

# Perceptions of the Health and Safety Regime

Summary Report prepared by Vanilla Research  
for the Better Regulation Executive

March 2008

FINAL



<b><u>1. SUMMARY</u></b>	<b>3</b>
<b><u>2. BACKGROUND AND OBJECTIVES</u></b>	<b>5</b>
<b><u>3. RESEARCH APPROACH</u></b>	<b>6</b>
<b><u>4. THE CURRENT CONTEXT OF HEALTH AND SAFETY COMPLIANCE</u></b>	<b>7</b>
ON THE WHOLE BUSINESSES AREN'T FIGHTING THE SYSTEM	7
CONSISTENCY OF VIEWS, INCONSISTENCY OF APPROACHES	7
A BURDEN, BUT NOT OFTEN AN EXCESSIVE ONE	8
<b><u>5. CRITICISMS OF THE HEALTH AND SAFETY REGULATIONS</u></b>	<b>12</b>
A LACK OF FLEXIBILITY	12
THE AMOUNT OF PAPERWORK	13
A LACK OF CLARITY OVER WHAT IS ACTUALLY REQUIRED	13
THE LAW PLACES RESPONSIBILITIES ON EMPLOYERS YET FEW ON EMPLOYEES	14
A LACK OF CLARITY OFTEN LEADS TO THE INVOLVEMENT OF A CONSULTANT	14
A KNEE-JERK REACTION TO 'RED TAPE' IN GENERAL	15
<b><u>6. TYPOLOGIES</u></b>	<b>16</b>
<b><u>7. CONSTRUCTIVE HELP FOR BUSINESSES</u></b>	<b>18</b>
EXAMPLE RISK ASSESSMENTS WERE WIDELY APPROVED OF	18
A WISH FOR <u>PROACTIVE</u> ADVICE AND GUIDANCE	19
CHECKLISTS WERE SEEN AS ATTRACTIVE IDEA, EVEN WITHOUT INSURANCE DISCOUNTS	19
<b><u>8. PERCEPTIONS OF A COMPENSATION CULTURE</u></b>	<b>21</b>
A WIDER PROBLEM	21
THE EXTENT TO WHICH BEHAVIOUR IS MODIFIED AS A RESULT	22
<b><u>9. THE EMPHASIS OF INJURY OVER ILLNESS</u></b>	<b>23</b>
THE DISTINCT NATURE OF AN SME	23
FEW FORMAL STEPS CURRENTLY IN PLACE	23
STRONG RESISTANCE TO THE SUGGESTION OF GREATER REGULATORY COVERAGE	23
ADVICE AND GUIDANCE – YES; REGULATION – NO.	24
<b><u>10. THE VIEWS OF EMPLOYEES</u></b>	<b>25</b>
EMPLOYEES' VIEWS WERE SIMILAR TO THOSE OF THEIR EMPLOYERS	25
<b><u>11. THE CALL FOR EVIDENCE'S 10 QUESTIONS</u></b>	<b>26</b>

## 1. Summary

### On the whole businesses aren't fighting the system

We saw widespread acknowledgement of the importance of health and safety in the workplace, not just in terms of regulatory compliance, but in terms of good business practice. Only a handful of businesses resisted the concept of H&S regulation in its current form.

### The perception is that, *in theory*, full compliance would pose an unreasonable burden on small businesses

Numerous examples were offered of 'health and safety gone mad' in terms of regulatory requirements, and the image of a health and safety manual 100 pages thick contributes to an image of regulatory bureaucracy.

However, *in practice*, they often operate at, say, 80% compliance, which results in health and safety largely NOT being seen as overly burdensome  
We have arbitrarily chosen the figure of 80% to represent a level at which most small organisations chose to sit – an equilibrium of common sense, good business practice and a 'reasonable' level of regulatory-driven precautions that they see as making for a safe workplace whilst still being manageable. In their minds these measures gave them the confidence that any inspection would be helpful rather than trying.

### The '20%' non-compliance is attributed to lack of time, but also lack of clarity

Few of those we spoke to felt confident about what was legally required. Even among those who had had a formal external Risk Assessment carried out the document often sat on the shelf and was far from familiar territory. Instead most organisations felt they had voluntarily identified the real risks around the workplace and had put in place measures to manage them. The compliance shortfall could be characterised as, to quote Donald Rumsfeld, '*known unknowns*' – they might not know what they were, but they would imagine them in terms of 'banning kids playing conkers' and so did not worry unduly about them.

### As a result the Example Risk Assessments were widely approved of

They were seen as accessible, undaunting, simple and basic - the opposite of the 100-page document they imagined health and safety guidance to be. Importantly, with a few exceptions, the contents was seen to be very reasonable, unsurprising, and were not felt to constitute 'red tape' or an unreasonable burden. They were often described as 'reassuring and comforting' in that they gave the business confidence it was along the right lines, or if not, specific guidance on how to improve matters.

### The first-hand examples of perceived 'red tape' and excessive burden were mostly seen in businesses open to the public (or public sector) – and were often bundled into criticism of Government Regulations in general

There were a minority of vocal critics of the regulations, who felt the *actual* burden put on small businesses was unreasonable and lacked common sense. Examples included:

- The clothes shop that had to put up a ‘no smoking’ sign despite feeling it was obvious that you wouldn’t smoke in a clothes shop
- The hotel that had to give staff manual handling training even if the ‘heaviest thing they’ll have to lift is a baguette’
- The charity that dealt with other public sector agencies and so had to fill out the complete raft of paperwork.

These businesses still acknowledged the importance of regulations, but wished there were more ‘flexibility’ towards small businesses.

#### There is a worry around a perceived compensation culture

As well as the few businesses we spoke to where members of the public had made claims (and it tended to be the public rather than employees), respondents cited ‘no win no fee’ adverts as evidence that society is becoming more litigious. To a large extent though they did not behave differently as a result - other than being more conscientious about insurance, or minor steps such as providing smaller knives in the staff room.

#### And a sense that responsibilities are put on employers but not on employees

Around the discussions on litigation issues, it was felt by many employers and consultants that employees should be treated as adults, and held responsible for their actions to a greater degree than they are. There was a perceived unfairness that an employer could put in place measures, explain them to employees, but still be held accountable if employees failed to follow them.

