the world, especially on workplace injury. But in 2008, two major reports on the UK's H&S system by the House of Commons Select Committee on Work and Pensions ("the Committee"), and the Better Regulation Executive ("BRE") highlighted problems encountered by some organisations in dealing with H&S⁴.

The system, in place since the Health and Safety at Work Act 1974 ("HSWA"), sets out what outcomes employers are obliged to deliver, but is not prescriptive as to how to deliver them. This flexibility has many benefits: it allows employers to respond flexibly to risks they identify or that emerge as the business evolves; it ensures that it is employers who are responsible for the risks in their workplace; and allows employers to balance the interests of the business with reasonable protection of their workers. But this flexibility can create challenges for some organisations.

The Committee identified that some employers, particularly those in small businesses, can find it difficult to understand and apply H&S legislation within their organisations. The Committee believed that this led to over-interpretation, over-burdensome risk assessment and unnecessary costs. They were particularly concerned about the role of

over-zealous H&S consultants and advisers and recommended introduction of a recognised accreditation. They also recommended that the Risk and Regulation Advisory Council ("RRAC") looked at the main causes of overly risk-averse behaviour and effective means of addressing them.

The BRE focused specifically on low risk smaller businesses since the cost of compliance for smaller businesses is much higher than for larger ones. The BRE found that:

- many firms do not recognise the boundaries between different regulators and different regulations, using the term "health and safety" to cover a wide range of regulations for which Health and Safety Executive ("HSE") is not responsible;
- the range of written, telephone and face-to-face support provided by the HSE and local authorities to help employers meet their H&S obligations was welcomed but that access and awareness were an issue for some;
- there is now a complex network of sources of H&S support, outside the control of HSE or local authorities, to which businesses can turn – at a cost – and that some small low risk firms appear to spend unnecessary time and money on them;

⁴ The House of Commons Work and Pensions Committee report "The role of the Health and Safety Commission and the Health and Safety Executive in regulating workplace health and safety" examined the role of the newly merged Health and Safety Executive ("HSE") and the Better Regulation Executive's report "Improving Outcomes from Health and Safety" considered how the health and safety regulatory regime affects workplaces where the overall risk of injury or ill health is relatively low, focusing in particular on low risk smaller businesses.

- firms are increasingly required to demonstrate compliance and / or forms of H&S assessment when they bid for contracts, when they undertake training and when they seek insurance cover. For many, these requirements have become a significant additional source of H&S bureaucracy; and,
- the tone of the media coverage of H&S, much of which is negative, influences public views of H&S regulation. It adds to the confusion about the scope of H&S and affects the perception of a compensation culture.

To address these issues the BRE recommended more be done to help businesses make informed choices of when – and when not – to pay for support, development of an even more active media strategy, as well as a government examination of the impact of public sector pre-qualification schemes, and strengthening the contribution of the insurance industry.

Following these reports, and at the request of Lord McKenzie at the Department for Work and Pensions (“DWP”), Judith Hackitt and Geoffrey Podger at the HSE, the Risk and Regulation Advisory Council agreed to examine the challenges faced by small organisations when managing H&S risks. The term ‘small organisations’ includes businesses as well as not for profit workplaces such as schools and charities, where it was believed there was greatest opportunity for improvement in H&S outcomes. The RRAC work was designed to inform the update of HSE strategy, particularly in the area of supporting smaller organisations and support their wider efforts to deliver improved H&S outcomes.

Sarah Anderson published her review (“the Anderson review”) of government guidance, including H&S guidance, whilst this report was first being drafted⁵. It found that small and medium sized enterprises had four concerns about government guidance: poor accessibility; lack of clarity; inconsistency and real uncertainty as to whether following guidance would actually keep them out of trouble. The Anderson review recommends ways of ensuring firms can place greater reliance on official guidance and thereby reduce the cost of compliance.

Selected Recommendations from Related Reports

The role of the Health and Safety Commission and the Health and Safety Executive in regulating workplace health and safety, a report by the House of Commons Select Committee on Work and Pensions, April 2008

The Committee believes that the Health and Safety at Work Act 1974 is proportionate; however, some employers, particularly small and medium enterprises (SMEs) can find it difficult to understand and apply. We commend HSE’s efforts to reduce the administrative burden on businesses and conclude that it should continue to keep the adequacy of the support it provides to SME’s under review and ensure smaller employers are able to access sufficient and appropriate guidance.

