

Work and Pensions Committee

Oral evidence: Health and Safety Executive, HC 39

Wednesday 17 March 2021

Ordered by the House of Commons to be published on 17 March 2021.

[Watch the meeting](#)

Members present: Stephen Timms (Chair); Debbie Abrahams; Shaun Bailey; Siobhan Baillie; Neil Coyle; Steve McCabe; Nigel Mills; Selaine Saxby; Dr Ben Spencer; Chris Stephens; Sir Desmond Swayne.

Questions 128 to 191

Witnesses

[I]: Suzannah Nichol MBE, Chief Executive, Build UK; and Verity Davidge, Director of Central Policy, Make UK.

[II]: Mike Clancy, General Secretary, Prospect; and Paul Nowak, Deputy General Secretary, Trades Union Congress.

[III]: Sarah Albon, Chief Executive, Health and Safety Executive; Professor Andrew Curran, Chief Scientific Adviser, Health and Safety Executive; Samantha Peace, Director of Field Operations, Health and Safety Executive; and Professor John Simpson, Head of Public Health Advice, Guidance and Expertise Covid-19 Response, Public Health England.

Examination of witnesses

Witnesses: Suzannah Nichol and Verity Davidge.

Q128 **Chair:** Can I welcome everybody very warmly to this meeting of the Work and Pensions Select Committee looking at Covid safety in the workplace? We are very grateful to all the witnesses joining us in this session. Can the witnesses for the first panel very briefly introduce themselves at the start before we ask some questions? We will start with Suzannah Nichol.

Suzannah Nichol: Good morning, everybody. Good morning, Chair. My name is Suzannah Nichol. I am the chief executive of an organisation called Build UK. We are the leading representative organisation for the construction sector and we bring the contracting supply chain from clients to tier 1 contractors, trade associations, specialist contractors and



HOUSE OF COMMONS

specialist services together. Collectively we represent in excess of 40% of UK construction.

Verity Davidge: Hi, everyone. I am Verity Davidge. I am Director of Central Policy at Make UK. We represent manufacturing and engineering companies across England and Wales. We are very much the voice of manufacturing, but we also deliver services to manufacturing businesses. This includes HR and legal advice, technical training through our apprentice training centres and also health and safety training.

Q129 **Chair:** Thank you, Verity, and welcome back.

Can you both tell us how much of a challenge it has been to keep workplaces in each of your sectors safe during the pandemic and how useful you have found the guidance from the Health and Safety Executive as you have been trying to keep workplaces Covid-safe, starting with Suzannah?

Suzannah Nichol: I am not entirely sure anybody can quite describe how enormous the challenge was to businesses in any sector of the last year. For construction it was particularly challenging, especially at the beginning. We were a sector that was not told to close, but we were also a sector that was not on the list to stay open. That set an initial challenge of are we or are we not to continue operating. We very quickly established that we should continue to operate and we wrote to the Government confirming that on 17 March before we went into lockdown.

Construction regrouped pretty quickly and we brought together the major trade bodies in construction and we formed under the umbrella of the Construction Leadership Council. One of the very first things we did was identify that for construction sites to continue to open safely and operate we needed some procedures. On 24 March, which was the morning after the first lockdown, we published site operating procedures. The week before I had pulled together from our tier 1 contractors and some of our specialists what they were doing as things were starting to close down, so we were able to publish site operation procedures that set out what good practice was in terms of looking after the workforce and how they could work safely.

These were picked up across 99% of the industry and pretty much every site used them. They were based on a range of information that was available at the time. There was not, as far as I can recall, any HSE information, there was not any PHE information and there was not any Government guidance specifically for construction. We had the basic guidance on social distancing, if you remember, good hygiene, washing your hands and keeping your distance.

Right at the very beginning the industry itself created the blueprint for guidance and the Government guidance from PHE did not come until later in April, I believe, and I believe much of that was based on the site operating procedures that we put in place.



HOUSE OF COMMONS

The biggest challenge was it dramatically reduced numbers on site. While many sites worked outdoors, many sites also are indoors, where we were particularly aware of social distancing and less fresh air. The real challenge was understanding the impact, implementing social distancing and grappling with a massive reduction in productivity. Indeed, for the first two or three weeks many sites shut down or paused while they worked out what they could do. Hopefully that sums up the situation. I can give you plenty more information but I am conscious that you are looking for an overall picture.

Q130 **Chair:** That is a very helpful overall picture. Thank you very much. Verity, how was it for manufacturers?

Verity Davidge: I will try not to repeat any of Suzannah's excellent points, but instead build on them. Again, one of the first questions or challenges is as a manufacturing sector we were not asked to close, but there was a lot of confusion at the very beginning as to whether we could remain open and operational because a lot of manufacturing job roles were not on the critical workers' list. I think many employees were working out whether they could go to work, depending on whether they were defined as a critical worker.

The turning point for us on that was the letter from the Secretary of State for Business at the time, who sent a very public message and a letter to the manufacturing industry saying, "Please do remain open" and of course we needed to. We are an industry that puts food and drink on the supermarket shelves, powers homes with energy, repurposed production lines to produce PPE and of course helped national efforts on the ventilator challenge, so a very good thing that we were able to stay open and operational.

This has not been without its challenges, of course. It has not been plain sailing. In terms of the challenges, it was that initial set-up time and costs associated with ensuring that businesses were Covid-secure and I think that is including but not limited to the social distancing measures. They still remain in place. You can imagine on a factory site or a production line having to make all of those changes was quite significant and companies are still bearing those costs in terms of having to change the way in which production operates.

In terms of Government guidance—and I use the term "Government" here purposely—if I look to Make UK members, the majority are small businesses and they do not really differentiate between the Department for Business, Energy and Industrial Strategy, the Cabinet Office, HSE or Public Health England. When they were looking for advice they were just looking for some kind of Government guidance. In the early stages it was probably very limited and it was changing on a regular basis and that made it difficult for companies to be able to keep up with what was happening.



HOUSE OF COMMONS

One of the comments that always springs to mind when I speak to businesses that was raised with us is what it really meant to stay safe. Employers wanted to ensure that their employees were safe, but did adhering to those guidelines and what not to do mean that their employees were safe? I think it lacked quite a lot of detail in the first instance.

Even in the guidance in the early stages it was very much around hand sanitiser: the higher the level of ethanol, did that mean it was more protective for their employees? There was no guidance on that; facemasks versus face coverings. As an industry that uses PPE, things like that, the messaging around the guidance, "Have a face covering", that is very different to a facemask. A lot of the time the employers felt that they were making those decisions themselves.

I have sat in a lot of meetings with members throughout the last 12 months and what I found is they generally were sharing best practice because they were craving information. Industry was crying out for guidance and I think at times they felt that they were filling that void themselves.

Q131 Sir Desmond Swayne: The key to the question is how could the communications with you by HSE have been improved? Given what you have just answered, be careful what you wish for. The one thing I learned at school was that if you are not going to like the answer do not ask the question. Would you have welcomed intrusive guidance and regulation telling you to do all sorts of things when frankly you worked out many of the answers yourselves through common sense?

Verity Davidge: I think there is that balance of education and regulation and it depends where that pendulum swings. You are right: if you then started to enforce employers with all of these must adhere to statutory regulations, they would probably turn around and say it was too much, but I think they felt probably a little bit out in the cold. We are in extraordinary times. Companies and indeed ourselves have never experienced this, so I think we needed stronger guidelines and guidance in the early stages.

Suzannah Nichol: If I may follow on, I support everything Verity has said. I have to say in our sector, without the industry coming together employers would have floundered and would all have been doing different things on site, which is extremely difficult, because at the time confirming to workers and giving them the confidence that they were safe to go to work, I think sometimes we forget how terrifying it was at the beginning.

Nobody knew what was going on; nobody understood what was safe. Where we felt we could have done with more guidance is where we went and asked for help, so specifically on face coverings and facemasks we ended up issuing guidance as the Construction Leadership Council, but even that was not until very late in the year, September or October, because we could not get clarity on what a good face covering was, what



HOUSE OF COMMONS

a facemask was, how that related to PPE and was a visor acceptable or not. To be honest, I think there will still be people in the industry who would not be able to tell you that.

I endorse what Verity was saying. It is those pinch points where we needed absolute clarity, then the industry was prepared to frame the guidance around that to keep its people safe, but we needed that core guidance.

Another particular challenge for the industry, which led to a lot of sleepless nights, was the 15-minute rule, about 15 minutes in close proximity. We all got tied up in knots. Eventually that got taken out of the guidance because no clarity could be given. I completely agree: it is that balance where the industry concerned can determine what good practice and best practice is, then the same in construction, sharing best practice became the lifeblood. We had weekly calls with the chief executives of every one of our members. We had daily calls with the Construction Leadership Council and much of that was answering our own questions and sharing advice and information. Clarity on the pinch points was much needed. I would say that is the main area where all of us, by the sounds of it, struggled, as Verity said.

Q132 Sir Desmond Swayne: Now we have a roadmap for opening up, but you are already open for business. Does that roadmap present you with any difficulties and is there anything that HSE should be doing to alleviate them?

Suzannah Nichol: You are right, Sir Desmond: we have been open throughout, so we are ahead of the curve of a lot of people because we understand what it is like being back at work. There will be challenges, particularly for construction. Public transport has been a big challenge all the way through. At the beginning of January, just before the last lockdown, construction in London was put at risk by overcrowding on the Tube. Again we called our all members together, did a huge amount of work adjusting site hours, getting people off the public transport network and our members stepped up absolutely brilliantly.

Again, it was not easy, but we can see already from last week people are starting to use the public transport network and that starts to put pressure both on Transport for London staff—it is particular to London—but also construction workers as they continue to go to work. I see there will be pinch points and pressure points coming. When retail opens, people will be getting on the Tube, when workplaces start to open, so I do think that is an area that we have to either seek further guidance on or ensure we have sufficient capacity on the network.

Verity Davidge: There will be almost new areas that we need to explore. As an employer, what do you need to do when you get an isolated case or cases? I think the roadmap is really positive and we should start with that because it is already changing businesses' confidence and their ability to return to normal trading conditions sooner.



HOUSE OF COMMONS

We will also have questions around vulnerable employees. I think there will be a lot of questions around mental health and wellbeing as people return to the office. Let us remember that many of us have now been working from home for 12 months. It has its positives; it also has its drawbacks. Going back on site or into the office will be quite significant. I think a lot of employers will be looking for guidance on how they reassure those employees. As Suzannah has said, how they start to travel to and from work again, things that a lot of them have not been doing for a while.

I think HSE has a role to play in helping that recovery around issues with Covid, but of course more widely as well. Dare I say it, a lot of our members are tackling Covid-19 while still trying to understand the new arrangements of the trade and co-operation agreement and what that means for the health and safety agenda. Things cannot be taken in isolation. This is a lot for employers to take on to ensure that they are supporting their employees effectively.

