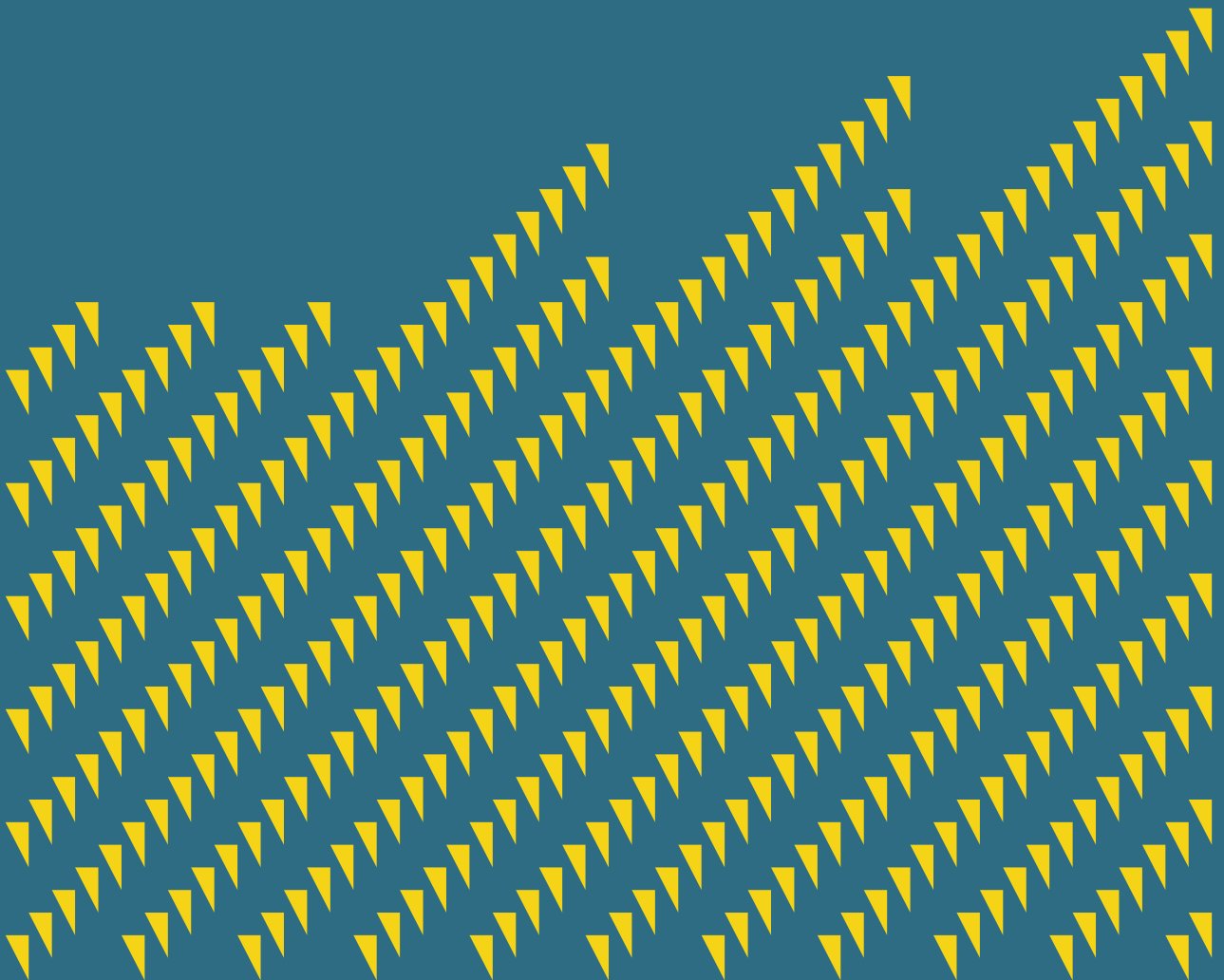UNBOUND

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Failed safe?

Enforcing workplace health and safety in the age of Covid-19

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November 2020

Acknowledgements

This research uses data from an online survey conducted by YouGov and funded by the Health Foundation. The total sample size was 6,061 adults, and fieldwork was undertaken between 17-22 September 2020. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18-65) according to age, gender and region. The figures presented from this survey have been analysed independently by the Resolution Foundation and as a result, the views expressed here are not necessarily those of YouGov or the Health Foundation.

Summary

Some workplaces have long been recognised as risky: factories, construction sites and those where hazardous materials or processes are used, to name but a few. But since Covid-19 gripped the UK in spring this year, all workplaces where people come into contact with one another have become potential sites of harm. As a result, a risk to health at work is no longer a relatively rare experience, but instead a majoritarian concern. In schools and shops, factories and warehouses, when driving buses or caring for others, workers today encounter a health threat the scale of which employers and the health and safety system have never had to address before.

So just how risky do employees think their workplaces are? Using new data from a representative survey of 6,000-plus UK working-age adults (aged 18-65) conducted in September 2020 (the point at which plausibly the largest share of the workforce was physically 'at work' since March this year), we find worrying levels of concern. Nearly half of employees (47 per cent) that spend at least some of their time in the workplace (the group we largely analyse as they have a factual basis for their assessment) rate the risk of Covid-19 transmission at work as fairly or very high. And while the vast majority (90 per cent) of employers have taken multiple steps to mitigate that risk, more than one-third (35 per cent) of employees still report being actively concerned about catching the virus on the job.

Moreover, there are key differences in the level of concern between groups. To begin, we find that employees in forward-facing workplaces such as health, education, shops and hospitality have the highest level of active concern (although it is noteworthy that 33 per cent of workers 'behind-the-scenes' in factories, warehouses and the like are also anxious despite viewing their workplaces as relatively low risk). Perhaps unsurprisingly, we find that black, Asian and minority ethnic workers have a higher-than-average rate of concern (47 per cent compared to 34 per cent of their white counterparts), as do those living in a household where someone (possibly themselves) is clinically vulnerable (45 per cent compared to 34 per cent of workers in non-shielding families). But much less intuitively, we note that young workers (aged 18-24 years) are one-third more likely to be actively concerned about Covid-19 transmission at work than older workers (aged 55-64 years), a finding that is explained almost entirely by their over-representation in what are today's new higher-risk workplaces.

Personal characteristics also play a key role in determining whether an employee raises a health and safety issue when they have one, or receives an adequate response. We find that just over half (52 per cent) of workers in the lowest pay quintile have flagged their Covid-19 concern, compared to almost three-quarters of the top earnings quintile (72 per cent). Likewise, younger workers are around half as likely to raise their concerns

as those aged 55-65 (36 per cent compared to 67 per cent), in part because they work in sectors of the economy where jobs are most under threat. The lower level of power some workers have is also reflected in their ability to effect change. For example, when low-paid employees do raise an issue, 33 per cent see no resolution compared to 23 per cent of the high paid.

Put this together with the fact that our survey shows close to half (47 per cent) of all employees have no knowledge of where to raise a health and safety concern outside their organisation, and the case for robust state action to ensure that workplaces are 'Covid-secure' is clear. So how have the Health and Safety Executive (HSE) and local authorities (the bodies responsible for ensuring employers comply with health and safety legislation) addressed the new and wholesale workplace risk presented by Covid-19? We show that the HSE was slow-off-the-mark to send inspectors out to workplaces to ensure they were safe, though it has subsequently ramped up remote 'spot checks' on employers as well as physical inspections of business premises. While there is currently no publicly available data on the pandemic performance of local authorities, we also note that both the HSE and local authorities entered the crisis hollowed out: despite a top-up of £14.1 million in funds from the Government this May, the HSE's total operating budget for 2020-21 is equal to £100 for each workplace for which it is responsible, compared to £224 in 2010-11.

