1. Introduction

Health and safety law in the UK appears to stand at a crossroads. In recent years, there has been an increasingly critical public debate about the utility of health and safety legislation, with some parts of the media promoting the idea that this branch of law is excessively protective leading to undue restrictions on businesses. This is summed up in the popular expression: ‘health and safety gone mad’. The Conservative-Liberal Democrat Coalition that took office in May 2010 acted swiftly to establish a review of health and safety law in order to combat the perceived ‘compensation culture’ and to ensure that the law did not ‘overwhelm businesses with red tape’. This review (by the Conservative peer, Lord Young) concluded that ‘stories of individuals suing their employers for disproportionately large sums of money for personal injury claims, often for the most trivial of reasons, are a regular feature of our newspapers’. In response, Lord Young proposed an agenda for reform designed to reduce bureaucracy for business and to instil ‘common sense’ in the application of health and safety law. This approach

* Professor, Centre for European Law and Internationalisation, University of Leicester. I wish to thank Pascale Lorber for constructive comments on this chapter. The research for this article was completed during a period of study leave granted by the University of Leicester.


assumes that the basic problem is ‘too much’ health and safety, but it is hotly contested by the trade union movement. The latter estimates that ‘at least 20,000 people die prematurely every year because of occupational injury and disease’, while around 246,000 are injured at work annually.\(^4\) Trade unions contrast these statistics with the rapid decline in enforcement activities related to health and safety legislation during the past decade. The number of workplace inspections has fallen by more than two-thirds, alongside a 48% reduction in the number of prosecutions.\(^5\) Consequently, trade unions are arguing for a strengthening in the law, and its enforcement, an agenda that appears to be diametrically opposed to the direction that the government is pursuing. Given this polarised backdrop, this is an appropriate juncture for an overview of the current state of occupational health and safety law.

This branch of British labour law is a complex framework of legislation and common law, incorporating elements of criminal, contract and tort law. The legislative framework is mainly founded on the Health and Safety at Work Act etc (HSWA) 1974,\(^6\) which is an umbrella for a wide variety of Statutory Regulations. In principle, the HSWA and its Regulations form part of criminal law;\(^7\) breach of the legislation is a criminal offence. Yet the legislation intertwines with tort, because individuals may be able to challenge breach of the Regulations under the tort of breach of statutory duty. More broadly, an individual who suffers an occupational injury or disease might also have recourse to the tort of negligence or an action in contract law for breach of the employer’s implied duty of care for the employee. This chapter will, thus, consider both the role of statute and the role of common law as regards the protection of workers’ health and safety. It commences with an introduction to the main facets of the British legal

\(^4\) This estimate is based on those injuries that require at least three days off work. Trades Union Congress, ‘The case for health and safety’, 2, <http://www.tuc.org.uk/workplace/tuc-18421-f0.cfm>, 30 September 2010.


\(^6\) The law in Northern Ireland is governed by the Health and Safety at Work (Northern Ireland) Order 1978, SI 1978/1039 (NI 9), which is not considered further in this chapter.

framework in order to clarify some of the complexity mentioned above. It then examines core concepts in health and safety law, before turning to examine the duties imposed on various actors, such as employers and employees. The role of workers’ representatives is analysed and the chapter concludes with an overview of the remedies for breach of health and safety law. In keeping with the general themes of this collection of essays, particular attention will be paid to the rules applying to the construction industry.

The legal background

Modern health and safety law can be traced back to the recommendations of the 1972 Robens Committee, which led to the HSWA 1974. Although it has been amended in the subsequent period, this Act remains the cornerstone of statutory health and safety law. It establishes general duties on employers towards employees, as well as any other person who may be affected by health and safety risks. It applies to employment in both the public and private sectors. Duties are also imposed on the self-employed, employees, those who control premises and the manufacturers of articles and substances for use at work. The Act cannot be enforced by individuals. Instead, the Health and Safety Executive (HSE) was created and this body enjoys powers to inspect workplaces and a range of instruments for enforcement, including via criminal prosecution. The Act includes powers for the issuing of secondary legislation (‘Regulations’) by the relevant minister on a wide range of matters related to health and safety. Therefore, the Act is accompanied by a large number of Regulations. Some of these deal with specific health risks, such as noise or hazardous substances, but others deal with general matters of regulation, such as mechanisms for the representation and participation of workers.

9 s. 47(1) HSWA 1974.
10 Originally, there were two organizations, the HSE and the Health and Safety Commission. These were merged in 2008.
11 A detailed examination of the wide variety of Regulations is provided in B. Cotter & D. Bennett (eds), Munkman on Employer’s Liability, 14th edn (London: LexisNexis, 2006).
The volume of Regulations adopted under the HSWA changed significantly in response to developments in EU law. The advent of the 1989 ‘Framework’ Directive on the safety and health of workers and its six daughter Directives led to a new generation of Regulations. The HSWA is used as the legal foundation for adapting British law to the requirements of EU Directives and commentators have noted that ‘virtually all’ legislative changes in Britain simply reflect the implementation of EU law. This general picture was confirmed in a 2011 independent review of health and safety law. The ‘Löfstedt Review’ reported evidence that ‘41 of 65 new health and safety regulations introduced between 1997 and 2009 originated in the EU’. Of particular importance are the Management of Health and Safety at Work (MHSW) Regulations 1999 as this is the main legislative response to the 1989 Framework Directive. In relation to construction, detailed standards are set out in the Construction (Design and Management) Regulations 2007. Lord Young’s review has criticised the proliferation of Regulations under the HSWA. In the short-term, it has proposed codifying the large number of Regulations into a single set of Regulations, but it diagnosed the underlying cause of the problem as the EU ‘where the tendency has been to look first at extending prescriptive regulation rather than examining ways of ensuring risk is managed in a proportionate way’. This breathed fresh life into an enduring scepticism on the part of the Conservative Party, in particular, towards EU social regulation. It dovetails with a wider trend to criticise ‘gold-plating’ of EU Directives; this is the perception that UK regulators go beyond the

---

15 SI 1999/3242.
17 HM Government (n 3 above) 39.
18 Ibid.
minimum required to comply with EU legislation. A House of Commons inquiry in 2008 found only limited evidence of this in the field of health and safety, but it recommended an approach that focused on reducing administrative burdens for business in the future.\(^\text{20}\)

In its response to the Löfstedt Review, the government has committed itself to promoting ‘a more proportionate, risk-based approach to health and safety’ within EU law and policy.\(^\text{21}\)

Although the legislative framework is founded in criminal law and enforcement by an official regulator, this must be seen alongside the possibilities for individuals who have suffered damage to their health at work to seek compensation through civil proceedings. This takes a number of forms. First, there is the possibility for civil liability to arise where damage has been caused by a breach of legislative requirements on health and safety. This is excluded in relation to the duties found within the HSWA, but, in principle, an individual may bring civil proceedings for damage caused by a breach of one of the Regulations adopted under the HSWA.\(^\text{22}\) For example, the MHSW Regulations place a duty on the employer to undertake a risk assessment.\(^\text{23}\) If the employer failed in this duty and it could be shown that this breach caused damage to the employee through failing to provide a safe system of work, then an action for compensation could be brought.\(^\text{24}\) This is, though, subject to the possibility for individual Regulations to contain provisions that expressly exclude civil liability. For example, some elements of the Construction Regulations do not give rise to civil liability in respect of those who are not employees.\(^\text{25}\) Actions for compensation for breach of the Regulations take the form of the tort of breach of statutory duty. There are four main steps to establishing that this tort has been committed: (1) the legislative provision was breached; (2) the damage suffered was of a kind that the provision was intended to prevent; (3) the person belongs to a class

\(^{20}\) House of Commons Work and Pensions Committee (n 1 above) para. 43.


\(^{22}\) s.47(2) HSWA.

\(^{23}\) Reg 3(1).


which the provision was intended to protect; (4) the breach of the duty caused the loss.²⁶ An important advantage to the litigant of bringing an action for breach of statutory duty is that normally it is not necessary to show fault on the part of the employer; in this respect, it is akin to a form of strict liability once the breach has been proven.²⁷ This gave rise to concern in the Löfstedt Review that strict liability led to the awarding of compensation even where the employer had taken all reasonably practicable steps to prevent the breach of the law.²⁸ In response, the government has announced that it will review legislation that applies strict liability to employers in civil proceedings.²⁹

The second option for individuals is to bring an action in the tort of negligence. In order to succeed, three basic elements need to be satisfied: (1) a duty of care exists on the part of the defendant towards the class of persons to whom the claimant belongs; (2) there has been a breach in the duty of care by the defendant; (3) the defendant’s conduct caused the damage to the claimant.³⁰ In addition, it is important to recognise that there will be no liability if the damage arising is too remote.³¹ In 1937, the House of Lords held that there was a general duty of care on the part of employers towards employees with regard to their safety at work.³² The Court identified four principal components of this duty of care: the provision of a safe workplace; safe equipment; competent and safe fellow employees; and a safe system of work. Smith et al point out that some of these categories have since been the subject of Regulations adopted under the HSWA, such as the provision of safe equipment.³³ In these areas, it may be more likely that a claimant will bring an action for breach of statutory duty, given the stricter principles of liability that will apply. There are others, however, where legislation remains limited, such as

²⁷ Cotter and Bennett (n 11 above) 5.31.
²⁸ Löfstedt Review (n 14 above) 6.
²⁹ Department of Work and Pensions (n 21 above) 13.
³³ Smith et al (n 24 above) 29-30.
liability arising from the negligence of fellow employees, and here the tort of negligence remains central.

