

A REFLECTION ON THE CURRENT LOCAL AUTHORITY LED REGULATION MODEL:

Lisa VIEWS FROM SMALL AND MEDIUM SIZED BUSINESSES Borley

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ABSTRACT

Background

Health and safety regulation has been identified by the UK government as an area of over-regulation; a burden to business; and hindering economic growth. In response recommendations have been made to government to reduce this regulation¹⁻³. Whilst this seems to be the view held by government, many sources indicate that health and safety regulation has a role to play in supporting business⁴⁻⁶ and that 'good regulation' can actually help businesses and aid in their growth and economic prosperity.

Guidance issued by the Health and Safety Executive (HSE) to Local Authorities has left Local Authority regulatory departments unable to undertake proactive inspections in medium and low risk workplaces, relying on intelligence to trigger reactive investigative visits. Such visits effectively only allow the prevention of future repetitions rather than preventing harm in the first place. At the same time spending cuts have seen reductions of 28% to Local Authority funding which has forced a re-examination of how to deliver services including health and safety regulation.

Method

An empirical qualitative methodology was applied to test the health and safety compliance advice required by SMEs. Semi-structured interviews (n=10) were carried out with selected SME owners/managers across a range of sectors with varying exposures to health and safety regulatory interventions, in the City of Peterborough. The interviews were conducted face-to-face at the business premises, recorded and transcribed. The data was coded in order to establish themes which were used to develop emergent theory.

Results

Ten themes emerged from the data. The strongest themes that emerged were that businesses did not feel that deregulation or reduced inspections would be beneficial either at the individual business level or across the sector. Of significant note was that participants wanted to continue to have inspections on a frequent basis. They felt that fewer inspections would lead to lower compliance levels and increased accidents. In addition, SMEs indicated that they do not have the skills or capacity to self-regulate and thus wish for tailored business advice to aid in protecting their workforce.

Recommendations

The presumption that regulatory visits are negative is questioned by the research and indeed all interviewees welcomed the support they gain from such visits. With this in mind it is suggested that a more business advisory approach is adopted to meet SME needs and aid growth while still protecting the workforce. A number of recommendations are made including a risk based proactive intervention strategy based on responsive regulation principles, improvement of communication and business engagement and focus on advice provision for SMEs. The recommendations are designed to meet businesses needs and also to contribute to business growth.

Keywords

Business advice compliance; Business growth; Deregulation; Health and safety; Local Authority; Regulation; SMEs.

INTRODUCTION

Government have recently become critical of regulation and suggest that occupational health and safety is over-regulated, seeking to reduce regulation in order to allow business growth. This is in line with a difficult economic climate which has led to many businesses struggling to grow or survive. The belief that regulation is bad for business has been largely founded on the Global Competitiveness Report 2010-11⁷, which ranked the UK number 12 of 139 countries in terms of its business competitiveness position, but identified that the burden of government regulation was a weakness and that inefficient government bureaucracy was the fourth most problematic factor for doing business in the UK. It has to be recognised that this relates to all forms of regulation including banking and finance, but it is used as evidence of over-regulation in all areas. In parallel central government's spending review has resulted in cuts to LA funding of 28% with Environmental Health services taking an 8% hit⁸. This means that Local Authorities have to re-examine the way they use the resources they have left.

Advocates of deregulation such as Berg⁹, Arculus¹ and Young² have also influenced the reduced regulatory regime. Contrary to these views, the World Health Organisation¹⁰ and Organisation for Economic Co-operation and Development¹¹ hold the position that public health (including occupational health and safety) needs regulating in order to improve health and reduce health inequalities, whilst leading academics including James et al.¹², Beck et al.¹³, O'Neill^{4,14} suggest that this policy is counter-productive.

The public's perception of health and safety has been largely influenced by the media's portrayal of stories such as the banning of school children playing conkers without the use of safety goggles¹⁵. These 'regulatory myths' have damaged the reputation of health and safety amongst both the public and businesses in the UK¹⁶. Many of the stories that are reported in the media do not refer to 'workplace' health and safety as it were but are often more related to public activities¹⁷. It can be argued this has led to the feeling that health and safety is only there to ruin people's fun and enjoyment.

It is important to note that whilst people have their concerns about health and safety regulation, in 2010/11 there were 171 work related fatalities and 115,379 non-fatal injuries were reported. 1.9 million people were suffering from work related illnesses. This led to 26.5 million working days being lost³. It is therefore important to recognise that whilst some may feel that health and safety has become a burden, it saves lives and prevents long term illness.

The cost of occupational injuries and illnesses to UK businesses has been estimated to be over £3 billion¹⁸. In addition, the benefits of reduced injuries and ill health to business can influence business growth due to improved productivity and quality of work^{19,20}. Marmot²¹ states that businesses that do not protect their employees harm their workers. This confirms that ignorance of health and safety has a direct effect on workers' health and well-being.

Hilage *et al.*²² presents evidence of a link between regulation and lower accident rates in some sectors whilst Takala and Hämäläinen²³ found that only 24% of the reduction of workplace fatalities over the last 10 years can be linked to the change in employment from heavy industry to lower risk industries meaning that the remaining 76% is due to other factors including regulation. There is also evidence confirming the link between good health and safety provision and positive business outcomes²⁴. Indeed where there are discrete and focused regulations that oblige even small firms to have formal systems there is evidence of

positive outcomes on accident rates²⁵⁻²⁷. Wilson *et al.*²⁸ identified that SMEs are unable to self-regulate environmental issues and that they have a poor awareness of non-compliance, relying on the regulator to point them out. This evidence is supportive of the argument that the current regulatory regime is effective in reducing accidents and ill health.

As a result of implementing latest HSE guidance^{29,30}, Local Authority proactive health and safety inspections have fallen by 77%. At the same time more than half of recent fatalities in HSE enforced workplaces occurred in premises which are no longer subject to proactive inspections¹⁴. O'Neill, holds the view that it takes catastrophic events to occur in order to trigger re-regulation and uses examples such as the *Legionella* outbreaks in Edinburgh (June, 2012) and Stoke (July, 2012), and the recent horse meat scandal to demonstrate that when things go badly wrong, regulators are criticised for not taking enough action. These are examples of what can happen when regulation is reduced. Whilst the perception of government and business may be that deregulation will lead to cost savings and allow for economic growth, O'Neill¹⁴ explains how in actual fact all that results is a cost shift from business to individuals, communities and the public purse as a result of increased accidents and ill health.

James *et al.*¹² argue that the Löfstedt³ report falsely promotes the fact that low-risk workplaces are over-regulated and does not present the other side of the coin in terms of the significance of a long term decline in regulatory activities which could lead to a deviation from compliance over time. In 5 years the movement away from compliance could be greater than it is now and in 10 years even further away. This deviation could be industry or sector specific or business size could be a significant factor.

