

Summary Report

Understanding Business to Business Burden

Health and Safety Executive
Insight & Service Design
2 Southwark Bridge
London
SE1 9HS

Jigsaw Research Ltd

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1. Background and Objectives

Background

Previous research shows that while most businesses support the spirit of health and safety regulation, business surveys continue to cite health and safety as a burden despite extensive simplification work by HSE.

The evidence suggests the burdens cited by business are often driven **less** by legislation itself than by lack of confidence in interpreting it, by associated third party factors such as business to business prescription and by the fear of civil action.

Businesses often fail to distinguish between regulatory and non-regulatory requirements or third party factors, and this sense of burden leads many businesses to purchase external advice, often inexpertly.

This can lead to a range of negative outcomes:

- Disproportionate, costly and/or ineffective business action that crucially **does not** reduce the risk of injury or ill-health at work;
- Businesses relying on generic advice from third parties that **fails to** tailor strategies for risk management to their specific needs;
- A perception that the legislative requirements for health and safety are **more** complicated and burdensome than they really are.

Blue Tape

Internally, HSE defines blue tape as burdens that businesses place on other businesses in the name of health & safety (H&S), but that fail to deliver effective reduction in risks. Externally, terms such as 'private sector regulation' and 'private sector bureaucracy' can also be used to describe these burdens.

For the purposes of this research, possible sources of blue tape were delineated as:

- The H&S requirements of clients
- The H&S requirements SMEs need to fulfil when tendering for contracts
- Insurance companies
- The fear of civil litigation
- Local Authorities (as procurers)
- Advice/guidance provided by a health & safety consultant and/or supply chain assurance consultant
- Trade associations
- Accreditation schemes
- Other H&S related standards/schemes e.g. BS 18001

HSE believes that blue tape is contributing to a disproportionate approach on the part of businesses to managing their health and safety risks. Research was required to explore and test the above hypotheses.

Objectives

- To measure the scale of blue tape and which sectors and sub-sectors are most affected in GB
- To test/ validate/ disprove a range of hypotheses to further build an evidence base
- To deepen understanding of different drivers behind blue tape (e.g. supply chain related, insurance requirements, fear of civil litigation, etc.)
- To establish the 'real life' business impacts of different aspects of blue tape on SMEs – including what the practical impacts are on a business's approach to risk management
- To understand where businesses perceive H&S to be a business burden versus H&S being of value and providing benefits
- To understand areas where HSE may be able to reduce the impact of blue tape on SMEs

2. Research Methodology

The research approach was comprised of three consecutive phases.

Phase 1: Exploratory Depth Interviews

The primary aim of Phase 1 was to inform the design and content of the Computer Aided Telephone Interview (CATI) questionnaire used in Phase 2. This phase comprised:

- 9 x 1 hour in-depth interviews with SMEs in the Construction sector
- 1 x 30 minute in-depth interview with a large business within the Construction sector
- 1 x 30 minute in-depth interview with a H&S consultant serving the Construction sector

Please note: The Construction sector was chosen as previous research indicated that this sector was affected by blue tape.

Phase 2: Quantitative Survey of SMEs

The primary aim of Phase 2 was to measure the scale of blue tape and to identify which sectors are most affected. Also, to determine which sectors should be the focus of Phase 3.

Phase 2 comprised 1400 x 5 minute CATI interviews with a senior person within the SME with overall responsibility for H&S. The survey provides an overview of the blue tape burden imposed by H&S across a broad cross section of SMEs of all sizes, and from a range of Standard Industrial Classification (SIC) 2007 codes.

Phase 3: Deep Dive Interviews in Targeted Sectors

The aim of Phase 3 was to holistically explore and understand what businesses are doing around H&S, how much of a burden it poses, what the drivers of that burden are and the role of blue tape within this.

Phase 3 comprised qualitative sector deep dives in five sectors which from the quantitative survey self-identified as having more sources of blue tape resulting in greater impacts on the H&S policies and procedures within their businesses;

Construction, Education, Human Health & Social Work, Wholesale & Retail, and Administration & Support Services. Within each of the chosen sectors the following was undertaken:

- 6 x 1 hour in-depth interviews with SMEs (Total 30)
- 1 x 30 minute in-depth interview with a large business (Total 5)
- 1 x 30 minute in-depth interview with a H&S consultant serving the sector (Total 5)
- 1 x 30 minute in-depth interview with another organisation involved in supply chain assurance, e.g. a trade association (Total 5 which were 2 x trade associations, 1 x consultancy supporting SMEs to achieve accreditations such as CHAS, ISO14001, OHSAS18001, ISO9001:2000, 1 x consultancy providing fire safety, asbestos & PAT services, 1 x consultancy providing H&S services, insurance brokering & e-learning)

3. Main Findings

In the survey, the majority of businesses (70%) do not agree with the statement that H&S places a big burden on their business; in addition, the majority (82%) agree with the statement that the policies and procedures they have to have in place are sensible and proportionate relative to the H&S risks within their business. Reflecting this, only one third (29%) of businesses spend any time on H&S on a weekly basis and a further one third (32%) spend less than one day per month on H&S. Blue tape does not appear to be impacting most businesses.