In the period since 1945, the courts have substantially expanded the notion of ‘implied duties’ on the employer arising from the contract of employment. These duties take various forms, but they are unwritten obligations that the courts have interpreted as being a necessary incident of the contract. The implied contractual duties include a duty on the employer to protect the health and safety of employees. The view of the courts has been that today it is ‘immaterial’ whether the duty of care arises in tort or in contract due to the similarity in the substance of the duty. Nevertheless, different rules regarding procedures and remedies will apply depending on whether the action is brought in tort or in contract.

As can be seen from this short overview, British health and safety law has two distinct branches: the statutory regulation administered by the HSE, and the possibilities arising in tort and contract law for individuals to seek compensation when their health and safety has been damaged at work. Yet the two do not exist in isolation from each other and both will be examined throughout this chapter.

2. Basic concepts in health and safety law

(a) Health

There is no definition of ‘health’ in the HSWA 1974 or the MHSW Regulations 1999. In relation to civil liability, section 47(6) HSWA defines ‘damage’ as including ‘the death of, or injury to, any person (including any disease and any impairment of a person’s physical or working condition)’. This non-exhaustive definition leaves a broad scope for interpreting the concept of ‘disease’. In this vein, the work of the HSE ranges from

34 Ibid.


37 eg damages for loss of future earnings may be awarded in tort, but it ‘will not normally be recoverable in contract’: Deakin and Morris (n 35 above) 296.
combating risks associated with traditional industrial injuries, such as chemicals or asbestos, to providing guidance on contemporary forms of work-related disease, such as musculoskeletal disorders. 38 The Trades Union Congress (TUC) has highlighted the shift in the nature of occupational health and safety risks from the former to the latter. 39 HSE statistics show a significant decline in the rate of fatal and non-fatal injuries in the past 15 years, across both employees and the self-employed. 40 For example, the number of fatal injuries at work was 171 in 2010/11, compared to 236 in 2003/04. 41 The largest causes of work-related ill-health are stress, depression or anxiety, and musculoskeletal disorders. In 2010/2011, the HSE estimated that 1.8 million people were suffering an illness that they believed was caused or made worse by their current or past work. 42 Amongst those conditions that started in the past 12 months, around 75% were either ‘stress, depression or anxiety’, or musculoskeletal disorders. 43 Nevertheless, the HSE estimates that there was a 21% fall in musculoskeletal disorders during the period 2006/07 to 2010/11, with a 14% reduction in the prevalence of stress. 44 Data from general practitioners (the local doctor who is typically the first point of contact for a patient) reveals that 55% of working days lost were due to mental ill-health and 37% were due to musculoskeletal disorders. 45

The trend towards recognising the role played by mental health is also reflected in the common law where a series of cases has recognised that psychiatric injuries, such as stress, depression, and mental illness, are covered by the employer’s duty of care. 46 It should, though, be kept in mind that the nature of occupational health risks varies considerably depending on the type of work being performed. When looking at work-

38 Musculoskeletal disorders includes conditions such as back pain and repetitive strain injuries.
39 TUC (n 4 above) 3.
42 Ibid 3.
43 Ibid.
44 Ibid 4.
45 HSE (n 40 above) 7.
related illness (which includes stress), the sectors with the highest rates of illness are health and social work, followed by public administration. The picture is very different if the focus is on injuries at work, where the most dangerous occupations are agriculture, transport and construction. Around one-third of fatal injuries occur in construction, and the rate of fatal injuries in this sector is four times the average for all industries.

(i) Working Time

The implementation of the Working Time Directive in Britain has contributed to broadening the traditional understanding of occupational ‘health’. Prior to the Directive, there was very little regulation of working hours. This was exemplified in the case of Johnstone v Bloomsbury Health Authority, which concerned a doctor who suffered stress and depression following a regular requirement to work long working hours, even over 100 hours per week. In the absence of any statutory regulation of working time, the question arose whether an employer could, as a matter of principle, include a term in the contract of employment that would require the employee to work very long hours, even where this risked damaging the employee’s health. The majority of the Court of Appeal took the view that an express contractual term to this effect could not be overridden by the implied duty of the employer to protect the health of employees. On the facts of the case, the Court managed to interpret the employee’s contract in a manner that avoided such an unrestrained obligation, but it exposed the limits of the common law for tackling this source of risks to health.

The historical absence of regulation of working hours forms part of the explanation for the British government’s initial hostility to the Working Time Directive.

47 HSE (n 40 above) 16.
48 Ibid.
49 House of Commons (n 1 above) 124.
53 Browne-Wilkinson V-C, ibid 283.
At the time that the Directive was adopted, there was a Conservative government and it was adamant that the EU’s legal competence for regulating occupational health and safety should not extend to cover the regulation of working time. This view was ultimately rejected by the Court of Justice, which adopted a broad interpretation of the concept of health: ‘a state of complete physical, mental and social well-being that does not consist only in the absence of illness or infirmity’. Following the judgment, the UK adopted the Working Time Regulations 1998, which largely mirror the contents of the Working Time Directive. Notably, the Regulations allow individual workers to ‘opt-out’ of the requirement that the average working week does not exceed 48 hours. Although they include measures to promote occupational health, the Regulations are legally distinct from other aspects of health and safety legislation. They were not adopted under the umbrella of the HSWA, but are free-standing Regulations issued under the European Communities Act 1972 (a general instrument for implementing EU law). The avenues for enforcement differ from other branches of health and safety law. Specifically, there is a larger role for enforcement via individual litigation. In respect of daily and weekly rest breaks, and paid annual holidays, these provisions can be enforced by a worker making a complaint to an Employment Tribunal. In contrast, the requirements on the maximum working week and the protection of night workers are enforceable by the HSE through the normal process of investigation and prosecution. This hybrid model of enforcement leaves the impression that the Regulations are perceived to be on the margins of health and safety law. This is reinforced by the HSE website. There is a long list of ‘topics’ accessible from its homepage, but working time is not mentioned. Within the website, there is a page on working time, but this advises that all initial enquiries should be directed to the Arbitration, Conciliation and Advisory Service. This suggests that regulating working time is not central to the HSE’s activities. Moreover, there remains

55 SI 1998/1833.
56 Reg 4(1).
57 Reg 30(1).
58 Reg 29. On the HSE’s enforcement powers, see section 5 of this chapter.
60 <http://www.hse.gov.uk/contact/faqs/workingtimedirective.htm>, 8 August 2011.
political resistance to the Working Time Directive. The Coalition’s Programme for Government promises ‘to work to limit the application of the Working Time Directive in the United Kingdom.’

(ii) Harassment, Discrimination and the Protection of Vulnerable Groups

Bullying, harassment and discrimination are not specifically forbidden within health and safety legislation, although the HSE has recognised that these phenomena can be related to occupational health, in particular as causes of stress at work. Nevertheless, the main legal remedies lie elsewhere and this is generally not perceived as a matter of health and safety law. Space does not permit a detailed examination of the law in this area, however, the key instruments are the following. In relation to discrimination, the Equality Act 2010 prohibits discrimination based on the personal characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. This applies to the workplace and it includes an express prohibition of harassment. As discussed in section 5 of this chapter, the provisions on disability are particularly relevant to workers who have experienced occupational injury or ill-health. In addition, the Prevention of Harassment Act 1997 makes it unlawful to harass another person for any reason; it is not necessary to demonstrate a discriminatory reason under this legislation. There is no definition of harassment in the Act, but section 7 clarifies that the conduct must have occurred on at least two occasions and this includes ‘alarming the person or causing the person distress’. Harassment under the Act is both a criminal offence and it can give rise to a claim in civil proceedings. Employers may be vicariously liable for harassment committed by their employees, provided that it took place in the course of their employment. Finally, it should be noted that the employer’s duty of care arising in the tort of negligence can

---

63 s.26 Equality Act 2010.
extend to liability for the damage to the victim’s health where the employer fails to prevent workplace bullying.65

Beyond the general protections outlined above, the law also recognises that there are certain groups who face specific health risks. There are various provisions within the Working Time Regulations conferring additional protection in respect of young workers and night workers. For example, a young worker may not work more than 8 hours per day or 40 hours per week,66 while night workers must receive periodic health assessments.67 The MHSW Regulations also include special obligations on the employer in respect of young workers; certain types of work are excluded for young workers, such as those involving harmful exposure to radiation or extreme temperatures.68 The MHSW Regulations include specific protections for new or expectant mothers. Once the employee has notified the employer that she is pregnant, gave birth in the previous 6 months or is breastfeeding, then the employer must conduct a risk assessment. The employer is under a duty to alter working conditions and hours of work if this is necessary to avoid risks to her or her baby.69 Indeed, if such alterations cannot lead to an avoidance of the risk, then the employer must suspend (with pay) the employee.70

(b) Risk

This section will introduce the main avenues for tackling risks to health and safety within British law. These will be divided into two categories. First, there are the duties found within the HSWA and Regulations adopted there to. Secondly, there is the tort of negligence and its approach to attaching liability where certain risks materialise in damage to individuals. It is important to distinguish the enforcement powers of the HSE under the HSWA and associated Regulations from actions by individuals in tort. Breach of the legislation can lead to prosecution by the HSE for the risk caused to health and

---

65 para. 102, Green v. DB Group Services (UK) Ltd [2006] IRLR 764 (QB).
66 Reg 5A, Working Time Regs.
67 Reg 7.
68 Reg 19, MHSW Regs.
69 Reg 16.
70 Reg 16(3), MHSW Regs and s.68 Employment Rights Act 1996.
safety, whether or not damage has been caused to any individual. Where actions are brought in tort, then there must be evidence that the risk has actually given rise to harm.