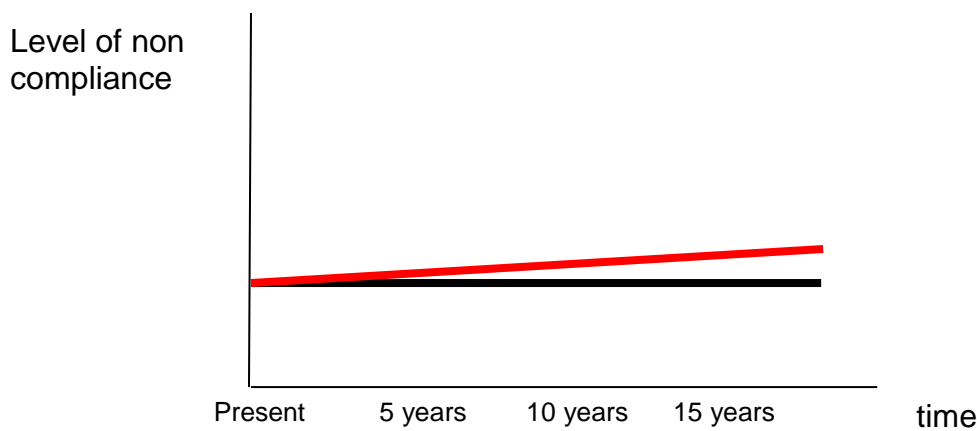


Figure 1. Potential shift of compliance over time if a regulatory regime is altered

This research is purposeful in seeking SMEs voices which are missing from the debate. The majority of evidence that has been used in support of change has been based upon the views of large multi-national organisations^{2,3} and very little evidence has been included about the views and needs of SMEs. Research exists³¹⁻³⁴ that argues the case that SMEs need more support in terms of health and safety and how they rely on advice they get from inspectors heavily. It is suggested that many of them find health and safety a burden because they feel confusion and uncertainty and do not have the ability to self-regulate^{34,35}. However, this evidence is not being heard by government and is not being included in the pro-deregulation debate.

It is important that rather than letting change lead to such extreme deregulation, that other options are explored, that offer some level of compromise whereby SMEs are supported in the right way to allow for business growth but are not left alone to the extent that they are unable to comply thus putting their employees at risk.

The British Chambers of Commerce claimed that over half of businesses found health and safety to be a burden³⁶. However, when examined in detail the smallest of SMEs disagree with this and in some sectors such as business/professional services only 10% said they felt health and safety was an extreme burden³⁶. The main issue that emerged was that SMEs tend to over comply due to their own uncertainty about requirements^{33,36,37,38}. In terms of financial burden health and safety accounted for only 4% of the total cost of regulation to business in 2010³⁹.

Anderson³¹ identified that 58% of SMEs considered complying with regulation in general was a very important responsibility to them. She found that the fewer employees a business had, the less important they considered complying with regulation to be. Health and safety in particular was considered to be the most time consuming and costly part of regulation and presented the biggest burden to business. The British Chambers of Commerce⁴⁰ also found this to be the case, although the Burdens Barometer³⁹ suggests that this is not actually the case.

There are various suggestions of how much health and safety costs businesses. Lancaster *et al.*⁴¹ said that on average a large firm spends in excess of £420,000 a year on health and safety whilst the Forum of Private Business⁴² said that SMEs together spend in excess of £2 million. This emphasises the significant financial impact that health and safety has on business which in the current economic climate clearly has an effect on the UK and its part in global recovery. However, it could be questioned whether or not this cost is justified or whether much of it is due to over-compliance as a result of the lack of understanding of reasonable practicability. The other side of this equation to consider is the cost to business of not complying with health and safety in terms of absence, ill health to the state, non-completion of orders etc.

In addition to monetary cost Taylor⁴³ claims that SMEs are spending on average one working day per month on regulatory compliance. Clearly, this has a far more significant impact on a small business with less than 5 employees than a larger business with 100 employees for example.

Lansdown *et al.*⁴⁴ identified that the costs of implementing health and safety regulations are often felt by businesses straight away, but the benefits can take a long time to be seen. This does not help an SME to appreciate that it is in their long term interests to implement them. This theory is reinforced by Cagno *et al.*⁴⁵ who identified that large companies already recognise that safety pays rewards in the long term but that more work needs to be done with SMEs to make them realise this.

With SMEs being more likely to collapse due to lack of finances it may be that many do not remain in business long enough to reap the benefits. Interestingly, Fairman and Yapp⁴⁶ found that SMEs are more prone to accidents than large businesses. This could be due to the lack of health and safety expertise within the organisation, lack of resources to implement controls and poor appreciation of the benefits of complying. This also influences cost impact by increased days lost and likelihood of civil litigation which is a known fear of businesses¹⁷.

Department for Business Enterprise and Regulatory Reform⁴⁷ found that businesses feel health and safety regulation is a barrier to business success. The Department for Work and Pensions⁴⁸ say that the more obstacles that are put in the way of entrepreneurs and

investors, the more of a negative impact this will have on the country economically which agrees with the findings of Sala-i-Martin⁷. Clearly, there is a need to ensure that business growth is encouraged as far as possible in order to aid global recovery but at the same time public safety must not be compromised in order to achieve this.

SMEs are an important part of the UK economy as they account for 99.9% of all businesses; 59.1% of private sector employment and 48.8% of private sector turnover⁴⁹. Those involved directly with businesses such as regulators need to recognise the heterogeneity of SMEs and understand that SMEs have different support needs at different points in their development. For example, a new business is likely to need more support than an established one, although an established business in the process of expansion may need a higher level of support during this time. This can also apply in terms of the trading year with high and low points differing between sectors and areas which can impact on the level of focus on health and safety compliance. For example, the retail sector is likely to be less focussed on compliance during the period leading up to Christmas due to trade being at its peak, whilst some ethnic food businesses are likely to be less focussed on compliance during July, the month of Ramadan. It is important that regulators give thought to these issues when developing and reflecting on best practice and support mechanisms.