Beyond capacity issues, Covid-19 has brought other systemic issues to the fore for the health and safety system. The risk-based enforcement model that the HSE has used for two decades relies on good intelligence, enabling it to direct both its own and local authority efforts at firms where the risk of non-compliance is known to be highest. With almost every workplace now a potential site of risk, the HSE and local authorities have had to re-gear and find new ways of establishing where the worst problems lie. Efforts in this respect have been sophisticated: for example, the HSE targets firms with a large share of contingent workers, recognising that those on insecure contracts are more likely to work when ill because of financial pressures. However, little credence appears to be given to the (unorganised) employee voice in this process, missing a key source of intelligence in what remains a rapidly evolving crisis.

Finally, we note that the health and safety system has been reluctant to use its strongest enforcement tools thus far to tackle poor practice. In some respect this is understandable: working collaboratively with employers to help them comply with new and shifting guidance, and giving them the benefit of the doubt when they fall short, is perhaps fair in current conditions. But the fact that Covid-19 has been designated a 'serious' and not a 'significant' risk in the workplace by the HSE constrains action that can be taken when non-compliance is detected, as any enforcement must be proportionate

to the risk. We question whether this is appropriate, not least because it is based on the impact of contracting Covid-19 on a 'healthy worker' and not the 'average worker', as well as failing to take account of the health risk of outbreaks at work on the wider population.

Overall, we recognise that the pandemic has been a huge challenge to employers and the systems designed to keep employees safe at work. Serious efforts have been made to adapt at speed, but Covid-19 has exposed the weaknesses in the general approach we take to labour market enforcement in the UK. Regulation (especially health and safety) is routinely depicted as a bugbear for businesses, choking off innovation and unnecessarily absorbing resources. But in today's new world, without robust enforcement, workers and the general public are left exposed, and workplaces cannot function efficiently. If ever there was a moment when economic activity goes hand-in-hand with strong health and safety enforcement, that time is now.

Workplaces that have conventionally been viewed as low risk are rated very differently today

When most people went to work in February this year, few probably gave health and safety in the workplace much thought. Beyond the classically dangerous jobs (on building sites, in factories or on oil rigs, for example), the workplace is rarely viewed as a potential site of harm. Today, all that has changed: the Covid-19 pandemic means that any place where people interact with others now comes with a health risk and major outbreaks of the virus at work have brought the issue to the fore. In this briefing note we explore how this new and wholesale workplace risk is being managed – something that is critical to get right if virus transmission is to be reduced, and economic activity is to flourish in the Covid-19 age.

We begin our exploration of the issue with Figure 1. Using data from a representative survey of 6,000-plus working age adults (aged 18-65) fielded one week before the Government advised all those who could work from home to do so once again (in other words, at a point when the share of employees back in the workplace was plausibly as high as it has been since March this year),[1] this shows how prevalent a sense of risk in the workplace has become.[2] While close to half (49 per cent) of employees who are back in the workplace rated the ongoing risk to their health and safety from Covid-19 as low or

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1   According to the ONS, Business Impact of Coronavirus (Covid-19) Survey (BICS), Wave 14, 58.9 per cent of the workforce in private sector businesses that have not stopped permanently trading were working from their normal workplace for the period 7-20 September 2020.
2   While a subjective assessment of workplace risk by the employee clearly cannot be conflated with an objective risk assessment by an expert inspector, we take the view that there is sufficient public understanding about Covid -19 transmission and steps required to reduce that risk for the worker perspective presented in this briefing to be valid. Moreover, it is worth noting that there is an active academic debate on whether risk can ever truly be objectively assessed. See, for example: J Zinn (ed.), Social theories of risk and uncertainty: An introduction, Blackwell 2008.

non-existent, a similar share (47 per cent) believed that the risk of virus transmission was fairly or very high (with the remaining 4 per cent report they do not know).[3]

FIGURE 1: **Nearly half of employees in the workplace rate the risk of Covid-19 transmission as high**

Proportion of employees reporting risk to health and safety in the workplace due to transmission of Covid-19, by workplace type: UK, 17-22 September 2020
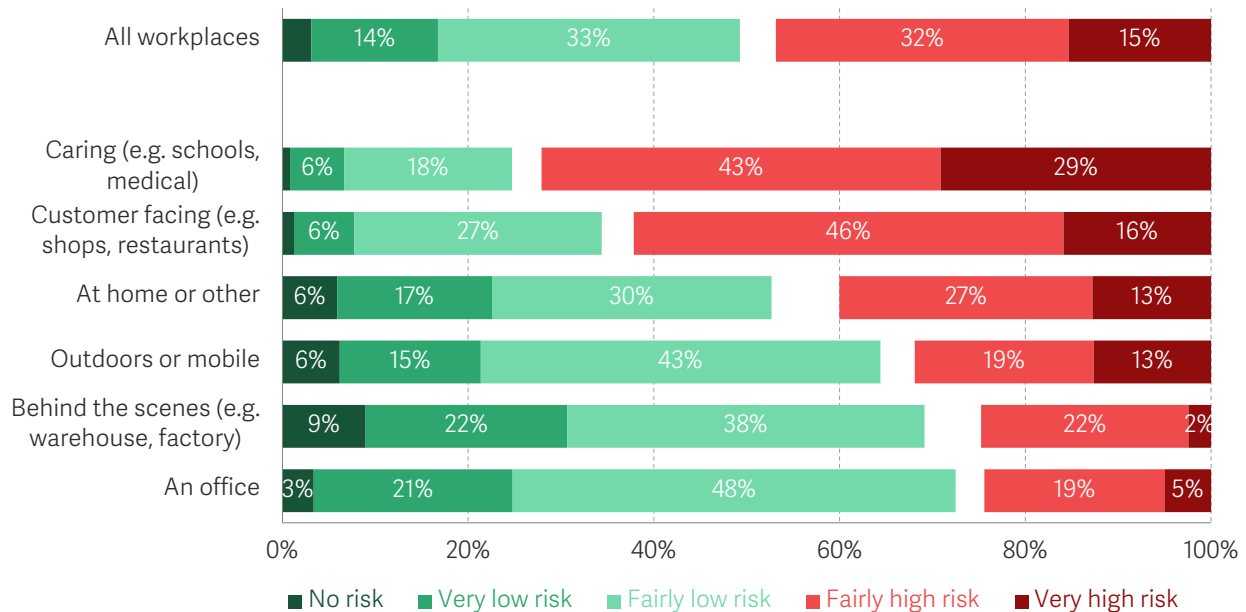
NOTES: Base = all UK adults aged 18-65 with an employee job and working at least part of the week in the workplace (i.e. not exclusively working from home or fully furloughed) (n=2,160). Base by categories: caring (e.g. schools, medical) n=725; customer facing (e.g. shops, restaurants) n=260; at home or other n=220; outdoors or mobile n=112; behind the scenes (e.g. warehouse, factory) n=170; an office n=673. The gaps in the middle of each set of bars include people who responded 'don't know'. These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

Unsurprisingly, certain types of workplaces are perceived as being especially high risk when it comes to virus transmission.[4] Those working in sectors such as education, health and caring, which involve a great deal of contact with others, expressed the most worry: close to three-quarters (72 per cent) of those working in these sectors rated their workplace as fairly high or very high risk. Likewise, many workers in other forward-facing roles viewed the workplace with trepidation: more than three-fifths (62 per cent) of those working in jobs in retail and hospitality – workplaces that have conventionally been viewed as low risk when it comes to health and safety – indicated they are worried about contracting Covid-19 at work. But even in more 'closed' workplaces such as warehouses

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3   Throughout this briefing, we report survey results for employees that spent at least part of the working week back in their normal workplace (i.e. those that have a factual basis for their assessment of workplace risk). The sole exception to this rule is Figure 9.
4   These results based on workers' perceptions match ONS findings that health, caring and education occupations, for example, are higher risk on the objective measures of physical proximity to others and exposure to disease. See: Office for National Statistics, Which occupations have the highest potential exposure to the coronavirus (COVID-19)?, May 2020.

and offices, the risk of Covid-19 transmission is also seen as material: 29 per cent of those working in factories, warehouses and the like rated their risk as high, for example, while close to one-quarter (24 per cent) of office workers felt the same.