(i) Risk and the Health and Safety at Work Act

The general approach to risk is found at the outset of the HSWA: ‘it shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.’ The ‘reasonably practicable’ test indicates that an employer is not liable for every risk that arises in the course of employment. The phrase has its origins in earlier health and safety legislation and the commonly cited interpretation is found in Edwards v. National Coal Board. This case concerned a worker in a coal mine who was killed after the collapse of a road. The reason for the collapse was a hidden defect that could not have been detected in advance and which could only have been addressed if all such roads were reinforced. The defendants argued that this was not ‘reasonably practicable’. Asquith LJ gave this term the following interpretation:

‘“reasonably practicable” is a narrower term than “physically possible” and seems to me to imply that a computation must be made by the owner, in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other; and if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them.’

While the Court was not satisfied that the mine owners in the Edwards case had actually done all that was ‘reasonably practicable’ to prevent the risk of the road collapsing, the test created has been criticised by some commentators for permitting economic considerations to be taken into account in deciding the scope of the duty to ensure health and safety. The European Commission shared these concerns and initiated infringement

71 s.2(1).
72 [1949] 1 KB 704 (CA).
73 ibid 712.
74 James and Walters (n 13 above) 28.
proceedings on the basis that this was not compatible with Article 5(1) of the Framework Directive, which contains no such proviso.\textsuperscript{75} The Court of Justice, however, upheld the validity of the reasonably practicable test, concluding that it was not clear that the Directive required Member States to adopt a system of no-fault liability.\textsuperscript{76}

The ‘reasonably practicable’ test remains central to determining the scope of employer’s obligations and continues to generate litigation surrounding its boundaries. For example, in \textit{R v. HTM,}\textsuperscript{77} two employees were killed when they were moving a mobile lighting tower and this struck electricity cables. The employer claimed to have taken all reasonable precautions and to have provided training, which included lowering the tower when it was being moved. The Court of Appeal accepted that it was relevant to assessing the scope of the employer’s liability to take into account the likelihood of a particular risk materialising;\textsuperscript{78} negligence by the employees could be relevant evidence in determining whether the employer had taken all reasonably practicable steps to avoid the risk.\textsuperscript{79} It must also be borne in mind that the burden of proof when asserting that a certain step was \textit{not} reasonably practicable lies on the defendant.\textsuperscript{80} Section 40 HSWA is a rare example of a reversed burden of proof in the criminal law: ‘it shall be for the accused to prove … that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement’.

In addition to the HSWA, it is necessary to consider the approach to risk found within the large volume of Regulations adopted under its auspices. While it is impossible to examine all of these, the MHSW Regulations are of special significance. They place a duty on an employer to conduct a ‘suitable and sufficient assessment of the risks to the health and safety of his employees to which they are exposed whilst they are at work’, as well as the risks faced by other persons not employed by the employer but ‘in connection

\textsuperscript{75}‘The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work’, Art 5(1), Directive 89/391.

\textsuperscript{76} Para 51, Case C-127/05, \textit{Commission v UK} [2007] ECR I-4619.

\textsuperscript{77} [2007] 2 All ER 665 (CA).

\textsuperscript{78} Ibid para 22.


\textsuperscript{80} Ford and Clarke (n 26 above) 2.56.
with the conduct by him of his undertaking’. An employer must carry out a specific risk assessment before employing anyone under the age of 18, and employers with more than five employees must keep a record of such assessments. The extent to which British law has been shaped by EU legal requirements is evident in the inclusion within Schedule 1 of the MHSW Regulations of ‘general principles of prevention’ that must be the basis for employers’ protective measures. These are a reproduction of Article 6(2) of the Framework Directive and include themes such as seeking to alleviate monotonous work. The general principles of prevention are also woven into other elements of health and safety legislation. The Construction Regulations require these principles to be respected in the design, planning and preparation of a project and ‘so far as is reasonably practicable’ during the ‘carrying out of the construction work’.

Critics of health and safety argue that risk assessments are linked to the supposed tendency to apply health and safety requirements in an excessively restrictive manner. Lord Young’s review argued that there was an inclination towards the elimination of all risks, rather than the proportionate approach reflected in the ‘reasonably practicable’ test. There appears to be two extremes in practice: some organisations that have misinterpreted, in an overly-bureaucratic fashion, the process of risk assessment, alongside other organisations that fail to undertake even basic risk assessments. Lord Young’s review proposed several deregulatory steps: a simplification of risk assessments for office accommodation and ‘low hazard environments, such as shops and classrooms’; exempting employers from conducting risk assessments for homeworkers; and exempting self-employed people from the requirement to have written risk assessments, unless in hazardous occupations. While this has been presented as mere ‘common sense’, it seems to reflect an outdated view of occupational health risks as those likely to lead to serious physical injury. The most common sources of work-related ill-health and

---

81 Reg 3(1), MHSW Regs.
82 Reg 3(4).
83 Reg 3(6).
84 Reg 7, Construction (Design and Management) Regulations 2007.
85 HM Government (n 3 above) 7.
86 House of Commons (n 1 above) 19.
87 HM Government (n 3 above) 28-29.
absences from work are stress and musculoskeletal disorders; arguably these are risks that materialise in both hazardous and non-hazardous environments, and are likely to effect all workers, including homeworkers.

(ii) Risk and the tort of negligence

In relation to the tort of negligence and, where they overlap, the employer’s implied contractual duty of care, the scope of liability is mediated by the concept of reasonable foreseeability. The defendant will only be held to have breached the duty of care if she failed to act upon a reasonably foreseeable risk of damage:

‘negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do’.88

This standard is particularly tricky in relation to employer liability for psychiatric injuries to employees. In Walker v. Northumberland County Council,89 a social services manager suffered two mental breakdowns in the space of a year when working under conditions of high pressure due to limited staff resources and a growing volume of child abuse casework. Much of the case turned on whether it was reasonably foreseeable that he would have suffered this psychiatric injury. The judge drew attention to the dilemma: ‘given that the professional work is intrinsically demanding and stressful, at what point is the employer’s duty to take protective steps engaged?’90 On the facts, the failure of the employer to provide adequate support on his return to work following the first mental breakdown was deemed crucial, because at this point it was reasonably foreseeable that he was exposed to a higher than normal risk of psychiatric injury. Further clarification was provided in the seminal case of Barber v. Somerset County Council.91 The House of Lords approved a set of ‘practical propositions’ developed by Baroness Hale in the Court of Appeal. These recognise that psychiatric injuries are more difficult to foresee than

88 Rogers (n 30 above) 279.
90 Ibid 710.
91 [2004] 1 WLR 1089 (HL).
physically injuries and ‘an employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he knows of some particular problem or vulnerability’.\(^{92}\) Consequently, there is a strong onus on the employee to tell the employer about the stressful conditions under which she is working in order for any subsequent injury to be viewed as reasonably foreseeable. This can give rise to difficult factual disputes as to whether the employee had provided sufficient indication to the employer about work-related stress. Nevertheless, contextual information can be taken into account. In *Hone v. Six Continents Retail Ltd*,\(^{93}\) the fact that the employer knew that the employee was working well in excess of the maximum 48 hours working week (without having signed an agreement to opt-out of this limit) should have made the employer particularly alert to concerns raised by the employee. Prior knowledge of risks will not always be sufficient to render the employer liable for psychiatric injury. In *Johnston v Unisys*,\(^{94}\) the employer’s knowledge was limited to the fact that the employee had experienced work-related stress during the mid-1980s. This was deemed to be too remote for liability to be attached to a psychiatric injury following his dismissal in 1994.

(c) Protection and Prevention

The main way in which the law seeks to protect health and safety is through the imposition of duties on a range of parties, such as employers, employees and the self-employed. These are discussed in more detail in the next section, but the most extensive duties are attached to employers. The duty to conduct risk assessments is a central feature of the law’s efforts to prevent damage to health at the workplace. In addition, the MHSW Regulations require the employer to establish mechanisms for ongoing health surveillance and to appoint competent persons for providing assistance on compliance with the legal duties.\(^{95}\) It is not necessary for the competent person(s) to be employed directly by the employer, however, they must have sufficient time, resources and

\(^{92}\) Ibid 1092.

\(^{93}\) [2005] EWCA Civ 922.

\(^{94}\) [2001] 2 ICR 480 (HL).

\(^{95}\) Regs 6 and 7, MHSW Regs.
information in order to fulfil their functions. Although the MHSW Regulations require the person to be ‘competent’, there is no detailed regulation of the qualifications needed in order to exercise such a role. Academic commentators and politicians have criticised the poor quality of some health and safety consultants, who may lack the necessary qualifications. In response, in 2011, the HSE launched an ‘Occupational Safety and Health Consultants Register’ to provide a source for identifying qualified advisors.

