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RUBBED OUT

An evidence review into the deadly failures of the Health and Safety Executive (HSE) throughout the pandemic

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The full report is available online at: <https://www.hazards.org/infections/rubbedout.htm>

Executive summary

- The Health and Safety Executive (HSE), faced with thousands of reported workplace outbreaks and hundreds of Covid-19 deaths, deferred to public health agencies, outsourced investigations, downplayed risks, abandoned transparency and embarked on a near complete enforcement holiday.
- HSE's confidence that Covid-19-related enforcement is unnecessary, as in almost all cases employers are uncharacteristically responsible and responsive, is ill-founded. There have been widespread criminal failures by employers to meet minimum legal duties on risk assessments, social distancing and PPE. Concerns raised by workers have been routinely ignored or resulted in victimisation of whistleblowers.
- The 'significant' rather than 'serious' classification for Covid-19 under HSE's Enforcement Management Model (EMM) is based not on evidence that too few workers die, but that too many of those infected survive. The ratio of deaths to infections is much lower for Covid-19 than the 'serious' rated coronaviruses MERS and SARS, but the total number of work-related Covid-19 infections and deaths is orders of magnitude higher. Covid-19 also has much more serious long-term effects, including Long Covid, chronic lung disease and cardiac damage. HSE's classification reflects a flawed system rather than a credible hazard determination.
- Covid-19's Hazard Group 3 classification, for pathogens that "can cause severe human disease and may be a serious hazard to employees", under HSE's EMM should have resulted automatically in a "serious health effects" consequence descriptor. HSE did this for both its coronavirus cousins, MERS and SARS, which between them killed fewer than 2,000 people worldwide. HSE's defence of a lower "significant health effects" descriptor for Covid-19, which has killed in excess of 126,000 in the UK alone, is indefensible.
- Rather than establishing a unique Covid-19 specific Enforcement Management Model classification for Covid-19, HSE has instead slotted it under the EMM's heading for "incidental exposure to micro-organisms," where these biological agents are given a blanket, lower "significant health effects" designation. This reflects a structural flaw in HSE's classification system, incapable currently of dealing with the impact of a pandemic in the workplace or high levels of community and workplace transmission. The model assumes the risks are primarily in health care and labs, but Covid-19 affects a broad range of sectors.
- HSE has largely abandoned transparency on its Covid-19 policy development and priorities. Throughout the pandemic it has held no open board meetings and published no agendas, minutes or papers for any of its meetings. When *Hazards* obtained minutes of its closed board meetings through freedom of information requests, HSE redacted most of the content. Sections on HSE's reworked 'key priorities', 'revised business plan' and measures to 'provide an effective regulatory framework' were blanked out in their entirety.
- HSE kept under wraps critical weekly reports on the sectors and geographical areas hit by Covid-19 outbreaks. HSE had assembled a critical metric which could have informed Covid policies and prevention priorities deployed by industries, unions and other concerned agencies. But HSE kept it to itself. After *Hazards* uncovered the existence of the weekly updates, the regulator said it was discontinuing them. The withheld reports revealed 'non-high risk sectors' had the highest number of outbreaks, a pattern not anticipated or addressed in its enforcement model and approach.

- A *Hazards* analysis of HSE enforcement and dangerous pathogens policy documents reveals a hazard classification system dangerously ill-fitted to rating Covid-19 has resulted in the risks from Covid-19 at work being downplayed. It has led to an inadequate investigation and enforcement strategy, with risks as a consequence not effectively mitigated.
- While over 20 per cent of pre-pandemic concerns resulted in an enforcement notice, that figure for Covid-19 dropped to less than 0.2 per cent. Firms with poor safety records and experiencing repeated large-scale outbreaks were also included in a virtual enforcement amnesty. Both these factors under HSE's EMM were supposed to increase the likelihood of enforcement action, including prosecutions.
- A *Hazards* review of the 910 'stop work' prohibition notices issued by HSE from 25 March 2020, when the Coronavirus Act took effect, until 21 March 2021 found there had been three prohibition notices issued for Covid-19 related criminal safety breaches, affecting two workplaces, a construction site and an offshore platform. There have been no prosecutions initiated by HSE, despite widespread evidence of related criminal breaches of safety law.
- There have been several thousand workplace outbreaks affecting a range of sectors, with retail, offices transport, mail delivery, construction, first responders and manufacturing all experiencing hundreds of outbreaks, some seeing hundreds of workers infected. HSE has stepped back from its regulatory mandate and is relying on public health agencies for intelligence. HSE had involvement in responses to only 1-in-8 known workplace outbreaks.
- Work in sectors and occupations with a high risk for Covid-19 exposure is associated with a higher risk of related infection, hospitalisation and premature death. Rates of severe or fatal Covid-19 at least twice as high in transport, the social and education sectors and health care than for workers in 'non-essential' jobs. If you are employed in one of these predictably risky jobs, there is a predictably elevated risk of dying. If you work from home or are in a professional grade with greater autonomy over how and where you work, there is not. In general, this holds after accounting for socioeconomic factors.
- An HSE review of Covid-19 classification due to be completed by the end of April is answering the wrong questions, by reviewing emerging scientific evidence. The problem is not a paucity of evidence, it is that the classification system used by HSE is no longer fit-for-purpose. HSE is treating Covid-19 – a Group 3 pathogen that can cause “severe disease” and “serious hazard to employees” - as an incidental risk at work when it has, in all probability, killed thousands.
- There are genuine grounds for concern that HSE concocted arguments of convenience to define a pandemic in the workplace as something less than 'serious', to fit a narrative decided elsewhere by government. In doing so workers were sacrificed. HSE wasn't keeping Britain safe. It was keeping Britain working.