#### The suggestion that a greater emphasis should be placed on managing illness as well as injury was largely seen as opening a Pandora’s Box

Whilst many small businesses acknowledged the importance of preventing work-related illness, the thought of it being regulated scared them. Firstly, many believed that the nature of a close-knit small business environment meant stress and depression were less likely to get out of control than they might in a corporate workplace – in effect they were more likely to already have informal measures in place. Secondly though, there was a widespread belief that it would be an opportunity to ‘try it on’ – illnesses are much more difficult to define and pin down and employees could exploit this.

#### Employees’ views were similar to those of their employers

Among the two groups of employees in ‘low risk’ businesses we spoke to, there were no feelings of the workplace being ‘unsafe’. They mostly felt the balance was about right between protecting the workforce without tying small businesses up in excessive burdens – but again this was in the context of only partial current compliance. Importantly, they cited the lack of bureaucracy as one of the key benefits of working in an SME/Micro environment, along with the fact that they tended to be given greater responsibility than they might in a larger corporate environment. The view was that complete compliance with the highest standards of H&S would interfere with *their* working day as much as their bosses’.

## 2. Background and Objectives

The Health and Safety Review is considering how the health and safety regime affects small employers and employers whose overall risk is classified as relatively low. Its objective is to find ways to make compliance easier for these organisations, improve health and safety outcomes for their employees, and maintain the confidence of the public in the health and safety system as a whole.

While the Review Team undertook desk-based research to consider the operation of the regime, they also wished to discover how those involved in the regime (those regulated by it and those working within it) felt. To this end a market research project was commissioned from Vanilla Research, an independent research firm, to speak directly to small, low-risk firms. This research ran in parallel to the Call for Evidence in support of the Review, which ran between November/December and January 2008.

The research intended to answer a number of questions, including the questions contained in the Call for Evidence, namely:

1. Do you believe the British health and safety system achieves the right balance between protecting workers, and the demands it places on employers and others?
2. Are legal duties applying to the charitable and voluntary sectors sufficiently clear to support charitable and voluntary activities whilst protecting the people affected by them?
3. Do you think the way the health and safety regime is perceived by employers, workers and the wider public in Britain has a significant impact, e.g. on accident rates, or on the way employers act?
4. How can good health and safety management best be encouraged and recognised?
5. Do you believe fear of compensation claims has any influence on the way in which health and safety is managed? If so, how?
6. What more, if anything, do you believe Government should do to ensure employers have access to affordable, authoritative information and advice on health and safety?
7. How can regulators best ensure that employers prevent ill-health being caused or made worse by work?
8. Do you feel that regulators targeting methods adequately reflect the risks of work in terms of ill-health, as well as injury?
9. What improvements could be made to help HSE and Local Authority inspectors target rogue employers?
10. Could further flexibility in whether HSE or a Local Authority regulates in a particular case improve outcomes?

### 3. Research Approach

The research took a qualitative approach, using both face-to-face in-depth interviews as well as group discussions to explore the issues in an informal, semi-structured way. As well as small low-risk businesses, a handful of interviews were carried out with small charities, professionals involved in health and safety (both from a consultant as well as an inspection point of view), and two group discussions were held with non-unionised, non-management employees of low-risk small businesses.

The depth interviews were structured across size (Small Medium Enterprises were defined as 10-49 employees, and Micro businesses as 1-9 employees), geography, and included a number of sectors. All businesses were selected from 'low risk' areas and excluded 'higher risk' businesses. 'Low risk' was defined as workplaces that are not subject to risks such as hazardous substances, strong vibration or loud noise e.g. retail such as stationers, newsagents, clothes shops; offices; hotels and restaurants, leisure facilities, business services. 'Higher risk' (i.e. excluded from the research) were businesses such as pest control, butchers or retailers with cutting machinery, construction, chemical companies, lifeguards at a swimming pool.

The structure of the interviews is outlined below:

	SME depths (10-49 emps)	Micro depths (0-9 emps)	Charity depths (0-49 emps)	Professional depths	Total
London	2	1	1		4
Cardiff	2	1		1	4
Exeter	3		1	1	5
Birmingham	3	1		1	5
Sheffield	3	1	1	1	6
Cambridge	3	1	1	1	6
<b>Total</b>	<b>16</b>	<b>5</b>	<b>4</b>	<b>5</b>	<b>30</b>

Two group discussions with employees were conducted in Birmingham and London.

All interviews were conducted between 23 January and 5 February 2008.

## Main Findings

### 4. The Current Context of Health and Safety Compliance

#### On the whole businesses aren't fighting the system

Among the 'low risk' businesses we spoke to we saw widespread acknowledgement of the importance of health and safety in the workplace.

This was both in the sense of 'Health and Safety' for regulatory compliance, and 'health and safety' as good business practice. This sense also emerged in the couple of interviews with Health and Safety inspectors – although they could usually find some small area of technical non-compliance, they felt that most low-risk businesses were broadly compliant and broadly supportive of the concept. This is not to say that there are no 'rogue' businesses out there, just that among low-risk SMEs they were seen to be the exception rather than the rule.

#### Consistency of views, inconsistency of approaches

While most organisations felt health and safety was important, we saw dramatic differences in how they went about addressing it.

From one extreme....		
Charity	3 staff	Approaches it very informally, as they don't see their office as much of a risk. Nothing is written down – they rely on common sense. They have never been inspected nor had a Risk Assessment done.
....to another		
Chain of 3 clothes shops	10-49 employees	Adopt a very rigorous approach to H&S. Conscientious on all paperwork, have regular briefings for staff as well as 6 monthly Risk Assessments.

As might be expected, most organisations adopted a position somewhere between the two. Any approach to health and safety usually consisted of varying elements of 3 components: common sense, good business practice and regulatory compliance.

**Common sense:** this almost always formed the main bulk of an organisation's health and safety measures. Steps such as not leaving cables lying around, not standing on chairs, mopping up spillages when they happen, not working on

your own in unlocked premises at night, not placing heavy boxes on high shelves etc

Good business practice: These would be measures that might not always be obvious, but that were put in place for the benefit of employees or the business. These could include clearing walkways of deliveries within set times, formal training on using equipment or paid-for eye tests. Importantly, 'good business practise' would apply regardless of any regulatory requirements.

*"If I didn't care about health and safety, we wouldn't be open – there'd be too many accidents." SME, Hairdressers*

Regulatory compliance: This in many cases was the smallest of the three components (although as the report outlines later this is more often due to regulatory *ignorance* than *defiance*). We heard reference to a number of Risk Assessment documents, although these often gathered dust on a shelf, or in some cases had been bought via the internet and had not even been read. We also heard of accident books, employees being sent on manual handling courses, and required signage such as 'no smoking' or 'mind the step'.