Finally, the other area is around long Covid, so that is again now where perhaps we are beginning to see questions from employers about what that means for employees who may be suffering from long Covid. Where is the guidance around that? I think it is very positive that we have this roadmap. I think we are seeing a lot of green shoots from our sector in business confidence, sales and orders picking up, things almost returning back to a different normal, but that said, it is always going to present challenges. We are not quite in the space where employers feel confident that they can continue to run their businesses as they were prior to the pandemic.

Q133 Chair: The Health and Safety Executive has brought in contractors since October to carry out inspections to increase its inspection capacity. What has your experience been of those contractors doing health and safety inspections at your workplaces?

Verity Davidge: I think Suzannah and I have found our flow now of taking it in turns. It has been mixed. Some manufacturers have felt that the spot checks were a little bit of a tick-box exercise, so the questions have been at what level they have their sanitiser and how much stock of the hand sanitiser they have. There is a bit of a question mark around how really relevant this is for both HSE and the employer.

On the other end of the spectrum, a lot have felt that the inspections have added great value. For example, some inspectors came and took a formal tour of facilities and factories, offered really good guidance for the employers and made those employers and their employees feel a lot more assured.

We have some unfortunate examples and I will call these isolated incidents, because I do not think they are widespread. We have an example where a company said that the HSE inspectorate brought the police in with them and then another who advised the employer and their



staff of their previous role working in a debt collection agency. I think while on the whole they have been positive, there has been value, we have seen a couple of incidents where perhaps that telling of the background of that inspector started that conversation on a little bit of a negative and maybe companies felt a little bit threatened in that way. I would stress I feel these are isolated incidents and ones we have raised directly with HSE in order to move forward.

Q134 **Chair:** What made the difference between the good experiences and the bad experiences?

Verity Davidge: I think it was more about, "How can we help you? We are here to help you and to guide you and to offer you education. We are not here straight away for enforcement action". I think it is a positive if we are not seeing penalties given out here, there and everywhere.

If an HSE inspectorate can come in, look at the business and say, "There are a couple of things we need to work on. Work on them and let me come back" it is far better than an on-the-spot fine like, "You have not been adhering. Here it is. You have no time to learn best practice". I think it is just that openness and willingness of those inspectorates to guide employers because guidance is what they are looking for.

Suzannah Nichol: I do not have much to add. We have had very little feedback. There was some initial concern about the use of contractors, the principle of it, but then we had nothing else at all, no specific concerns. I think from the information I have on HSE visits 55% recorded no action required and 25% verbal, so that is 80% were given, as Verity said, the advice.

I believe construction is used to managing risks, so Covid was another risk in the long list of things that they manage out daily on construction projects. They were usually very pleased to get a good report from the HSE that they had "passed" the visit and generally the Construction Leadership Council had positive feedback about all that the industry was doing. That is all I have to add.

Chair: Thank you both very much. Those are all the questions that we wanted to put to you at the start. Please stay with us because we are hoping you may want to respond to what you hear later on in this session, probably around 11.15 am when we get to that stage. Thank you both very much for being with us.

Examination of witnesses

Witnesses: Mike Clancy and Paul Nowak.

Q135 **Chair:** We move on now to our second panel, representatives from the trade unions, and I would like to ask the two witnesses who are joining us to introduce themselves, starting with Mike Clancy.



Mike Clancy: Good morning, colleagues. I am Mike Clancy. I am the General Secretary of the Prospect trade union. We represent 150,000 members across the public but primarily the private sector, but in terms of the purposes of today's hearing we represent the staff at the HSE and in particular the regulatory inspectors and specialist staff employed by the HSE.

Paul Nowak: Thanks, Chair, and thanks to the Committee for the invitation. My name is Paul Nowak. I am the Deputy General Secretary of the TUC. We represent 48 trade unions, who in turn represent around 5.5 million workers directly right across the public and the private sector.

Q136 **Chris Stephens:** Good morning, Paul and Mike. I should declare my trade union membership first, Chair, and wish the Committee a happy St Patrick's Day.

Paul, I have some questions around how HSE is engaging with the trade unions. You will know the TUC press statement in January noted that safety rules have not been updated since last March and that is despite the improved scientific understanding of how the virus spreads. What do you think is causing that lack of response from the Health and Safety Executive and the Government?

Paul Nowak: Chris, on the safe working guidance BEIS has now confirmed, after contact with the TUC and representation from the TUC, that it has now gone out to unions and employers sector by sector to ask people about the safe working guidance, the scope for it to be refreshed and whether or not it is still fit for purpose. I think that is an important step forward.

More broadly in terms of the HSE and maybe just to say two important bits of context first. I have, as you would expect and the TUC does, a huge amount of respect for the staff and inspectors at HSE. It is an incredibly important organisation and it has an essential role in keeping Britain's workplaces safe and healthy.

The second point is that that responsibility for keeping Britain's workplaces safe and healthy does not just rest with the Health and Safety Executive. It also rests with the Government. There is more that the Government could have done to support the HSE and employers and unions throughout the course of the pandemic.

You touched on the issue there of the safe working guidance, but also issues around funding for the HSE, making sure that it has the tools it needs to do the job. Also the sick pay system. We have been calling consistently for sick pay to be reformed so that low paid and insecure workers do not suffer financial hardship if they have to self-isolate. We also wanted the Government to require employers to publish their Covid-19 risk assessment. We think that would have given confidence to the staff and customers and the public at large that employers were doing the right thing.



HOUSE OF COMMONS

Turning to the HSE in particular, by and large HSE inspectors engage very effectively with the union reps when a concern has been raised about an employer, an important discussion to make sure that they get the version of events from the health and safety rep. That is part of the inspection and enforcement process. I think it is fair to say that during the pandemic unions have raised concerns that that has not always happened, and that is particularly the concern that was touched on in the previous contributions when the contractors who are conducting spot checks over the telephone or on site are involved.

They are not trained and experienced in the same way that a warranted HSE inspector would be. Quite often they fail to engage union reps. The reality is that more broadly we did a survey of our reps between November last year and January this year and only 15% of safety reps, and remember these are trained and accredited union safety reps whose workplaces have been visited, have said that either them or another safety rep have been engaged with by the inspector, so more to do from our point of view.

In terms of the HSE's wider engagement with unions, there are well-documented concerns that I am sure we will get into in the discussion. I know we will go on to talk about the classification of Covid-19 in the HSE's enforcement management model. That is a real concern for us, but also what we would regard as the very worrying low levels of improvements and prohibition notices that the HSE has imposed on employers as a result of breaches of safe working guidance.

In summary, HSE has an absolutely fundamentally important role to play. Government have a role to play as well. While we value the engagement that we have with the HSE, we think it has been found wanting in some areas during the course of the pandemic.

Q137 Chris Stephens: Thanks, Paul. You have touched in your summary on some of the issues that I do want to ask questions about. My next question is a simple one. The experience on the feedback that the TUC has received where employees have raised concerns about workplace safety—has the Health and Safety Executive taken those concerns seriously?

Paul Nowak: I would hope that the HSE would take those concerns seriously, but I think the figures in many ways speak for themselves. The HSE has responded to, I think, over 170,000 concerns raised in relation to Covid-19. As a result of those 170,000 concerns, 7,000 or so have resulted in verbal advice, just over 1,500 have resulted in written correspondence and we have only seen 235 improvement or enforcement notices served to employers. To me, those sorts of metrics are worrying. The fact is that the HSE has failed to issue a single prohibition notice on an employer for a breach of Covid safety rules. We know that local authorities have issued prohibition notices on account of Covid safety as well as venues breaching lockdown rules.



HOUSE OF COMMONS

I do not think the only metric for the Health and Safety Executive is the number of improvement or enforcement notices or employers being prosecuted, but I think that the balance is wrong and the reality is that employers need to know that if they breach that safe working guidance there is a realistic chance of them being served an enforcement notice by the HSE. We are still seeing significant numbers of workplace outbreaks and a report just yesterday in terms of DHL's facility in Trafford Park.

I want to make sure that we are supporting good employers who are doing the right things, who are carrying out their risk assessments, who are involved in the staff and those risk assessments are being supported and are given advice and guidance as appropriate. I also want to make sure that the employers who are playing fast and loose with worker safety know that they have a realistic chance of being held to account by the Health and Safety Executive.

Q138 Chris Stephens: Thanks, Paul. Some of those employers are in Government Departments, as you know, and they have an industrial dispute in DVLA. Paul, I wanted to take you to the joint statement. In April, TUC, the Health and Safety Executive and CBI outlined the range of actions that HSE should consider against employers who were non-compliant on Covid guidelines. Has the Health and Safety Executive lived up to those commitments?

Paul Nowak: It goes back to the point that I have just made there, Chris. We know that in the vast majority of cases, employers' guidance and advice on what they should be doing to make sure that they are compliant with safe working guidance will be enough.

It beggars belief that we have not had one single prohibition notice and not one single employer prosecuted for failure to comply with Covid safety measures. You either take from that that workplaces up and down the country are uniformly complying with the safe working guidance—I would like to think that is the case, but that is not the experience of our members in workplaces.

We have surveyed our members about these issues, big issues in many workplaces about employers not providing for social distancing, not providing face coverings where they should be worn. That lived experience of our members and reps is not reflected, we do not think, in the enforcement action from the HSE. As I say, I would not detract at all from the integrity and the ability of the people working for the HSE. Maybe we will go on to talk about the enforcement management model, but that failure to categorise Covid-19 as a serious risk I think has had an impact and sends entirely the wrong message to employers across the country.

Q139 Chris Stephens: Thanks, Paul. I will bring Mike in at this stage. Mike, good morning. I know you have outlined there that you have a range of membership across all sectors, including your own members, who are employed by HSE. Do they have any concerns about some of these issues



HOUSE OF COMMONS

about compliance and Covid guidelines and whether HSE is doing enough, or as far as your members are concerned, is it a problem with resources and funding and some of those issues?

Mike Clancy: Thanks for the question, Chris. You cannot divorce the assessment of HSE's performance in the last year from the journey it has been on in the previous 10 years. There is a point to make up front.

The fact that the HSE is able to exercise any form of competent regulatory oversight is a tribute to the people who work for it. It has experienced a 54% real-terms reduction in its funding and the consequences of that funding reduction have been laid bare by the fact that the pandemic has demonstrated regulation, far from being an inhibition upon commerce, regulation and consumer and worker confidence is key to commercial success.

If we are going to learn one thing from the last 12 months, I hope that is one of the things we learn—that agile, proportionate regulation is essential for good business and essential for wellbeing and the safety of the workforce and consumers.

The £14 million given in May 2020 after the Prime Minister's promise of spot checks represents less than 10% of the funding that has been cut. We have to remember that the inspectorate of the HSE are measured, considered professionals who take some time to train. There are only 390 main grade inspectors. There are more parliamentarians than there are inspectors. You cannot remedy the funding deficits of the decade by the sudden provision of £14 million, which was only ever going to be able to be applied in a short-term fix. The funding is not even ongoing, as we understand it.