We acknowledge the challenge HSE faces in debunking H&S myths and the importance of this in trying to promote understanding among the public. We commend the HSE for its efforts to tackle misconceptions and encourage it to continue working with partners to address this

⁵ The Anderson Review, “The Good Guidance Guide: Taking the uncertainty out of regulation” looked into the best ways Government can give regulatory guidance to businesses.

issue. Public misconceptions of H&S can obscure the importance of sensible measures to protect workers and secure public safety. We share the disappointment of some witnesses that the media's portrayal of H&S issues encourages this misunderstanding and has a detrimental effect on public perceptions of H&S.

We are concerned that the test of "reasonable practicability" introduces a lack of clarity that can increase the burden on employers in meeting their H&S obligations. We recommend that the Law Commission reviews the test of "reasonable practicability" and how it applies to the Health and Safety at Work Act 1974.

The Committee commends HSC and HSE for its work with employers to address over-interpretation of H&S legislation. However, as the Chair of HSC acknowledged, there is a long way to go. We are particularly concerned that the H&S consultancy profession is currently unregulated. The Minister agreed that over-zealous H&S advisers encourage employers to produce over-burdensome risk assessments. We therefore recommend that the Government, in consultation with the Institution of Occupational Safety and Health, introduces recognised accreditation for H&S consultants and advisers, with appropriate sanctions for malpractice.

The establishment of the new Risk and Regulation Advisory Council (RRAC) creates an excellent opportunity to tackle over-zealous interpretation of regulation and over-burdensome risk assessment. We recommend that the RRAC focuses on identifying the main causes of overly risk-averse behaviour and introduces effective means of addressing them. RRAC should also have a role in the development of accreditation for H&S consultants.

Improving outcomes from health and safety, a report to Government by the Better Regulation Executive, August 2008

This report made the following recommendations, amongst others:

1. The HSE should improve penetration rates and distribution of the support they provide to SMEs and help employers make more informed choices of when – and when not – to pay for support on health and safety.
2. The Local Better Regulation Office should work together with the HSE and the Local Authorities Co-ordinators of Regulatory Services (LACORS) to design a new scheme that would allow small firms to demonstrate in a single process their compliance in a range of regulatory areas associated with health and safety.
3. The Health and Safety Executive and local government should seek to improve the tone and impact of media coverage of health and safety.
4. Anne Glover's review of the barriers to SMEs winning a greater proportion of Government contracts should consider the extent to which pre-qualification schemes act as a barrier to SMEs bidding for public sector contracts.
5. Public sector procurers should have a presumption that SME bidders for their contracts who are members of any health and safety pre-qualification scheme meet their requirements.

6. The Association of British Insurers (ABI) should encourage member firms to draw a distinction between advice grounded in regulatory requirements and advice related to the insurance policy itself, such as guidance in the event of a compensation claim.

7. The British Insurance Brokers' Association (BIBA) should continue its work to promote good health and safety practices e.g. by highlighting government information and advice services to its members and supporting the development of products that strengthen the link between small firm health and safety performance and premiums.

8. The HSE and local authorities should launch a series of pilots to test, both in terms of scale and types of workplace, where more joint-working can be most effective.

The Good Guidance Guide: Taking the Uncertainty out of Regulation, a review by Sarah Anderson CBE, January 2009

The Anderson Review made the following recommendations, amongst others:

1. The Government must make clear to SMEs that it takes responsibility for its current guidance.

2. The Government should provide access for SMEs to a tailored, insured advice helpline on employment and H&S regulations and provide free access for one year from the point of first contact.

3. The Government should raise the profile of statutory codes that are of most use to SMEs. They should ensure that judges receive judicial training to state where statutory codes have been taken into account in their judgements.

4. HM Revenue and Customs should expand its work with other government departments and regulatory bodies to enable Business Advice Open Days to provide face-to-face advisory sessions on a range of other essential regulatory issues affecting SMEs, in particular employment and H&S law.

5. Businesses should be able easily to report inconsistent or inaccurate guidance to a central place.

6. Departments and regulators must promote a culture of regulatory compliance through their provision of sector-specific advice.