This pattern - a good dose of common sense and sound business practice, supplemented by an element of regulatory compliance – was seen to be crucial in determining whether organisations saw the Health and Safety regime as a regulatory burden.

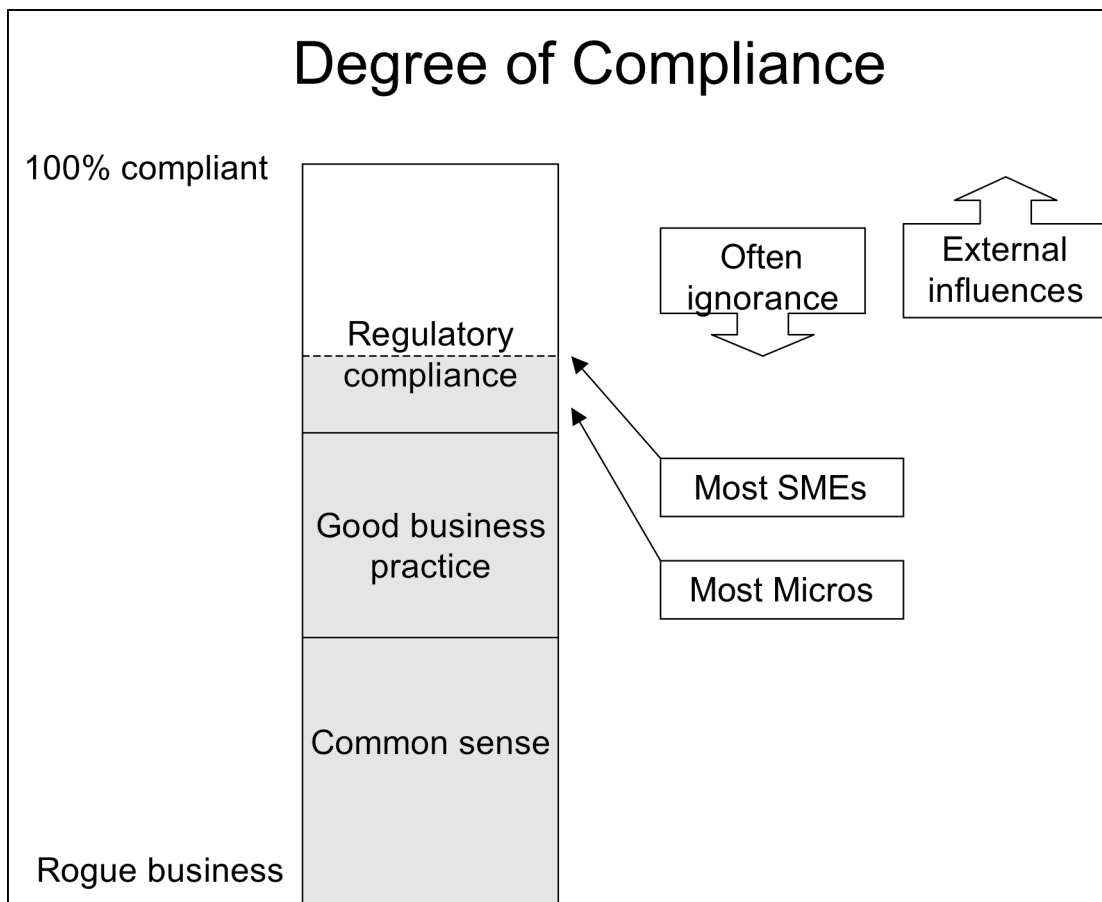
## **A burden, but not often an excessive one**

Across the many businesses and charities we spoke to, only a minority felt current Health and Safety regulation places an excessive burden on the business. However, a vital caveat is applied to this, in that most of the organisations we spoke to were not 100% compliant.

We have arbitrarily chosen a figure of 80% to represent a level at which most small organisations chose to sit – an equilibrium of common sense, good business practice and a 'reasonable' level of regulatory-driven precautions that they see as making for a safe workplace whilst still being manageable. Since they are not complying with every single requirement, by definition the burden it *actually* places on the business is lessened.

*"If some small businesses complied with everything they would never get off the ground. It's the weight of what you've got to absorb." Professional, Solicitor*

Below we outline how most businesses adopt an approach that involves only an element of regulatory compliance.



A number of elements need to be explained within this framework:

#### SMEs were often found to have more measures in place than Micros

By definition Micro businesses have fewer employees, often involve smaller premises, and often fewer activities or departments within the business. In addition the turnover is often lower than that of an SME, and so there is often less budget available for investment in H&S measures. Lastly, the owner is often still at the heart of the business and able to be more 'hands on' and so relies less on paperwork and formal policies. As a result (rightly or wrongly), they feel less of a need to abide by explicit regulatory guidelines, and so on the whole are less 'compliant' than SMEs.

#### The shortfall in Regulatory Compliance is usually considered acceptable.

Most of the 'low risk' businesses we spoke to felt relatively comfortable in the measures they had in place. They usually felt they were aware of the risks in the workplace and had put in place reasonable steps to manage them. When pushed on areas of non-compliance, specific comments usually centred around perceived 'technical' non-compliance rather than real risks e.g.:

- We keep boxes out of walkways, but we haven't actually put yellow

marking tape down the side of the walkway;

- We've been asked to put duct tape over every crack in the wall, but they're tiny.

*"We look at things, and then think what's sensible to do." Charity*

Indeed, the inspectors that we spoke to suggested they too tended to take a 'reasonable' approach when inspecting low risk businesses, and would not necessarily enforce every letter of the regulations as long as the business was well-intentioned and the workplace was considered safe.

*"Common sense usually prevails in inspections." Inspector*

### The public, or the public sector, usually drove the highest technical levels of compliance

The businesses we spoke to who demonstrated the highest levels of regulatory compliance (to the extent of putting in place measures they felt were unnecessary) usually did so either because their premises were open to the public (hotels, shops etc) or they dealt with public sector bodies as part of their core business - labelled 'external influences' in the diagram above. These influences do not apply to all SMEs, and so help to explain why only some practice the highest levels of compliance.

Examples we saw of businesses prompted to the highest levels of compliance by external influences (i.e. for non-employee related reasons) included:

- The clothes shop that put in place 'no smoking' signs in its stores for the public rather than employees;
- The charity who deals with a lot of public sector agencies and so has to complete all the required 'paperwork';
- The hotel that put in place a 'mind the step' sign for the public rather than employees;
- The hairdressing salon that has regular Risk Assessments carried out by a local College prior to their taking on work placement students.