We conducted some polling with YouGov in May 2020 to inform our representations on behalf of our members generally and our HSE membership in particular. Some 67% of the public, who are after all who we are all serving in this respect, wanted physical inspections and 52% of the public felt that a phone-based triage or a call would not give them the confidence to return to the workplace or maintain their presence in the workplace.

I can go on further about this question of spot checks, the triage system and the numbers associated with that, but given the earlier conversation I would make this point. I think there is a crucial point about HSE brand here. When businesses are being visited now, are they being visited by a spot check support officer or are they being visited by a trained, experienced inspector? Probably at the moment the brand of the HSE, because of simple volume, is being carried out not necessarily by the trained, respected inspector but by those who have been brought into this process more latterly as an emergency stop-gap because of the inadequacies of funding in previous years.



Our members have serious concerns. Not only do they go to sites where their own safety has to be considered, but also about the future of the institution that they care deeply about. They are deeply committed to the safety and wellbeing mission and they have some serious concerns about the direction of the organisation now, but let us not forget, the organisation has done miracles against declining funding in the last decade.

Q140 Chris Stephens: I think it is your members who perhaps have performed those miracles. Based on what you have said, I think some of the evidence you have just provided is pretty illuminating and something that I think the Committee would certainly want to explore further.

In your experience, given your trade union background and given that you know what is going on in HSE through your members, who has the most accurate picture of what is happening out there? Is it HSE or is it the trade unions?

Mike Clancy: To be fair, as Paul and our colleagues from the employer associations have reflected, where we are at our best is where trade unions, employers and the workforce work co-operatively. There has been a great deal of that in the last year. We work with many sophisticated employers. Many of our members beyond the HSE are safety professionals. They manage risk in aviation, in defence and in the power industry. We have been very successful in the creative sector working with employer associations and similar in ensuring that we had detailed protocols to allow, for example, film and TV to return to production in a safe manner.

The people who do know best are the practitioners. What I mean by that are HSE inspectors. They are on the ground; they have an accumulated experience. I emphasise that they are not the clipboard warriors of some characterisations that emerge in this debating space. They are people who are inclined to keep businesses running, inclined to give advice so that businesses can recover and be safe and only to take the enforcement steps when it is necessary, but they need to be given the tools to do that and the right structures. You may want to come on to talk about the enforcement management model, I expect. The practitioners know, the good employers, the good safety reps, the good trade unions working collaboratively.

What we need to also learn from the last 12 months is that British industry has been at its best when it has worked collaboratively. It is very important not to go back to any silos and to think that one constituent, employer, Government or union knows best. We need to co-operate on all of this, particularly in this recovery phase when people will be very anxious and their experiences as they return to work will be mixed.

Chris Stephens: That brings me quite nicely, Mike, on to the measurement of effectiveness and I will put my question to both you and Paul.



Chair: Briefly, if you would, Chris.

Q141 **Chris Stephens:** Yes. To what extent should the number of enforcement notices issued be part of that measure?

Mike Clancy: It is interesting. Back in 2017, in one of the many reviews of the HSE, one of the recommendations of the Taylor review in 2018 was, "HSE should review its risk appetite in prosecutions and consider taking on more challenging prosecutions, in line with existing prosecution and enforcement guidance, when there is benefit in doing so". This is a perennial issue. It is natural for citizens to equate successful prosecutions of businesses who deserve it with a successful, credible HSE.

The most salient point here—and Paul has already made it and I reinforce it—is that our inspectorate, which we are proud to represent, starts from a position of trying to improve, but it should not be shackled in taking the right enforcement action. There is a logical sequence in the enforcement management code that it has to go through. Many of them are warrant holders with significant and onerous responsibilities in discharging those duties, which is why they take a while to train.

Consequently, when they move through they need, for example, the right prompts in the enforcement management code to be able to do this. Latterly they have been told that prohibition notices are an element that is available, but the enforcement management code needs to be changed so that this is recognised as a serious risk and that will enable the sort of activity that people are looking for.

The paucity of prosecutions here has to be a civic society concern, but it should not be laid at the door of the inspectorate. It is operating within the structures that are given to it.

Paul Nowak: In answer to your question, Chris, and I do not know if you want me to move on to the enforcement management model—

Chair: Steve McCabe has a question on that, so we will come directly to Steve. Paul, do you want to comment on this before I bring Steve in?

Paul Nowak: Very quickly, Chair. I mentioned before the number of prohibition notices issued by HSE should not be the only metric, but it should certainly be one metric and there should be a balanced scorecard. Responsibility lies not just with the HSE. Government needs to take responsibility as well. The starting point for safe workplaces is risk assessment. We said right at the outset the Government should require employers to publish their risk assessments, which they should have developed in consultation with their own staff. That would give everybody confidence.

The Government did not put that requirement on employers and now we have a situation where certainly in the survey work that we have done, only around about half of workers are confident that their employers have carried out a risk assessment, a Covid-secure risk assessment.



HOUSE OF COMMONS

Remember, a risk assessment by law, which they should have been consulted on in the development of that risk assessment. Never mind our ability to establish whether or not those risk assessments have been developed in consultation with staff and have been acted upon.

This is the sort of stuff that Government got wrong right at the outset. I think a very basic requirement that when you carry out a Covid-secure risk assessment you publish that risk assessment to give everybody confidence that you have done the right thing would have been a good starting point.

Q142 Steve McCabe: You have both said that you think the decision to categorise it as significant rather than serious was a mistake. Apart from the fact that it might have produced more prohibition orders, what other effects would have resulted if it had been categorised as serious, rather than significant?

Paul Nowak: Maybe I will start off on that one. I think the TUC is very clear that we think the HSE got this one wrong and we think certainly the HSE's own board, stakeholders, including the TUC and unions, its own inspectors, have expressed concern about that classification of Covid as significant rather than serious.

This is not just a technical issue. At the moment 14,481 people of working age have died with Covid-19. That is 12% of the overall death toll and for the HSE to effectively say that the virus is not a serious workplace health risk because it does not risk death to the average worker we think is just plain wrong and denies the facts.

We have heard directly from inspectors themselves—and Mike alluded to this—that its failure to categorise Covid-19 as a serious risk effectively limited the scope of inspectors to issue prohibition notices. That effectively means that there is a higher threshold to be met when issuing prohibition notices for employers for significant risk compared to serious ones. I know inspectors have raised this issue collectively through their own union. It puts individual inspectors in a very difficult position and we believe it limits the HSE's ability to enforce Covid safety measures thoroughly enough.

My understanding is the HSE board agreed that the organisation should review that classification. I think that needs to be clarified. Is that review going to happen? What is the timetable for it? We think it is something that needs to be put right and it is something that employers and the public at large will be concerned about.

Mike Clancy: I think there has been here by Government and HSE simply a failure to read the room of civic opinion. If we asked people whether a key regulatory policy should classify Covid as significant or serious, what do we think people would say? They would regard it as serious. We well appreciate that the categorisations have to be grounded in the regulatory policy of the HSE, but we have been raising this for



some time and it does have surrounding factors. We have been pushing both internally and we have talked about it in policy terms externally about raising the importance of ventilation as a risk management measure, along with the other provisions around hands, space and washing and so on.

For example, my briefing tells me that we do not have a code in the appropriate processes so that inspectors can catalogue ventilation concerns, let alone the broader questions in relation to masks. Latterly we are seeking engagement with HSE management on how the further facility to issue prohibition notices, but still short of the change in categorisation, will happen. This is all playing out in real time as we head into a roadmap, as we head into, one hopes, a sustained recovery phase.

Q143 **Steve McCabe:** Sorry to interrupt. Who at HSE do you hold responsible for the limited number of investigations and enforcement actions?

Mike Clancy: It is the responsibility of the institution's enforcement management code, which is managed by the HSE senior managers and ultimately, I guess, in partnership with the board. We know the board has been pressing to review this. We are pressing for greater clarity. In many respects, we work very collaboratively with Sarah and her team, but none the less on this I go back to my point. This may need reviewed, but it needs to be rapid and it can only really point in one direction.

Q144 **Debbie Abrahams:** Good morning, both of you. Following on from Steve's point, I wondered whether your members have also had any concerns about how risk and also cases are being reported. It is not required under RIDDOR, so that is my first quick question.

I also wondered whether, given that we now have several EU countries that are classifying Covid-19 as an occupational disease, again you think we are out of step as far as that is concerned?

Paul Nowak: Certainly one set of concerns that our unions do have is about employer engagement with union safety reps around the whole issue of Covid-19. As I mentioned before, risk assessments should be carried out in consultation with unions where they are present and the workforce more generally.

I know that our unions have raised directly with the HSE some concerns about employers' failure to consult with union safety reps. That is a breach of employers' legal duties. I think the response our unions had back—and we can provide examples of this, if it is useful—is that that is a low priority issue for the HSE.

We firmly disagree with that assessment. Engagement and consultation with the workforce and with trade unions, where they exist in workplaces, is absolutely essential in terms of making sure that risk assessments are coherent and comprehensive and meet the real life test. We have a particular set of concerns there.



Q145 **Debbie Abrahams:** Sorry to interrupt, Paul. Do you think that there has been underreporting? I have been looking at the PHE figures, which is the way that it is recorded in workplace settings and it does seem very low. You are talking about the risks and the risk assessment, lack of engagement and that is a precursor to the underreporting of outbreaks and so on. Do you think that is an issue? If I could press you on the other point about classifying it as an occupational disease as well.

Paul Nowak: It is very difficult. We know that Covid-19 is not restricted to workplaces. People are at risk of transmission in household settings, in the community, on their commute into work and in workplaces themselves. I do think it is important that we see the workplace as a serious place for potential transmission of Covid.

Chris Stephens alluded before to the example in DVLA in Swansea. We have seen that in various Bakkavor factories, with large numbers of workers testing positive for Covid-19, in the case of Swansea DVLA hundreds of workers, and in those cases the common denominator was the workplace. I do think we have to see the workplace as a significant place of transmission.

In terms of formal classification, I am not in a position to respond to that at the moment, but I do think we have to see the workplace as a serious potential place of transmission. That is why everything that I have talked about in terms of starting at the basics of risk assessment and getting that right, it is important that the workers are engaged right from the outset.

The Government recognises workplaces as a serious risk of transmission, otherwise why have we been in the situation over the course of the last 11 months where effectively the Government have locked down large parts of our economy and encouraged people to work from home? The point that Mike made before: for Government to be working through the HSE, but more directly as well with unions and employers to make sure we minimise risk, you cannot eliminate risks in any workplace but you can certainly minimise and mitigate them.

Q146 **Neil Coyle:** Is it the TUC view that the classification—or misclassification, as you might put it—of Covid has undermined efforts to tackle the virus and has that classification undermined the wider Government aim of staying safe and protecting the NHS?

Paul Nowak: I do think there is a point there, Neil, about the fact that it is seen as a public health issue rather than a specific occupational health issue perhaps does lead to that sort of concern about underreporting and not taking the issue as seriously as it should be. We have workplaces where we have unfortunately had outbreaks and fatalities. I think we have a collective responsibility, employers and unions, to do whatever we can to make work as safe as possible.