Anderson³¹ found that almost half of SMEs do not actively seek guidance on health and safety, which appears to conflict with the notion of spending considerable time on such regulation. This also suggests that they are more reliant on the advice they receive from health and safety inspectors. When guidance is asked for it is generally regarding health and safety management systems and risk assessment³¹, suggesting that it is the paperwork and form filling that businesses find most challenging. In contrast only 4% of businesses asked in the same study said they would look to Local Authority inspectors for guidance³¹. This could be for a variety of reasons: the majority of the sample in the study may have been enforced by the HSE; businesses may rely upon the advice being given as opposed to requesting it; or the businesses may see inspectors as being purely about enforcement and not advice, or a fear that by asking, someone will find something wrong. She also identified that a significant number of businesses feel they need to pay for advice on health and safety matters in order to be able to comply. It is of great concern that SMEs are not fully utilising the free advice available from inspectors. Anderson³³ suggests that SMEs collectively spend over £1.4 billion on paid advice. This clearly has an economic impact on global recovery because this is money that could be better invested in business growth and development.

Löfstedt³ says that health and safety regulations are generally fit for purpose. He identified that the problem with health and safety regulation is not with the regulations themselves but how they are interpreted and applied. Taylor⁴³ agrees that it is the application of the regulations rather than the regulations themselves that are the problem. He says that many SMEs have difficulty in understanding what 'so far as is reasonably practicable' means and suggests that one of the real issues is the public's understanding of risk. This reinforces the argument already made that misunderstanding of requirements leads to over-compliance and the perception that what is required is more complicated than it really is.

Richard⁵⁰ said that there is a need to seek alternatives to regulation in order to support SMEs. He identified a particular need to support new businesses and says that in order to improve economic growth it should be easier to start and run a small business in the UK than anywhere else in the world.

Others have identified alternatives to traditional regulation. Arculus¹, Hale *et al.*⁵¹ and Better Regulation Executive⁵² consider self-regulation as an alternative to command and control approaches, whereas Ayres and Braithwaite³⁵ discuss a middle-ground approach of enforced self-regulation whereby firms set their own rules which are approved by the regulator and breaches of those set rules constitute an offence. This type of system would

be heavily linked to trade bodies with the intent that market force would push firms towards enforced self-regulation in order to gain memberships or approvals of their trade bodies thus competition would force firms to comply. They also developed a pyramid system of enforcement known as responsive regulation where the enforcement approach can be moved up and down dependent on the response of the regulate, with more forceful approaches being at the top of the pyramid and more lenient approaches at the bottom. Their point of view is that as long as the regulator has the ‘big stick’ approach available to them for use, the less likely they will be to need to use it and thus the most used approaches will be towards the bottom of the pyramid.

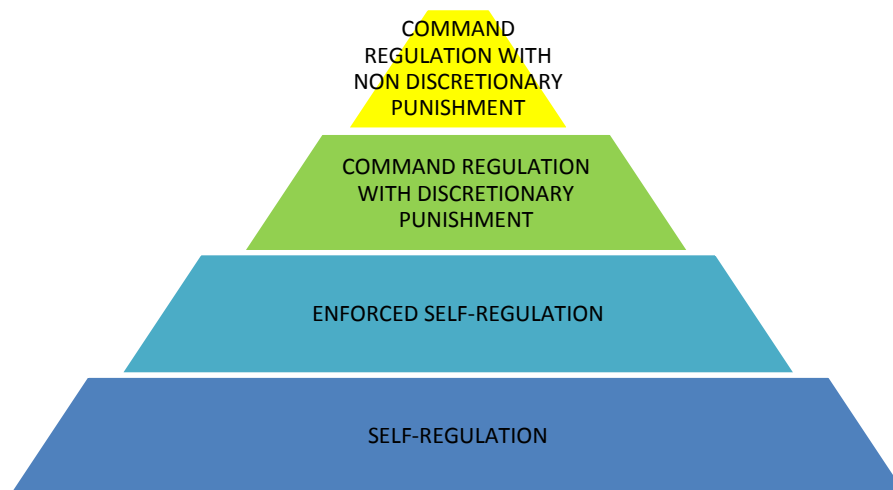


Figure 2. Ayres and Braithwaite's example of an enforcement pyramid
(Ayres and Braithwaite³⁵)

A similar approach is suggested by Anderson and Russell⁵³ where self-regulation would be enforced by independent self-financed regulatory organisations that would regulate through industry membership and compliance with codes of conduct. However, with this approach there would be no formal mechanism for sanction other than loss of membership. Also, many SMEs would not necessarily have the desire or need to be members of industry bodies and so this approach would only likely to capture a small proportion of SMEs.

Fairman and Yapp³⁴ oppose self-regulation for SMEs because they do not know what they need to do in the first place, they rely on the inspector to tell them what they need to do and do not have the necessary knowledge and understanding to be able to self-regulate. They argue that an educative approach and educative interventions lead to increased compliance levels.

Baldwin and Black⁵⁴ discuss ‘really responsive regulation’ as a more innovative, dynamic approach to regulation whereby there is on-going consideration of regulatory strategy which detects non-compliant behaviour, develops tools and strategies to respond to that behaviour, enforces those tools and strategies, assesses their success or failure and modifies them accordingly. The strengths of such an approach are that it can be tailored to the individual business taking into account their attitudinal response and that it is adaptable to change. The approach is naturally one of reflective practice and is a way of working that Environmental Health Practitioners enforcing health and safety should be doing by nature. Environmental Health Practitioners are trained to be reflective practitioners⁵⁵ and so are in a very strong position to be able to work in this way.

Forlin^{56 (p1)} made clear that whatever changes are made to the current system it must remain a priority “*that the UK retains its position as being one of the safest places in the world in which to work.*”

METHODOLOGY

This study is an empirical phenomenological qualitative research project based around a ground theory approach and utilising a pragmatic worldview where methods and approaches were chosen to address the problem, rather than a strict following of any one specific paradigm. The data is of a narrative nature, presenting the views, thoughts and opinions of people. This study required the exploration of the views of a population of SME operators. These views cannot easily be measured numerically and so a qualitative approach has been chosen.

Grounded theory was applied as the most suitable approach where a theory is needed to explain how people are experiencing a phenomenon⁵⁷. In this case the phenomenon was the experience of health and safety regulation and a theory is needed to explain what people’s experiences of health and safety regulation are. Grounded theory aims to generate a theory, pattern or generalisation that emerges from the data collection and analysis⁵⁸.

The research was undertaken by conducting individual semi-structured interviews with business operators (n=10). All interviews were undertaken with informed consent, audiotaped and transcribed.

Interviews were chosen as the preferred method of collecting the data because they can be Data analysis was carried out using a systematic approach which involved the researcher thoroughly reading through all transcriptions and initial thoughts being recorded in the form of memos before commencing the coding process.