However, there are a significant number of businesses (30%) who agree with the statement that keeping on top of H&S places a big burden on their business. On specific aspects of blue tape, these SMEs are more likely than other businesses to feel that:

- The policies and procedures they have to have in place are excessive and disproportionate
- Taking responsibility for H&S seems like more and more paperwork with no obvious H&S benefit
- There is no real link between what they have to do for H&S and keeping employees safe

This does indicate that where H&S burden is experienced, blue tape is driving this, at least in part.

The main drivers of blue tape burden appear to be:

- Fear of civil litigation
- Insurance companies
- Client requirements

The role of each of these in driving blue tape burden is outlined below.

Fear of Civil Litigation

The fear of possible civil litigation is a driver of H&S activity in many businesses; almost three quarters (74%) of SMEs in our sample agreed that a lot of what they do around H&S is to protect themselves from being held liable for any accident or injury that occurs to an employee or member of the public. The threat of civil litigation is a driver of H&S activity across all industry sectors and sizes of SME. Being held liable for a serious H&S incident was perceived as having potentially catastrophic consequences for the SME; essentially it was felt it could mean the end of the business. From the qualitative research we know that the possible threat of civil litigation is certainly not the only reason to engage with H&S; duty of care drives sound practices in many businesses. However, it can be the scary monster in the corner of the room and as such can influence both their actual policies and practices and also, very strongly, the lengths they go to ensure all the 'paperwork' is in place.

Insurance Companies

Insurance companies have an impact on H&S policy and procedures for 74% of SMEs, with 34% experiencing some impact and 40% experiencing a big impact. From the qualitative research, for many SMEs the impact of the insurance company's requirements is indirect rather than direct. Having insurance in place is seen as an essential protection against the possible consequences of civil litigation. However, there is a fear that, given the slightest excuse to do so, the insurance company may refuse to pay out. This gives SMEs a very good reason to ensure that all of the 'paperwork' is in place; if SMEs can demonstrate that they have the correct policies and procedures in place, this reduces the 'wriggle' room for the insurance company and is perceived as making it less likely they will not honour the claim.

Client Requirements

Client requirements have an impact on H&S policy and procedures for 73% of SMEs, with 27% experiencing some impact and 46% experiencing a big impact. From the qualitative research, ensuring good practice around H&S down the supply chain is hugely important to contractors, be these private sector companies or public sector bodies, e.g. Local Authorities. At one level this was regarded simply as good practice; one of the many responsibilities a business has to fulfil alongside its core activity. However, contractors were also highly cognisant of the threat a significant H&S breach posed to their reputation and commercial position. This threat came from a number of sources; mainstream media, social media, local press, word of mouth – all were felt to have the power to inflict significant damage. This led contractors to feel justified in imposing H&S requirements on sub-contractors and to them taking steps to ensure any sub-contractors they did use met certain H&S standards/criteria. These could be extensive, and could include membership of accreditation schemes or other H&S management schemes, documentation outlining policies and procedures and audits of their business.

Blue tape can place considerable emotional and administrative burdens on SMEs, deriving both from a fear of civil litigation and pressure from external bodies.

The *emotional burden* was largely driven by the need to ‘make sure you are covered’. It arose out of the sense that responsibility for H&S lay with the SMEs, and that they would be held accountable for any incidents that did occur. Should an accident occur, they perceived the onus will be on them to prove they had everything in place and so they need to ‘make sure they are covered’. This leads to SMEs taking pre-emptive action; putting processes in place to ensure they are protected from potential trouble. The sense of burden can be compounded by a lack of certainty over what ‘the rules’ are, i.e. what H&S legislation requires of them. SMEs can find it difficult to establish what exactly they need to do around H&S and what is sufficient; they do not believe there is one, comprehensive source of reliable information on H&S. The fear of the possible consequences and the uncertainty around the ‘rules’ are a powerful double whammy that can leave businesses feeling vulnerable and with a constant sense that H&S is burdensome.

The *administrative burden* arose out of the need to make sure all of the ‘paperwork’ was in place; this was important, as SMEs need to be able to demonstrate that they have all the correct policies and procedures in place, and that staff are aware of them. The feeling is that if an incident does occur and they cannot evidence their policies and procedures, SMEs are leaving themselves open to being deemed liable. So, again this is about “making sure they are covered”.

The role that the main drivers of blue tape burden play, as well as how the burden manifests itself, differs depending upon how much autonomy the SME has over its H&S policies and practices.