### The '20%' non-compliance was often due more to ignorance rather than defiance

In our research we found exceptions to this rule, and consequently there will be many more exceptions across the UK as a whole, but overall we found that it was more commonly businesses not knowing exactly what they needed to put in place that prevented higher levels of compliance, than knowing the details but resisting implementing them.

The compliance shortfall could be characterised as, to quote Donald Rumsfeld, '*known unknowns*' – businesses might not know what they were, but they would imagine them in terms of 'banning kids playing conkers' and so did not worry about them.

In many cases businesses had commissioned a Risk Assessment (or bought one online) but had not actually read it – behaviour that was acknowledged as commonplace by some of the Professionals we spoke to. Though a manager

might accept that there were probably measures contained in it that they did not have in place, as they couldn't remember the full contents they were unsure what they might actually be. Again though this was seldom a major concern to them, as they would tend to be confident that they had addressed the real risks in the business.

## 5. Criticisms of the Health and Safety Regulations

There were three main areas of criticism of the actual Regulatory framework, and one that was more related to the judicial interpretation of it. These were:

- the lack of flexibility in how regulations are applied to small, low risk organisations;
- the amount of paperwork required for compliance;
- the lack of clarity over what is and what is not required;
- the sense that the law tends to place the onus on the employer to implement measures, yet little on the employees or customers to follow them.

It was apparent though that in the first two cases only a minority of the criticism was based on first hand experience, and reflected an actual burden on the business. In many cases the criticism was based on media reports or second-hand experience, and did not represent an actual burden since the organisation did not have the relevant measures in place (nor ever really intend doing so).

### A lack of flexibility

Many organisations felt that what made for sensible regulations for bigger businesses should not automatically be applied to smaller ones. SMEs are often closer-knit organisations, where the manager will usually have a better control of what goes on in the workplace, and where staff turnover is often lower and so there is a greater-build up of workplace-knowledge.

Allied to this was often a wish to be able to treat staff like adults and give them some freedom to manage their own actions – something that might be less apparent in larger corporations where managers may not know each member of staff individually.

Examples of these criticisms included:

- a requirement for ‘no smoking’ signs on office doors;
- a requirement to provide goggles for putting bleach down toilets;
- having to fit separate male and female toilets when they have fewer than 10 employees;
- not being allowed to give staff (who are often friends) paracetamol;
- having to give staff manual handling training ‘when the heaviest thing they’ll lift is a baguette’.

*“I know the rules are there to protect people. But I resent having to have a no smoking sign up, that has to be a certain size and all of that. Because it’s common sense – of course you shouldn’t smoke in a clothes shop, but it’s illegal not to have a sign.” Micro, Retailer*

In most cases the criticisms were from organisations who considered themselves fairly conscientious, but who felt that the relevant risks would be pretty negligible among a small group of adults exercising common sense.

## **The amount of paperwork**

The difference between ‘in theory’ and ‘in practice’ was also evident regards paperwork. There were examples of organisations that felt they spent a disproportionate amount of time filling in H&S paperwork, or in the case of one tailor, who no longer offered work placements to students because of the required paperwork.

Indeed the instance of no longer taking on work placement students was acknowledged by one of the professional consultants interviewed who saw the practice becoming less common and felt H&S paperwork was the reason. In these cases the organisations felt that health and safety was important, but that the attendant paperwork did little to actually reduce the ‘negligible’ risk.

*“I see the inefficiency of the whole thing. You waste an awful lot of time filling in silly forms to cover your back.” SME, Publishing*

Evidence suggests that people were filling in paperwork sometimes as a defensive mechanism and sometimes because clients required it. In the latter example the clients were usually public sector organisations who required documentation of all H&S measures. In terms of ‘defensive’ paperwork, we heard SMEs say that they filled in paperwork out of a belief that it would help them in the event either of a lawsuit or an inspection (though it was unclear where this belief stemmed from). A potential danger with the latter position was highlighted by one of the H&S consultants we spoke to:

*“There’s a feeling that once you’ve done the risk assessment you can tick the box and move on, but that’s the easy bit. The thing that has to be done is translate it into a work procedure and integrate it into what people do.” H&S Solicitor*

Again though there were a large number of businesses that criticised the ‘paperwork’ without actually doing it, or actually knowing what it entailed. They often would have an image of a health and safety manual 100 pages long.

## **A lack of clarity over what is actually required**

The third underlying criticism surrounded the fact that very few of the organisations we spoke too felt confident they knew what the legal requirements actually were (hence their operating at somewhat less than 100% compliance).

This view was apparent across SME and Micro businesses, as well as among the professional consultants interviewed. Only a minority of respondents had actually sought out information themselves, but even those who had had questions seldom found simple, clear guidance.

The confusion was felt to be quite widespread and consistent, e.g.:

- the business that tried to find advice online about recommended gaps between desks, but got nowhere;
- the respondent who, in advance of the interview, looked up [www.hse.gov.uk](http://www.hse.gov.uk) but found it too intimidating and confusing;
- the restaurant that asked its Local Authority advice on how it could arrange tables outside on the pavement but got no advice;

- the H&S consultant who commented that no-one could keep up with all the requirements as the legislation changed so frequently.

*“Sometimes you feel like you’re swimming in a very large ocean and there’s not a lot of help out there.” Charity*

*“Confusing and constantly changing. For example the rules on asbestos – some say it’s only an issue if you’re refurbishing and some say something else. And you don’t always know who the key contact is if you have a query.”  
SME, Gastropub*

The issue of a perceived lack of help on the part of Local Authorities (often a business’s first port of call) was mentioned a few times. As was the fact that when seeking basic information, it can be hard to work out the difference between legal obligations and less essential services/equipment etc offered by consultants trying to sell their services.

## **The law places responsibilities on employers yet few on employees**

A recurring theme amongst respondents was the way in which regulation places so much responsibility for health and safety matters upon employers rather than employees or customers.

*“I think sometimes there can be an excessive burden on the employer to be expected to do everything to cocoon the individual. It’s difficult to get the balance right, but I think there should be some emphasis on the individual (or customer) taking some responsibility.” Professional, Solicitor*

Employers, as well as health and safety consultants, acknowledged that deciding upon and documenting the appropriate health and safety procedures for their business was not always overly onerous in itself. However, ensuring they were consistently implemented and taken on board by staff/customers could prove extremely difficult (an example being a customer tripping on a step that is clearly lit and well marked).