A manual coding process was then undertaken based on grounded theory procedure:

- *Open coding*
- *Axial coding*
- *Selective coding*^{57,59}

Participants were purposively selected using the researchers’ knowledge of business type, location, size, and by approaching them face-to-face. This approach was chosen over randomised sampling in order to ensure that the best quality information was collected, by people who wanted to share their views and to ensure that participants had experience of health and safety regulation. Neuman⁶⁰ says that purposive sampling is a valuable method that can be used to access specific types of participants for more detailed study. In this case the categories of business are quite specific and the additional need for inclusion of minority groups means that a randomised selection process would be very difficult to meet these requirements.

The inclusion criteria were:

- <250 employees.
- Regulated by Peterborough City Council for health and safety.
- Have received a health and safety intervention.

The following exclusion criteria were applied:

- Businesses regulated by the HSE.
- Franchises.
- Businesses that have been in operation for < 12 months.
- Businesses with ≥250 employees.

These criteria were chosen because the definition of an SME as defined by other researchers such as Anderson^{31,33} is a business with <250 employees. Only businesses regulated by Peterborough City Council were included because the research question was looking specifically at LA led regulation. The study was carried out at a local level within the Peterborough area. Businesses must have received some form of health and safety intervention in the past in order for them to be able to give their views about their experiences. Franchises were excluded because whilst they may be considered to fall within the criteria of an SME, they are likely to have access to a larger company for health and safety information which would give them an advantage over other SMEs and may influence their views in a way that would skew the results and would not be representative of a typical SME. New businesses were excluded if they had been operating for <12 months as they were not likely to have had the full experience of regulatory processes yet and therefore their views may be biased or misinformed.

A selection of business types were included by category as follows:

Category	Number of Businesses
Shop/Office	2
Restaurant/Takeaway	2
Warehouse	2
Hair/beauty	2
English not first language	2
TOTAL	10

Table 1. Sample selection by business type

The reason for selecting these categories was that this covered the main sectors enforced by the Local Authority and ensured an even distribution of business types. It was important to include a proportion of businesses where English was not the first language because 21% of the population in Peterborough are not of UK origin⁶¹. Therefore 20% of the sample included businesses whose first language was not English to reflect this.

RESULTS AND DISCUSSION

The process of data analysis identified many codes within the data. Whilst these codes were all quite specific in terms of their meaning, many of them could be connected with each other and the links between them led to 10 overarching themes.

Businesses do not want deregulation of health and safety or reduced inspections. They think the current way inspections are carried out is right and generally find the inspections helpful.

An almost unanimous opinion emerged that regulatory visits should not be reduced which is contrary to views offered by Löfstedt³, Young², Arculus¹, Berg⁹ and Richard⁵⁰. There were opinions that a reduction of visits would lead to less confidence and an inclination to save money through non-compliance. These comments support views held by O'Neill¹⁴ that catastrophes (e.g. *Legionella* outbreaks, horse meat scandal) are resultant of reduced

regulation, Hilage *et al.*²² and Takala and Hämäläinen²³ who say that regulation is effective in reducing accidents and illnesses.

One participant stated that small businesses need visits as this is the only source of guidance they have access to, which agrees with Fairman and Yapp's³⁴ findings. Another said they felt that they were guessing whether they had done things correctly or not until they received an inspection. However, they also said that visits could be more helpful indicating a perception that health and safety visits may not be as helpful as they could be. This can be linked to Russell's⁵ view that a positive approach to regulation can support business growth and that how it is delivered day-to-day is what matters.

Other participants agreed that the frequency of inspections should not be reduced. These were 'low risk' businesses thus would not be subject to proactive inspection at all in accordance with current guidance⁶². They commented that if health and safety was deregulated it would remain important initially but that in 5-10 years' time it would not be thought about anymore. They said that if health and safety was deregulated that it would change the level of importance it was given by businesses because it would be human nature to become lazy. They made the comparison with the MOT on a car and posed the question that if it didn't have to be done, why would a business do it? This mirrors the effect demonstrated in figure 1.

It was suggested that inspections should focus on the highest risk businesses. However, they did not want the lower risk category to be forgotten about and still believed they should be visited albeit less frequently recognising that prevention was important further supporting O'Neill's¹⁴ view. This was especially important for new businesses and for gaining up to date information with provision of more advice visits being suggested which coincides with Richard⁵⁰ who identified a need to support new businesses. Some said they would like advice to form part of the inspection.

Currently, new businesses are given a risk rating based on known information such as the type of industry and activities they are carrying out. This means that the majority of new businesses categorised into B1, B2 or C thus would not necessarily be subject to an initial inspection⁶². Participants did not think this was a good idea but felt that regulators could be more tolerant sometimes, further supporting the argument of Russell⁵, Better Regulation Executive⁵² and Local Better Regulation Office⁶³. One participant said that the current balance of enforcement and support was good and they would like to see regulators continue to work with businesses in this way as advocated by Russell⁵.

The evidence suggests that businesses want to comply and they want to do the right thing but feel that they need the regulator to visit to verify that what they are doing is right. They almost need a 'seal of approval' from the regulator in order to feel happy that they are compliant. Fairman and Yapp³⁴ also found this to be the case and that once businesses have had the all clear from the regulator they consider themselves to be compliant. It also confirms that Wilson *et al.*²⁸ were correct in so much as that SMEs are unable to self-regulate because of this need for reassurance. This could be linked to their fear of litigation (discussed later) in that they want to be able to feel that they have had that approval from the regulator, and that if they have, they feel less worried about litigation because they know they have done all 'reasonably practicable'.

Most participants were happy with the way inspections were being carried out but wanted more advice, guidance and feedback from them and wanted them to be proportionate to the business in terms of the level of responsibility the business operator has. This suggests that a bespoke regulatory approach such as that presented by Baldwin and Black⁵⁴ could be the way forward.

One participant who had previously experienced an improvement notice being served on them said that if the notice had not been served and they had not had to carry out the work that they wouldn't have had the work done as they would not have been aware the problem existed, supporting Fairman and Yapp³⁴ that SMEs are unable to assess their own compliance. They said that money was the reason they get frustrated when they are told they have to do things which is supportive of arguments presented by British Chambers of Commerce³⁶, Anderson³¹, Lancaster *et al.*⁴¹ and the Forum of Private Business⁴².

Some participants said that they would find a pre-arranged announced visit more beneficial as it would enable adequate staffing thus allowing the business operator to dedicate time to spend with the inspector, to prepare for the visit in terms of gathering documentation and prepare questions they wanted to ask, and to enable the operator to manage their workload so that they could have adequate time set aside for the visit.

A number of participants were not aware that the Local Authority had enforcement responsibility for health and safety or were not aware they had received an inspection before. This shows that businesses do not associate health and safety with Environmental Health and when inspections are combined with other disciplines such as food hygiene, the health and safety element is not recognised by the business.