The vast majority of employers have taken steps to ensure workplaces are 'Covid-secure'

The picture of risk in the workplace presented above largely inverts the pre-pandemic view that premises such as shops and offices, pubs and restaurants were low-risk environments when it came to health and safety, requiring only light-touch regulation or oversight. Under UK law, the responsibility for ensuring the workplace is safe falls squarely on the employer. They must assess risks in the workplace, consult with employees on health and safety issues and take all steps that are reasonably practicable to protect workers and those in close contact with the business from harm.[5] Since May 2020 (the point at which non-essential workers were encouraged to go back into the workplace), the Government has issued extensive guidance to firms to explain how workplaces can be made 'Covid-secure'.[6] While this guidance lacks legal force, it has been suggested that so long as employers follow the suggestions laid out by the Government, they will be deemed to have acted lawfully.[7]

According to employees, the vast majority of firms appear to have taken their responsibilities seriously in the face of the pandemic. As Figure 2 makes clear, only 2 per cent of employees back in the workplace believe their firm has taken no steps to protect them and their colleagues from transmission of the virus. Most commonly, employers have increased handwashing facilities and/or provided hand sanitiser (79 per cent); introduced social distancing measures (73 per cent); and ensured workplaces are cleaned and disinfected more regularly (73 per cent). Less common strategies include changing shifts or staggering arrival and departure times (27 per cent) and using fixed teams to reduce the number of people with whom each worker comes into contact (32 per cent).


5   For a useful overview of employers' legal responsibilities, see: Health and Safety Executive, Health and safety regulation: A short guide, HSE, 2003.
6   For further details, see: Working safely during coronavirus (COVID-19), accessed October 2020.
7   Work and Pensions Select Committee, Formal meeting (oral evidence session): Health and Safety Executive, 12 May 2020.

FIGURE 2: **Just one-in-fifty employees report their firm has taken no additional steps to make their workplaces 'Covid-secure'**

Proportion of employees reporting steps were taken by employers to reduce the transmission of Covid-19 in the workplace: UK, 17-22 September 2020
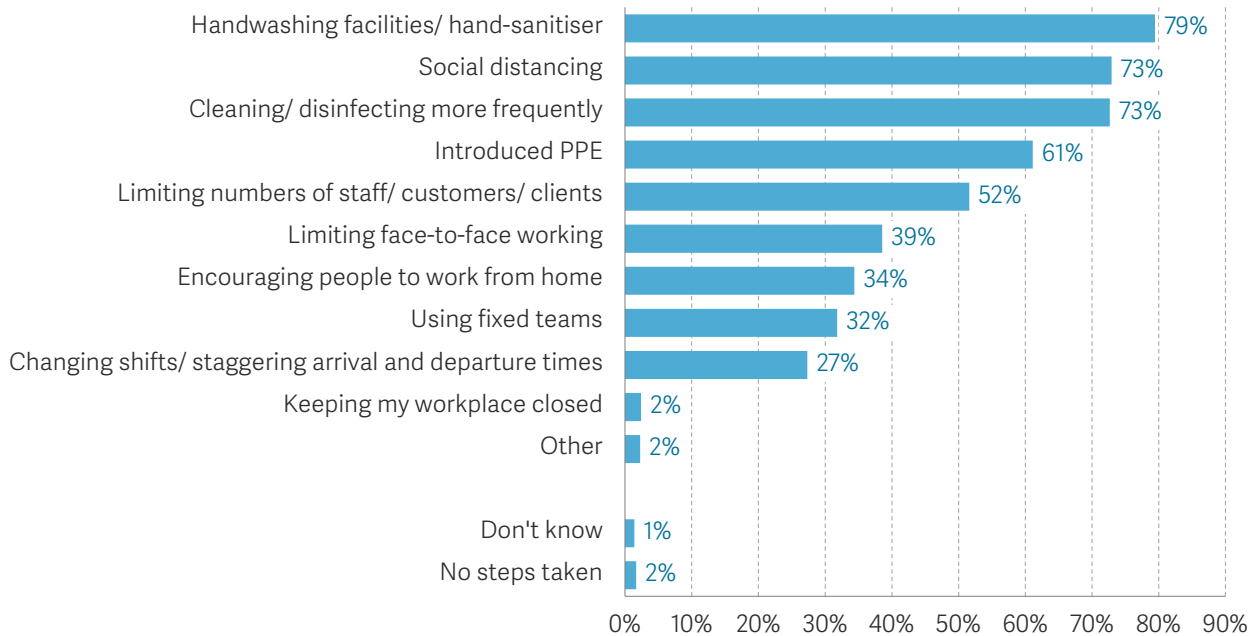
NOTES: Base = all UK adults aged 18-65 with an employee job and working at least part of the week in the workplace (i.e. not exclusively working from home or fully furloughed) (n=2,160). Multiple responses allowed. These figures have been analysed independently by the Resolution Foundation.
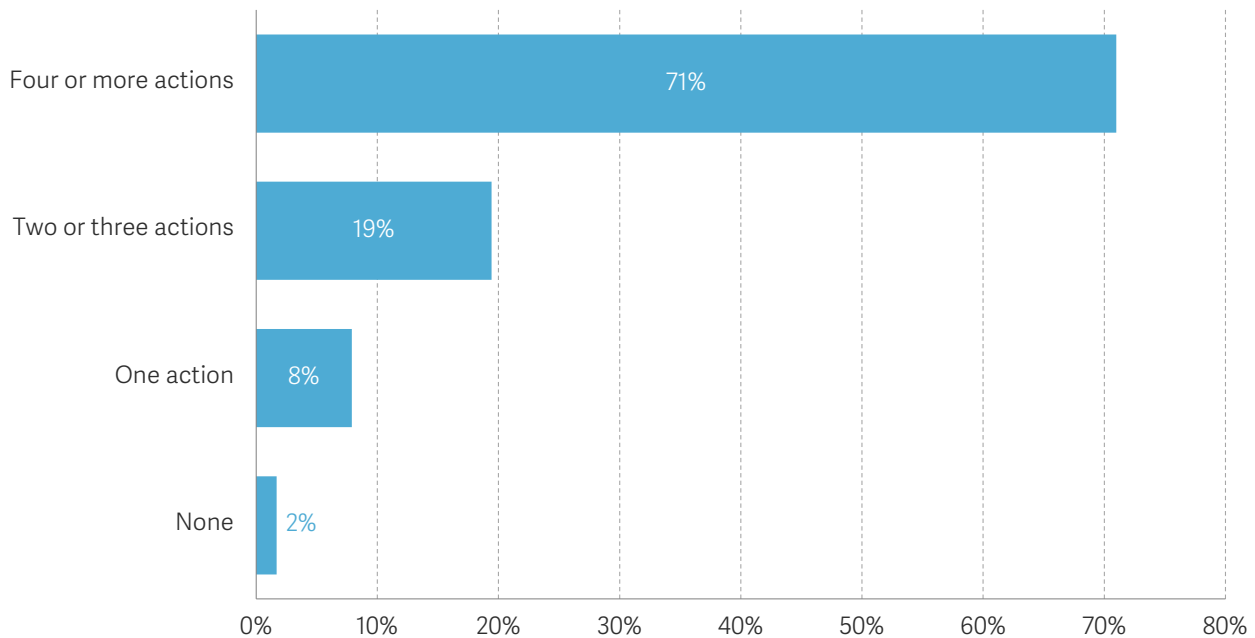SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