*“It fails to protect employers against customers, even when we have done everything right.” SME Retailer*

In such cases, despite of the employer having done everything they could by way of training, communication, etc, in the case of an accident it was still felt likely that they could be sued, or at minimum have to jump through hoops to prove their innocence. This is where many felt that the law placed an unfair burden upon them, with little emphasis on the employee or customer to take some responsibility. The view was that employees and customers were adults, yet the law was often felt to treat them like children.

## **A lack of clarity often leads to the involvement of a consultant**

A lack of confidence over what is legally required of SMEs, coupled with time constraints, meant many we spoke to had involved an outside consultant in

forming their H&S policies and measures (more often than not found through informal routes such as friends of the owner, or a customer of the business).

It should be said that while there are many high quality consultants around, for some of those we spoke to the relationship was far from satisfactory.

*“I think it was appropriate to get an external viewpoint on it; but I’m not sure the guy concerned was particularly one of the best in his field.” SME Law firm*

Criticisms included the resulting report being an off-the-shelf, generalised one of little relevance to the business, or an underlying cynicism that some of the recommendations were thinly disguised sales opportunities (e.g. recommending expensive fire extinguisher trays in the case where fire extinguishers were sometimes moved around the office).

*“I’m not sure where to go for information without getting charged an arm and a leg by consultants. I wish I knew where to find some definitive information about what we are legally required to do.” SME Software Design*

*“(I try to avoid consultants) Most of the time they want to sell you something.” SME Restaurant*

Often the sense was that involving a consultant ‘ticked the box’ of getting a Risk Assessment rather than added value to the workplace.

## **A knee-jerk reaction to ‘red tape’ in general**

It should also be noted that there was an undercurrent of criticism among some organisations of Government Regulation in general, and Health and Safety was often caught up in this net.

As a result some of the strongest reactions to Health and Safety ‘extremes’ were seen in organisations that also faced a number of other regulatory burdens – e.g. food hygiene and safety, licensing or commercial driving licensing (in the instance of a recruitment firm). Similarly, a number of businesses criticised Employment or other laws in the same breath as Health and Safety regulations, and what was offered as a criticism of the latter was actually a criticism of the former (Employment law was considered to be disproportionately strict for SMEs).

*“I wouldn’t employ anyone who was pregnant or likely to get pregnant because of that case. A woman went for a job in a small business, and she was interviewed by the owner of the business, who said the job involved a lot lifting and carrying. She said ‘no, that’s fine, I can do that’. I think a month or two after she started the job she announced she was pregnant and couldn’t do any lifting and carrying. So he said well you can’t stay in the job, and he ended up losing his business.” Micro, Crafts*

*“They’re going to introduce a simplified CPC (Certificate of Professional Competence) for drivers – why? CRB (Criminal Records Bureau) checks are another one – they’re often a waste of time.” SME, Recruitment*

Lastly, there was also an element of reacting to media stories rather than personal experience. So we heard criticism of Health and Safety banning the playing of conkers and damping down public firework displays, both of which we would suspect were not directly relevant to the workplace in question.

## 6. Typologies

In the course of the research a number of ‘types’ of organisation emerged, in terms of their approach to Health and Safety. By no means are we suggesting that all businesses fall into one of these typologies (or pen portraits), but we hope that they help pull together many of the typical attitudes and behaviours that were apparent among the low risk organisations we spoke to.

### ‘It won’t happen to me’ (and in all likelihood probably won’t)

A micro-business, typically office-based, which believes its employees should be treated like adults. The owner will take a common-sense, informal approach to managing risk, and won’t have sought any external advice or support. They’ll verbally outline key risks to employees but won’t formally ‘train’ them in H&S measures.

They will: manage fire risks; keep stray cables out of the way; avoid storing heavy boxes on high shelves; avoid lone females working late in the day.  
They won’t: train employees in manual handling; have a formal accident book.

Burden? Views a lot of H&S as ‘over the top’, but as it doesn’t go out of its way to comply doesn’t *actually* spend a lot of time or money on H&S.

Typical example: a marketing company

Typical comment: ‘We never used to have these rules and regulations and we managed OK’

### Common Sense Plus

A micro or small business that takes a very conscientious approach to the wellbeing of their workforce (and possibly customers). They want to be as compliant as reasonably possible, and have mitigated all of what they see as real risks. They will *informally* train their staff in H&S matters, and may well have had a formal Risk Assessment carried out, although they can’t remember everything that is in it. H&S is in the hands of a manager rather than the owner.

They will: have PAC testing; make step ladders available; take basic safety steps if lone working.

They won’t: force staff to always comply with all the guidelines; regularly assess computer work stations.

Burden? Sees most of it as good business practice, and will happily take the extra few steps as required. Does not see it as too onerous a business burden, but then isn’t actually 100% compliant.

Typical example: hairdressers or estate agent

Typical comment: ‘Some issues are just part and parcel of the job’

### Compliant Critics

An owner-managed business that is open to the public. They're knowledgeable about all the legal requirements as they are likely to have been recently inspected. They feel a lot of the regulations are 'red tape' and are an unreasonable burden on small businesses, and these views are founded not just on H&S regulations but also on food safety and hygiene, employment law etc.

They will: have a no smoking sign and a 'mind the step' sign; have put staff through formal manual handling training.

They won't: do it willingly.

Burden? Yes, both in terms of time and money.

Typical example: small hotel

Typical comment: 'It's red tape and over-the-top'

### Fully compliant

The larger organisations, more medium than small. They are large enough to have a manager with H&S an explicit part of their job. They take a *formal*, documented approach to it, often with an external prompt (solicitors who see the legal vulnerability of lax standards, or service companies with public sector clients). They are most likely to use external H&S consultants.

They will: send staff on formal training; have a 'live' Risk Assessment document; have a budget or at least funding for H&S.

They won't: few things they won't do.

Burden? Do not really see it in those terms – they want to be legal and want to have a safe workplace.

Typical example: a medium sized legal practice

Typical comment: 'I'm known as the official nag around here'

## 7. Constructive help for Businesses

### Example Risk Assessments were widely approved of

Earlier in this report we have outlined how ‘low-risk’ SMEs were generally unfamiliar with exactly what was required of them legally in terms of health and safety, and that one of the main criticisms of the legislation was a perceived lack of clarity around what was required.

