

Institution: University of Liverpool		
Unit of Assessment: UoA 20: Sociology, Social Policy and Criminology		
Title of case study: Reshaping Labour and Trade Union Policy on Workplace Safety Regulation		
Period when the underpinning research was undertaken: 2009–2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
David Whyte	Professor	2008 – present
Period when the claimed impact occurred: 2016-2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>This case study showcases the impact of Professor David Whyte's research upon the labour and trade union movement at the highest levels. Whyte's work identifies several failures of UK health and safety regulation. It maps the influence of Whyte's evidence-based proposals which set out a blueprint for a new system of health and safety enforcement, introduce legal reforms that are applicable to the changing world of work, and propose new mechanisms of compliance with international law. Those proposals featured in the 2017 and 2019 Labour Party General Election manifestos and remain embedded in the policies of both the Labour Party and the major UK trade unions.</p>		
2. Underpinning research		
<p>The underpinning research provides evidence and analysis that directly led to a number of proposals for enhancing the regulating of workplace safety in the UK. This underpinning research has been developed in close collaboration with the Institute of Employment Rights (IER) and it informs the policy proposals in the IER Manifesto for Labour Law project which provided the blueprint for Labour Party policy on the workplace. IER Director Carolyn Jones acknowledges "the central role that Professor David Whyte's research has played in developing the Institute's policy and advocacy work on workplace health and safety over the past decade....his work has driven a number of important aspects of Institute policy" and that "his findings have formed the basis of the Institute's regular research reports, contributions to government inquiries and consultations and briefings for trade unions" (corroborating source 5.3). He has been a key member of the IER Manifesto team, joining the Executive Committee in 2014. During this period, Whyte's research has underpinned a total of 13 briefings, research reports and submissions to government inquiries on behalf of the IER (see publication 3.1 and corroborating source 5.4).</p> <p>Whyte's underpinning research also provided the foundations for two North West Social Sciences Doctoral Training programme CASE studentships in partnership with the IER (2015-2019; and 2018-present), the first on UK compliance with international standards of labour law (which develops capacity for amplifying research finding 4 below), and the second on workers' rights vs shareholders' rights (which develops capacity for amplifying research finding 3 below).</p> <p>The pathways between specific findings made in Whyte's underpinning research and those policy proposals capture a broad range of regulatory interventions, including: 1 the concepts underpinning policy; 2 patterns of enforcement; 3 legal accountability; and 4 compliance with international benchmarks. Those pathways are mapped out below:</p>		

RESEARCH FINDING 1: The deadly flaws in 'risk regulation' policy.

This research established that the operationalisation of UK government definition of “high” and “low” risk work to reshape regulatory policy is based on flawed assumptions, and likely to significantly exacerbate risks in workplaces. This research finding is derived from analysis set out in publications 3.4, 3.5 and 3.6. This research finding underpins policy proposals 4 and 5 in table 1 below.

RESEARCH FINDING 2: The collapse of health and safety enforcement.

The underpinning research was based on the construction of an extensive and unique data set of Health and Safety Executive (HSE) regulatory activity generated by freedom of information requests. It found a collapse in all forms of HSE regulatory intervention and enforcement between 1997 and 2010. This research is captured in publications 3.4 and 3.5. Those research findings underpin policy proposals 1, 2, 3, 7 and 8 in table 1 below.

RESEARCH FINDING 3: The accountability gap in corporate offending.

This empirical analysis and conceptual critique of the use of fines against corporate entities forms the basis for a re-calibration of sentencing policy, proposing more effective forms of revenue-proportionate punishments, equity fines and debilitation measures. This research finding is based on evidence developed by Whyte's research in publications 3.2 and 3.3. This research finding underpins the policy proposals 6, 7, 9 and 10 in table 1 below.

RESEARCH FINDING 4: UK failure to meet standards of international law.

This research finding is based on a unique “benchmarking analysis” that UK compliance with ILO standards lags behind most other member states of both the European Union and the OECD. This finding is detailed in publication 3.1. This unique analysis shows that UK compliance with ILO standards lags behind most other member states of both the European Union and the OECD. This finding underpins the policy proposals 1, 2, 3, 8 and 9 in table 1 below.