Moreover, most firms have taken not just one but many steps to reduce the risk of the virus being transmitted between staff and others in the workplace. As Figure 3 shows, more than seven-in-ten firms (71 per cent) have taken four or more actions to keep staff safe, and close to one-in-five employers (19 per cent) have made either two or three changes. That said, a further 8 per cent of firms appear to have taken only one step to protect their workers, which coupled with those who have taken none leaves one-in-ten workers (10 per cent) reporting that their employer has taken minimal action in the face of the pandemic. While it is plausible that such firms had standards of hygiene and safety, or working practices that were already conducive to social distancing prior to March, the finding that no extra actions were taken to minimise the risk of virus transmission does give some cause of concern.

FIGURE 3: **One-in-ten employees report only one or zero additional actions have been taken to ensure their workplaces are 'Covid-secure'**

Proportion of employees reporting steps were taken by employers to reduce the transmission of Covid-19 in the workplace, by number of actions: UK, 17-22 September 2020

NOTES: Base = all UK adults aged 18-65 with an employee job and working at least part of the week in the workplace (i.e. not exclusively working from home) (n=2,160). These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

Those working in forward-facing roles have been best protected from transmission risk

By and large, employees acknowledge the many steps that employers have taken to make their workplaces 'Covid-secure'. But do they think this adds up to sufficient management of the new risk they face in the workplace today? Figure 4 explores this question by comparing employees' perception of how risky their workplace is when it comes to the transmission of Covid-19 (as shown in Figure 1), with their level of actual concern. (To make this distinction clear, imagine a hospital worker who would naturally view their workplace as a high-risk environment when it comes to virus transmission, but who might report a low level of concern about actual transmission because, for example, good social distancing systems and PPE have been put in place).

The chart shows two interesting findings. First, while it is clear that the steps employers have taken to manage Covid-19 risks have been somewhat effective, employees still have a worryingly high level of anxiety about virus transmission in the workplace (with 35 per cent indicating they have an active concern). Second, when we break out our results by

workplace type, employer actions to reduce risk appear to have been most efficacious in forward-facing sectors such as health and educational facilities, and shops and restaurants. In contrast, those in mobile and behind-the-scenes roles such as delivery, warehousing and factories report a relatively high level of active concern, despite viewing their workplace overall as relatively low risk. While such workers' level of concern remains below that of those in the highest-risk workplaces, this finding does suggest that action to reduce risk in 'closed' workplaces has been less extensive, perhaps because such employers do not need to publicly demonstrate that they are 'doing the right thing'.

FIGURE 4: **One-third of employees that have been back in the workplace have an active concern about virus transmission at work**

Proportion of employees reporting a high level of risk to health and safety due to transmission of Covid-19, and an active concern about the transmission of Covid-19 in the workplace, by workplace type: UK, 17-22 September 2020
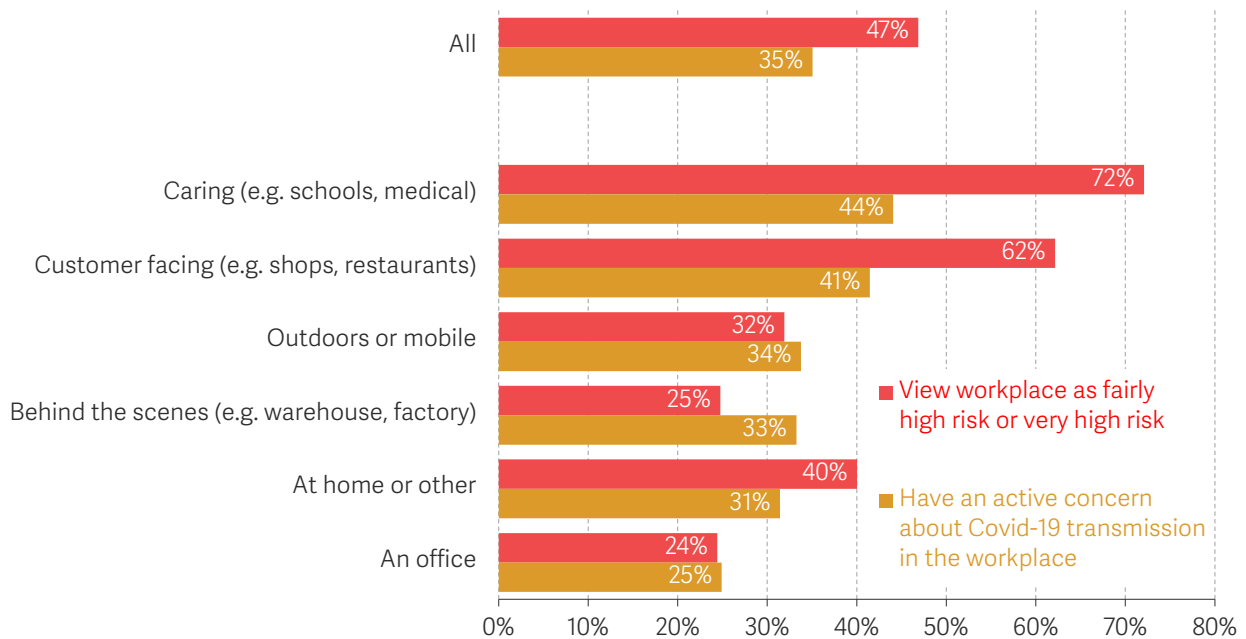
NOTES: Base = all UK adults aged 18-65 with an employee job and working at least part of the week in the workplace (i.e. not exclusively working from home or fully furloughed) (n=2,160). Base by categories: caring (e.g. schools, medical) n=725; customer facing (e.g. shops, restaurants) n=260; outdoors or mobile n=112; behind the scenes (e.g. warehouse, factory) n=170; at home or other n=220; an office n=673. By active concern, we mean those who report having a concern about coronavirus transmission in the workplace that either they have not raised or that has not been fully resolved. These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

Of course, our findings may not all be about workplace type: the composition of the workforce could also play a role in determining the level of concern. As the pandemic has taken hold, it has become clear that certain groups in society are more severely affected by the virus: older people, those with some underlying health conditions and black, Asian and ethnic minority people have all been shown to have poorer outcomes

when contracting Covid-19.[8] Given this, the findings we present in Figure 5 are somewhat surprising. As this makes clear, those from higher-risk groups do not always have significantly more concerns than others about virus transmission in the workplace. Most strikingly, younger workers are in fact more likely than older workers to view their workplaces with anxiety: 43 per cent of 18-24-year-olds say they have an active concern about catching COVID-19 at work compared to 31 per cent of 55-65-year-olds. This pattern is entirely explained by the types of jobs that younger workers do, however: after accounting for the fact that younger workers are much more likely to work in customer-facing roles, for example, the differences between different age groups is no longer statistically significant.[9]

The differences in workplace concern between those who are clinically vulnerable (or share a home with someone who is) and those who are not are more significant (45 per cent compared to 34 per cent respectively). Most strikingly (and perhaps worryingly), close to half (47 per cent) of black, Asian and ethnic minority workers have a concern about virus transmission in the workplace compared to one-third (34 per cent) of their white counterparts, though this too is explained by the types of jobs they do.[10] Overall, this largely suggests that workplace type trumps personal characteristics when it comes to determining the share of workers who are actively concerned about Covid-19 transmission at work.