HOUSE OF COMMONS

Going back to one of our original points, I just cannot believe that we have had a situation where we have not had a single prohibition notice and one single employer prosecuted. That to me does not speak to an enforcement regime that is taking to task those employers who we know are playing fast and loose with workers' health.

Mike Clancy: Very briefly, I think Debbie's question is very important because any national statistics are an aggregate of workplace behaviours and workplace forums. I would say this, wouldn't I, but it is true. Unionised workplaces are safer statistically, but employers have obligations to consult with the workforce and I think this is sometimes forgotten, even where unions are not recognised.

The employer representative regulations that date back to 1996 put an obligation upon employers to have safety consultation mechanisms with workers. If all of this was functioning successfully, say where unions do not operate, do these consultations mechanisms happen, then reporting would be better. The quality of conversations on safety, risk assessment and the processes in particular workplaces would be so much better. This is a really important point, that we give workforces a voice through either their unions or through the statutory processes that already exist.

Q147 **Shaun Bailey:** Mike, the Government have announced this £14 million increased funding for HSE. Prospect have made some comments around the fact that it does not necessarily go towards recruiting new inspectors and that it is quite limited in its scope. From your perspective and for your members, what additional interventions do you feel there need to be and where do you think, if there is going to be additional support or additional funding for HSE, that should be going?

Mike Clancy: It is a simple, inescapable fact that we have to recruit and train more inspectors if we are serious about having appropriate regulatory reach for the HSE going forward. You might say that comes from the trade union that represents those people, but you cannot cope with the level of resource cuts that the HSE has had and then expect it to perform at the level that has been necessary in the last 12 months.

There also needs to be a much broader consideration of the funding for the recovery period. We have had the immediate health challenges. We all know that there is going to be an ongoing mental health challenge to support civic society in as the recovery happens and employers are going to have a hell of a challenge.

We need to promote this collaborative, engaged process with their workforces, their trade unions and representative bodies. The Government needs to think about that and HSE's role in that proactively. It is inescapable that there needs to be more resourcing of the sort of people who can work successfully with businesses to keep them safe through the recovery period and beyond.

Q148 **Shaun Bailey:** If we take a step back a minute: in terms of the impact



on the welfare of your members, what have those constraints meant for your members in terms of their wellbeing at work and their welfare in the roles that they are performing at the moment?

Mike Clancy: Our members are hugely resilient in the HSE and I pay tribute to them. Many of them are senior representatives in the union and they bring a depth of expertise to our conversations on this that makes us particularly strong in our credentials to talk about it.

What they feel over this period is that the HSE as an institution has not been valued in the national mind. In fact, if anything, if you go back to previous commentary about red tape and regulatory overreach, that has affected their collective morale. They feel currently overstretched; they feel part of a sandwich. They want to do more. They want to be given the appropriate tools to apply their professional judgment and they do not want to see the HSE criticised any more than anyone else does.

I think there is also a concern as well—and I use this phrase in front of the Committee with great care—that there is not a dumbing down of their role, that anybody who does work in this space should be criticised, but you cannot put a regulatory inspector in the field in short order. This requires a sustained period of recovery for the HSE and a value of the institution and the people who work for it, to put behind us the last 10 years.

Paul Nowak: Could I add to that, Shaun? We have on a very practical level had several instances where HSE contractors have been turned away by employers—either because they do not have a warrant and the employer effectively has denied them access to the workplace or because the employer suspects that they are not who they say they are because they are not an accredited HSE inspector.

I echo Mike's comments 100%. This pandemic surely gives us pause for thought, to think back about how we resource the HSE in the medium to long-term so we can ensure workplaces are Covid-secure, but much more broadly we have a regime of workplace inspection and enforcement that we know upholds the highest standards of health and safety in the workplace.

Q149 **Shaun Bailey:** That is very helpful, Paul. Thank you. What is the risk that we are going to lose talented people from HSE compounded with, as you have discussed, a funding shortfall as well, so a gap in recruitment, as there is already? What is the risk of that? What is the impact of that going to be?

Mike Clancy: It is self-evident. It is a very perceptive question. HSE inspectors, once trained, are highly valuable commodities. If you wish to, you can probably earn more money in the private sector in a safety management role, operational policy or similar.

Consequently therefore there is always a risk that if HSE funding does not provide the circumstances in which HSE rates of pay can keep up with



external markets, that if people wish to forgo their public service commitments—which so many of them have—and wish to move into the private sector, they are more than likely able to do it. We know that is a challenge. We regularly talk to HSE management about that, to be fair, and it can in the future period, as safety will be so important to employers, be magnified.

Paul Nowak: Everybody wants to work for an organisation that is properly resourced and that has the highest possible public reputation. There is a very real set of pressures in the HSE and indeed in other public bodies at the moment with the public sector pay freeze. I do not think that will help, particularly when, as Mike outlines, there are potentially other private sector opportunities for HSE inspectors. Ultimately what we want is an HSE that staff are incredibly proud to work for and then feel that they have the resources and the tools that they need to do the job right.

Chair: Thanks for your evidence. We would be grateful if you would stay with us so that, if you wanted to, you could comment after we have heard from our next panel.

Examination of witnesses

Witnesses: Sarah Albon, Professor Andrew Curran, Samantha Peace and Professor John Simpson.

Q150 **Chair:** We warmly welcome representatives from the Health and Safety Executive and Public Health England. Can the four of you very briefly tell us who you are, starting with Sarah Albon?

Sarah Albon: I am Sarah Albon, the chief executive of the HSE.

Professor Curran: Good morning. I am Andrew Curran and I am HSE's Chief Scientific Adviser.

Samantha Peace: Good morning, everyone. I am Samantha Peace. I am the Director of Field Operations for the Health and Safety Executive.

Professor Simpson: My name is John Simpson. I am the Head of Public Health Advice, Guidance and Expertise at Public Health England.

Q151 **Chair:** Thank you all very much for joining us. Can I start with a question for Sarah at HSE about your budget, which we have heard a little bit about already? We have heard that it has more than halved in real terms since 2010.

Professor Agius of Manchester University says that the £14 million of extra funding, "... bears no relation to the scale of the task in hand". Has the £14 million extra been confirmed for next year yet? If so, how do you plan to use it next year? This year half of it has been used to contract to debt collection firms to carry out inspections on HSE's behalf. Can you tell us how that has worked out in practice and what do you think are the



lessons from the pandemic for longer-term HSE resourcing?

Sarah Albon: If I start off perhaps by talking about how we spent the £14 million this year. I think we really welcomed the additional funding that was made available to HSE to help tackle the pandemic, but as your previous witnesses from Prospect and from the TUC recognise, it takes approximately three years to fully train a new inspector, so we were not going to be able to take £14 million, train a whole cohort of new inspectors and have them out and about inspecting within a matter of weeks or months, or frankly even during the course of the pandemic.

What we wanted to do was to devise ways of making sure that we use our trained inspectors in those areas where there was greatest cause for concern, so to effectively build in a triage system that meant that we were able to screen out cases in businesses where the risk was low and to focus—I have welcomed hearing the acknowledgement from, I think, all of the witnesses—the dedication and expertise of our inspectors. We wanted to make sure that we used their time surgically where it could be used most effectively to deal with the highest risk.

We started that by telephone-only triage, using a series of structured questions that helped us identify risk. Samantha, who is joining us, herself a very experienced warrant holding inspector who has been out on some of the inspections, may be able to tell you, if the Committee is interested, what we did to give ourselves assurance and to be sure that those questions were the right kind of questions and were identifying the businesses where the risk was most serious.

We recognise the importance—if we were going to rely on fairly limited evidence, with people who had only had limited experience in health and safety and very limited training—of making sure we had the right questions and the right assurance and audit running in the background so that we were confident in relying on that.

When we had the telephone lines up and running we recognised, though, that there was still more that could be done perhaps with some boots on the ground, so that made us think about what could we do to use a similar spot-check approach but in person. What might be the right kind of business out there that could help us with that?

Clearly, we were not going to be able to train people to become HSE inspectors overnight, but we had to be thoughtful of the kind of risk that we would then be exposing those individual contractors to. Not only the risk of Covid, but also the risk of aggression or difficult businesses because not all businesses—although most do—welcome an HSE inspector or anybody turning up at the door. That led us to think about what sort of flexible workforce is out there who already have training in dealing in difficult situations, in keeping things calm, and that led us to contract on that basis. The firms that we have used in the first round of contracting specialise in bailiff operations and debt collection.



HOUSE OF COMMONS

But again, we use that similar audit basis in order to ensure that they were asking questions in the right way. We have been very closely monitoring their operation, including with things like body-worn video cameras and those kind of things because their behaviour, both in the sense of them doing the job that we are paying them to do and doing it thoroughly and properly, but also representing us properly and responsibly, was important to us. We have put a lot of effort and thought into that.

That was how that was going. It has enabled us, and here it is important to just correct—I do not want to get into the numbers too much—a little bit the numbers that you were saying. We have dealt with over 160,000 Covid-related cases, but most of that has been our proactive effort. We have had just over 20,000 concerns raised with us rather than 170 that Paul was referring to. We have now done in excess of 60,000 site visits. That is both our inspectors and also this field force that we have been talking about.

Although the numbers of prohibition are very low, but we have also done a couple of prohibition notices as well. Again, Sam will be able to talk more about the actual use of the EMM and how it feels for her and her team as inspectors using it and the extent to which they have felt able to use the full range of their enforcement tools in practice on the ground.

Going forward, we have been told the additional £40 million will roll forward into next year, but it is ring-fenced to Covid. It is not an increase to our baseline so the same kind of constraints around cannot use it for long-term recruitment and training of new inspectors will apply. Again, we are very much looking at how can we use this to bolster what we do to make sure that we use our inspectorate resources as effectively as we possibly can, recognising that an increase in budget for a period like this, while incredibly important and valuable to us and welcome, does not enable us to recruit and train large numbers of new inspectors.

Q152 **Chair:** Longer term, do you think it has become clear that there should be an increase in HSE funding on a permanent basis?

Sarah Albon: You would expect me, as the chief executive of the HSE, to be putting my hand up and saying that more money would enable us to do more important things and it would. Of course it would. It is true that there has been a diminution of the number of fully qualified inspectors over the past decade. It is also true though that we have never and would never seek to say that the only way in which HSE can help businesses do the right thing is through inspection. We think it is important that we get our policy right, our science right, our guidance right, and of course also regulation in enforcement. All of those are important tools.

The witnesses at the beginning of the session talked about the paucity of guidance available at the very beginning of the pandemic. That is true. As the first national lockdown started the virus itself had only been isolated



HOUSE OF COMMONS

and identified roughly a month before in terms of genomic sequencing and those kind of things. We were all learning.

We published our first guidance on our website on 21 March, so a couple of days before national lockdown started. We worked very closely with the Construction Leadership Council on the creation of its guidance that your first witness was referring to. But it is absolutely true that we were all learning about a new threat at the start and learning at real pace.