In relation to construction, there is a special set of requirements designed to prevent accidents and injuries at work. A construction project is notifiable if the construction phase will last more than 30 days or if the combined total number of working days for all those workers participating exceeds 500. In such cases, a ‘Construction Design and Management (CDM) Coordinator’ must be appointed by the client. This person has a range of responsibilities relating to the coordination of health and safety during the pre-construction phase. The CDM Coordinator must lodge with the HSE basic information concerning the project, such as its duration and the estimated number of workers involved. In addition, the client must appoint a ‘principal contractor’. This person is responsible for planning, managing and monitoring the construction phase of the project with a view to ensuring that it is carried out without risks to health and safety ‘so far as is reasonably practicable’. The principal contractor has duties in relation to all other contractors involved in the project and in relation to all workers, regardless of employment status. Workers must receive an induction to the site and the principal contractor should ensure that they receive information and training.

---

96 James and Walters (n 13 above) 43; HM Government (n 3 above) 31; House of Commons (n 1 above) 21.
98 F. Wright, Law of Health and Safety at Work (London: Sweet & Maxwell, 1997) 211. This has been shaped by the need to comply with Directive 92/57 on the implementation of minimum safety and health requirements at temporary or mobile work sites [1992] OJ L245/6.
99 Reg 2(3), Construction (Design and Management) Regs.
100 Ibid Reg 22(1).
101 Department of Work and Pensions (n 50 above) 7.
102 Ibid Reg 22(2).
a duty on the principal contractor to consult with the workers or their representatives on ‘health, safety and welfare’,\(^{103}\) and this person must ensure sufficient welfare facilities for the workers in areas such as sanitation, washing, drinking water, and rest facilities. In 2005, the HSE published a detailed investigation of occupational health and safety, which included case studies from the construction industry. This suggested that compliance was patchy and depended on the nature of the construction site. Large sites with trade union organisation seemed to have better levels of compliance.\(^{104}\) Moreover, compliance levels appeared higher in relation to those who were employees, and lower for those who were sub-contracted labour or agency workers.\(^{105}\)

The HSE enjoys inspection powers that seek to prevent breaches in health and safety. HSE inspectors can enter any premises at ‘any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time)’.\(^{106}\) If the inspector concludes that there is a contravention of any of the statutory provisions, then an ‘improvement notice’ can be issued. This requires the person to which it is issued to take action to remedy the contravention within a specified period of time.\(^{107}\) If, however, there is a risk of ‘serious personal injury’, then the inspector can issue a ‘prohibition notice’. This may direct that specified activities must not be carried out until the contraventions of the law that give rise to the risk of serious personal injury are remedied. Moreover, the prohibition notice can have immediate effect, allowing inspectors to order a stop to business activities if required. It is a criminal offence to contravene any requirements within either an improvement or prohibition notice.\(^{108}\) HSE inspectors are complemented by local authority inspectors. These have a wider remit, with particular responsibility for controlling food hygiene, but they enjoy similar powers to issue improvement and prohibition notices. HSE inspectors mainly focus on high hazard sites, such as manufacturing, while local authority inspectors deal with low hazard sites.

\(^{103}\) Ibid Reg 24(b).


\(^{105}\) Ibid 99.

\(^{106}\) s.20 HSWA.

\(^{107}\) s.21 HSWA.

\(^{108}\) s.33(g) HSWA.
Clearly, there are limits to the capacity of the HSE to inspect all workplaces. An important source of information for the HSE is the mandatory reporting of injuries, diseases and dangerous occurrences. The reporting system, known by its acronym ‘RIDDOR’ requires the HSE to be notified of a range of events falling within the Regulations, including any accidents and injuries that cause the person to be incapacitated for more than seven days.\textsuperscript{109} While this is a valuable source of information on health and safety at work, the HSE estimates that only 58\% of reportable injuries are actually reported.\textsuperscript{110}

The HSE evidently enjoys significant powers of inspection and enforcement. There is, though, a lively debate about the manner in which these powers are exercised. During the past decade, there has been a discernable shift in the regulatory model pursued by the HSE, moving away from a reliance on enforcement powers (such as prosecutions) and instead focusing on partnership with businesses to promote voluntary compliance.\textsuperscript{111} This was initiated by the HSE in 2000, but reinforced by a government review of regulation published in 2005, referred to as the ‘Hampton report’.\textsuperscript{112} This sought to reduce regulatory burdens on business by targeting those areas where the risk is highest; the HSE committed itself in response to the report to reduce inspections by 30\%.\textsuperscript{113} The strategy can also be attributed to the resources available to the HSE. Its annual budget peaked in 2002 at £258 million, but has declined since then.\textsuperscript{114} Its net operating cost in 2010/11 was around £175 million.\textsuperscript{115} It is not surprising, therefore, to discover than the

\textsuperscript{109} The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (as amended).
\textsuperscript{110} HSE, ‘The Health and Safety Executive: annual reports and accounts 2009/10’, HC20 (London: The Stationery Office, 2010) 12. Lord Young’s review has proposed raising the threshold for reporting incidents to those leading to seven days of incapacity (n 3 above) 30.
\textsuperscript{111} Tombs and Whyte (n 5 above) 29.
\textsuperscript{112} P Hampton, ‘Reducing administrative burdens: effective inspection and enforcement’ (London, HMSO, 2005).
\textsuperscript{113} Tombs and Whyte (n 5 above) 35.
\textsuperscript{114} James and Walters (n 13 above) 56.
number of inspectors has declined during the past decade; the Field Operations Division had 962 inspectors in 2003, but the TUC estimates that there are around 700 now. Tombs and Whyte have assembled a detailed statistical analysis of inspections in the period 1999/2000 to 2008/09. Workplace inspections conducted by the HSE have declined by 69%. Looking at RIDDOR reported injuries, there have been major falls in the proportion of such incidents that are investigated by the HSE. For example, only 33.6% of injuries leading to amputations are investigated and 25.4% of injuries resulting in major burns. The number of improvement notices issued fell by 30%, and similarly the number of prohibition notices fell by 26%. The most recent figures show that the HSE issued 7,137 improvement notices and 3,835 prohibition notices in 2010/11; this was a 23% increase in the number of improvement notices issued in 2009/10. Prosecutions, the most serious weapon in the HSE’s arsenal, fell by 48%. Most of this decline occurred in the period to 2005, since when the annual number of prosecutions has been fairly stable.

The data confirms a change in the regulatory model, which the HSE terms a ‘risk-based approach to complaints investigation’. In defence of this approach, the past decade has witnessed a downward trend in the rate of fatal and major injuries. The HSE estimates that this fell from 130 per 100,000 employees in 1999/2000 to 106 in 2008/09, an 18% decline. Reports of work-related ill-health are estimated to have declined from 2,190 per 100,000 workers in 1999/2000 to 1,810 in 2008/09, a 17% decline. Interpreting the data is difficult. James and Walters draw attention to the longer-term role played by

116 James and Walters (n 13 above) 55.  
117 TUC (n 4 above) 8.  
119 HSE (n 41 above) 12. Local authority inspectors issued 5,620 improvement notices and 1,600 prohibition notices.  
120 The HSE brought 878 prosecutions in 2010/11, of which 85% resulted in convictions: HSE (n 41 above) 11.  
121 HSE (n 110 above) 24.  
122 Ibid 12.
shifts in the type of work within the economy, in particular the decline in manufacturing and the rise in the service sector.\textsuperscript{123} This means that part of the decline in the rate of injuries may be due to a reduction in physically dangerous forms of work, rather than an actual improvement in the quality of health and safety. Moreover, the HSE data are based on RIDDOR and it is accepted that over 40\% of reportable incidents are not in fact reported. Notwithstanding these notes of caution, it seems fair to acknowledge that the shift in the regulatory model has not prevented a continuing trend of decrease in occupational injuries. Yet it is simultaneously notable that the decline in the rate of inspections far outstrips any comparable decline in the rate of injuries. The HSE also acknowledges that the picture is less encouraging if the focus is on work-related ill-health, such as stress and musculoskeletal disorders.\textsuperscript{124} In autumn 2010, the government announced deep cuts in public spending and this included a 35\% cut in the HSE budget cut in the period to 2014/15.\textsuperscript{125} The government has announced that workplace inspections will be reduced by one-third.\textsuperscript{126} This is in contrast to the conclusions of a House of Commons inquiry in 2008, which recommended an increase in inspections in key sectors of poor performance.\textsuperscript{127}

\textit{(d) Promotion}

The mandate of the HSE includes responsibilities for promoting occupational health and safety. It conducts research in this area and operates an information and advisory service.\textsuperscript{128} Moreover, it is empowered to issue ‘Approved Codes of Practice’, subject to the consent of the relevant minister.\textsuperscript{129} These aim to provide practical guidance on the

\begin{itemize}
  \item \textsuperscript{123} Jones and Walters (n 13 above) 37.
  \item \textsuperscript{125} HSE (n 97 above) 20.
  \item \textsuperscript{127} House of Commons (n 1 above) 29.
  \item \textsuperscript{128} s.11(2) HSWA.
  \item \textsuperscript{129} s.16 HSWA.
\end{itemize}
law. Although not legally-binding, they are admissible as evidence in criminal proceedings under the HSWA.\textsuperscript{130} The HSE operates an extensive website with a wide range of information on all manner of occupational health issues, including basic information available in 30 languages.\textsuperscript{131} The construction industry is a key focus of the HSE given its higher rate of occupational injuries. In 2007, one in three construction sites inspected by the HSE were found to put the lives of workers at risk.\textsuperscript{132} The HSE is conducting various campaigns to address these issues. For example, it distributed 110,000 pocket information cards aimed at migrant construction workers to make them aware of health and safety issues.\textsuperscript{133} In 2010, it targeted inspections on the refurbishment branch of the construction industry where there was a disproportionately high accident record.\textsuperscript{134}