In the course of the interviews respondents were showed an example of a draft Risk Assessment available on the Health and Safety Executive’s website ([www.hse.gov.uk/risk/casestudies/index.htm](http://www.hse.gov.uk/risk/casestudies/index.htm)). On the whole reaction was positive, even among those who previously had been quite critical of the regulations.

- Pros:
- Very simple and accessible language and length – undaunting
  - Gives small organisations a starting point amid all the confusion
  - For a number of people it offered reassurance that they were ‘on the right track’
  - Content seems reasonable and does not suffer from the ‘health and safety gone mad’ syndrome
  - Could easily build in hotlinks to more detailed content (such as on manual handling guidance)
  - A degree of personalisation – there was a consistent view that it was better to increase the degree of relevance and personalisation even at the expense of increasing the number of documents.
- Cons:
- Some examples were felt to be over-the-top. For instance requiring hairdressers to wear gloves for all ‘wet work’ - experience tells people that it is unlikely to become common practice. The asbestos precautions in the office-based business example were also commented on as over-the-top in terms of ‘immediate notification of accidental damage’.
  - It needs to be seen as a means to an end, not an end in itself. This comment largely came from Health and Safety professionals, who emphasised that it would need to be communicated to businesses that this document is only a foundation, and that the organisation would still need to develop it into a valuable policy.

*“These look more basic than anything I’ve seen, which is a good thing. It’s helpful to understand what kind of thing they (H&S) are looking for, so this is good.” Micro, Retailer*

*“I was expecting to scoff, but actually it was quite useful.” Employee*

It is difficult to say exactly how concrete the interest in the examples was – whether they liked them in theory, or whether they would actually bring them into use. The main requirement would be a level of awareness that they existed – none of the respondents we spoke to had actually searched the HSE website for such guidance or knew they existed. A couple of respondents though actually asked for copies of the examples as a result of

the interviews, and we believe that if proactively publicised there would be a reasonable degree of interest in them.

### **A wish for proactive advice and guidance**

There were mixed experiences of health and safety inspections among the organisations we spoke to. Some individuals had no recollection of ever being inspected, despite being in the role for a number of years; others had been inspected and had found the inspectors quite inflexible. Regardless though of the individual experience, there was an underlying opinion that most would welcome constructive, reasonable advice and guidance.

*“I would welcome them and put the kettle on.” SME, Recruitment*

With most small businesses supportive of the concept of safe workplaces, largely trusting of Government as an authoritative source of information, yet unclear as to what is required, there was a real value placed on visits that would help them comply and improve the health and safety of their workplace.

*“There is not a presence, you’re not likely to get inspected. It’s not just a question of fear - there was someone coming in on a regular basis, they could help them do the right thing. And a lot of businesses would like to get a better steer.” Professional, Solicitor*

Yet the solution need not be purely visits – several mentioned welcoming simply clear online information or a telephone helpline should they have any queries.

This ideal was actually seen to be the general practice among the two inspectors we spoke to as context to the survey – they both felt they approached ‘low-risk’ businesses with a view of reasonable improvements rather than picking up on all possible non-compliances.

### **Checklists were seen as attractive idea, even without insurance discounts**

As was the case with the Example Risk Assessment documents, the majority of organisations were attracted by the idea of a Checklist. The idea was thought to offer some form of route through the legislation and guidance for those in the dark as to what is required. We had no actual drafts to test, but the ideal would be something that:

- was relatively short, simple and to the point;
- helped address all the real risks in a workplace rather than picked up on endless ‘pedantic’ elements of compliance;
- was not too onerous to complete – a checklist rather than ‘more paperwork’;

For many the idea was compelling even without the added incentive of insurance discounts. Unsurprisingly, the added possibility of saving money was of interest to most small businesses, but importantly there is a trade-off between likely savings and additional burden. For some Micro businesses their insurance bill is relatively small to begin with (in the hundreds of pounds), and so any discount is unlikely to be large enough to persuade them to

comply with the letter of the checklist - although they might still use it for guidance. On the other hand, a retail SME with shops open to the public had an annual insurance bill in the region of £15,000 and felt even a 5%-10% discount would be a real motivation to incorporate a checklist.

## 8. Perceptions of a Compensation Culture

### A wider problem

A substantial majority of the individuals included in the research felt that there was a developing compensation culture in the UK. They cited a number of reasons for this belief.

- The number of ‘no win, no fee’ adverts on TV;
- Experiences of being stopped on the street and asked if they had recently had an accident at work;
- Direct experience of customers claiming compensation after a fall;
- Direct experience of customers ‘trying it on’ with unfounded claims (which disappeared once the business responded with paperwork demonstrating safety measures);
- An example of a customer who slipped, but left the building on her own saying she felt OK, only to return later with her son who had persuaded her to make a claim for damages;
- In another example a small hotel owner had a lady visiting who had asked for there to be no air freshener put in her room as she suffered from asthma. He did not put any in there, but could not “take out” any residual odours from previous applications a few days before. She complained the following day that she had not had a good night’s sleep, asking for compensation and threatening to take legal action.

*“I think the sue and blame culture is becoming the norm. Years ago if you wanted to claim for compensation the insurance company might ask for lots of proof, but nowadays it gets waved through.” Professional, Consultant*

There was a clear sense among many that the judicial system has tipped ‘unfairly’ in favour of claimants and against businesses. In some cases this manifested itself in a belief that businesses were likely to lose court cases, in others that they were being advised to settle out of court given the risk that they might lose a court case. In another example an SME settled out of court for an employer slippage. Even though he felt he had done absolutely everything by the book and was not in the wrong, he was advised that settling would be cheaper than standing his ground and fighting it.

It did not appear as a major worry for those we spoke to, since most had insurance for such events, but it was certainly ‘at the back of their minds’. This was despite any firm knowledge of the likely size of such claims – perceptions of what made for a typical award ran from £5,000 to £250,000.