The level of knowledge and sharing of knowledge nationally and internationally has been phenomenal. Andrew mentioned to me yesterday a fascinating statistic. In all the years since the flu pandemics at the turn of the First World War there had been something like 130,000 pieces of academic literature published on influenza. We are now not far short of that in just the last year internationally on Covid.

The pace at which learning has been going on has been phenomenal and we, together with various others, have been trying our very best to distil that, to put it in a manageable format and to share that with business as helpfully as we possibly can, recognising always that there is a real balance between bombarding everybody with something every time there is a fractional change to the knowledge that is out there, but also the importance of staying up to date where new knowledge does move us on and we can be helpful.

Thinking about the roadmap to the lockdowns hopefully ending across the different nations of the United Kingdom at the moment, we are looking again at revision of guidance and there are three things that we are fundamentally wanting to bring into that. Paul mentioned one of them around ventilation and increased knowledge around that, but also the impact of workplace testing and vaccination because since the last lockdown has ended there has been a real shift in need, obviously the availability of vaccines, but also the use of workplace testing.

Q153 Chris Stephens: The amount of enforcement notices and written correspondence that HSE has issued is, on average, lower than last year, and you have stated that there has been no change to HSE's policies on issuing of notices. So what are the reasons for the decrease?

Sarah Albon: It is mostly because we have been concentrating so heavily on Covid. We have found that the level of compliance on the whole in businesses with the Covid social distancing and other precautions is significantly better than many of the other areas where we would have otherwise proactively taken action. That is not surprising.

There has been so much international and national effort, not just from Government but from all employers, public bodies and everybody else to focus on Covid, to focus on what people can do, to focus on what business can do, trying to get business to understand that Covid is a risk that needs to be taken seriously. We do think it is incredibly serious and I am sure we will come on to talk more about the EMM, but there is nobody



at HSE who thinks that Covid is not a serious risk, to be taken seriously. What we have seen is that business on the whole is responding to that. It is managing risk well.

Contrast that, for example, with had Covid not happened in the world: we would have probably been looking at campaigns around the danger of things like wood dust, mild steel welding fumes, things like that, where just trying to get the traction and breakthrough about the importance of dealing with those risks with employers and employees is much harder.

Q154 Chris Stephens: I should have thanked your organisation. I know you have done tours around the country with MPs and shared that information and you are a regular attender in asking pertinent questions.

If I can ask an impertinent question, which is coming down to the crux of your letter to the Committee last month. You talk about most of the regulatory activities being towards ensuring giving advice and making sure that workplaces are Covid-secure, but say that enforcement action, where it is warranted, would be taken. Has there been a shift of emphasis between enforcement action to advice? Essentially, is one of the problems the resources issues, which we heard from Mike Clancy earlier?

Sarah Albon: No, I do not think that is fair. You may want to hear direct from Samantha on this because she can speak very directly to her experience as an inspector and as a leader of inspectors. But we would always, as an organisation, want first to try to achieve compliance with whatever risks are present in a workplace. The most important thing for our inspectors is to try to make the workplace safer. If they can achieve that through co-operation, understanding and collaborative working, then for us that is a better win and a quicker win.

We have suffered to some extent in the public discourse from a completely understandable lack of comprehension that the enforcement that we are doing is not the same as the enforcement around requiring groups of people not to gather together or requiring people to wear facemasks in shops. That legislation, which was obviously passed as emergency legislation under public health rules, is not something our inspectors have the power to enforce against. The on-the-spot fines, those kind of things, are something that we cannot do and we do not have the power to do.

I am also not saying that that would be a particularly good use of our inspectors' time because they have been spending time trying to manage more complex and difficult risks with employers to understand how to do the right thing to keep their workers as safe as possible.

Q155 Chris Stephens: Has the proportion of employees' behaviour improved in terms of making sure that they are taking all reasonable precautions and what is driving that improvement?

Sarah Albon: For employees? It is understanding themselves—



Chris Stephens: Employers, sorry.

Sarah Albon: It is probably the general public pressure and awareness out there. You cannot turn on the radio or open a newspaper, quite rightly, without seeing the latest information about Covid, the number of people who are in hospital who are sadly losing their lives. It is right at the top of all of our daily conversation and concern. If you have something like that, it is unsurprising that business takes it very seriously and, on the whole, does its best to implement all of the risk-based controls that it can do in order to keep workforces as safe as possible.

Q156 **Chris Stephens:** The Institute for Employment Rights has stated that Covid guidance being issued in England, compared to Scotland and Wales, was insufficiently clear about employers' legal obligations. How would HSE respond to the concerns that the Institute for Employment Rights has on that matter?

Sarah Albon: We worked very closely with all three Governments on the detailed guidance, but appreciate that HSE do not have responsibility for employment law. Our role in feeding into the guidance in all three nations was to ensure that there was a sound scientific basis for the types of risk mitigations that employers could put in place and that we, as ever, were trying to focus on what employers could practically and reasonably do in order to keep their employees as safe as possible.

Q157 **Chair:** Can I just pick up this point about the number of notices? In the year before the pandemic you received altogether about 32,000 concerns and in response you issued just over 7,000 notices. On Covid, up until 4 February, you had received 18,000 concerns and in response you issued 33 notices.

I am just trying to understand the reasons for that mismatch. Are you saying that you only normally issue a notice if firms ignore informal approaches and that in Covid they are taking your informal approaches much more seriously? Is that the point that you are making?

Sarah Albon: Essentially, yes. An inspector would always start from the position of saying—clearly if there is an immediate unguarded risk, for example, a piece of machinery that should be guarded that does not have a guard, they may move immediately to say that has to stop right now. But beyond that, if we are talking about risk of dust in the workplace or extraction systems, things like that, our inspectors will always try to secure co-operation first before they move through to formal enforcement.

Q158 **Chair:** It is normally much harder than it has been in Covid, is that right?

Sarah Albon: Yes. But also we would normally go and target those, whether it be by sector or by firm, areas where we believe that compliance is at its lowest. What we have recognised in Covid—and, quite rightly, this Committee and others have played their part in highlighting the importance of HSE in the overall countrywide response to the pandemic—is that although the risks in the sense of non-compliance are



HOUSE OF COMMONS

probably lower than the normal risks that we would tackle, we still absolutely think it is important that we have put the focus and time into Covid and Covid security in the workplace as part of that part we play, which is an important part in public assurance.

Q159 Steve McCabe: Over 10,000 workers have died from Covid. There have been 20,000 expressions of concern you have told us about and only two prohibition notices. You said to my colleague, Chris Stephens, a moment ago that nobody at HSE does not think Covid is serious, but is the reality not you do not think it is serious; you think it is significant rather than serious? Is it not time to admit you have this wrong?

Sarah Albon: No, as I said to the Chair and a group of other MPs, the enforcement management model, the EMM—the document that we are talking about here—helps guide inspectors through an enforcement process and helps them to think about what is the immediate risk to workers in a range of different hazards that they need to think about. That is everything from asbestos exposure through to being crushed by cattle on a farm, risk of falling from height and all of those kinds of different risks that an HSE inspector might have to face and consider on a daily basis.

In considering where on the hierarchy, one of the things that the experts and scientists in the background are looking to say is: what is the credible likely outcome for the working population as a whole as a risk of exposure to a particular hazard? Some 11,000 people dying is a desperate tragedy for those people, their families and their friends.

I do not imagine there is a single person across the whole country who has not been personally touched by Covid and the impact on their friends, their families and their lives. Nobody is trying to underplay the seriousness of this, but it is much more likely to have a serious or fatal consequence for those people outside of working age. The biggest indicator of a fatal or very serious outcome if you catch Covid is your age. After that, we look at other comorbidities. It is important to recognise that the 11,000 people are not 11,000 people who were all at work.

Q160 Steve McCabe: No, but there have been a significant number of clusters in working environments. That is true, isn't it?

Sarah Albon: It absolutely is true. We have looked at those in conjunction with PHE and others. Andrew and John may want to say a bit more about that. This is not the case in every single workplace and there have been improvement notices and a very small number of prohibition notices. I would not rule out either prosecutions in the future.

Q161 Steve McCabe: Is it true there have only been two prohibition notices?

Sarah Albon: There have only been two prohibition notices, that is true. What the classification is recognising is that the likely outcome for a typical healthy worker, thank goodness, is that most people will not go on to suffer permanent or fatal consequences.



Q162 **Steve McCabe:** Can I ask you one other point on this? I have the descriptor and the definition of the classifications in front of me. It says, "Significant: causes non-progressive conditions or results in temporary disability". It says for "serious", "Causes a permanent progressive or irreversible condition, causes permanent disabling leading to a lifelong restriction of work capability or a major reduction in the quality of life".

Given the numbers of people who seem to be suffering from long Covid, about which we do not know enough at the moment, and the fact that 10,000—you say 11,000—people have lost their lives, does it not sound to you as if the definitions for "serious" are much closer to what we are experiencing than the definitions for "significant"?

Sarah Albon: You read out part of the definition there, but the other half is the likely outcome for the population as a whole. However, you are right in recognising that we are gradually learning about the disease, the potential impacts and the issues around long Covid. It is why the classification was first arrived at back in the early part of the summer. We reviewed that last autumn. Far from being required by the board to review it again, I told the board that it was already our intention to conduct another review so that we are making sure that we are keeping on top of emerging scientific evidence.

The important thing that I want to emphasise is that absolutely nothing in that enforcement management model fetters the ability of our inspectors to take the appropriate enforcement action in the light of any issue they see. It would be helpful to hear directly from Sam, as somebody who has spent her whole working life as an inspector and has been dealing directly with them.

Both Paul and Mike made reference, helpfully, to the collaborative working that we try to have with the TUC and unions more generally. The tripartite relationship in HSE between ourselves, unions and employers is important to us. Although we knew directly that most of our inspectors were very comfortable with what they were doing, we took seriously the information from Prospect that at least some of their members were reporting to them that they did feel concerns about the EMM. We also work with Prospect to get those concerns passed directly to us. Eleven individual issues were raised and we have looked at those. We have reminded inspectors about the powers that they have and will continue to do so because it is important to us.

I am very confident that the majority of our inspectors are comfortable with what they are doing. They are absolutely clear that they have the full range of their powers available to them and they are using them where appropriate. Clearly that was not the case with everybody and we take that seriously. We have been working both with Prospect and with our own employees to make sure that everybody understands what they can do and everybody is comfortable in exercising the full range of powers that they have.



Q163 **Chair:** When will you have completed this latest review on this point?

Sarah Albon: We are going to finish by the end of next month. Essentially there is a big literature review and a consideration of all this newer scientific evidence that emerged.

Q164 **Siobhan Baillie:** We have touched on some of this in the previous panel as well. HSE is clear that the reporting of injuries regulations provide no requirement for incidents of disease or deaths of members of the public, patients, care home residents or service users from Covid-19, which will probably surprise members of the public.