3. Personal scope of application and duties of the parties

\textit{(a) Employers}

Section 2 HSWA sets out a series of general duties for employers. These are: (a) the provision of a safe plant and system of work; (b) making arrangements for the safe use of substances; (c) the provision of information, training and supervision for employees; (d) keeping the place of work safe; (e) providing a safe working environment and making adequate arrangements for the welfare of employees. These are combined with those duties arising from the myriad of Regulations adopted under the Act, especially the MHSW Regulations. It should be noted that the HSWA excludes employment ‘as a domestic servant in a private household’.\textsuperscript{135}

There are various legislative provisions that extend the duties of the employer beyond those who are employees. Section 3(1) HSWA provides:

\begin{footnotesize}
\begin{enumerate}
\item s.17 HSWA.
\item <http://www.hse.gov.uk/index.htm>, 3 March 2011.
\item HSC (n 124 above) 13.
\item HSE (n 110 above) 18.
\item Ibid.
\item s.51 HSWA.
\end{enumerate}
\end{footnotesize}
‘It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.’

This is important because the concept of ‘employee’ in British law does not cover all those who provide work for an employer. In particular, casual workers and agency workers often fall outside the definition of ‘employee’. Section 3(1) provides a mechanism for ensuring that the employer’s duties will extend to cover non-standard forms of work. A similar situation is found in the MHSW Regulations, where the duty to conduct risk assessments extends also to those not employed by the employer. These Regulations include specific provisions on the health and safety of temporary workers, such as their access to health surveillance provided by the employer. Nevertheless, there remain certain provisions where the duties of the employer are limited to those categorised as employees. For example, the duty on employers to supply information on health and safety risks, preventative measures and procedures, only extends to ‘employees’.

The common law case-law on negligence has recognised that the liability of the employer can include matters that are ‘reasonably incidental’ to the performance of work. This can include entering or leaving the workplace, or being on part of the employer’s premises, even though the employee is not required to be in that place. The employer may be both directly liable for her own actions and vicariously liable for the actions of her employees. In a significant development of the law, the Court of Appeal recently held that vicarious liability may also arise in respect of those who are working in ‘a position akin to employment’. The case concerned potential liability of a Catholic

---

136 Reg 3(1), MHSW Regs.
137 Ibid Reg 15. This is designed to comply with Directive 91/383 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship [1991] OJ L206/19.
138 Ibid Reg 10.
140 Ibid 138.
141 para. 70, JGE v. The Trustees of Portsmouth Roman Catholic Diocesan Trust [2012] EWCA Civ 938.
Diocese for sexual abuse in a children’s home committed by a priest. While the priest was not an employee of the Diocese, the relationship under which he operated was held to be sufficiently akin to employment in order to give rise to vicarious liability. This decision may be significant in the future for claims of vicarious liability relating to the actions of atypical workers.

Vicarious liability extends to the actions of employees that take place in ‘the course of employment’. There is a large body of case-law surrounding when an employee’s actions may be regarded as being in the course of employment, despite not being the proper manner for performing work. Langstaff summarises the position as the following: ‘the employer is liable for tortious acts which amount to an unauthorised mode of performing authorised acts but not for acts which are not sufficiently connected with the authorised act so as to be a mode of doing it’. Ultimately, this is a question of fact and the law reports are replete with fine distinctions between situations that fall inside or outside of this sphere. Some general guidance was provided by the House of Lords in Smith v. Stages. This case concerned two workers who were required to complete a job at a site far from their normal place of work. They travelled there in a private car. Although the employer had agreed to pay them for sleeping time before returning home, they did not take a rest and a serious accident occurred on the return journey. Given that they were being paid during the time spent travelling, the House of Lords held that this fell within the course of employment, even though the mode of travelling was at the discretion of the workers. As a consequence, the employer could be vicariously liable for the negligence of the employee driving the car. More generally, Lord Lowry drew a distinction between ‘the duty to turn up for one’s work with the concept of already being ‘on duty’ while travelling to it.’ In his view, the employee travelling between her home and her place of work (and returning back again) is normally not acting within the course

---

142 Ibid 145.
143 One source of litigation is accidents and injuries that occur outside the workplace but in the course of work-related events, such as organized excursions: D. Brodie, ‘Away Days and Employers’ Liability: Reynolds v. Strutt and Parker’, Industrial Law Journal 41 (2012): 93.
145 Ibid 939.
146 Ibid 956.
of employment, so the employer has no liability for such journeys. Nevertheless, there could be exceptions to this general principle, such as where an employee is called from home to attend an emergency; in this circumstance, the journey from home to the place of work could be regarded as being in the employer’s time.

(b) Employees

Section 7 HSWA creates two duties for an employee: (a) to take reasonable care for her own health and safety, as well as that of others who may be affected by her acts and omissions; (b) to cooperate with the employer in complying with any statutory duty or requirement. This is supplemented by a further duty on the employee not to ‘intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare’. Duties are also placed on employees within the Regulations adopted under the HSWA. For example, the MHSW Regulations require employees to use equipment and substances in accordance with training and instructions provided to them. Employees must also inform either their employer or an employee with responsibility for health and safety of (a) any work situation presenting a serious and immediate danger; and (b) any shortcoming in the employer’s arrangements for protecting health and safety. The statutory duties of employees can be relevant in a civil law action for damages in relation to whether there has been contributory negligence on the part of the employee. If this is found to be the case, then the court may reduce any damages awarded to the claimant.

(c) Self-employed

Section 3(2) HSWA places every self-employed person under a duty ‘to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and

---

147 s.8 HSWA.
148 Reg 14, MHSW Regs.
149 Ibid.
150 Smith et al (n 24 above) 31.
151 See further, Rogers (n 30 above) 375-377.
other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.’ Further duties on the self-employed can be found in the Regulations adopted under the HSWA. For example, the Provision and Use of Work Equipment Regulations 1998 specify that the requirements imposed on employers also apply to self-employed persons ‘in respect of work equipment he uses at work’. One of the most significant obligations on self-employed persons is found within the MHSW Regulations, which require the self-employed person to conduct risk assessments in respect of her own personal safety as well as that of any others who may be affected. The Löfstedt Review raised concerns that this was unduly onerous and the government has announced that it will seek to change the law to ‘remove health and safety burdens from the self-employed in low-risk occupations, whose activities represent no risk to other people.’

The regulation of the self-employed is a key issue in relation to the construction industry, where it is estimated that one-third are self-employed.

(d) Sub-contractors

One issue that proves challenging for health and safety law is the question of sub-contractors; that is, where the employees of one employer are working on the premises of another. This is particularly relevant to certain forms of employment, such as construction. Specific provision for this is made in the MHSW Regulations. If an employee of one employer is working on the premises of another employer, or of a self-employed person, then the host employer/self-employed person has a number of obligations. For example, the person working in the host undertaking must be provided with ‘appropriate instructions and comprehensible information regarding any risks to that person’s health and safety’. These provisions also apply if the situation is one of a self-employed person working in the premises of another employer or self-employed person.

152 Reg 3(3), SI 1998/2306.
153 Reg 3(2), MHSW Regs.
154 Department of Work and Pensions (n 21 above) 9.
155 Walters et al (n 104 above) 81.
156 Reg 12(3), MHSW Regs.
In respect of the tort of negligence, the courts have been willing to attach liability to a person who was not the employer of the claimant, but who is deemed to have control at the relevant time when the damage occurred.\textsuperscript{157} The case-law in this area is often concerned with accidents occurring on construction sites where there may be multiple contractors working simultaneously on the same site, some being self-employed and others being sub-contracted labour from another employer. While the attribution of liability depends on the specific facts, the case-law includes examples of situations where the courts impute a duty on the principal contractor or the owner of the property to protect the health and safety of those working on the site.\textsuperscript{158} This corresponds with the approach in the Construction (Design and Management) Regulations 2007, where duties are not attached to the status of being an ‘employee’, but are instead linked to being a contractor, or working under the control of a contractor.\textsuperscript{159} The broader statutory language is evidently designed to ensure that the precarious working arrangements common in the construction industry do not circumvent the scope of health and safety law.

4. Workers’ representation

There is a general duty in section 2(6) HSWA to consult with representatives appointed by recognised trade unions with a view to ‘promoting and developing measures to ensure the health and safety at work of employees’. The detailed arrangements for the implementation of this duty are found within the Safety Representatives and Safety Committee Regulations 1977.\textsuperscript{160} Originally, this was the only route for worker participation in the area of health and safety. The main shortcoming was that it was limited to those workplaces where there was a recognised trade union. Prior to 1999, there was no statutory process whereby employers could be compelled to recognise a trade union. So worker participation in the area of health and safety was completely


\textsuperscript{158} Langstaff (n 139 above) 140.