*“It’s not at the front of your mind but it’s always at the back of your mind, as these days people can be straight down to the solicitors who will tell them they can sue for thousands.” Micro, Tailor*

*“It’s not a real concern for us as I think we have all the necessary systems in place to keep that to a minimum, but I think that’s what Joe Public thinks. I think they probably only see the negative side of it, as that’s all the press cover. So yes, it’s all about what can I get and who can I blame?” Charity*

*“It’s always something we think of as our customers are out of work and may be tempted to think it’s an easy way to get cash. Especially as more and more these days you have people jumping out at you saying ‘Do you want to make a claim?’ “ SME Training Company*

### **The extent to which behaviour is modified as a result**

Our interviews suggested that organisations are not necessarily acting any differently as a result of a fear of a compensation culture. For most it is a worry, but not one that changes what they do - other than ensuring that adequate insurance is taken out, or possibly engaging a H&S consultant when they might not have otherwise. A couple of respondents did though claim to have a tendency to be more likely to say “no” to minor things (such as placing a toaster in the staff room) i.e. err much more on the safety side than perhaps they had in the past.

*“If we take reasonable precautions I think the HSE should see we’ve tried everything and there should be some recognition. But the tendency to sue forces you to be more draconian and say: you can’t do this for H&S reasons, so we’re seen to be the bad guys (e.g. telling tenants not to leave things on the stairs).” SME, Property Management*

## 9. The Emphasis of Injury over Illness

### The Distinct Nature of an SME

In the course of the interviews we discussed the current emphasis on addressing work-related injuries to a greater extent than work-related illnesses, and whether an increasing emphasis on the latter would be welcomed.

One recurring theme was the sense that SMEs and other small organisations are very distinct from larger corporations. Owners and managers were felt to take a greater degree of personal responsibility for their staff than can be the case elsewhere, and so would intervene earlier in potential cases of stress or depression. This belief extended to colleagues, who it was felt take more of a pastoral concern for each other than in larger businesses – a close-knit workplace has its advantages as well as disadvantages. So without meaning to appear complacent, many felt that some of the formal measures that might be appropriate to larger firms were more likely to be already informally in place in SMEs.

*“It’s a small firm, so we are all very much aware of each other.” SME, law firm*

### Few formal steps currently in place

There were a few exceptions where businesses already had in place formal policies to address healthy as well as injury-free working, e.g.:

- subsidised gym membership
- free eye tests
- VDU assessments

but these were very much the exceptions rather than the rule.

### Strong resistance to the suggestion of greater regulatory coverage

It was very much the view, among SME employees as well as owners, that any moves towards greater regulation around work-related illnesses would be unwelcome. There were a number of reasons behind this:

- Some elements were just felt to be ‘part of the job’. From the tailor spending time over a sewing machine, through the hairdresser standing up for most of the day, to the gastropub owner stooping to get wine from a cellar, the feeling was that some things just come with the territory, and attempting to eliminate their effects would fundamentally undermine the business’s viability.
- People react to things in different ways. Some people hide stress, someone might get back ache while another person doing the same thing may not – it was felt unfair to expect businesses to correctly spot problems when they are not always obvious. The sense was that it should be the employee’s responsibility to flag up back-ache or stress etc.
- ‘It would be like nailing jelly to a wall’. This concern was raised by the professionals as well as the SMEs – issues such as stress or

depression are thought to be difficult to define and diagnose with certainty. Furthermore problems were anticipated with defining whether, for instance, stress was caused by the workplace or by an employee's personal life.

*"If you want us to be a counsellor, pay us to be a counsellor." Micro, Crafts*

- Opening Pandora's Box. Finally, there was a real and consistent worry that regulating around illness as much as injury would be an open invitation to employees to 'try it on'. The belief was that, while by no means a majority, there were plenty of people around who would manipulate the legislation in order to be signed off sick.

*"I'd have to close my business if all 3 girls were off with stress."*

*"It's hard to prove and difficult to police. I know there are some genuine cases of true stress – I've seen a woman give a speech about it and she broke down in tears as she talked about it – but in a lot of cases those who want to work will work and others who don't will find it a good way to skive." Professional, Consultant*

### **Advice and guidance – yes; regulation – no.**

Despite such concerns on behalf of SMEs (concerns that were shared by the professionals we spoke to as well as the employees), there was an acknowledgement that illnesses could be a problem, but that it would be more appropriately dealt with by offering advice rather than imposing regulation.

## 10. The Views of Employees

### Employees' views were similar to those of their employers

In order to provide some added context to the in-depth interviews, we conducted two discussion groups with non-unionised, non-managerial employees of small businesses. Their views consistently shared common ground with those of employers.

- The freedom and lack of bureaucracy that comes with working in a small organisation was consistently mentioned as one of the best things about working there. Furthermore, among these 'low risk' employees, there were no spontaneous calls for the greater degrees of protection that can come with working for a large organisation.
- There were no feelings that they were working in 'unsafe' environments. It is obviously worth stating that this by no means suggests that such workplaces do not exist, just that there was no sense of vulnerability among the employees we spoke to.
- They mostly felt the current balance between protecting employees without over-burdening businesses was about right – although as with employers, this view was in the context of only partial current compliance. They acknowledged their employers probably didn't comply with every single element of regulation, but they were comfortable with this.
- In fact, both employers and employees suggested it was more likely that bosses were nagging employees to comply with safety measures than vice versa (at least in the low risk businesses we covered).
- They too knew of examples of what they considered over-the-top compliance, but these were isolated instances (e.g. the worker who was told to wear goggles when putting bleach down the toilet).
- The Risk Assessments were welcomed for the same reasons they were by employers – they were felt to be helpful, mostly reasonable, and brought clarity to an area of ignorance.
- There was a strong wish to be treated like adults (as with employers wanting to treat them like adults), and in this context they felt some of the measures should be *recommended* rather than *required* e.g. having to take short, frequent breaks from VDU work even if there are deadlines to be met etc. While a minority of the public may be contributing to a 'compensation culture', a large number actually want to be treated like adults and take responsibility for themselves.
- They quickly had concerns that stronger regulation around illness as well as injury could prompt people to feign illness – in a small business an absent employee impacts colleagues as well as owners.

## 11. The Call for Evidence's 10 Questions

Many of the questions posed in the Call for Evidence have already been addressed earlier in the report. Here we give short summaries for the questions that have already been discussed, and elaborate on any specific questions that have not.

1. Do you believe the British health and safety system achieves the right balance between protecting workers, and the demands it places on employers and others?

On the whole, businesses felt the balance was broadly acceptable at the moment, but this is in the context of, in most cases, incomplete compliance. Most organisations occupied an equilibrium of putting in place measures based on a combination of common sense, good business practice and an element of regulatory compliance – but falling short of compliance with every letter of the regulations. By stopping short of the perceived extremes of the regulation, they avoid experiencing what might be an unreasonable burden.