A professor from the University of Manchester said that this could lead to a systematic underestimating of Covid-19 caused by work and therefore missing vital opportunities to investigate and learn lessons to prevent further disease. We are climbing out of this pandemic, but we absolutely have to get this right.

I am going to give Sarah a bit of a break and come to Professor Simpson first. Do you think that the 2013 regulations should be changed to provide more accuracy and would that have helped PHE?

Professor Simpson: The 2013 regulations are not particularly an issue for the public health body, but one of the interesting things here is that the health and safety regulations at work are very much focused, quite rightly, on the physical dangers at work. What they are not there to cover are large-scale pandemics or large-scale infectious disease outbreaks. Some of them do cover infectious disease outbreaks, such as in food premises and so on as part of it. But in a large-scale pandemic the way the regulations are set out does make some of the reporting of this quite difficult.

I would like to make a couple more points on this. I have a spreadsheet in front of me with 1,400 workplace outbreaks that have been picked up. One of the things here is that this is again an unusual situation where some workplace issues were being picked up by the public health system first and then referred to HOUSE, rather than the other way round. That again is something else that may be worth thinking about in future legislation as to how that system works.

The other thing I would like to mention is that quite often workplace outbreaks are reflecting the prevalence in certain areas. There is a strong link between a major workplace in an area and the prevalence of Covid in that area, which is probably fairly obvious, but it is quite marked. One of the things that has been difficult for the Health and Safety Executive is that a lot of workplace outbreaks may be more to do with social factors within the workforce.

A good example would be workers on a large farm picking fruit, our food industry where a lot of people are coming in who may have poor socioeconomic factors themselves; travelling into work in shared vehicles



and living in houses of multiple occupation are also quite high-risk factors for Covid.

However, we are getting evidence now internationally that some particular workplaces do seem to have an issue, such as meat packaging, where there is now good evidence from US studies that the mitigations that were brought in, both in the US and the UK, seem to be reducing the number of outbreaks, for instance, in meat processing factories. It is quite a complex picture, but the point is a good one: that the way workplace reporting works at present does not fit terribly well this situation, and that might be something we would wish to look at for the future.

Q165 **Siobhan Baillie:** Professor Curran, Sarah told us in the letter the regulations are not designed to provide definitive statistics on health and safety. Do you think they have failed us in a pandemic situation?

Professor Curran: I would agree with John. They were designed many years ago to provide a particular input to HSE's thinking and decision-making. The situation we are facing at the moment is incredibly complex and we have heard throughout the discussion this morning about how much we have learned over the course of the pandemic and how much we continue to learn and need to learn as part of that process.

One of the things we are now able to do through what are called National Core studies is start to do some of the analysis that is needed to understand some of the complex issues that we have identified and to unpick the role of the workplace in what is essentially a continuous transmission risk. Covid does not respect space; it is an "anytime, anyplace, anywhere" kind of transmission risk. Therefore to unpick the component of that transmission pathway will become very difficult.

For example, John mentioned the outbreaks. We are working very closely with our colleagues in PHE on the National Core study that HSE is leading. We are in a workplace today looking at a hugely detailed investigation, which will collect samples from work, it will include questionnaires and it will include genomic analysis of the virus, which will be able to give us better information about where the virus has come from. It is only through doing those very detailed intensive studies that we will understand the role of the work environment in the transmission of the virus.

We think about the other factors, such as the transport to the workplace and the socioeconomic factors that might lead to other issues being of concern, such as multigenerational housing or other issues from a socioeconomic perspective. While I agree that the RIDDOR information is a piece of the jigsaw puzzle, it is just a piece, and it needs to be seen in the context of the entire picture. We are using that RIDDOR data as part of our National Core study as well as many other data sources to get to grips with what is going on here.



Q166 **Siobhan Baillie:** Samantha, with your work on the ground, how does HSE work with PHE? Then if Professor Simpson wants to pick that up.

Samantha Peace: Can I just begin by saying thank you to the trade union representatives for recognising the integrity and the professionalism of the inspectors? Because it has been a very interesting and challenging time for us. We have been, like everybody else, learning as we go along in a very different environment for us.

Just a couple of things to put the work with PHE in terms of outbreaks into context. We have been finding when we have gone in that our experience of regulating Covid has been very different to our experience normally going into employers to regulate risks.

Employers are far more open and far more educated than we normally find them, partly because they are living that experience themselves. They are living it with their families, they are seeing the controls when they go to the supermarket, they are living that whole experience, whereas normally when we are discussing things with employers they are not living the risks themselves, they are governing the workers who do. It is a very different conversation. It is important people understand that—that that is our experience when we go out.

For the outbreaks, it is very interesting. We have been working as part of teams; almost 600 of the outbreaks now we have been involved in. As part of the teams going in to look at the role, which we recognise of workplace transmission—as Andrew points out, Covid does not recognise boundaries and we appreciate that and we recognise that—it is important we play our part in making sure that the risks of workplace transmission, because Covid is almost inevitably imported into an environment, does not transmit further. We work very closely with PHE and local authority colleagues to look at those situations and try to make sure that all of the controls that apply to that particular workplace are there.

By and large, and it reflects the enforcement profile that has been the subject of so much discussion, we have found people working extremely hard to try to protect the workforce. The areas that are probably the most difficult are the peripheral parts of the activity—people are in a particular mindset when they are doing their work activity, but that changes slightly when they have their smoke break or they are having their lunch or they are about to get into their car to go home. Then their behaviours and their mindset changes.

That has been a very interesting interface, where the collaboration between public health officials, PHE and others across devolved nations and ourselves has been important to collaborate together with outbreaks to understand exactly where any potential gaps might be and what action we respectively need to take to make sure we get everybody into the right place and we maximise the protection and the prevention of transmission.



HOUSE OF COMMONS

I was out with one of my inspectors going to look at waste and recycling and going to look at the food industry because we have targeted workplaces on a slightly different footing. We have targeted the kind of workforces where there is more likely to be transmission—those workforces that have to travel to that site, that are likely to share cars, that are likely to live in houses of multiple occupation—to try to make sure that our inspectors are surgically targeted at the areas where we can make the most impact.

We found employers who have, in the case of the food premises I visited recently in February, built further canteen capacity because they recognised they could not maintain the social distancing for people to have their lunch in the right mindset without doing so, provided cleaning kits for people's cars so that they can clean their cars if they are sharing them before they get there. Interesting crossing of the boundaries beyond what we would normally deal with with employers. On the ground, that is what we are seeing.

Lots of innovation as well and people applying their skill in quite interesting ways. In one of the schools, for example, in Scotland that one of our inspectors inspected, they were using their educational skill to teach the children to maintain their social distancing by painting rivers and telling them they could not cross the river because it is much easier for a child to understand than just our mind, which an adult can follow, but harder for a child. A huge amount of innovation.

I reinforce the point that nothing has fettered us, whether it is co-operating with PHE on an outbreak or whether it is going ourselves to do a spot inspection, heavily focused on Covid. Nothing has fettered us from taking whatever the range of enforcement action is that we feel is appropriate given the facts before us, the circumstances. Throughout it has been very explicit in our guidance to our inspectors, coming back to the categorisation in the EMM, which is of course one table out of 46 pages of material that covers a huge range of factors that when we are standing there, boots on the ground in premises, we process.

That is our complex regulatory thinking to reach a proportionate and sensible decision about what we ought to do and what powers and tools we ought to exercise to do it. There is nothing stopping us from treating something and elevating something to a serious risk and acting accordingly, should we wish to do so.

The enforcement management model kicks in often after we have done that or even if we encounter it as we go around the premises. There are times where we will see something that could be the subject of a prohibition notice. A good example would be an untied ladder on a construction site.

Clearly not safe, clearly something that should not happen, clearly defined standard, but it can be fixed there and then, so we get it fixed and then we move on. There is nothing fettering us there and I have



HOUSE OF COMMONS

been concerned to hear that a few of our people have felt less confident, less easy. You will always get that difference of opinion, but we have dealt with that.

In our work on the outbreaks, all that applies. If we see something in our role that relates to the workplace and we need to act to deal with that, we have done so. But it has been a real exercise in collaborative working to try to max out the potential for each partner in that to play their role and achieve the best protection.

Q167 Debbie Abrahams: I absolutely recognise the incredible pressure that you must be working under, particularly in the context of the resource constraints that you face. However—and this is directed to Sarah—I just want to go back to the point made about whether Covid should be considered as significant rather than serious. Given that I would expect a precautionary principle to be taken with a new virus, such as Covid, could you explain the decision-making process that you came to in terms of deciding that this was a significant rather than a serious disease and exactly who made that decision?

Sarah Albon: The advice on the decision was made by a group of very experienced inspectors, scientists and policymakers who would generally keep the EMM up to speed. Because of the nature of Covid as a new disease, their recommendation and the full literature and the data that they had reviewed in reaching that was put together and sent to one of our senior operational committees to endorse their outcome and to make sure that the full range of issues had been considered.

The EMM is a document that has existed for a considerable amount of time and is 46 pages of very detailed technical advice that helps guide consistency of decision-making for inspectors as they go about such a wide range of duties. With perfect hindsight, we could have said there is categories 1, 2 and 3 and then I suspect we would not have been having the debate, because we are not using the word “significant” and “serious” in their normal English meaning. It is intended instead to say, “For your typical healthy working population what is the likely outcome of being exposed to this particular hazard?” The hazard can range from an untied ladder through to hydrocarbon released on an oil rig through to now Covid or other—

Q168 Debbie Abrahams: I absolutely recognise what you are saying, but that advice for those particular hazards was after decades, if not longer, of experience; this was an emergent virus where we did not know the full outcomes and were becoming aware. I hope you do not mind my saying this, but that seems slightly complacent and reflected a complacent attitude to the virus as a whole last year. How does this compare—

Sarah Albon: I have to refute that.

Debbie Abrahams: That is fine.



Sarah Albon: We are the opposite of complacent. We are. We have turned the organisation on its head to respond to Covid. We have put so much resource, so much time of our policymakers, our scientists, our inspectors, as well as a whole new set of people because we absolutely recognise the central importance of getting this right.

There is always a legitimate debate about whether or not something has been treated in the right way or classified in the right way within a technical environment, but it is very unfair to describe the organisation as complacent.

Q169 **Debbie Abrahams:** I take that back. I am just looking in the context of how the pandemic has been managed as a whole, and it does seem to reflect that. How does our approach in the UK compare to our international cousins? Again in relation to this, we have seven European countries now that have classified Covid as an occupational disease. What is the situation far as we are concerned around that?

Sarah Albon: Obviously with HSE and PHE, I am not responsible for the classification of Covid as an occupational disease or otherwise. Of course in the UK such a classification largely then links through to the ability to access certain benefits through the overall benefit system.

The seriousness with which we have tried to support business in maintaining Covid-secure environments reflects well. The team has certainly been working internationally to understand what has been going on scientifically and practically in other countries.

But the reality is that we all recognised that it was important that various businesses—as our very first witnesses were saying—continued to work. If everybody had stopped going to work, if everyone had been able to do that and met nobody, then they would not have run the risk of transmitting Covid-19. But food had to be continued to be made, obviously healthcare professions and various other professions.