\textsuperscript{159} Reg 25(1).

\textsuperscript{160} SI 1977/500.
dependent on the employer’s discretionary decision regarding whether or not to recognise a trade union. Unsurprisingly, this is especially problematic in workplaces where there is low union density, such as construction, as well as areas where precarious work dominates (eg temporary or agency work).  

The linkage of worker participation rights to trade union recognition was an approach familiar to other aspects of British collective labour law, but it was called into question by two decisions of the Court of Justice. The cases concerned the duty to consult workers’ representatives under EU law relating to collective redundancies and the transfer of undertakings. The Court held that it was not consistent with the obligations of EU law to limit such consultation to situations where the employer had recognised a trade union. Although the case did not concern the UK’s implementation of EU health and safety legislation, it seemed very likely that the Court would adopt a similar approach in respect of other aspects of worker participation law. This stimulated the government to introduce an alternative pathway for worker participation in workplaces where there was no recognised trade union. These rules are found in the Health and Safety (Consultation with Employees) Regulations 1996. As there are important differences between the two sets of Regulations on worker participation (1977 and 1996), it is necessary to consider each in turn.

(a) Worker participation where there is a recognised trade union

The 1977 Regulations permit recognised trade unions to appoint ‘Safety Representatives’. These representatives are given a variety of powers. First of all, there are investigatory powers, such as the investigation of potential hazards, dangerous

---

161 James and Walters (n 111 above) 105-106.
164 SI 1996/1513.
occurrences, the causes of accidents, and complaints by an employee. Secondly, the representative has the power to inspect the workplace, including where there has been a notifiable accident or dangerous occurrence. The representative is entitled to inspect and take a copy of any relevant document. Thirdly, the representative has the function of making representations to the employer on behalf of the workforce in relation to health and safety, and this extends to representing the employees in consultations with the inspectors of the HSE. The employer is under a duty to consult ‘in good time’ safety representatives on a wide range of matters pertaining to health and safety, such as the introduction of new technologies at work. Moreover, the employer must provide the representatives with paid time off to perform their functions and to be trained, as well as providing them with reasonable facilities and assistance. If at least two safety representatives request it, the employer must establish a Safety Committee for the purpose of consultations with Safety Representatives. The TUC estimate that there are currently 150,000 trained health and safety representatives, but that these only cover around half of the workforce. It has been suggested that the serious injury rate in workplaces with trade union safety representatives is half of that found in similar workplaces without such representatives. While there is some debate over the reliability of such figures, studies have supported the basic premise that ‘systematic and consultative management’ is linked to better health and safety outcomes.

(b) Workplaces without a recognised trade union

165 Reg 4(1)(a)-(b), Safety Representatives and Safety Committees Regulations 1977.
166 Regs 5 and 6.
167 Reg 7.
168 Reg 4(1).
169 Reg 4A.
170 Reg 4(2) and 4A(2). See further, Wright (n 98 above) 189-190.
171 Reg 9.
172 TUC (n 4 above) 12.
174 Walters et al (n 104 above) xii.
The 1996 Regulations place employers under an equivalent duty to consult their employees on health and safety matters, but the employer can choose between direct consultation with all employees or consulting ‘representatives of employee safety’ who have been elected for that purpose by the employees. Moreover, the Regulations permit an employer who has been consulting elected employee representatives to decide to change to direct consultation.\(^\text{175}\) The Regulations say little about what direct consultation with employees would entail, except that the employer must provide the employees with such information ‘as is necessary to enable them to participate fully and effectively in the consultation’\(^\text{176}\). If the elected representatives route is chosen by the employer, then the representatives are empowered to make representations to the employer and HSE inspectors.\(^\text{177}\) The representatives must be provided with paid time off for carrying out their functions and they must be provided with training organised by the employer.\(^\text{178}\) This is in contrast to the 1977 Regulations where the employers must provide paid time off for training, but there is no duty on the employer to ensure that training takes place. This would seem to reflect the likelihood that a trade union representative will have access to training organised by the trade union.

Strikingly, the other functions of (trade union) Safety Representatives are not extended to elected representatives of employee safety. They have no powers to investigate or inspect the workplace. They have no powers to inspect documents and there is no provision for employee representatives to require the employer to establish a Safety Committee. Breach of the 1996 Regulations will not expose the employer to any civil liability, except in respect of the duty to provide paid time off for representatives of employee safety. Once again this is a departure from the 1977 Regulations where there is no restriction of civil liability.

(c) Worker participation in health and safety: time for reform?

\(^{175}\) Reg 4(4), Health and Safety (Consultation with Employees) (HSCE) Regs 1996.

\(^{176}\) Reg 5(1).

\(^{177}\) Reg 6.

\(^{178}\) Reg 7.
Unsurprisingly, the dichotomy contained in the two sets of Regulations has led to calls for reform. Research has suggested that the possibility for elected employee representatives in the 1996 Regulations is rarely used in practice, while a majority of employers rely on direct consultation. Research in the construction industry revealed that direct consultation, in the absence of trade unions, was often so informal as to fall short of an accepted concept of what consultation should entail. Yet the HSE is reluctant to exercise enforcement powers in relation to worker participation. Between 1997 and 2008, 5 improvement notices were issued under the 1977 Regulations and 42 under the 1996 Regulations. There was no evidence of any prosecutions ever having been brought in relation to breaches of the consultation duties.

The current legal framework seems out of step with contemporary trends in the labour market, in particular, the steep decline in trade union membership since the 1977 Regulations were adopted. In the private sector, only 15.1% of workers are members of trade unions. This means that many workers are only covered by the lower standards in the 1996 Regulations. A straightforward reform would, for example, be the levelling-up of the functions of representatives of employee safety with those of (trade union) Safety Representatives, while the House of Commons Work and Pensions Committee has proposed removing the power of the employer to opt for direct consultation. Nevertheless, when reform was considered by the HSE in 2003, it concluded that legislative change was not appropriate and that it would pursue voluntary methods for promoting worker participation. In the HSE’s current strategy document, it reasserts the importance of worker involvement and it is supporting initiatives towards this end.

179 James and Walters (n 111 above) 106.
180 Deakin and Morris (n 35 above) 824.
181 Walters et al (n 104 above) 100.
182 House of Commons (n 1 above) 56.
184 House of Commons (n 1 above) 55.
185 Ibid 119.
such as part-funding the training of representatives in non-unionised workplaces.\textsuperscript{187} Yet research suggests that a strong legislative foundation is a key prerequisite to effective worker participation in health and safety,\textsuperscript{188} so it must be questioned how much progress can be made in the absence of a willingness to consider legislative reform as part of the overall package of measures in this field.

5. Consequences on the parties and remedies in case of violation of health and safety provisions

(a) Enforcement by the Health and Safety Executive

As discussed earlier, the HSE enjoys powers to inspect workplaces and to investigate possible breaches of health and safety legislation. Its ultimate sanction is to bring a prosecution under the HSWA.\textsuperscript{189} Section 33 HSWA creates a range of criminal offences related to the operation of the legislation. Some of the offences concern the substance of the law; for example, it is an offence ‘to fail to discharge a duty’ which has been imposed by the HSWA or to contravene any requirement in both the HSWA and the Regulations adopted thereto. In addition, there are offences that are linked to the implementation of the law, such as obstructing a health and safety inspector.

The penalties vary according to the specific offence, however, most of the offences created by the HSWA attract the same penalty. Most offences under the Act can be brought either summarily or on indictment.\textsuperscript{190} If there is a summary conviction, then the penalty is a maximum of 12 months’ imprisonment, a fine not exceeding £20,000 (approximately €25,000), or both.\textsuperscript{191} If there is a conviction on indictment, then the penalty is a maximum of two years’ imprisonment, a fine (subject to no prior limit), or both. In 2010/11, there were 912 offences prosecuted in Britain resulting in 774 (85\%)

\textsuperscript{187} Department of Work and Pensions (n 50 above) 22.

\textsuperscript{188} Walters et al (n 104 above) xi.

\textsuperscript{189} In Scotland, prosecutions are brought by the Procurator Fiscal.

\textsuperscript{190} A summary trial is before a Magistrates’ Court; trial on indictment is before a Crown Court where there is a jury. Normally, more severe penalties can only be imposed by the latter.

\textsuperscript{191} Sch.3A HSWA.
convictions. The average penalty was £24,005 (approximately €30,000) per breach of the legislation. Statistics from 2002-2007 show that 30-40% of convictions are in the construction industry. There have been occasional high profile cases where substantial fines have been imposed. Notably, the gas company, Transco, was fined £15 million for an incident where four people were killed, and Network Rail was fined £3 million for a railway accident where seven people died. Imprisonment is unusual, with normally only 3-4 cases per year. Barrett reports that ‘the vast majority of prosecutions are brought against an organisation in its role of employer’, while the TUC notes that prosecutions are rarely in respect of occupational disease rather than injury.