Annex B:

List of recommendations

Recommendations

1. The HSE should take responsibility for engaging with H&S risk actors to ensure that they actively contribute to the confidence and competence of small organisations in managing risk in a sensible and proportionate manner.
2. The HSE should lead the debate on how to ensure that the advice and guidance provided by risk actors to small organisations is clear; and that the relationship between the advice and H&S regulations is also made clear.
3. The HSE should work with the Association of British Insurers (ABI) and the British Insurance Brokers Association (BIBA) to jointly examine whether insurers are providing advice and guidance to their customers that leads to greater confusion about what their H&S requirements are. The HSE should ask the Financial Services Authority (FSA) to examine this issue if progress is not made by ABI and BIBA.
4. The HSE should review its inspection and enforcement approach to consider how they can create a culture of compliance and encourage firms to feel confident about asking for advice. The HSE should review good practice from other regulators such as the Environment Agency and some Local Authorities with a view to consolidating advice within one source.
5. The insured advice line proposed by the Anderson report should be implemented in a way that helps to build confidence and competence of small organisations to apply their own judgement and undertake their own risk assessments.
6. The HSE and DWP should continue to examine whether a cost effective way of providing lower insurance premiums to low risk small organisations can be found in partnership with ABI and BIBA.
7. In light of the current consultation by the Ministry of Justice (MoJ) on the activities of claims management companies, the bodies that regulate and represent the legal profession, including the Association of Personal Injury Lawyers (APIL) and the Law Society, should consider whether action short of regulation could be taken to stop no-win, no-fee lawyers from abusing the current light touch regulation in this area of law. If this is not possible or is ineffective the MoJ should consider options for statutory regulation.
8. The MoJ should examine the evidence as to whether benefits to activities are taken into account appropriately in health and safety judgements involving public places, and take action if necessary.
9. The MoJ should examine how far personal injury litigation is being used, in effect, to extend health and safety law beyond the boundaries of the HSWA. The MoJ should also re-examine pre-action protocols to determine whether they are imposing unnecessary administrative burdens on small organisations.
10. The MoJ should evaluate the impact of Section 1 of the Compensation Act 2006 on personal injury and H&S cases and assess whether it met the aim of ensuring normal activities are not prevented because of the fear of litigation and excessively risk averse behaviour.

11. The HSE should review the H&S compliance pre-qualification schemes in public sector procurement to:

- a. Identify whether there is any evidence that H&S compliance pre-qualification schemes in public sector procurement are imposing unnecessary costs.
- b. Roll-out best practice in the public sector that standardises H&S pre-qualification criteria where possible, working with relevant partners such as the Office of Government Commerce (OGC).
- c. Use best-practice to open a debate with BIS, the Federation of Small Business (FSB), the Confederation of British Industry (CBI) and key trade associations on wider roll-out of this best practice.

12. The HSE should work in partnership with BIS to ensure standards set out clearly what the basis of the standard is, what they should be used for and how they relate to H&S law.

13. The HSE and DWP should continue to work towards accreditation of health and safety consultants. They should ensure that the accreditation leads to competent advice being given to small organisations.

14. The HSE should evaluate the impact of its information and education programme on small organisations' perceptions of their H&S requirements to inform future campaigns that support delivery of HSE's new strategy.

15. The HSE should work with strategic partners (such as the CBI, IoD, FSB, trades unions and trade associations) to ensure that small organisations have access to coaching or training that builds competence and confidence; allowing small organisations to determine what practices are sensible and reasonable for their specific workplace.

16. The HSE should engage with small organisations to review the effectiveness of the training opportunities they offer on and off line.

Annex C:

Contributors to this study

Organisations consulted during the Risk and Regulation Advisory Council's work

The following organisations have been involved in the Risk and Regulation Advisory Council's work to examine issues faced by small organisations trying to implement appropriate health and safety measures.

ABI	Insurance Brokers (AON, Crisis Survivor Limited, R K Harrison, Perkins Slade, Tysers)
ACAS	Insurance Underwriters (Aviva, Legal and General, Prudential, RSA, Zurich)
Adur District Council	International Underwriting Association
ALARM	IoD
Anderson Review	IOSH
APIL	Kirklees Local Authority
BERR, Better Regulation Executive	LACORS
BERR, Enterprise Directorate	Law Society
BIBA	LBRO
BPIF	Legal professionals (including representatives from Francis Taylor, Nabbaro, Thompsons, Weightmans LLP and from the Law Commission, Legal Services Commission, Magistrates Association)
BSI	Ministry of Justice
Business Link	Middlesex University
CBI SMEs Forum	Open University
DWP	Oxford Strategic Marketing
EEF	RoSPA
Environment Agency	Small Organisations (including but not limited to representatives from Adventure Play, Building services, Charitable groups, Children's play, Garden Centres, Gifts, Quarrying, Printing Services)
Financial Services Authority	TUC
FSB	UKAS
House of Commons Select Committee	USDAW
HSE	Whitehall and Westminster World
Institute of Occupational Medicine	

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