It has been widely recognised that one thing this terrible pandemic has exposed in our society—and I am sure this is true around the world—is inequality and the unequal impact on people's own lives. That is partly through the way we value different types of work and the wages paid for different types of work and what that means for living conditions and the ability of people to isolate in their own homes or otherwise.

There was a very complex system at work here and it is undoubtedly the case that Covid-19 has had a terrible impact, and that that impact is magnified if you are less well off. I think we all need to look at and reflect on in our wider society.

Chair: I need to butt in a bit because we are up against the clock. A very interesting point.

Q170 **Neil Coyle:** I want to ask a hypothetical question quickly, linked to some of the points made already. Were the regulations to focus not just on



HOUSE OF COMMONS

employees directly and to cover customers, passengers or care home residents—whichever the occupation setting might be—is it the panel's view that there would have been more prohibition notices?

Sarah Albon: That is very difficult to answer, partly because—I suppose it is a bit of a generalisation—on the whole workplaces that also have very significant interface with members of the public tend to be under the authority of local authorities to enforce, and have tended to be the subject of the major lockdowns. That is not universally the case, obviously.

In healthcare settings you cannot suddenly stop providing treatment and care to those vulnerable people who need it, but if we think about shops and restaurants and some of those other areas, those are the businesses that have been most frequently required to shut. That is not because the work is inherently dangerous, but simply because of the importance in limiting the number of people we all meet every day as we go about our lives if we are going to control transmission.

There was a huge amount of talk earlier in the pandemic about the R number, but that rate of ability to transmit to other people hangs off the number of other people we meet. Government have had to make those difficult judgments about where—

Q171 **Neil Coyle:** This question is for the whole panel. You were making the point again about exposure, not just vulnerability of the individual employee, and you did say you wanted to help reassure the public in cases like Covid-19 in this instance, but in any future pandemic. You are outlining the situation. What is your advice to Government about extending the regulations?

Sarah Albon: Extending the regulations; the RIDDOR reporting. If you think about RIDDOR as being a way for us to find out that something has effectively gone wrong and to go and see what is going on, then together with the reporting that is going into health—whether it be PHE or the health authorities in Wales or Scotland—reporting of clusters and outbreaks has been at an unprecedented level and has enabled us to get involved, as John was saying, via PHE rather than us bringing them into it.

Have we had the information we need to go to areas where there is concern, where there is an outbreak? Yes, I think we do, so I do not think there is a need to have a sudden change of reporting because, frankly, we are finding out about outbreaks anyway through the public health system.

The point we are all trying to make is that as we come out of the pandemic it is worth reflecting on the difficulty employers have had in understanding what they should and should not report in RIDDOR. As you are aware, I am sure, it is a criminal offence to fail to report something that should be reported.



One thing I dealt with a lot in early conversations with business leaders was a concern that they wanted to understand when they should report and they were quite fearful of failing to report. I do not think there has been an issue with us being unable to detect instances and outbreaks and then report.

Q172 **Neil Coyle:** I am interested if the professors want to come in because that does contradict what it says on the HSE website about acknowledging that there has been underreporting. I am concerned there is a contradiction between what you are saying this morning and what it says on your website. If either of the other panel members want to come in, please do. If not, I will have to move on because time is tight, as the Chair already said. John, do you want to come in?

Professor Simpson: In a sense this is not a public health question; it is more, as I say, of a legislation question. I am not a lawyer, but there would be quite significant issues if you were going to report companies—say, a supermarket—for the behaviour of people who were customers in the supermarket and how the employer, the supermarket, can affect the way their customers are behaving. I think there would be some quite difficult issues there.

As I said before, this has shown how different public health authorities and the HSE work together in the future and I think that will change quite a lot in the future and take into account public health issues.

Professor Curran: To add to what John said, it depends on the question you are trying to answer. You need to be very clear what it is you want the data to help you address. RIDDOR has a lot of biases with it for all kinds of reasons, so therefore it will not necessarily be the tool that will enable you to answer the question you are trying to answer.

I think it is important that we understand what all the data sources can tell us, be that Track and Trace, some of the HSE data or the data we are collecting—that is the important part. How does the data come together to enable us to get to the bottom of these problems? That is being delivered now through the collaborations we talked about and some of the National Core studies are driving at connecting data sources together in ways that have never been done before that will really help us.

Q173 **Neil Coyle:** Thank you, that is useful and links to the point about the PHE guidance we are introducing, including the action cards about reporting Covid-19 at work.

Can you tell us how you work with HSE to ensure employers know their responsibilities, both in respect of safety and with regard to recording cases?

Professor Simpson: We have very close links with BEIS on guidance production for industry and with HSE. We have had tripartite meetings going back to February last year where we have been discussing this. One thing, as Andrew has just said, is the linkage between the systems



HOUSE OF COMMONS

we have for picking up infectious diseases and picking up cases ourselves and our devolved Administration colleagues and how we link to HSE about workplace outbreaks.

In the past a lot of this has been on things such as legionella and other issues such as that. I think working on the best way we work together in these situations with large amounts of respiratory disease or large numbers is going to be important in the future. We have had more contact with HSE in the last year than we have in the previous 29, 30 years of my career, to be honest, and that will continue in the future.

Q174 Dr Ben Spencer: I draw the Committee's attention to my entry in the Register of Members' Financial Interests.

I have some questions, to change tack slightly here, looking at the asymptomatic screening programme being offered to businesses and I particularly want to ask some questions to Professor Simpson. This is where businesses are offered the ability to get lateral flow tests off their employees and to do weekly or twice weekly testing. Do you see this as a health and safety at work measure or a measure to control population levels of coronavirus?

Professor Simpson: I am sorry, but my normally very good internet seems to be playing up this morning. This is primarily a measure to reduce transmission within the population and particularly when more and more workplaces are opening up.

As Sarah has pointed out, the more we know about Covid-19, in a sense simplistically the more people you meet, the more people you get close to, the more chance you have of transmission. Anywhere you will get increased numbers of human interactions you have concern there will be, however well people behave, increased transmission. Doing this in workplaces and particularly going down to smaller workplaces and having systems whereby people can test in smaller workplaces will allow you, particularly in lower prevalence rates, to restrict the amount of transmission going on in the population.

The other thing on this is as the proportion of the population who are vaccinated increases, which is an excellent thing, you will tend to find more discrete outbreaks and we would wish, particularly with illnesses—and long Covid has been mentioned—you want to prevent as many people becoming ill as possible. This is another way of doing that.

It is not for me to say, but it will be to an extent a health and safety at work issue in that it is preventing transmission at work, but it is primarily a population and reduction of transmission effort.

Q175 Dr Ben Spencer: Thank you for that clarification. The reason why I ask is if I was a business owner and being offered these tests, the assumption I would make, maybe incorrectly, would be that this was something I was doing to protect my employees at work rather than managing overall population transmission.



HOUSE OF COMMONS

I see there is nothing about this in the brief stuff I have gone through from HSE's perspective, talking about testing, that I could find. Do you give any advice, Sarah, regarding businesses taking up asymptomatic screening in terms of where that fits in with their Covid-19 risk assessments?

Sarah Albon: The advice we would have been giving and would still give to business at the moment is that, although co-operation with wider public health control is important if business is able to do that, because of the well-understood issues, on an individual case-by-case basis you cannot assume that because you have had a negative test your workforce is necessarily negative. We would therefore still expect the full range of social distancing, hand hygiene and all the other controls with which business is now familiar to still remain in place.

This cannot replace any of those other controls because you cannot be sure that your workforce is therefore all free of Covid-19 and therefore do not need to follow those other basic controls. Our advice to business essentially is that this is a useful public health indicator, but it does not have a place in their risk assessment process and you should still carry out the full social distancing, hygiene and other controls that we have seen help workplaces control transmission.

Q176 **Dr Ben Spencer:** Finally, both Professor Simpson and I are from careers where we have had to, as part of our employment T&Cs, be vaccinated against a range of illnesses—Hep B, rubella, chickenpox et cetera. Have you had inquiries and what is your perspective on businesses that are considering making it part of their terms and conditions to have Covid-19 vaccinations?

Sarah Albon: It is largely outwith our principal area. It is an employment law issue. As you say, businesses have chosen and do choose in some other areas outside Covid-19 to require vaccinations. That could be true for people who, for example, as part of their routine work may have to travel abroad to countries that still require vaccination against particular diseases. It is something a company can do within the overall scope of employment law, but it is not something we have been directly involved in the wider debates on.

Q177 **Dr Ben Spencer:** Surely it is something that, dare I say, you should be involved in because it is to do with health and safety at work. In terms of employees, it is considerations about whether employees need to be protected with a vaccine, given the exposure they are getting into.

From a personal perspective, I think there is no debate in the health and social care sector; as a previous healthcare worker, I am used to having had vaccinations et cetera. But in other settings, which is where the debate is going, in other workplaces—we have heard particularly about plumbing—this seems to be where the issues are. Does HSE not have a perspective at all this?



HOUSE OF COMMONS

Sarah Albon: We have not taken a view at the moment. I think it is very complicated and there is a complex series of issues out there, including whether or not moving to compulsion would drive overall the take-up of vaccination in wider society or down through fear and misunderstanding. There is a very complicated series of issues that need to be carefully thought through before wider Government reaches a final position on compulsion.

Like you personally, I am a fan of the vaccination and have had my first shot. I would encourage all colleagues and people in general to do that because I think it is important. We have talked a little bit about some of the harder-to-reach communities and we know that vaccine hesitancy is probably higher in some of those.

As I say, this is not primarily an HSE responsibility, but as society we need to think about the best way to persuade the largest number of people that taking up the vaccine would be good for them, good for their families. Compulsion may or may not have a positive role to play in that.

Q178 **Dr Ben Spencer:** May I ask one final quick question? What if an employer did a Covid-19 risk assessment and said that employees working in a certain area had to have a vaccination? What would HSE's perspective be on that as a risk assessment?

Sarah Albon: The answer is it would depend on the quality of the risk assessment. It is impossible to answer what you think about a risk assessment unless you could look at it and see why they reached that conclusion.

Q179 **Selaine Saxby:** The Prime Minister has set out a roadmap out of lockdown. I wondered how you are working with employers, unions and other bodies to make sure that, as we emerge from this over the coming months, businesses and employers can be opened safely. Do you plan to update that guidance to employers as these restrictions lift?

Sarah Albon: Yes, you will have heard this morning that we have been working very closely with BEIS and other Government Departments. I know that BEIS has been, as Paul acknowledged, drawing the wider TUC and unions into those conversations about reopening, as well as employer organisations.

My experience through the various creations of guidance as the different lockdowns have happened and come towards an end is that there has been an unprecedented amount of co-operation, both between different Government organisations, but also with unions and employers.