The general opinion among businesses is that the current style of undertaking inspections is right, but communication could be improved in relation to non-compliances and more advice and guidance needs to be provided during the inspection. Businesses are asking for more tools to comply. This need was identified by Ayres and Braithwaite³⁵. This interaction is key to improving the understanding among business operators and could help to build confidence in knowledge of health and safety rather than a fear of the unknown.

Businesses do not understand what they need to do and they need more support and advice. They would like to receive more advice and guidance as part of the inspection.

All but one of the participants said that not knowing what they are expected to do in the first place and not understanding what health and safety law requires them to do was an issue for them, supporting arguments made by Anderson³¹⁻³³, Fairman and Yapp³⁴, Ayres and Braithwaite³⁵, Croucher *et al.*²⁴ and Cagno *et al.*⁴⁵.

The overwhelming theme that emerged throughout the interviews was that SMEs want more advice and guidance about health and safety. They do not know what they are expected to do and they want regulatory visits to continue as they see this as an opportunity to get help and advice. However, many of them were not aware that the Local Authority enforces health and safety and did not know how to access advice from them. Participants said that they find it difficult to find advice and guidance and are not sure where to go to seek it. They indicated that they would prefer to be able to access advice face-to-face, on the telephone or online than in written format. This contradicts the findings of Anderson³¹ which were that most businesses knew their local Environmental Health department was their main source of advice and that they did not find advice difficult to find. This suggests that there may be a localised issue, and that better lines of communication are needed to ensure businesses know what their Environmental Health team does and how to access them for advice. One participant said that if they had not received a health and safety inspection they would not have known where to access help and advice and a number indicated that they would find group advice sessions for SMEs useful.

A number of participants commented that they are often contacted by private companies informing them of new legislative requirements who try to sell their services but they would prefer to have this information from the regulator as they would have more confidence in the

information. They did not feel they could find any 'neutral' advice. They said advice was not accessible and they were not aware that they could contact the Council for advice. Many did not know who to contact for health and safety advice and were not aware of the role of Environmental Health and would not have thought to ask them for advice on this. However, they also said that businesses have a fear of regulators and are afraid that if they invite them in they might get into trouble. There is a danger here that SMEs may feel forced to take advice from such company's because they do not know where else to seek advice. In fact one participant actually thought that these company's enforced portable appliance testing requirements. Anderson³¹ found similarly that businesses felt forced to pay for advice which is clearly not helpful in terms of business growth.

Another participant was aware they could contact the Council for advice but said when they had tried to find advice and guidance on the internet they found it to be a minefield. They did not know which websites to look at and were just using search engines to find information using key words. They said they wanted more support and guidance from the Local Authority and that this would be particularly helpful when they first set up their business. They said that they are never told what they need to do.

Something that did emerge was that the level of knowledge and understanding of health and safety requirements was greater among skilled trades than non-skilled business owners. However, many SMEs are operated by non-skilled and non-academic people who are less likely to have been exposed to such training which is potentially the reason why SMEs have this lack of understanding and knowledge about health and safety requirements.

The main issue identified here is that businesses are not aware of what they need to do, where or how to access advice and many are not aware that the Local Authority can provide this advice for free. This general lack of understanding and knowledge among SMEs is likely to lead to either under-compliance or over-compliance as argued by Arculus¹, Anderson³³ and British Chambers of Commerce³⁶ and could be contributing to the perception that health and safety has become over the top because people are doing more that is required simply because they don't actually know what is required.

Businesses prefer health and safety inspections to remain separate from other disciplines.

Only 2 participants indicated that they would prefer health and safety inspections to be combined with other disciplines such as food hygiene, trading standards and licensing. There were 2 main reasons that emerged, the first one being the knowledge of the officer carrying out the inspections being inadequate and the second being that it would be too much for the business to deal with more than one discipline at a time indicating that if things were found to be wrong they would feel bombarded by too much and that they would rather concentrate on one area at a time. This suggests that if general inspections are to be the way forward^{2,62,64} that the officer carrying them out would need to be competent in all areas being covered.

The data infers that SMEs do not feel over-burdened by the number of regulatory visits that they receive, prefer the separation of visits because they do not want to cope with too many different things at the same time and have more confidence in the specialist officer than they would in a generalist who doesn't have the level of knowledge they need to provide the level of information, advice and guidance the business needs.

Businesses want health and safety enforcement to remain localised.

No participants were in favour of centralisation of health and safety enforcement responsibility, although one did say that consistency was important to them and that localised services must be consistent between areas.

The data suggests that businesses feel centralised services present barriers for communication, less familiarisation with officers and less contact. Their experience of centralisation in other areas has been negative and has influenced their views. Businesses feel that they benefit more from localised regulation because they can build relationships with officers and can access them more easily. This supports theme 2 in that businesses are worried that if regulatory services are centralised that they will lose the advice and support that they need in order to comply and in turn support the survival and growth of SMEs.

The main reasons for the preference of localised health and safety regulation were therefore based on the good relationship currently between officers and businesses, local knowledge of officers and the ability for businesses to be able to access officers for advice and guidance when they need it. This supports Russell's⁵ view that localised regulation is better for businesses and how working in a bespoke way to meet the local needs can result in significant improvements in the longer term and is also in line with Baldwin and Black's⁵⁴ theory of really responsive regulation. This then presents the question that if localised, tailored regulation is more effective, is consistency actually important? Surely, different communities will have different needs and thus a different approach may be more effective in one area to another. This would mean that Local Authorities would not be likely to be operating in a consistent manner and that the level of enforcement versus educational interventions may differ. Whilst this may be more effective in achieving compliance, it may come with criticism of inconsistency.

The evidence indicates that SMEs would prefer to be regulated by their Local Authority rather than a central organisation such as the HSE. Therefore it can be argued that Löfstedt's³ recommendation that the HSE direct all Local Authority health and safety enforcement activities and the resultant National Enforcement Code²⁹ are not in the best interests of SMEs and that in order to best support SMEs and encourage growth that Local Authority health and safety enforcement activities should be directed by businesses themselves on a localised level in bespoke fashion, designed to meet their specific needs.

The main drivers of compliance are the fear of litigation and moral reasons.

Only 3 participants said that the fear of inspection and prosecution were drivers of compliance. Interestingly all of them had been subject to some level of enforcement action in the past although not necessarily health and safety enforcement which could be an influencing factor in these views. In contrast 6 participants said that inspections and legal requirements did not drive them to ensure health and safety. None of these participants had received more than formal written warning letter through past inspection. It could be argued that inspection and legal requirements only drive businesses to comply after they have been subjected to enforcement action at legal notice level or above.