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8   See, for example: Office for National Statistics, Coronavirus (COVID-19) roundup: Deaths and health October 2020.
9   Results of a logit regression (n= 1,509) of whether an individual has an active concern about coronavirus transmission in the workplace on gender, age, ethnicity, whether respondent or someone in household was asked to shield, employee weekly pay quintile (September), level of concern about physical health of self and family, whether in atypical work in September (non-salaried, agency worker, temporary contract, zero-hours contract, multiple jobs, variable hours – each treated separately), region, length of time with current employer, number of employees at workplace, whether in a local lockdown area in mid-September, and index of multiple deprivation decile.
10 This is consistent with research showing that the variations in Covid-19 outcomes themselves between people of different ethnicities are strongly linked to demographic and socio-economic factors, such as geographical differences and occupational exposure. See: Office for National Statistics, Updating ethnic contrasts in deaths involving the coronavirus (COVID-19), England and Wales: deaths occurring 2 March to 28 July 2020, October 2020.

FIGURE 5: **Personal characteristics that put workers at greater clinical risk of Covid-19 do not always determine the level of concern about transmission at work**

Proportion of employees reporting an active concern about transmission of Covid-19 in the workplace, by personal characteristics: UK, 17-22 September 2020
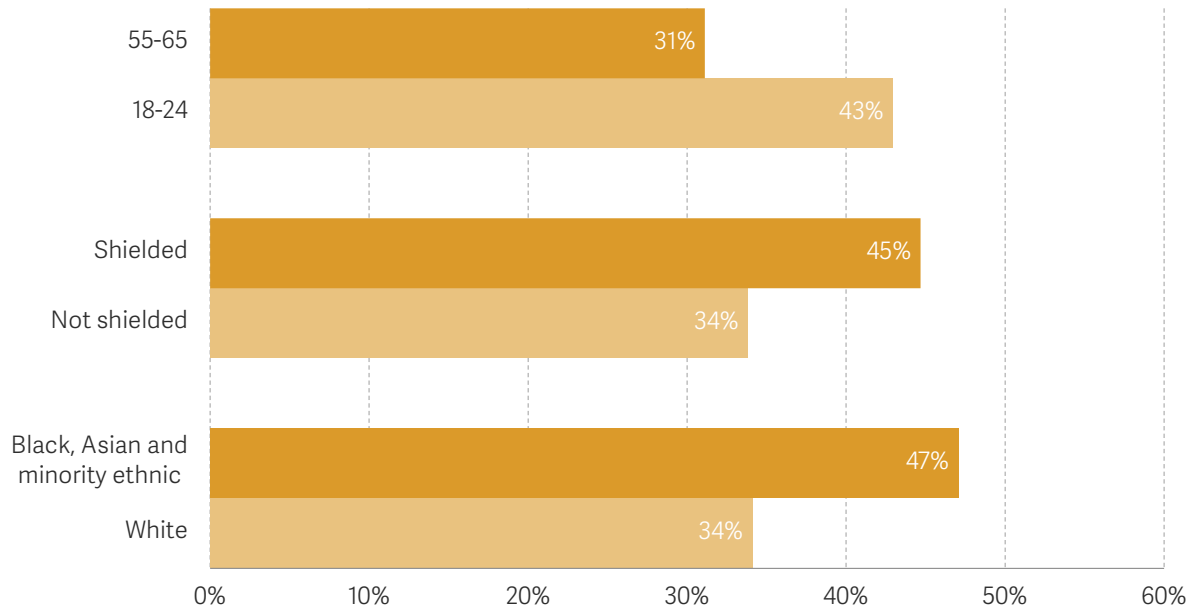
NOTES: Base = all UK adults aged 18-65 with an employee job and working at least part of the week in the workplace (i.e. not exclusively working from home or fully furloughed). Base by category: 55-65 n=337; 18-24 n=152; shielded n=217; not shielded n=1,823; Black, Asian and minority ethnic n=103; white n=1,903. 'Shielded' indicates respondent or someone in the respondent's household has been officially informed at some point since March that they are clinically vulnerable and required to shield. By active concern, we mean those who report having a concern about coronavirus transmission in the workplace that either they have not raised or that has not been fully resolved. These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

Workers in sectors that have been hardest-hit by the pandemic are the least likely to make, or resolve, a complaint

Given that the concern about virus transmission in the workplace is widespread, how likely are workers to go on to raise the issue? Figure 6 shows that a majority (57 per cent) of those worried about Covid-19 transmission at work have raised the issue with their employer, although there are considerable differences across workplace type. For example, 67 per cent of those working in warehouses, factories and the like with a concern have raised it, compared to just 45 per cent of those in customer-facing roles (despite the latter having higher levels of concern overall). While these numbers suggest that significant parts of the workforce have felt sufficiently emboldened not to hold back on their concerns, they do, of course, also indicate that two-in-five workers have not spoken out about their worries.

FIGURE 6: **Two-in-five workers with concerns about Covid-19 transmission at work have taken no steps to raise the issue**