Autonomous SMEs are largely independent when it comes to H&S policies and procedures. Accountability sits within the SME and on the shoulders of the person deemed responsible for H&S within the organisation. Knowledge and expertise around H&S is highly variable, depending upon the background of the person responsible as well as their inclination to engage with H&S. In addition, the approach taken to H&S within these SMEs is also highly variable, ranging from those who take it very seriously to those who are somewhat cavalier. These SMEs tend to be less confident that they are ‘getting it right’ around H&S as they are not being overseen/checked. From our survey, around 30% of SMEs are autonomous.

Directed SMEs are accountable to one or more external bodies when it comes to H&S, including commercial clients, Local Authority clients, other funding bodies (e.g. Education Trusts, NHS Trusts) and regulatory bodies. These bodies can and do make demands on the SME around H&S, and can be the biggest driver of H&S practices within the SME. From our survey, around 70% of SMEs are directed.

Both autonomous and directed SMEs exist across all sizes and sectors.

In autonomous SMEs, the main burden of H&S is emotional, driven by the belief that they could be held accountable should a H&S incident occur, and exacerbated by the fear of civil litigation. Autonomous businesses wanted to ensure they could demonstrate they had done all they reasonably could to guard against an accident, and so policies and procedures were documented, risk assessments done, accidents recorded, staff training done and logged, etc.

This could result in autonomous businesses engaging in behaviours specifically designed to 'cover themselves', such as getting members of staff to sign policies, procedures and exclusions so that if something does happen the employer will not, it hopes, be held responsible.

The sense of exposure can be compounded by a lack of certainty over what 'the rules' are. Autonomous businesses can find it difficult to establish what exactly they need to do around H&S and what is sufficient. The fear of the possible consequences and the uncertainty around the 'rules' can be a powerful double whammy that leaves businesses feeling vulnerable.

In conclusion, in autonomous SMEs, where blue tape did exist it appeared to be largely driven by fear of civil litigation compounded by a lack of certainty around 'the rules'. There was little evidence that fear of litigation was driving excessive H&S practices in autonomous SMEs, but it appeared to be working to ensure that H&S practices were reviewed, monitored and recorded. The main burden was the emotional one – the fear that they would be shown to be lacking in the event of an incident.

Directed SMEs are operating in a more complex environment where the feeling of accountability for H&S was spread across a number of bodies. These bodies (clients, funding bodies, regulators, etc.) were concerned with protecting themselves from the potentially serious reputational and/or commercial damage that could result from a significant H&S breach. They made significant demands on the SMEs operating down the supply chain.

This manifested itself in the requirement to record/document/evidence that the correct H&S policies and procedures were in place and being adhered to. It could also result in the requirement to obtain particular accreditations/certifications and/or to demonstrate that staff had undertaken particular training. All of this could place a considerable administrative burden on the SME. And there was some evidence that this could become a workstream in its own right, separate from H&S 'on the ground'.

There was no evidence to suggest that all of this 'paperwork' was being done at the expense of H&S 'on the ground'. Rather the SMEs are accommodating this extra workload using a range of methods; some sub-contract it to a H&S consultant, others employ someone full or part time to do it and in other SMEs, the owner/MD shoulders the burden at the expense of other business related or personal activities.

There was also evidence of excessive 'on the ground' practices, particularly in Construction, but also to a degree in Education.

Thus, in the more directed SMEs there is evidence of blue tape burden, driven by the need for bodies further up the supply chain to protect themselves from reputational/commercial damage in the wake of a serious H&S breach. SMEs operating here face not only the possibility of direct civil litigation, but also the threat of sanctions from the bodies to which they are answerable.

In all of this, H&S legislation can seem somewhat beside the point: compliance with the legislation can seem insufficient. All businesses, large and small, are operating in a societal context where it is perceived there is no longer such a thing as a straightforward accident; responsibility for any incident leading to harm can/must be assigned somewhere – someone is to blame and can/must be made to pay. Thus, businesses across all elements of the supply chain can be quite heavily engaged in the process of making sure they are not the one held to account.

Outside of the Construction sector, HSE itself is rarely mentioned spontaneously by SMEs and it seemed that HSE does not play a prominent role for many SMEs. There seemed to be little understanding of the role of HSE or of its relevance to them, either as an enforcer of H&S legislation or as a source of information or guidance on it.

H&S consultants and/or supply chain consultants also have an impact on H&S policy and procedures for 49% of SMEs (with 29% experiencing some impact and 20% experiencing a big impact) and, to a lesser degree, trade associations, 41% of SMEs experiencing an impact on H&S policy and procedures (with 23% experiencing some impact and 18% experiencing a big impact). H&S consultants and trade associations appear to be playing a role in helping SMEs to cope with the H&S burdens placed on them by blue tape.

Competent H&S Consultants can reduce both the emotional and the administrative burden by providing H&S expertise and guidance, conducting H&S audits/inspections, preparing H&S policy documents, producing risk assessments and helping SMEs achieve accreditations such as SafeContractor or ISO 18001.