There has been a long-running debate over the liability of senior officers in companies, such as the Board of Directors, for health and safety violations. This stems from the difficulty of identifying a specific individual who was responsible for the failure in systems of work, notwithstanding clear evidence that the senior management collectively failed to give this sufficient priority within the organisation. If the organisation is found to have committed a breach of the legislation, then there is the possibility in the HSWA for individual senior officers to be prosecuted if the offence ‘is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate …’. Following an amendment of the legislation in 2008, this offence now carries the possibility of up to two years’ imprisonment. Furthermore,

---

192 HSE (n 41 above) 12.
193 Ibid.
194 House of Commons (n 1 above) 42.
195 Ford and Clarke (n 26 above) 1.22.
197 Barrett (n 7 above) 77.
199 TUC (n 4 above) 9.
200 Barrett (n 198 above) 108.
201 s.37(1) HSWA.
the Corporate Manslaughter and Corporate Homicide Act 2007 created a new offence for organisations if ‘the way in which its activities are managed or organised (a) causes a person’s death, and (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.’ Section 1(3) clarifies the intended focus of the Act as it applies where the role of ‘senior management is a substantial element in the breach’. Barrett identifies the significant overlap between the HSWA and the 2007 Act; death due to a breach of health and safety by an organisation could already be prosecuted under the HSWA and, like the 2007 Act, there is no limit on the fine that can be imposed if tried on indictment. She concludes that the main impact of the 2007 Act could be the ‘greater stigma’ attached to a conviction for corporate manslaughter. The first conviction under the Act was obtained in February 2011, when a company was convicted for operating a dangerous system of work following the death of a geologist when earth collapsed on top of him. A fine of £385,000 (approximately €488,000) was imposed on a firm with an annual turnover of £333,000; the firm was permitted a ten year period during which to pay the fine.

(b) Enforcement by individuals

As discussed earlier, individuals have the possibility to seek a remedy via civil proceedings, which may take the form of the torts of breach of statutory duty or negligence, or an action in contract law for breach of the employer’s implied duty of care. While space does not permit a detailed examination of the remedies available in tort and contract law, the most common remedy will be damages. These are not subject to a prior maximum limit and the objective is to place the claimant in the position she would have been in, had the wrong not been committed.

---

202 s.1(1).
203 Barrett (n 198 above) 117.
206 See further, Rogers (n 30 above) 1025.
In order to protect victims of health and safety violations, the Employers’ Liability (Compulsory Insurance) Act 1969 requires all employers to be insured in respect of personal injury claims by employees.\(^{207}\) Moreover, the Employers’ Liability (Defective Equipment) Act 1969 imposes strict liability on employers in respect of damage caused to employees by defective equipment used at work, even if the defect was due to the actions of the third party. It is notable that both of these Acts only apply in relation to those employed under a ‘contract of service’; this means that those with more precarious working arrangements, such as casual workers, are unlikely to be covered. Workers in the construction industry, where there is a high rate of casual work and self-employment, may find themselves not covered by these laws. James and Walters note the general difficulty that construction workers can face in bringing personal injury claims where industrial injuries and diseases were caused over time and through working for a range of different employers.\(^{208}\)

(c) Reparation

While an individual might be successful in claiming damages for an injury or disease sustained at work, this will typically follow a lengthy process of litigation and it will not assist in dealing with the immediate consequences for the individual. This section explores several ways in which law provides support for individuals experiencing work-related ill-health. It looks first at social security, followed by the protection of sick workers and workers with disabilities.

(i) Social security and work-related ill-health


\(^{208}\) James and Walters (n 13 above) 132.
In the short-term, the most important social security benefit for those incapable of working is statutory sick pay. 209 This is payable after four consecutive days of incapacity for a maximum of 28 weeks. The current rate is £85.85 per week (around €109). Statutory sick pay is paid by the employer, but in order for the employee to qualify, she must have average weekly earnings of at least £107 (around €136) during the previous eight weeks. This is the threshold at which point the employee begins to pay National Insurance Contributions. This benefit is available to those who are ‘employed earners’, defined as ‘a person who is gainfully employed in Great Britain … under a contract of service’. 210 One of the complexities of British law is that the definition of ‘employed earner’ does not necessarily coincide with the definition of ‘employee’, which is found in employment rights legislation. The definition of ‘employed earner’ used in relation to tax and social security is broader and may capture some engaged in non-standard employment, such as casual work or agency work, even though these persons might not be employees for the purposes of employment rights. 211 Those who are self-employed will not, though, be eligible for statutory sick pay. Once an employed earner has exhausted their entitlement to statutory sick pay, or if she was not eligible for this benefit, then she may be entitled to the ‘Employment and Support Allowance’. This is a longer-term social security benefit which is payable both to those who have made National Insurance Contributions and to those who have not. The level of the payment is adjusted to reflect individual circumstances. 212

There is also a specific set of social security benefits for work-related ill-health. The Industrial Injuries Disablement Benefit can be provided to ‘employed earners’ who have an occupational accident, or who experience disease or deafness from their work; 213 it does not extend to those who are self-employed. The injury or disease should result
from events ‘in the course of employment’, but this is designed to capture a broad range of situations. The fact that the employed earner was acting contrary to the instructions of the employer, or any legal requirement, will not prevent eligibility for the benefit so long as ‘the act is done for the purposes of and in connection with the employer’s trade or business’. The level of the benefit provided depends on the degree of disablement; those deemed to be 100% disabled and over the age of 18 receive £158.10 per week (around €200). There are a number of additional benefits that can be provided depending on the specific circumstances of the individual. For example, those who are 100% disabled and need daily care may be entitled to a ‘Constant Attendance Allowance’, as well as an ‘Exceptionally Severe Disablement Allowance’.

(ii) The legal protection of sick workers and workers with disabilities

A key long-term issue for workers who experience injury or illness is the ability to return to work. British law does not impose a general duty on the employer to rehabilitate those experiencing work-related ill-health. Nevertheless, this may arise indirectly under the disability provisions of the Equality Act 2010. The first issue is to establish whether the worker’s situation meets the threshold to be treated as a disability for the purposes of the Equality Act. The definition of disability can be found in section 6(1):

‘A person (P) has a disability if – (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities’.

Further detail on the meaning of disability can be found in Schedule 1 of the Act. This clarifies, for example, that the effect of an impairment is ‘long-term’ if it is likely to last

\[214\] s.94(3), ibid.
\[215\] s.98, ibid.
\[217\] Ibid.
more than 12 months.\textsuperscript{218} A large volume of litigation has centred on the preliminary issue of whether or not the individual is disabled, often in relation to whether their impairment has a ‘substantial’ adverse effect on ‘day-to-day’ activities. Section 212(1) defines ‘substantial’ as ‘more than minor or trivial’, so this indicates the need for a broad interpretation.

If a person is disabled for the purposes of the Equality Act, then there is a duty on employers to make reasonable adjustments; failure to comply with this duty constitutes unlawful discrimination.\textsuperscript{219} There are three limbs to the duty to make reasonable adjustments, the first of which is:

‘a requirement, where a provision, criterion or practice of A’s [the employer] puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.’\textsuperscript{220}

The second duty is to make adjustments to physical features of the workplace that create substantial disadvantage and the third is to provide auxiliary aids, where failure to do so would result in substantial disadvantage.\textsuperscript{221} The potential value of the duty can be seen in the leading case of \textit{Archibald v Fife Council}.\textsuperscript{222} In this case, a road sweeper was left unable to walk following an operation. The House of Lords held that the duty to make reasonable adjustments required the Council to permit her to transfer to another role in the organisation that she was capable of performing. While the Council had allowed her to apply for other positions, she had to compete against other internal candidates and she was repeatedly unsuccessful. The extent of the duty to make reasonable adjustments was such that they should not have required her to undergo competitive assessments in

\textsuperscript{218} Para. 2(1), Sch. 1, Equality Act 2010. See also, Equality Act 2010 (Disability) Regulations, SI 2010/2128.
\textsuperscript{219} s.21(2) Equality Act.
\textsuperscript{220} s.20(3).
\textsuperscript{221} s.20(4)-(5).
\textsuperscript{222} [2004] IRLR 651 (HL).
seeking to make a job transfer. Baroness Hale recognised that the duty ‘necessarily entails an element of more favourable treatment’.223

Those workers whose injuries or illnesses constitute a disability will therefore be able to draw upon the duty to make reasonable adjustments as an instrument to assist in returning to work, even if modifications are needed to their original job. The Equality Act has a broad application, so it extends beyond those in a ‘standard’ employment relationship. For example, the duty to make reasonable adjustments covers contract workers supplied by another employer, and partners within a business.224 No such obligations arise in respect of a worker who is sick, but who does not fall within the definition of disability; for example, a worker who experiences an injury from which she is expected to recover in less than 12 months. In relation to those who are employees, some protection may be derived from unfair dismissal legislation. Section 98 of the Employment Rights Act 1996 treats ‘capability’ as a potentially fair reason for dismissal, and this is defined as ‘skill, aptitude, health or any other physical or mental quality’. It may, therefore, be legitimate for an employer to dismiss someone on grounds of ill-health. Nevertheless, for such a dismissal to be regarded as fair, the tribunals and courts have emphasised that a fair procedure needs to be followed, which will normally include dialogue with the employee, as well as a consideration of all relevant factors, such as the length of the absence.225 In McAdie v Royal Bank of Scotland, a bank worker sustained a psychiatric illness following harassment at work. The Court of Appeal approved the approach of the Employment Appeals Tribunal, which suggested that the obligations on an employer prior to dismissal were greater where the ill-health was caused by the employer’s actions: ‘it may, for example, be necessary in such a case to "go the extra mile" in finding alternative employment for such an employee, or to put up with a longer period of sickness absence than would otherwise be reasonable.’226 On the facts of the case, however, the employee was on indefinite sick leave with little prospect of return, so

223 Ibid para. 47.
224 s.41 and s.44 Equality Act.
225 Deakin and Morris (n 35 above) 460.
dismissal was held to be a fair course of action. In such cases, the employee’s remedy lies in a personal injury claim rather than unfair dismissal.