3. References to the research

- 3.1** Moretta, A. and Whyte, D. (2020) *International Health and Safety Standards after Brexit*, Liverpool: Institute of Employment Rights, pp40. This publication was fully peer reviewed, revised and accepted for publication by the Institute for Employment Rights publications committee, comprised of leading international industrial relations and labour law scholars, senior trade union officers and professional lawyers. See: <https://www.ier.org.uk/about/who-we-are/>. (publication available on request)
- 3.2** Whyte, D. (2018) 'The Autonomous Corporation: the Acceptable Mask of Capitalism', *Kings Law Journal*, vol. 29, no. 1: 88-110. [DOI 10.1080/09615768.2018.1475847](https://doi.org/10.1080/09615768.2018.1475847)
- 3.3** Tombs, S. and Whyte, D. (2015) *The Corporate Criminal*, Abingdon: Routledge, pp216, ISBN 0415556376. (publication available on request)
- 3.4** Tombs, S. and Whyte, D. (2013) 'The Myths and Realities of Deterrence in Workplace Safety Regulation', *British Journal of Criminology* vol. 53, no. 5: 746-763, [DOI: 10.1080/03056244.2015.1113657](https://doi.org/10.1080/03056244.2015.1113657)
- 3.5** Tombs, S. and Whyte, D. (2013) 'Transcending the Deregulation Debate? Regulation, risk and the enforcement of health and safety law in the UK', *Regulation and Governance* vol. 7, no. 1, [DOI: 10.1111/j.1748-5991.2012.01164](https://doi.org/10.1111/j.1748-5991.2012.01164).
- 3.6** James, P., Tombs, S. and Whyte, D. (2012) 'An Independent Review of Health and Safety Regulation? From common-sense to non-sense', *Policy Studies*, vol. 34, no. 1: 36-52, [DOI: 10.1080/01442872.2012.740240](https://doi.org/10.1080/01442872.2012.740240)

4. Details of the impact

Whyte's research has had a profound influence on the development of policy on health and safety in the trade union movement and the Labour Party, and has provided a roadmap for the inclusion of practical and workable policy proposal that address regulatory failure and weak mechanisms of legal accountability.

Whyte's research has had a seminal influence on the IER Manifesto for Labour Law project (corroborating sources 5.1 and 5.2). His work specifically underpins the policy proposals contained on pp 50-53 of the IER Manifesto (see table 1 below). According to IER Director Carolyn Jones: "Professor Whyte's publications and his research directly led to the development of 9 of the 25 policy recommendations contained in the Manifesto and subsequently fleshed out in IER's 'Rolling Out the Manifesto' document." (corroborating sources 5.3 and 5.4).

Table 1: Specific policy proposals underpinned by Whyte's research

Para 8.22 Manifesto for Labour Law

- 1) Establishment of ILO compliant inspection and enforcement regimes;
- 2) Significant increase of HSE and local authority inspections;
- 3) Provision of government funding to properly enforce the law;
- 4) Repeal of policies prohibiting unannounced inspections to "low risk" workplaces.

Para 8.27 Manifesto for Labour Law

- 5) A new scale in sentencing guidelines to ensure that sentences reflect both the seriousness of the offence and the ability to pay;
- 6) A new tripartite standing body to review sentencing practices and guidelines;
- 7) Placing the HSE inspection and prosecution regime on a new constitutional footing that will make funding secure and enforcement policy consistent;
- 8) A new enforcement policy that places emphasis on inspectors making use of their powers and to prosecute on indictment;
- 9) Creation of a new, discrete Unit within the Crown Prosecution Service solely responsible for Corporate Manslaughter.

Whyte's research leads directly to the conclusion that a wholesale transformation of the way that the workplace is regulated is necessary, and that this transformation should encompass: a doubling of regulatory resources, the establishment of new principles to guide mandatory inspection and investigation, new ways of legislating for maximum workforce involvement, new forms of sanction for those breaching the law, and new modes of administration capable of overseeing this transformation.

According to Lord Hendy, "Professor Whyte's research findings on the current effectiveness of the law on health and safety at work (and its regulatory machinery) have been influential on the development of the subsequent Labour Party policy on work, the workplace and industrial relations" (corroborating source 5.5). As part of a team of experts assembled by the IER., his research influenced the recommendations contained in the 'Manifesto for Labour Law' and in the document, 'Rolling out the Manifesto for Labour Law' which were used as a basis for the 2017 and 2019 Labour Party Election Manifestos (corroborating sources 5.5 and 5.6). The recommendations set out in the IER Manifesto for Labour law provided the architecture of a new policy framework for the Labour Party, which, if implemented, "have the potential to transform

the way workplace safety is regulated” (corroborating source 5.5). Whyte’s contributions to round table Labour Party consultations further influenced the drafting of the 2019 Labour Party Election Manifesto (corroborating source 5.5).