2. Are legal duties applying to the charitable and voluntary sectors sufficiently clear to support charitable and voluntary activities whilst protecting the people affected by them?

Many of the organisations we spoke to were unclear about the exact legal requirements for health and safety compliance, and this applied to charities as well. While some were sure about the steps they needed to put in place, others starting point was to treat volunteers exactly as they would employees. They did not seem to know exactly how they can legally treat them differently, so good business practice suggests they should treat them the same.

However, given the time pressures of part-time volunteers *as well as* short-term contracted employees, not all the Ts were crossed or Is dotted. A typical example was a charity that made sure volunteers who led group walks with the elderly carried out an initial risk-assessment of the route, but did not worry about explaining the protocol for reporting near misses in the accident book (neither to volunteers or employees).

In some cases it seemed to be that they responded to specific external prompts rather than from underlying knowledge – dealing with public sector agencies for one meant they had to complete 'onerous' paperwork, working within a local hospital for another meant they couldn't put up a noticeboard in a public space. In each case the knowledge was built up from others' requirements, and in the absence of external prompts there was no more clarity than among SMEs – with the attendant result that they put in place measures that they see as reasonable without necessarily being 100% compliant.

3. Do you think the way the health and safety regime is perceived by employers, workers and the wider public in Britain has a significant impact, e.g. on accident rates, or on the way employers act?

As has been described, among the low risk businesses we spoke to there was a strong sense of health and safety being necessary, both from a common sense point of view as well as for good business practice. On this basis accident rates are no doubt lower than they might be if health and safety weren't such a familiar concept to UK businesses. Furthermore, most businesses also put in place some measures largely as a result of awareness of the regime (e.g. accident books, manual handling training etc), and it could be argued that these also have a beneficial impact on accident rates. However, it was also seen that a lack of clarity or information around what exactly is required means most businesses are knowingly only '80%<sup>1</sup>' compliant – it is impossible to say from this research what effect implementing that last 20% would have, other than to make the burden more 'onerous' than 'manageable'.

4. How can good health and safety management best be encouraged and recognised?

The sense was that businesses (understandably) preferred the carrot rather than the stick. Most felt inspectors were reasonable and were as much a source of advice as purely an inspector – on the whole businesses seemed to welcome inspections as an opportunity for help with compliance. Given the current lack of clarity around what is required, the example Risk Assessments and suggestion of a checklist or accreditation were welcomed. There was real interest in the idea of a checklist, which was heightened at the possibility of meaningful discounts on insurance premiums – but only if the accreditation exercise is simple and more of a checklist than 'added paperwork'.

However, this support of encouragement is clearly in the context of a basic level of legal requirements – there needs to be an underlying stick in order for the carrot to work.

5. Do you believe fear of compensation claims has any influence on the way in which health and safety is managed? If so, how?

Whilst there was a real concern around a perceived 'compensation culture' developing in the UK, the fear of being sued was more 'at the back of the mind' than a pressing concern. Furthermore, it was not seen to have a significant affect on how health and safety is managed, aside from businesses being more conscientious about buying insurance. The bigger risk was felt to be customers rather than employees, and those businesses open to customers were seen to have some of the highest levels of compliance but due to inspections and good business practice. In a few cases though the distinction was admittedly blurred – it was difficult to say whether a business being told by an inspector that they need to put up a 'mind the step' sign or risk being sued is doing so because of the inspector or because of the fear of litigation.

6. What more, if anything, do you believe Government should do to ensure employers have access to affordable, authoritative information and advice on health and safety?

---

<sup>1</sup> An arbitrary figure chosen to illustrate less than complete compliance.

The clearest calls were for more proactive advice and simple guidance. Many businesses who had not recently been inspected wished they would be (proactive advice), and the strong (positive) reaction to the example Risk Assessments demonstrated a desire for more simple, concise information - refreshing change from the image of a 100 page manual that sits on a shelf gathering dust.

*“We’d like better communication of what’s really important, rather than so much information that you can’t work out what’s really vital and what’s a nice to have. The attitude tends to be: here’s a massive book.” SME, Gastropub*

7. How can regulators best ensure that employers prevent ill-health being caused or made worse by work?

There was strong resistance (apparent among SMEs, employees and consultants) to the idea of regulating around ill-health such as stress and depression. The feeling was that, while such illnesses were serious, it would be extremely difficult to differentiate between real instances caused or made worse by work, and either issues that are unrelated to the workplace or employees ‘trying it on’ – considered much easier to do with an illness than an injury. This left information and guidance (rather than regulation) as the preferred route.

8. Do you feel that regulators targeting methods adequately reflect the risks of work in terms of ill-health, as well as injury?

We were not able to cover this area in the research.

9. What improvements could be made to help HSE and Local Authority inspectors target rogue employers?

The main finding to emerge from the handful of interviews we did with inspectors and consultants was a sense that the regime (especially the HSE) does not have enough resource to inspect all those organisations it could and should do. By implication, some employers were falling through the cracks that should not be. There were also comments around targeting being more useful the more specific it is e.g. a Local Authority successfully targeting skin-piercers – with a view that sector is often be more important than size.

10. Could further flexibility in whether HSE or a Local Authority regulates in a particular case improve outcomes?

Both Local Authority inspectors included in the research felt that there is currently a ‘gap’ in terms of organisations that fall within the remit of the HSE, but who are not currently being inspected because of HSE not being felt to have adequate resource. Perhaps unsurprisingly they felt Local Authorities could help fill this gap, especially as they were often visiting the same industrial estates/areas anyway for their own inspections. In contrast, two of the three consultants spoken to suggested the regime should be centralised (albeit still with local teams), to avoid overlap and fill gaps.

## **Overall Conclusions**

The overall conclusion among both employers and employees was that the regulatory balance was not fundamentally out of kilter. Most organisations saw themselves as broadly compliant, safe workplaces, where the actual burden was not unreasonable. The excesses that were highlighted were often the result of specific recent inspections of public premises, rather than underlying measures that most organisations took.

In effect, ignorance of the detailed regulations often means that businesses unknowingly 'opt out' of some of the perceived extreme requirements. 'Health and safety gone mad' would be a more familiar cry from SMEs if they were all inspected on an annual basis by a very pedantic inspector, but most aren't.

This lack of knowledge about the precise nature of compliance argues that the desire for improvement is more in terms of making it easier to comply with current regulations, than easing the regulations themselves. Calls for improvements in the information and guidance on offer were more common than calls for changes in the actual regulations – although some would certainly welcome the latter.