6. Taking stock of UK law on occupational health and safety

UK health and safety law has several key strands. On the preventative side, there are the Health and Safety at Work Act 1974 and the accompanying Statutory Regulations. These seek to advance health and safety by imposing duties on key actors, such as employers, employees and the self-employed. In terms of substantive content, they are heavily shaped by EU legislation and this has been the main driving force in UK occupational health and safety law since the late 1980s. The HSE plays a promotional role insofar as it seeks to stimulate voluntary compliance with these duties, but it also enjoys preventative powers in the form of workplace inspections and the possibility to issue improvement and prohibition notices, or ultimately to initiate prosecutions. Worker participation is part of this preventative infrastructure, although it appears constrained by changes in industrial relations, as well as the weakness of the statutory provisions. In addition to prevention, the legal framework also includes a range of tools for responding to breaches of the legislation. The HSE has an important role to play here in bringing criminal prosecutions, but individuals can also tackle breaches of health and safety law through civil proceedings, often based in tort or contract law. While civil litigation is essentially a reactionary process, arising in response to violations of the law, undoubtedly it plays an indirect role in encouraging the prevention of injuries and ill-health at work. Employers’ awareness of the risk of being sued for damages by individual employees is certainly an incentive for compliance that runs parallel to the impact of the HSE as a regulator.

At the beginning of this essay, the polemical debate today around health and safety was highlighted. This is premised on concerns that there are excessive obligations on businesses arising from the combination of statutory regulation on the one hand, and civil proceedings in tort and contract on the other. The Prime Minister, David Cameron, has declared that ‘businesses are drowned in red tape, confusion and the fear of being
sued for even minor accidents’.\(^{227}\) Given the strength of the rhetoric, especially in the popular media, it can be difficult to form an objective picture of the reality of health and safety law. Stepping back from the politics of this issue, a range of statistics confirm that there has been progress in improving health and safety in the workplace during the past 10-15 years, with discernible declines in the rate of fatal and non-fatal injuries. Moreover, the performance of the UK compares relatively well to other EU Member States. The rate of fatal injuries at work is one of the lowest in the EU,\(^{228}\) although the rate of serious accidents at work is simply in line with the EU-27 average.\(^{229}\) Statistics in the past decade suggest that the UK has the lowest level of reported work-related stress in the EU,\(^{230}\) and amongst the lowest levels of musculoskeletal disorders.\(^{231}\) Such figures have to be treated with some caution; reporting systems may not be entirely equivalent. Nevertheless, the general picture that emerges from the statistical portrait might be taken as an indication that the regulatory mix in the UK is enjoying some success in achieving its objectives and that the bureaucratic burdens, insofar as they exist, may be a necessary means of delivering this record. Behind the headlines, the government itself appears to recognize that the problem, if there is one, does not lie with the legal framework. Lord Young’s review proposes some alterations in the legal requirements, but these do not call into question the basic approach in the law. Indeed, his criticisms are mainly directed at health and safety practice and a misunderstanding of what the law demands from employers. Likewise, the Löfstedt Review concluded that ‘in general, there is no case for radically altering current health and safety legislation’.\(^ {232}\) In any case, the close proximity of the British legal framework to the requirements of EU legislation means that there is

\(^{227}\) HM Government (n 3 above) 5.


\(^{232}\) Löfstedt Review (n 14 above) 1.
relatively little space for the UK to dilute its laws without running the risk of contravening EU law.

Like the government, trade union criticisms are not primarily directed at the underpinning legal framework, although they have made modest proposals for it to be strengthened.\textsuperscript{233} Their main concern also lies with health and safety \textit{practice}, but in this instance the approach to enforcement on the part of the HSE. During the past decade, the HSE has experimented with a significant reduction in inspections and its use of ‘hard’ enforcement powers, such as prosecutions. So far, that has not prevented continuing declines in the rate of fatal and non-fatal injuries at work. It is, though, impossible to divine whether retaining the previous level of inspections and prosecutions would have resulted in even greater declines in injury rates. Moreover, progress in relation to tackling work-related ill-health appears to be more gradual. When questioned about this by the House of Commons Work and Pensions Committee, the then Chief Executive of the HSE accepted that there was a ‘tipping point’ where reductions in enforcement activity would be such that it would ‘cease to have a deterrent effect’.\textsuperscript{234} Recent evidence from the construction industry suggests that there is an ongoing need for enforcement. The HSE reported that in 2009/10, it visited 2,014 refurbishment sites and needed to issue 691 enforcement notices.\textsuperscript{235} In 2009, a construction industry ‘blacklist’ was uncovered. This elaborate system involved a private company collecting data on trade union activists within the construction sector, as well as those who raised health and safety concerns. 44 construction companies subscribed to this database and apparently used it to avoid recruitment of those on the list.\textsuperscript{236} While this example spurred the previous government to prohibit blacklisting,\textsuperscript{237} it provides a salutary reminder that many employers do not have an altruistic commitment to health and safety and there is a need for enforcement to remain an active element in the regulatory toolbox. Given the extent to which

\begin{footnotesize}
\begin{enumerate}
\item eg placing company directors under a specific duty to ensure health and safety: TUC (n 4 above) 12.
\item House of Commons (n 1 above) 26.
\item HSE (n 110 above) 18.
\item The Employment Relations Act 1999 (Blacklists) Regulations 2010, SI 2010/493.
\end{enumerate}
\end{footnotesize}
enforcement has already been scaled back in the past decade, it would appear highly risky to proceed with yet further reductions. Nevertheless, the deep cuts to the HSE’s budget during the next three years appear to make such reductions an inevitability.

The combination of a deregulatory government agenda and reduced public spending on health and safety poses challenges for those seeking to ensure further improvements in occupational health. One avenue that might offer a way through this impasse is to place greater priority on worker participation. A range of research confirms a correlation between stronger worker participation and better health and safety performance.238 Moreover, worker participation offers an alternative regulatory strategy to the external oversight of the HSE. If the latter is going to lack the resources to revitalize its enforcement activities, then worker participation may hold an attraction as means of promoting inspection and monitoring from within the organization. The barriers to enhancing worker participation are, though, significant. In particular, the low level of unionization in the private sector imposes a need to ensure structures for worker participation that deal with both union and non-union workplaces. The current legal framework goes some way to addressing the former, but remains weak and fragile in relation to the latter. This is compounded by the apparent reluctance of the HSE to use its enforcement powers in relation to the legal requirements on worker participation. Moreover, the proliferation of non-standard forms of work, such as casual and agency work, poses a challenge to traditional forms of worker participation, which tend to focus on employees.

In conclusion, the outlook for health and safety law, and its enforcement, seems uncertain in the light of current political and economic pressures. Yet weakening the statutory infrastructure for health and safety might have the perverse effect of compelling workers to rely more on the protection derived via personal injury litigation based on tort law. While this can deliver compensation after the event, it is costly and time-consuming for both workers and employers, as well as feeding popular perceptions about an excessively litigious culture. A preventative approach, such as that based on worker participation and external inspection and enforcement, remains a more constructive model to pursue.

238 House of Commons (n 1 above) 51; Walters et al (n 104 above) x.
Bibliography


HSE. ‘The health and safety of Great Britain – be part of the solution’. 
<http://www.hse.gov.uk/strategy/strategy09.htm#a08a>, 9 March 2011.

HSE. ‘The Health and Safety Executive: annual reports and accounts 2011/12’. HC204. 


House of Commons Work and Pensions Committee. ‘The role of the Health and Safety 
Commission and the Health and Safety Executive in regulating workplace health and 

House of Commons Work and Pensions Committee. ‘Workplace health and safety: 

Howes, V. ‘Workers’ involvement in health and safety management and beyond: the UK 
case’. International Journal of Comparative Labour Law and Industrial Relations 23 

Howes, V. ‘Duties and liabilities under the Health and Safety at Work Act 1974: a step 

James, P. & D. Walters. Regulating health and safety at work: an agenda for change?. 

Langstaff, J. ‘The employer’s duty of care’. In Munkman on Employer’s Liability, edited 


Löfstedt, R. ‘Reclaiming Health and Safety for All: an Independent Review of Health and 


Tombs, S. & D. Whyte. Regulatory Surrender: Death, Injury and the Non-Enforcement 

Tombs, S. and D. Whyte. ‘Health and safety gone mad?’ Institute for Employment 
Rights Briefing, August 2010. 
<http://www.ier.org.uk/sites/ier.org.uk/files/H&S%20gone%20mad%20briefing.pdf>, 2 
March 2011.

Trades Union Congress. ‘The case for health and safety’. 

Walters, D. et al. ‘The role and effectiveness of safety representatives in influencing 

Wilby, D. ‘The general principles of negligence’. In Munkman on Employer’s Liability, 