Proportion of employees reporting an active concern about transmission of Covid-19, and share of that group that have raised a concern, by workplace type: UK, 17-22 September 2020
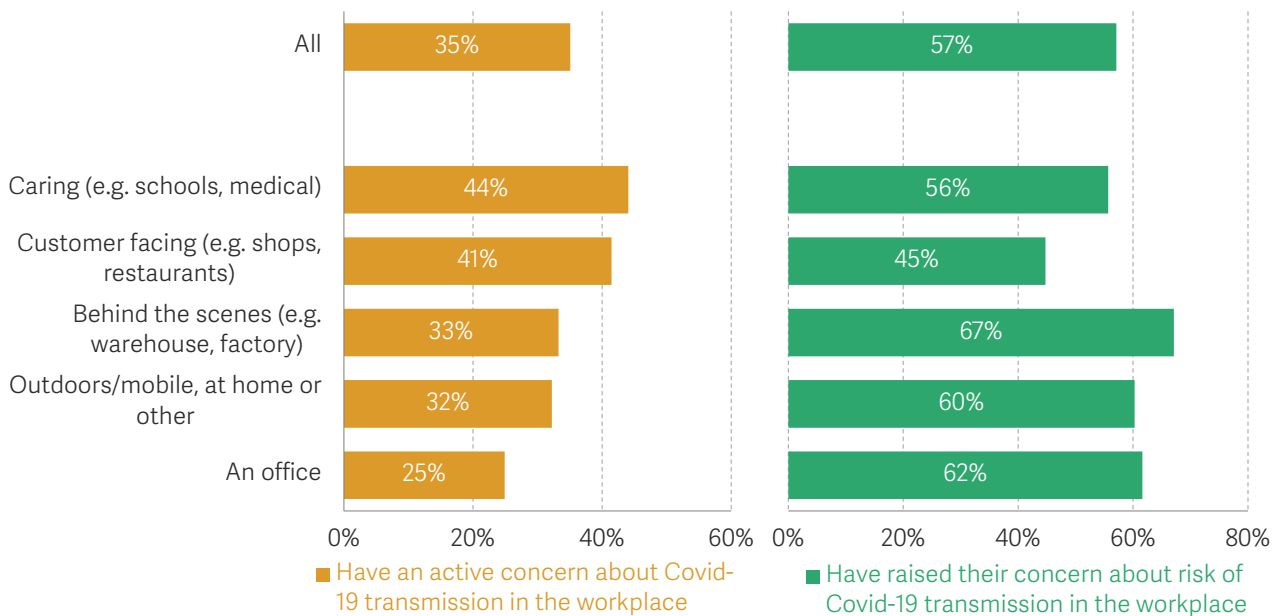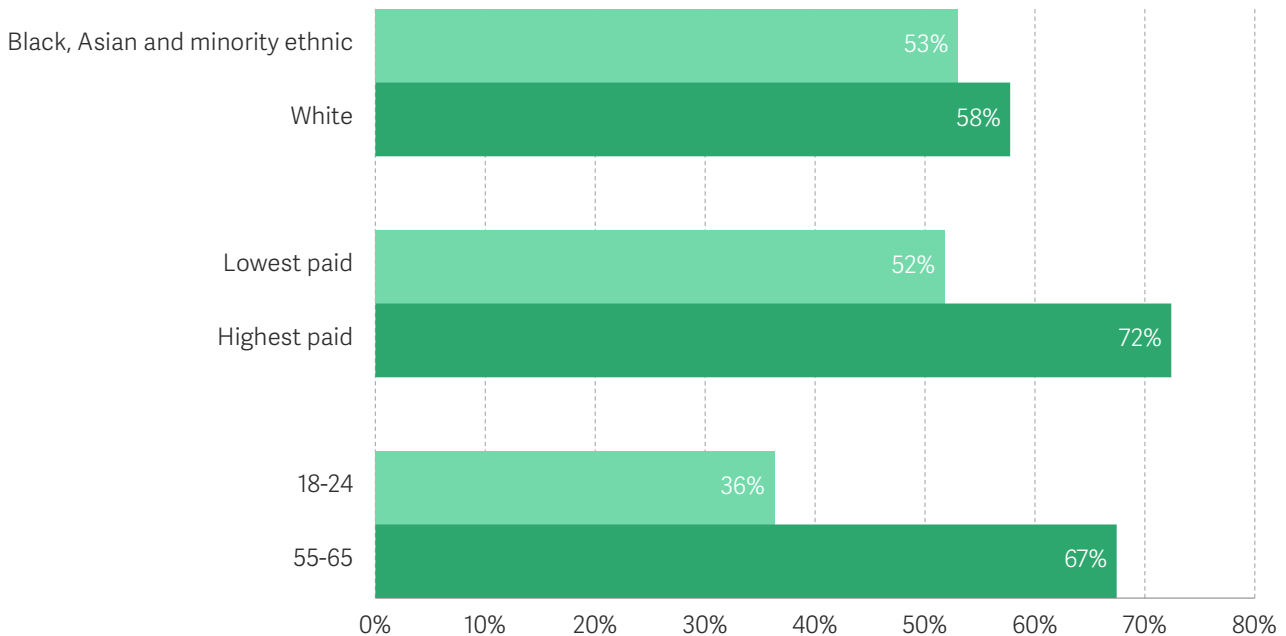

NOTES: Amber bar: base = all UK adults aged 18-65 with an employee job and working at least part of the week in the workplace (i.e. not exclusively working from home or fully furloughed) (n=2,096). Base by categories: caring (e.g. schools, medical) n=698; customer facing (e.g. shops, restaurants) n=255; behind the scenes (e.g. warehouse, factory) n=167; outdoors/mobile, at home or other n=322; an office n=654. Green bar: base = all UK adults aged 18-65 in employment and working at least part of the week in the workplace (i.e. not exclusively working from home or fully furloughed) that have an active concern about transmission of Covid-19 in the workplace (n=842). Base by categories: caring (e.g. schools, medical) n=335; customer facing (e.g. shops, restaurants) n=121; behind the scenes (e.g. warehouse, factory) n=71; outdoors/mobile, at home or other n=118; an office n=197. By active concern, we mean those who report having a concern about coronavirus transmission in the workplace that either they have not raised or that has not been fully resolved. These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

So, what determines the likelihood of a worried worker speaking out? In Figure 7 we look at the complaint rate of groups that are conventionally considered as having low levels of power in the labour market, namely black, Asian and ethnic minority workers, those on the lowest rates of pay and younger workers (with the results also presented for their comparator groups). Again, an interesting picture emerges. When it comes to raising a concern about the risk of virus transmission at work, black, Asian and minority ethnic workers are slightly less likely to raise a concern than white workers. In addition, the lowest paid workers are less likely to raise an issue (52 per cent compared to 72 per cent of highest paid workers). But most striking of all, we find that young workers are only half as likely to complain as older workers (36 per cent of 18-24-year-olds compared to 67 per cent of 55-65-year-olds). Recall that this younger age group also reported a high level of concern to begin with, as shown in Figure 5.

FIGURE 7: **Only one-third of young workers concerned about Covid-19 in the workplace have formally raised the issue**

Proportion of employees reporting an active concern about transmission of Covid-19 in the workplace that have raised the concern, by workplace type: UK, 17-22 September 2020

NOTES: Base = all UK adults aged 18-65 with an employee job and working at least part of the week in the workplace (i.e. not exclusively working from home or fully furloughed) that have an active concern about transmission of Covid-19 in the workplace (n=842). Base by categories: Black, Asian and minority ethnic n=53; white n=748; lowest paid n=172; highest paid n=90; 18-24 n=66; 55-65 n=120. Lowest paid = those in bottom weekly employee pay quintile; highest paid = those in top weekly employee pay quintile. Earnings quintiles are based on weekly net (take-home) salary for a usual employee in September 2020. By active concern, we mean those who report having a concern about coronavirus transmission in the workplace that either they have not raised or that has not been fully resolved. These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

Why might this be the case? On one hand, it is plausible that younger workers are less worried on a personal level about the threat to their health from Covid-19 (although emerging evidence on long-Covid, as well as obvious concerns they may have about subsequently infecting friends and older family members could run counter to this). On the other hand, there may be less individualistic explanations for younger people's lack of complaint. As we have shown elsewhere, young people are very much at the sharp end of the current economic crisis: they are over-represented in sectors that have been hardest hit by the pandemic such as hospitality and retail, as well as being more vulnerable to redundancy given their naturally shorter job tenure.[11] When we examine rates of complaint by sector rather than workplace, and control for age, both the individual and the structural accounts have validity: industry has some effect on employee's propensity

11 See, for example: M Brewer et al., Jobs, job, jobs: Evaluating the effects of the current economic crisis on the labour market, Resolution Foundation, October 2020.

to complain if they have a concern about Covid-19 in the workplace, but age also remains a strong driver of the differential rates we observe.[12]

Finally, it is worth examining the outcomes that employees achieve when they have raised a concern about workplace transmission, something we do in Figure 8. As this makes plain, employers have taken complaints seriously to a degree: more than one-in-five workers (22 per cent) that have raised an issue have seen their concern fully resolved. However, this leaves more than three-quarters (77 per cent) of employees with at least some of their concerns outstanding, and perhaps most worryingly three-in-ten (30 per cent) who feel their concerns have not been acted upon at all. Again, we also note some significant variation between the success rates of different types of workers. When we look at workplace type, for example, those in customer-facing roles such as shops and restaurants are least satisfied with their employer's response. Moreover, just as we saw that the lowest paid workers were less likely to raise a concern in the first place, it is also clear that they are also less likely to see a complaint that they do raise addressed (as is the case for atypical workers too).[13]

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12 After controlling for other characteristics, the estimated gap between 18-24- and 55-64-year-olds' likelihood of raising concerns narrows somewhat, to 43 per cent and 64 per cent respectively (compared to 36 per cent and 67 per cent without controls, as shown in Figure 7). Characteristics controlled for using a logit regression model are listed in footnote 9.
13 Unfortunately, our survey sample size is too small to allow us to investigate whether the same holds true for black, Asian and minority ethnic workers.