The biggest drivers of compliance among the participants were the fear of litigation and moral reasons. Most participants said that moral reasons were why they 'do' health and safety. This demonstrates that businesses do genuinely want to do the right thing. Comments made suggested that for smaller businesses with fewer staff that accident prevention is even more important to them because if they lose a member of staff for a period of time due to absence from work after a work related accident or illness, they are less able to absorb the loss than a large company, not only in terms of financial cost but also in practical terms. Reputation was also an important factor.

The findings are similar to those found by Braithwaite who found that businesses disagreed that their sole motivator was money and that they were motivated by responsibility, ethics and their duty to comply with the law³⁵ but also suggest that the underlying driver behind moral reasons could be the fear of losing reputation and the financial impact that could have in terms of lost business. However most businesses said they comply with health and safety because they want to rather than because they have to. Thus it could be argued that even if health and safety were deregulated, businesses would still do it anyway. However, when looking at the rest of the data, participants also say that they do not want to see health and safety deregulated and that they believe compliance levels would slip if it was deregulated.

Fear of litigation is very real, comments helped contextualise this level of fear in the SME sector. One participant was in the process of dealing with a claim at the time of the interview for a large sum of money demonstrating that it is not just the fear of litigation that drives this business to comply but the actual reality of them. They held the belief that there is a societal blame culture and perceived that even if everything 'reasonably practicable' has been done, they can still be at risk of civil claims, demonstrating confusion between what is legally required, and perception. There appears to be an interpretation that civil claims for accidents and injuries are 'health and safety' legal action and that businesses have to do 'everything possible' rather than what is 'reasonably practicable' in order to protect themselves against health and safety legal action. These views all support the views of Wright *et al.*¹⁷ who also identified litigation as a driver.

The data suggests that whilst most businesses do not have experience of claims being made against them; the fear is there. Evidence presented by Young² and O'Neill⁴ confirms that there has not been an increase in compensation claims in the UK. Therefore the fear is disproportionate to the number of claims that are actually made against SMEs.

Paperwork and time are the main barriers to compliance.

Whilst financial concern may be an underlying driver for compliance, in contrast only 3 participants identified the cost of health and safety compliance as a barrier. This suggests that the financial burden on businesses is not the actual cost of implementing health and safety requirements, but the cost of getting it wrong that worries them.

The majority of businesses indicated that time and paperwork were the biggest barriers for them. These issues are strongly linked as paperwork takes time to complete. This supports Anderson's³¹ and Taylor's⁴³ findings that time is the main barrier to compliance.

The comments indicated that SMEs find dealing with paperwork a stressful experience. It could be questioned whether having paperwork in place, form filling and recording health and safety information actually leads to a safer workplace. When SMEs are so time pressured due to the limited resources they have, would it not be better that their time was invested into actually carrying out health and safety practices rather than writing them down?

The data indicated that time is a bigger barrier for businesses whose first language is not English due to the fact that often a single person will deal with the administrative duties due to language barriers. This is intensified in microbusinesses with one participant saying that time was a barrier predominantly because of being the sole person responsible for everything within the business. It would seem that the smaller the business, the more responsibility is taken by a single person, and so time becomes a bigger barrier.

Another comment suggested that whilst businesses say they find paperwork a barrier, it is likely they are completing more paperwork than health and safety legislation really requires them to do. This is particularly likely for those employing less than 5 people. Businesses may be completing excessive paperwork due to their lack of understanding of what they

need to do 'just in case' or they may be completing paperwork as in order to proof of action in case of litigation.

Those participants that did not consider time or paperwork to be an issue were generally the larger of the SMEs where they had a dedicated person carrying out health and safety functions, or those who had sole control of the business and did not rely on other people to help them with paperwork.

There is a clear need to educate businesses on what paperwork is really required of them in order to allow them to free up more time to develop their businesses and to support economic growth. The evidence supports the views of pro-deregulation advocates such as Young², Arculus¹, Berg⁹ and Richard⁵⁰ but suggest that there may be confusion between regulatory requirements and regulatory visits in that it is the time taken up by the paperwork involved with compliance (or over-compliance) that is the issue not the visits to assess compliance.

Health and safety regulation is not generally seen as a burden on businesses and is not the law that causes the most problems for businesses.

Less than half of the participants said they found health and safety regulation burdensome. However, 2 of those were referring to health and safety in a different context to that of regulatory enforcement which demonstrated that businesses are unclear of how health and safety is enforced and that they see regulatory functions and litigation as the same thing. Their experiences of other departments carrying out non-regulatory health and safety functions in relation to their roles were confusing and demonstrated that other council departments also have misinterpretations of legal requirements and seem to be using health and safety to create unnecessary barriers.

Some participants made reference to food safety management systems when discussing health and safety and another reason given for health and safety being burdensome was in relation to fire safety responsibilities which are not encompassed within health and safety regulation but are enforced under separate legislation. These are examples of businesses perceiving a number of regulatory functions to be included within the health and safety umbrella. It also suggests that food hygiene and fire safety are more burdensome to businesses than health and safety regulation.

Another participant associated stress with this burden, reinforcing the need for more advice and guidance which could help relieve such stress for businesses. The stress could be down to the uncertainty of knowing whether things are correct or not. Interestingly, Hansford *et al.*⁶⁵ also identify that there is a psychological cost associated with coping with regulations for SMEs. Whilst this is not a financial cost it could lead to stress or simply discourage business owners from continuing.

The majority of participants however, said they did not find health and safety a burden. Commenting that they felt it was common sense but one said they felt a greater sense of responsibility having recently taken over the business, than before when working as the manager for the previous owner. This indicates that there is a greater feeling of responsibility for SMEs than for larger chains where managers have the backup of a company behind them. Interestingly, businesses whose first language was not English said they thought it was very similar to where they had come from.

These views contradict evidence presented by Anderson³¹, Department for Business, Enterprise and Regulatory Reform⁴⁷ and British Chambers of Commerce³⁶ who argue that health and safety is a burden to businesses. However, Richard⁵⁰ was unable to substantiate that health and safety regulation was specifically a burden and the Burden Barometer³⁹ does

not support that argument either because only 4% of the financial burden was due to health and safety legislation. This is supported by the data which found that the legislation that causes businesses the most worry is financial law, followed by employment law, food law and fire safety, reiterating that businesses issues with 'regulation' are not specifically with health and safety regulation although health and safety seems to be lumped together with all matters regulatory and receives a high level of criticism from the pro-deregulation corner^{1,2,9,50} who argue that businesses find regulation a burden.

Businesses do feel that health and safety is important but other business pressures and legal requirements push it further down the hierarchy. If health and safety were not a legal requirement or if inspections were stopped/reduced health and safety would become less important to them.

