

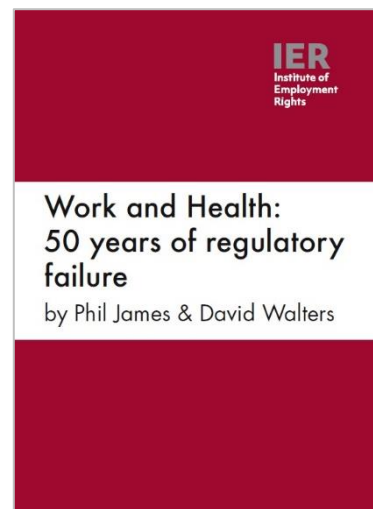
## Work and Health: 50 years of regulatory failure

Published July 2022

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Available at:

[https://tinyurl.com/IER-  
WorkAndHealth](https://tinyurl.com/IER-WorkAndHealth)



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**The 19th of July 2022 marks 50 years since the Robens committee (led by Lord Alfred Robens), published and presented to Parliament its landmark report. Half a century on, the IER has produced a book, 'Work and Health: 50 years of regulatory failure', critiquing the current regulatory framework for health and safety at work in the UK.**

The anniversary of Robens will no doubt be seen as an opportunity to extol the virtues of the Robens Committee's analysis, defending the fundamental soundness of its prescriptions and that of the framework of law to which it led. Our experts take a radically different view, arguing that the recommendations of the Robens Report were made on the basis of a flawed analysis of the 'problems' that existed with the way in which work health and safety was then regulated.

In putting forward an alternative perspective, the IER's book argues that any analysis needs to encompass not only a focus on reducing the direct harms caused by work through work fatalities, injuries, and ill health, but also on its wider adverse and unequal effects on health stemming from:

- low pay
- inadequate access to sick pay and compensation
- a lack of decent work more generally

The authors of the book, Phil James (Professor of Employment Relations at Middlesex University) and David Walters (Emeritus professor in the School of Social Science at Cardiff University) argue for a broader, societal, understanding of health and safety regulation, making the case for **"radical reform of the type...needed to ensure that decent work becomes the norm across the economy and that the scale and inequity of harm caused both directly and indirectly by work are addressed meaningfully."**

**In June, the International Labour Organisation (ILO) added safety and health as a fundamental principle and right at work, in what was a major breakthrough in occupational health and safety for workers.**

**The analysis in this new publication, 'Work and Health: 50 years of regulatory failure' builds on three fundamental assumptions:**

- **In all societies people in paid work have a basic human right to expect that their health is not harmed by it and therefore those who are responsible for controlling work activities, and thereby benefit from them, have legal obligations to ensure this right is protected.**
- **This right can only be realised in practice if workers have a capability to exercise it meaningfully.**
- **When this right is formally recognised (such as by regulatory standards) but then impinged upon, there are adequate means of responding to this on the part of workers and their representatives and unions, and the state, through its regulatory inspectorates and the engagement of the courts.**

**In this sense the IER publication mirrors Michael Marmot's important observations on the way in which patterns of ill health are shaped by inequities in power, money and resources and the nature of the employment arrangements under which work is undertaken.**

Key findings of 'Work and Health: 50 years of regulatory failure' include:

- The regulatory system introduced by the Robens Report in 1972 and set in place by the Health and Safety at Work Act 1974, was in many ways a major departure from previous approaches. It changed the way in which the requirements of regulation and the roles of regulatory agents, employers and workers were conceived in the operation of future arrangements for improving work health and safety practices.
- However, there remains a multiplicity of weaknesses in work health and safety regulation in the UK, providing strong evidence of the failure of the reforms of the 1970s to deliver. The reasons for this failure are to be found in the assumptions behind the Robens recommendations and the weaknesses in the regulatory standards that followed them.
- The regulatory standards ushered in by Robens were especially vulnerable to manipulation by a succession of governments espousing a neo-liberal political ideology very different from the ideology prevalent at the time of the reforms.
- These failures cannot be properly understood without situating them in the wider context of change that has occurred in UK society and its political economy over the few decades.
- The continued presence of preventable harm in reported data is a consequence of this political context, but these only provide a very partial picture of the true scale of work-related harm. There is ample evidential data on the health effects of low-income, job insecurity and work-life imbalance, all of which provide evidence of how work contributes more widely to an unjust and unacceptable social gradient in health.
- For several decades, there has been a form of managerialism in work health and safety which is all too often narrowly focused on safety behaviour (placing the responsibility on workers) and unquestioning assumptions about corporate interests being shared by everyone.
- Beyond large workplaces, there is little state support for the representation of workers interests, despite the development of successful models of such support in other countries.
- Although there have been no overt efforts on the part of the state to entirely dismantle corporatist institutions for consultation on health and safety, as there has been in other areas, an effective marginalisation of both the presence and effectiveness of worker representation within these structures has occurred.
- Repeated rounds of government cuts to arrangements for securing compliance with regulatory standards and an associated demand for 'business friendly' approaches have served to undermine the capacity and willingness of HSE, in combination with local authorities, to regulate work health and safety effectively.
- There is no evidence that current approaches advocated and adopted by both the Government and the HSE to 'enforcement' significantly compensate for the 'enforcement gap' flowing from these reductions.

Some recommendations, noting the ILOs recent decision to make occupational safety and health a fundamental principle and right at work:

- The current regulatory duties held by employers should be applied to persons in control of businesses and extended to all those labouring on their behalf, taking account of forms of work and employment organisation in which conventional employee/employer relationships are absent.
- Duties to manage work health and safety effectively, with access to competent support and taking account of workers voice, could be strengthened, and made to deliver a more holistic conception of what regulating the prevention and amelioration of harms arising from work encompasses.
- There should be radical enhancement of the collective rights of workers (and hence the capacity that they and their representatives have to advance their own interests and challenge those of the organisations for whom they labour at the workplace, enterprise, sector, and national levels).
- There should be the provision of a platform of minimum employment rights that, to paraphrase Marmot, provide workers with access to fair and decent income, greater employment security, treatment based on respect and personal dignity, and work that reflects these principles.
- Action is needed to strengthen regulatory provisions on the representation and consultation of workers over work health and safety matters. This should include:
  - measures enabling representatives to issue provisional enforcement notices and to stop dangerous work.
  - Actions to facilitate the representation of workers in small enterprises and those working for contractors.
  - Improved rights to paid release for training, and trade union access to workers with health and safety issues, regardless of whether or not they work for an employer who recognises unions for the purposes of collective bargaining.
- Action is also required to strengthen the independence and democratic nature of HSE governance.
- Reviews should be undertaken of the continued appropriateness of the current delegation of enforcement in large parts of the economy to inadequately resourced local authorities and whether a closer integration should be established between health and safety and wider employment regulation.
- The resourcing of the HSE, as well as local authorities, needs to be expanded so that it is sufficient to support a radical expansion in inspections and enforcement activity, and to remedy damage that has been done to wider aspects of the organisation and its work as a result of years of underfunding.
- More innovative strategies need to be deployed by regulatory authorities to enhance substantive compliance. Not as an alternative to 'traditional' inspection, but as a supplement to it.
- There is a need for more robust inquiry into how some of the 'big picture' problems of the present system, as outlined in the publication, might be best addressed.