The intention is to re-look at the guidance that existed as we exited the first national lockdown and the second and make sure that is appropriately updated to take account of any emerging knowledge. The particular areas where we will look to make sure there is updated information and advice given is around the conversation we just had



HOUSE OF COMMONS

around vaccination, the impact of workplace testing and also around ventilation.

Q180 **Chair:** I have two very quick points. Sarah, the decision to categorise Covid-19 as significant rather than serious: was that ultimately your decision as chief executive to make?

Sarah Albon: I take responsibility for any decision my organisation makes.

Q181 **Chair:** A question to Professor Simpson: you told us that you have a spreadsheet of 1,400 workplace outbreaks in front of you. Is there some analysis of those 1,400 that you can let us see in terms of which sectors they are in and what kind of workplaces—that sort of thing?

Professor Simpson: The very short answer is yes, and I am very happy to send it.

Q182 **Chair:** We will be very interested to see that. We have overrun a bit, but I would like to give an opportunity to each of our four witnesses in the earlier panel to come back, if they want to, on any of the points they heard in the third panel and then go back to HSE and PHE to respond further, if you would like to. In the order that everybody introduced themselves, Suzannah Nichol, is there anything you want to say at this point?

Suzannah Nichol: Thank you for the opportunity to listen in. It has been very interesting to hear all the evidence. I would say one thing to sum up from our sector, which is the lens through which we have experienced Covid-19 over the last 12 months. It is a sector that has worked from day one. It has remained operational from that very first day, even before we went into lockdown, right up to date.

The industry has seen that it is vital to protect worker safety. That has been our overriding priority, but it is also been business survival so many businesses have been doing their utmost to achieve both those, because without one you cannot have the other. They go hand in hand.

Keeping those sites open has taken a huge amount of dedication. People have worked extremely hard and it has come across from the discussion that this has been a whole new ballgame for everybody. The majority of people have done their utmost in extremely challenging circumstances, from construction, from the very largest contractor—multi-billions of pounds' worth of turnover—to the smallest specialist contractor going into people's homes trying to carry out emergency work across all four nations. Everybody has done their bit.

In response to the discussion around HSE, sometimes it is easy to forget that they, too, have been on the front line. It has been going out to work and out to sites and we have all been finding our way through this. Collectively, industry has come together to find solutions. There will be



HOUSE OF COMMONS

lessons learnt and I think next time, if there is a next time, there will be things we could do differently.

Verity and I talked about those pinch points. On some of these things, finding an answer together is better than not finding an answer at all because at least we can all step up and respond. That is all I would like to say, thank you.

Verity Davidge: The only thing I would add—and I think Mike said this during his session—is around collaboration. Paul mentioned that business groups and the TUC are currently working with the Department for Business, Energy and Industrial Strategy on safer guidance by sector. Those are the approaches that work.

Suzannah mentioned how industry came together. We had to work things out ourselves, but when we engaged with employee representative bodies it was even more positive. Probably a takeaway is that we need to do more of that in the future so when we are then syncing with HSE we know what we want from both an employer and employee perspective.

The other thing I would add is I was quite pleased to see a line of questioning around mandatory vaccinations and thoughts on that because we are talking now about what is next and where the questions are coming, and we did a lot of work with members around workplace testing. Take-up is still low. Companies are citing a range of challenges with that.

The next question we are getting, particularly through our HR and legal service, is around mandatory testing and employers are looking for guidance and support. At the moment I do not think we have any of that. We hear comments in the press and the media and it is all speculation, but I feel we need to get that right, otherwise employers will find themselves potentially in trouble. At the moment, where do we signpost them? Our message at the moment is to encourage vaccinations and no more than that, but any further guidance and support from Government we could get on that would be very much welcomed.

Mike Clancy: I would say first, for the work of the Committee and onwards, let us not stop or shift off this. HSE is as important in the recovery as it was in the crisis. Looking to the future, what I have seen HSE as an institution do and our members do is a magnificent job in fitting the regulatory scope and posture to a declining set of resources, as opposed to probably being able to identify what needs to be done and then have the resources to do it.

There is always a resource challenge in any environment and obviously in Government, but funding is everything here and the inescapable truth that HSE needs to be better funded has to be a point that comes out of this.



HOUSE OF COMMONS

Paul Nowak: I have three very quick points. First, in response to Verity's point, I declare an interest as a member of the council of Acas, but Acas has produced some new guides on vaccination testing. I do not think they are definitive, but I know that has been done on an iterative basis with the support of employers and unions and they are a useful resource.

There are two points to draw out in response to the evidence on the figures I used before and then on this issue around the enforcement management model. Sarah clarified them and the figure I used before was 172,000 contacts as Covid-related cases. They encompass social distancing concerns, spot checks and outbreaks. Within that figure there are 79,000 Covid-related contacts and Sarah said 20,000-odd concerns raised.

At one point those concerns peaked at 1,600 concerns raised in one week. The compare and contrast for me is the read-across to the figures on enforcement and prohibition notices.

I said there have been no prohibition notices; I think we have heard today that there have been two. That is not on the HSE database yet so they must be new ones. But if you take that bottom figure of 20,000 concerns raised, I am still worried that when you compare and contrast that to two prohibition notices, a one in 10,000 chance of an employer being issued with a prohibition notice to me does not seem right.

I listened very carefully to the evidence from Sarah and her colleagues and I reiterate absolutely up front the respect I have for HSE. But I believe those figures would have been different if we had a different classification under the enforcement management model.

More importantly, it is not just me. Mike's union represents health and safety inspectors. Prospect's branch said very clearly, "The decision to categorise Covid-19 predominantly a significant rather than a serious workplace issue does unnecessarily limit the options open to inspectors. This is because in the vast majority of cases it removes the ability to use prohibition rather than improvement notices and those workplaces that fail in the judgments of inspectors should face the consequences of their actions and omission".

I get the point that for many people of a healthy working age, Covid-19, whether they contract it at the workplace or anywhere else, is unlikely to result in serious harm or loss of life. But we know that over 14,000 people of working age have lost their lives and we also know that those workers do not live in isolation. They go back to their communities, back to their families and back to their households. To reiterate a point I made before in the evidence I gave, I think the HSE has that point wrong and I hope the review will result in a reclassification.

Chair: Thank you all very much indeed. Final responses: Professor Simpson, is there anything you want to respond to or anything else you would like to add?



Professor Simpson: No, that is fine, thank you.

Q183 **Chair:** Thank you very much for what you have contributed this morning. Sarah, is there anything you want to respond to?

Sarah Albon: Nothing I want to respond to. Just to reiterate—it was great, Suzannah, and thanks for acknowledging it—that our inspectors have right from the beginning of lockdown been out and, by the nature of the work, going to those places where we are most concerned that Covid-19 is not controlled. It has been great to hear it acknowledged: a first class job to try to both support but also challenge those businesses that needed challenging to do the right thing. We will conduct that review and look and challenge ourselves to see if we have all our things right.

It is important that you learn as an organisation, but I also want to emphasise what we heard from Samantha, as an extremely experienced warranted inspector leading our largest team of inspectors. She has been out on the front line herself and told us directly that she felt and her team feel they have the full range of powers available to them and also, importantly, they will and do use them when they think that is necessary to gain compliance.

Q184 **Chair:** Thank you, Sarah. You made it clear that you take responsibility for that classification decision. Can you, in a couple of sentences, explain what the process is of the decision to be made? Is there a series of committees who make a recommendation that comes to your desk? What are the mechanics of that?

Sarah Albon: It did not literally come to my desk; this is what I was trying to say. I am not trying to shirk the responsibility. I take responsibility for my whole organisation, but I am not the person with the detailed scientific knowledge best placed to look at all the evidence and reach a conclusion.

I oversee good governance where a group of people who do have that expertise and knowledge read the literature, take direct experience from the likes of Sam and her colleagues about the impact of things on the ground and bring all that together to ensure that inspectors are supported in making the right decision and having the right support around enforcement decisions.

Q185 **Chair:** Is it then Professor Curran who draws the conclusion?

Professor Curran: If I can come in there, I am obviously part of the discussion, but I do not form that final recommendation. The science plays into that wider conversation in the way that HSE works generally by drawing together the science, the policy and the regulatory issues.

Q186 **Chair:** Who does make the final recommendation?

Sarah Albon: It is a group of senior members of staff in the organisation who themselves have a background as warranted inspectors.



Q187 **Chair:** It sounds as though it is Samantha.

Sarah Albon: It is not Samantha.

Samantha Peace: If I may help here, I was one of the parties to that decision, so yes, as senior regulators we listen to the science, we listen to the guidance and views of others and senior regulators review that.

We often work as an organisation and the way we often make judgments is in peer review. We calibrate, check what we are doing is right and constantly review. We are used to that. We are used to that in lots of different footings. We constantly review to see what is possible in the workplace because things evolve all the time and our legislation is goal-setting, which has huge advantages in letting us be agile.

Exactly the same approach has been taken to this, which is why you are hearing it has been reviewed. It would automatically be reviewed by us regularly because this is such an evolving situation.

We still feel very firmly that is the right decision on the evidence available to us. It does not fetter and I need to strongly re-emphasise this. Our inspectors act with absolute integrity. They use the tools and powers available to them based on what they see on the ground in front of them and they are able to respond to a huge range of factors and situations. They are able to respond if they find somebody clinically extremely vulnerable, for example, who is in a workplace, who has been called into a workplace and questioned and elevate the situation to a classification of serious to achieve the right outcome.

It is important that everybody understands that there is nothing and has never been anything fettering our inspectors, the vast majority of whom are confident and who have lots of opportunity and will continue to do so throughout the months of the pandemic to bring back concerns, to come back and calibrate, to have decisions peer reviewed. No concerns are expressed on this.

Q188 **Chair:** How large a group is it that meets to make these decisions?

Samantha Peace: In this particular case, there would have been at least five senior regulators involved in peer reviewing the decision.

Q189 **Chair:** Is there a minuted meeting that takes place?

Samantha Peace: I do not recall a minuted meeting, but there is a lot of exchange of information and some discussions in person.

Q190 **Chair:** Leading to?

Samantha Peace: Leading to a final paper that says this—

Chair: A paper that goes to the chief executive?

Samantha Peace: Which may not have arrived on Sarah's desk, but it is the operational regulatory position that we have at that moment in time,



HOUSE OF COMMONS

that we capture and keep as our record of right. We were there and when we come to review we look at where we have been and look at any other emerging evidence that may influence that decision. Then we can change that decision or that classification if we think it is appropriate.

Q191 **Chair:** Would you be the author of that paper?

Samantha Peace: I was not the author of the paper, but the person who wrote it is another very senior, very experienced regulator of 30 years or so who works for me.

Chair: That is extremely helpful. On behalf of the Committee, I thank all of you for your very interesting evidence to us this morning and, much more than that, for the huge amount of work that you and your organisations have all done in the course of this pandemic.

We are very grateful to you for that enormous amount of work as well as for your very helpful and interesting evidence to us today. That concludes our meeting. We have overrun, which reflects the high level of interest we have found in what you have all had to say, but I now need to draw the meeting to a close.