FIGURE 8: **Three-in-ten employees have not seen their concerns about Covid-19 transmission at work addressed in any way**

Proportion of employees reporting an active concern about transmission of Covid-19 in the workplace that have raised the concern, by outcome: UK, 17-22 September 2020
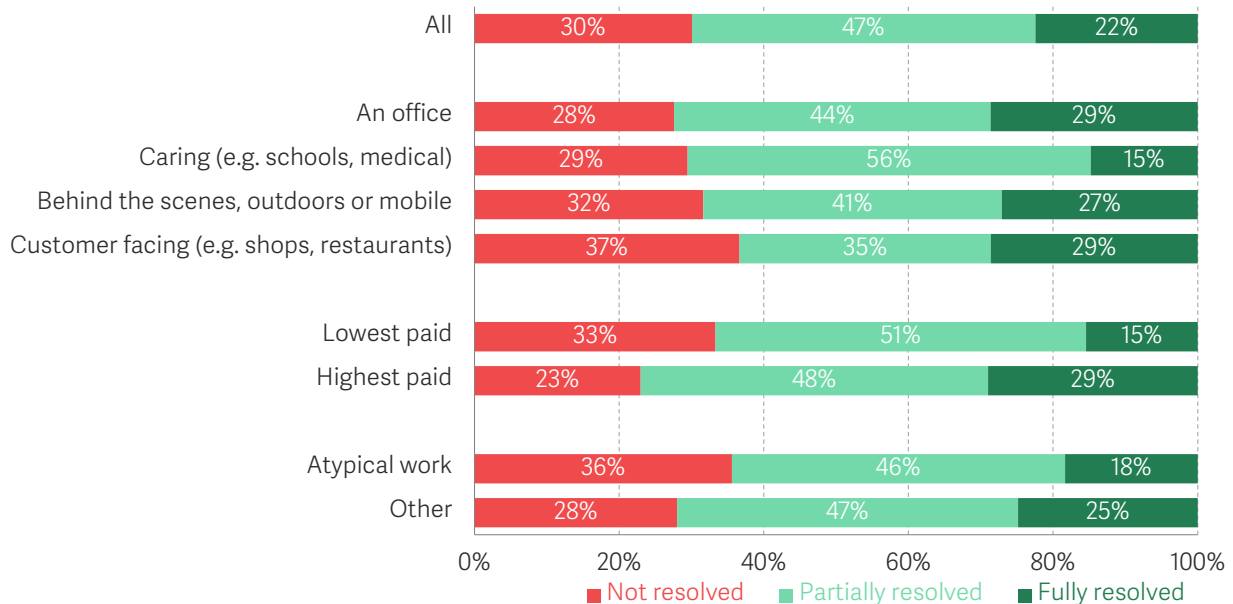
	Not resolved	Partially resolved	Fully resolved
All	30%	47%	22%
An office	28%	44%	29%
Caring (e.g. schools, medical)	29%	56%	15%
Behind the scenes, outdoors or mobile	32%	41%	27%
Customer facing (e.g. shops, restaurants)	37%	35%	29%
Lowest paid	33%	51%	15%
Highest paid	23%	48%	29%
Atypical work	36%	46%	18%
Other	28%	47%	25%

NOTES: Base = all UK adults aged 18-65 in employment and working at least part of the week in the workplace (i.e. not exclusively working from home or fully furloughed) that have raised a concern about transmission of Covid-19 in the workplace (n=483). Base by categories: an office n=122; caring (e.g. schools, medical) n=187; behind the scenes, outdoors or mobile n=70; customer facing (e.g. shops, restaurants) n=55; lowest paid n=90; highest paid n=65; atypical work n=119; other n=349. The workplace categories 'outdoors/mobile' and 'at home or other' have been excluded due to low sample sizes. Lowest paid = those in bottom weekly employee pay quintile; highest paid = those in top weekly employee pay quintile. Earnings quintiles are based on weekly net (take-home) salary for a usual employee in September 2020. By active concern, we mean those who report having a concern about coronavirus transmission in the workplace that either they have not raised or that has not been fully resolved. These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

There is a widespread lack of awareness of where to raise a concern about health and safety in the workplace

So far, we have focused on those who have expressly indicated that they have a concern about the transmission of Covid-19 in their workplace. But how would the working population writ-large tackle a health and safety concern connected to the pandemic if and when they return to the workplace? In Figure 9 we present the results of a hypothetical question we posed to all employees in our survey: "In the event that you had raised an issue about the transmission of Coronavirus in your workplace with your management and they did not respond, who would you approach to formally complain outside of your organisation?"14 As the chart makes clear, there is a low level of knowledge about avenues for advice or redress: close to half (47 per cent) of the

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14   This was an open question where respondents provided a free-text response.

employee population would not know who to approach with such a concern. Moreover, fewer than one-in-ten workers indicated the Health and Safety Executive or their local authority (8 per cent and 6 per cent respectively), the two official enforcer bodies (although it is clear that bodies such as ACAS signpost workers to the appropriate routes to make a formal complaint if necessary).

FIGURE 9: **Close to half of all employees would not know where to complain if they were worried about Covid-19 transmission in the workplace**

Bodies employees would approach if they were to complain outside of their organisation about the risk of transmission of Covid-19 in the workplace: UK, 17-22 September 2020
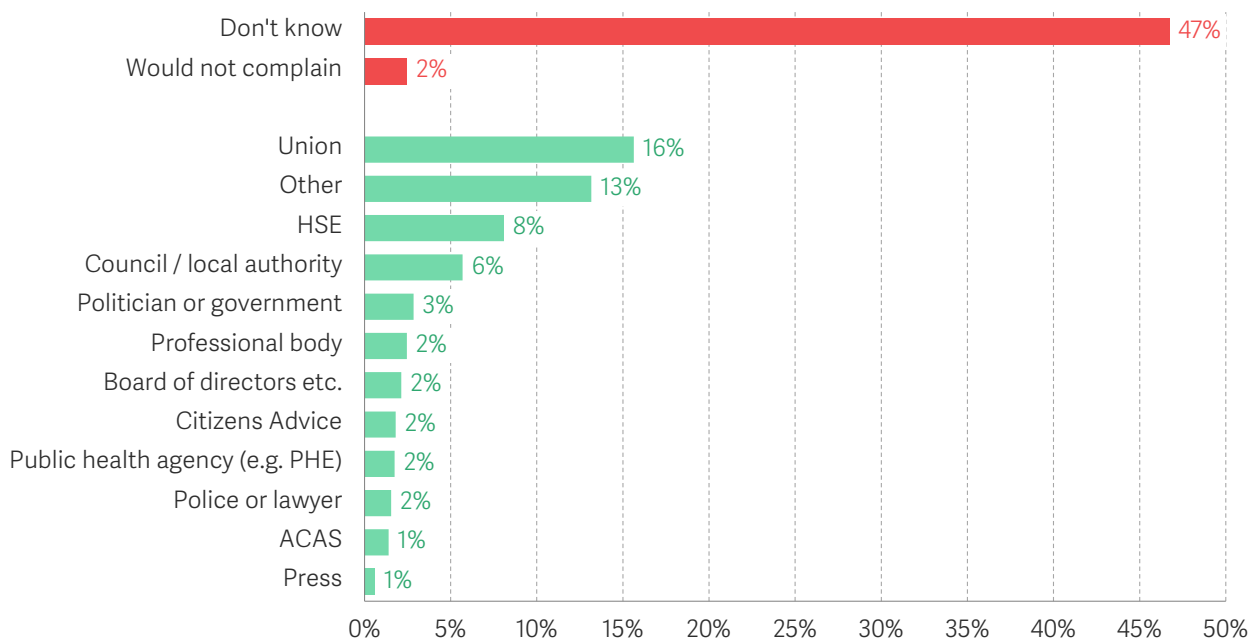
NOTES: Base = all UK adults aged 18-65 in employment, excluding those who are exclusively self-employed (n=3,840). Free text question therefore multiple responses allowed; however, "don't know" and "would not complain" include only those respondents who had not mentioned any other organisation. These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