More than half of the participants said that they see health and safety as a priority. One participant clearly acknowledged the importance of health and safety in relation to employee welfare. However, some that did not see health and safety as being important indicated that until something happens, they would not consider it as important and that they do it because they know they have to. It could be argued on this basis that if health and safety was not a legal requirement or the legal requirements were reduced, that its level of importance would fall further down the hierarchy of regulatory responsibilities for businesses. This could be more of a problem in SMEs where one person is often responsible for everything so that individual's time has to be allocated by priority to different responsibilities. Other responses suggested that the potential sanction for non-compliance contributes to the level of priority allocated to regulatory areas. If people are never inspected, served notices or prosecuted for health and safety crimes it may be unlikely to remain high within a hierarchy of priorities. It could therefore be argued that the more that health and safety regulatory activities are reduced, the lower its priority will become.

One participant having previously claimed that their main driver for compliance was moral reasons making reference to their customers welfare later said that they will only do the absolute minimum they have to do to comply. This indicates that they may pay more attention to those things they consider to affect their customers than their employees who are more likely to be affected. This can be supported by Hilage at al.²² and Takala and Hämäläinen²³ who found that when regulation is reduced, accidents increase.

Some participants said that other business pressures such as production targets, tax and VAT were the main factors pushing health and safety down in priority. Anderson³¹ also found this to be the case. The likelihood of health and safety remaining a high priority for businesses if deregulated is low and the likelihood would be a shift in compliance levels as indicated in Figure 1 previously.

The majority of businesses see financial law as their highest priority. This is likely to be because the sanctions of getting it wrong are higher and cost businesses the most money. It could also be because the fear of being sanctioned for non-compliance is a reality in that fines are commonly enforced on businesses not completing tax and VAT returns or for being dishonest about financial matters. This would be likely to result in the cost-shift that O'Neill¹⁴ explains in that the cost of health and safety will move away from the business as they choose not to comply, towards the public purse as more accidents and illnesses result.

Few businesses will have experienced health and safety sanctions beyond the enforcement notice stage presenting little or no cost to the business, thus the effect on business for non-compliance with financial law is felt more. There is also the imminence of the sanction to consider. If health and safety inspections were more frequent and inspectors had the ability to issue 'on the spot' fines, businesses may give it a higher priority. That said, do we really want businesses to be 'doing' health and safety just because of the fear of being

sanctioned? This type of sanction may be effective for 'safety' non-compliances which are easy to spot but would not necessarily be effective for dealing with 'health' related non-compliances such as exposure to harmful substances, stress or noise which are issues that can have more serious and longer term effects and arguably affect more people in the UK.

Ayres and Braithwaite's³⁵ suggestion of two enforcement pyramids for sanctions and strategies based on ever-increasing intrusiveness, coupled with ever-decreasing frequency of use recognise that regulators need high level sanctions available to them and that where they have them, businesses are more likely to comply without them needing to be used. The simple fact that they are available to be used is a deterrent itself. However, in order for businesses to be aware that they are available for use they need to have heard of them being used on occasion. If health and safety enforcement is reduced to such a degree that it is rarely used then the level of awareness of potential sanctions will also diminish.

Businesses feel that health and safety law has been taken out of context affecting public life too much and has led to the fear of being sued influencing behaviour.

All but one of the participants said they believed health and safety law had been taken out of the context it was intended for as argued by Ball and Ball-King⁶⁶ and Wright *et al.*¹⁷. Many of the comments made reference to there being an increase in 'blame culture' and its negative effect on everyday life with one comment even suggesting that health and safety law no longer protects employees but is there more to protect consumers now. This is interesting and suggests that section 3 of the Health and Safety at Work Act⁶⁷ has been stretched to the point that it has become more emphasised than section 2. Clearly, the Act was intended to protect employees at work and the additional provisions such as section 3 were included to ensure people such as contractors, self-employed people and visitors were also protected.

One participant believed that when people take part in life activities that are not work related they take on the risk of hurting themselves willingly and that they should be allowed to carry on if they want to. Another said that they think health and safety is taken out of context and commented that if it is applied to too many trivial things that people will be less likely to pay attention to it at all and take it less seriously. This could explain why people often laugh about health and safety matters and why the media choose to mock health and safety. A comment was made that people should be allowed to "live life" without health and safety affecting them. They felt that a lot of the reason why health and safety had been taken out of context so much was due to peoples' interpretations. They also said that in situations such as schools that there are a lot of stakeholders who may put pressure on those responsible if something goes wrong and that this causes them to react overcautiously. This supports the argument that the fear of being sued affect health and safety behaviour.

The data shows that there is a general feeling that health and safety has been taken out of the context it was intended and that rather than being applied in the workplace to protect employees it is being applied in day to day life settings and children's play to the detriment of people's enjoyment. Continuation of such over application of health and safety regulation to these activities for which the legislation was never intended is likely to lead to a generation of risk-averse people who are afraid to take any level of risk despite the benefits they may gain from them such as enjoyment, well-being and learning.

There is a strong belief that people's misinterpretation of how health and safety should be applied and it's over application are largely due to the fear of litigation that is felt by people even in day to day life activities. This stems from the fact that people are not being held responsible for their own actions and that people look for somebody else to blame for harm they have incurred. There is a belief that litigation has increased and the pressure is on businesses and organisers of events to over-comply and over stretch the provisions of section 3 of the Act. It could be argued that health and safety has been taken out of context

so far that it is now being used as a consumer protection tool rather than to protect employees at work as was intended. This over application may have led to health and safety losing impact and influence media perceptions. One can perceive a cycle in which the media highlights an increasing ‘blame culture’ which in turn makes people fearful of litigation, so that they over apply health and safety or in the wrong settings, which results in loss of impact and subsequently the media portray health and safety in a negative light.