The Manifesto for Labour Law framework has endured as Labour Party policy under Keir Starmer’s leadership. Former Shadow Chancellor of the Exchequer, John McDonnell MP said of the IER Manifesto, “the detailed policy proposals drawn up by a specialist group of 26 of the UK’s leading labour law experts, is exactly what is needed to create fair, just, secure, democratic and productive conditions of work.” (preface to corroborating source 5.2). Len McCluskey, General Secretary of UNITE noted on its publication: “We are delighted to support the Institute of Employment Rights’ Manifesto for Labour Law, which provides us with the policy framework we need to move forward with a more progressive agenda in 2020” (corroborating source 5.6). Mark Serwotka, General Secretary of the PCS similarly noted: “The IER’s manifesto represents a major step towards a progressive alternative that PCS is proud to stand behind.” (corroborating source 5.6). A comprehensive list of other Trade Union and Labour Party leadership testimonies to the influence of the Manifesto for Labour Law is included in corroborating source 5.6.

All of the candidates in the 2020 Labour leadership contest committed to full support of the Manifesto for Labour Law. Current Labour Leader Keir Starmer has preserved the role of Minister for Employment Rights and Protections, the cornerstone of the IER Manifesto.

Whyte’s research has played an active role in guiding opinion “in the Labour Party and wider labour movement of the critical state of health and safety law (and its enforcement) in this country, and the measures which should be taken to improve it and adequately protect workers.” (corroborating source 5.5). Indeed, “Professor Whyte’s communication and popularisation of our policy proposals has helped to increase support for IER ideas.” (corroborating source 5.3). As part of this opinion-shaping work, Whyte’s publication 3.1 was the subject of a high-profile meeting of leading lawyers and trade unionists hosted by Unite (corroborating source 5.7).

The influence of his policy work for the IER is corroborated by Frances O’Grady, General Secretary of the TUC, Christine Blower, former General Secretary of the NUT, Matt Wrack, General Secretary of the Fire Brigades Union and Mick Cash, General Secretary of the National Union of Rail, Maritime and Transport Workers, (corroborating source 5.8). The IER printed and distributed 2,500 copies of publication 3.1, to trade union members and officers in all of the major UK trade unions.

The underpinning research set out in section 2 has also impacted on international audiences, indicated by Whyte’s invitation to address a major trade union conference in Norway in February 2019. The leaders of Fagforbundet (the Norwegian Union of Municipal and General Employees), Norsk Tjenestemannslag (The Norwegian Civil Service Union), Landsorganisasjonen i Norge (the Norwegian Confederation of Trade Unions) invited Whyte to incorporate his research findings into guiding their work. At the conference Norway Prime Minister Erna Solberg and the leader of the Labour Party Jonas Gahr Støre discussed Whyte’s research findings (corroborating statement 5.9). Following the conference, the Norwegian Union of Municipal and General Employees requested and translated Whyte’s written proposals for a new system of shareholder fines (corroborating source 5.10) which has subsequently formed the focus of the union’s ongoing policy development on corporate crime.

5. Sources to corroborate the impact

Sources that corroborate the influence and impact of Whyte’s research on the work of the Institute of Employment Rights:

5.1 Institute for Employment Rights (2016) ‘Manifesto for Labour Law’, Liverpool: Institute for Employment Rights, ISBN: 978 1 906703 32 5, pp84.

5.2 Institute for Employment Rights (2018) Rolling Out the Manifesto for Labour Law, Liverpool: Institute for Employment Rights, ISBN: 978 1 906703 40 0, pp72.

5.3 Personal testimony from Carolyn Jones, Director, Institute of Employment Rights.

5.4 List of policy documents authored by Whyte and commissioned by the Institute of Employment Rights

Sources that corroborate the influence and impact of Whyte's research on Labour Party and UK trade union policy:

5.5 Personal testimony from John Hendy QC, Labour Member of the House of Lords.

5.6 Statements testifying to the reach and influence of Whyte's research by leaders of the major UK trade unions and the Labour Party front bench team.

5.7 Publicity flyer for 'Health & Safety at Work after Brexit', meeting hosted by Unite the Union to discuss Whyte's research.

5.8 Whyte, D (2015) The Mythology of Business, Liverpool: Institute of Employment Rights, ISBN 1906703271, pp45.

Sources that corroborate the international influence and impact of Whyte's research on trade union policy:

5.9 Personal testimony from the Mette Nord, President of Fagforbundet (Norwegian Union of Municipal and General Employees (375,000 members)

5.10 Whyte's policy proposal on 'investor fines' for health and safety offences translated into Norwegian and published in *Agenda Magasin*, 2nd March, 2020