RECOMMENDATIONS

1. Local Authorities should continue to proactively inspect all categories of SMEs. This should be undertaken on a risk basis, determined through consideration of the size of the business in order to differentiate the level of risk associated with an SME and a larger business. Proactive inspections do not have to be labelled as ‘inspections’ but should involve a combination of assessment of compliance with legal requirements and provision of advice and guidance. These visits could be re-branded as ‘advisory visits’ in order to avoid the perception of over-regulation. In premises other than category A these visits should be pre-arranged. Unannounced inspections should be reserved for those businesses with no intention or desire to comply and for reactive interventions. A suggested model is shown in the diagram below:

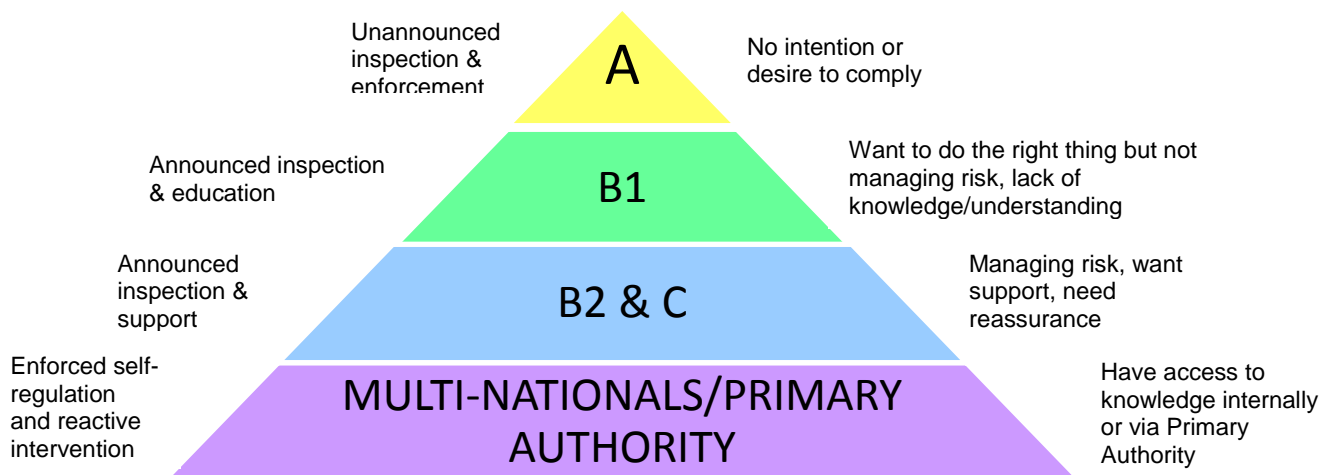


Figure 3. Pyramid showing the different regulatory approaches that could be applied to each category of business compared with the attitudinal setting likely to be present

2. Local Authority health and safety activities should be locally/business led. Local Authorities should engage with their businesses and provide the level of intervention they want and need. The needs of businesses in different areas will not be the same meaning that different Local Authorities would adopt different approaches. Local Authorities should consult with SMEs and use their views to determine intervention planning.
3. Local Authorities should tailor their interventions to the businesses needs and should not operate a ‘one size fits all’ approach. Enforcement policies should be flexible enough to allow bespoke approaches to be applied considering the businesses response to intervention. Regulators should be able to exercise their professional judgement on a case by case basis without having to follow rigid guidelines as to what is appropriate action.

4. Local Authorities should offer better advice services to include online resources that provide links to reliable and up to date information, sector specific workshops, surgeries, training events and face-to-face advice visits upon request. Simple guidance should be developed by Local Authorities to help SMEs e.g. downloadable checklists, example risk assessments and other documentation that can be accessed directly through the Local Authority website. Communication of the availability of these services should be improved.
5. Local Authorities should improve their communication channels with businesses to ensure there is better understanding of the services provided and how to access them. Information, guidance and updates on regulatory changes and new legislation should be provided to businesses by multiple methods (newsletters, telephone calls, email, face-to-face visits). Health and safety teams should link up with other departments such as business rates to reach new businesses.
6. Local Authorities should engage with SMEs on a frequent basis. This will help to ensure that new businesses are captured, support can be offered, their views can be considered and relationships can be built leading to SMEs feeling able to call upon regulators for advice and guidance without fear of enforcement action being taken against them. This will improve compliance levels and aid business growth.

Implementation of these recommendations would lead to a cycle to aid business growth and reduce accidents/illnesses in workplaces as shown in the diagram below:

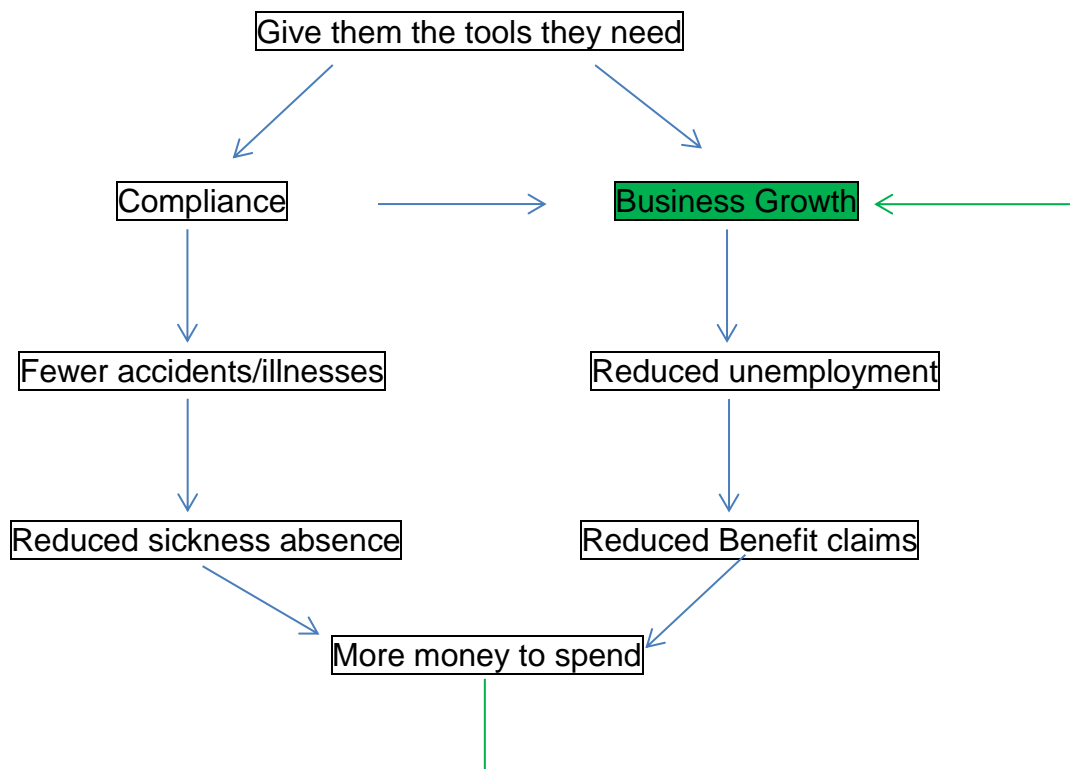


Figure 4. Cycle that would be created if recommended approach was adopted

In order for health and safety interventions to be accepted by government there is a need to move away from being seen as the enforcer, towards more of an advisory role. This would

ensure that preventative, proactive interventions are still carried out but that they are not seen as 'regulation', but are seen for their contribution to support business and support economic growth.

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