Looked at more positively, the other half (51 per cent) of the employee population would have at least one (and in some cases multiple) ideas of where to go to complain. While a wide range of responses were received, the most commonly suggested body to approach with a Covid-19 concern in the workplace is a union, with close to one-in-six (16 per cent) employees indicating this would be a key port of call. In Figure 10 we explore in further depth the relationship between the level of unionisation in sectors and the level of knowledge about who to approach. To begin, we observe a strong, positive relationship between the level of unionisation and the likelihood that workers know who to approach with a concern.[15] But more pertinently, the chart also indicates those sectors where

15   R-squared = 0.69.

perhaps we should be most worried about the capability of employees to raise any issues they have about Covid-19 risk in the workplace, such as hospitality and retail, where low levels of both unionisation and workers' knowledge of where to go with a complaint are observed.

FIGURE 10: **Workers in some of the riskiest sectors are both less likely to be unionised, and less likely to know where to go with workplace concern**

Proportion of employees who would know where to go with an issue about health and safety in the workplace, and rates of unionisation, by sector: UK, 17-22 September 2020 / Q4 2019
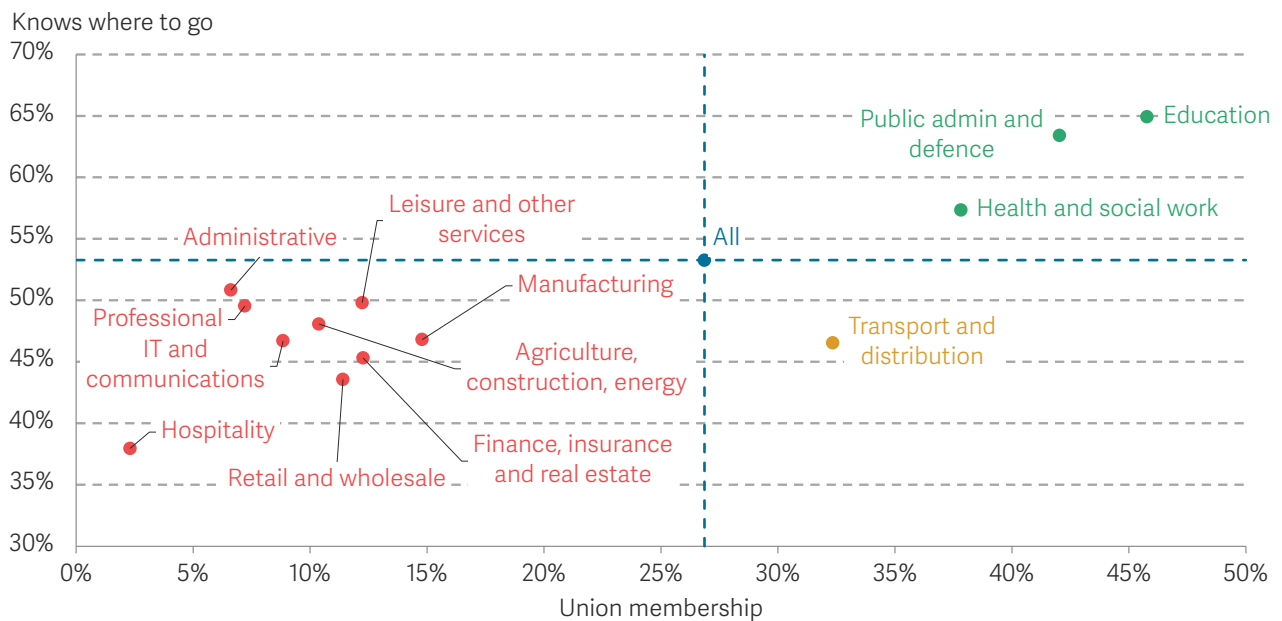
NOTES: Base = all UK adults aged 18-65 in employment, excluding those who are exclusively self-employed (n=3,840 for 'knows where to go'). 'Knows where to go' base by categories: Agriculture, construction, energy n=175; Manufacturing n=176; Retail and wholesale n=248; Transport and distribution n=178; Hospitality n=107; IT and communications n=228; Finance, insurance and real estate n=284; Professional n=339; Administrative n=182; Public admin and defence n=401; Education n=718; Health and social work n=498; Leisure and other services n=244. 'Leisure' is shorthand for the arts, entertainment and recreation industry. Dotted lines show the average rate of union membership (27 per cent) and rate of knowing where to go with a complaint (53 per cent). Knowing where to go rate is from 17-22 September 2020 (YouGov) and union membership rate is from Q4 2019 (Labour Force Survey). These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave; ONS, Labour Force Survey.
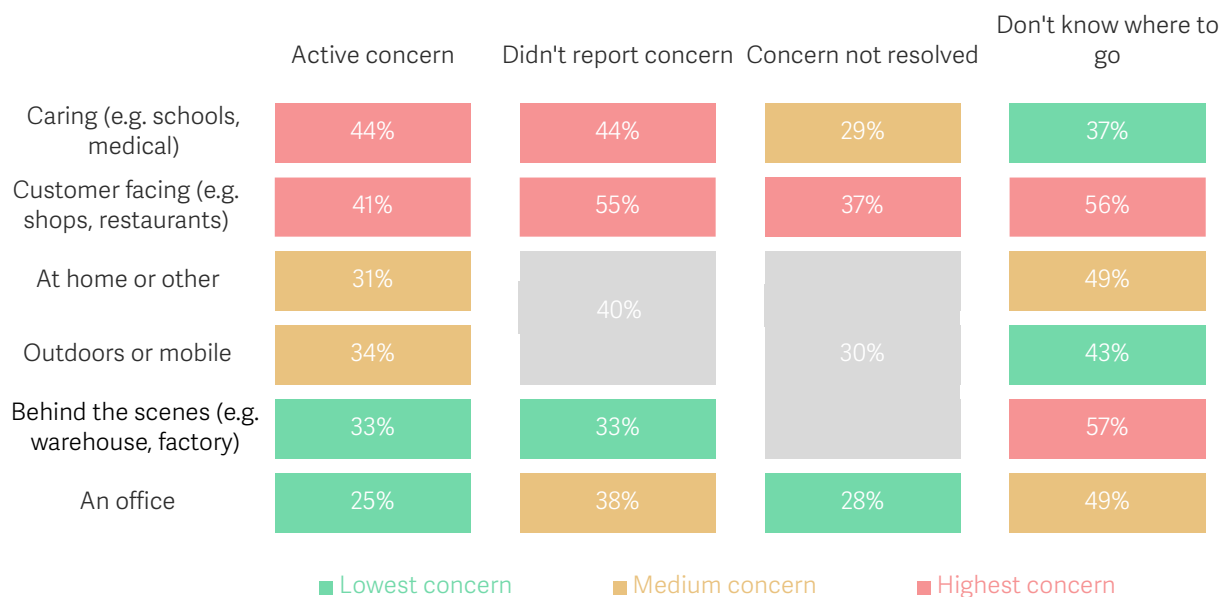
The case is clear for stronger state enforcement when it comes to workplace health and safety today

Altogether, our survey analysis shows that today, health and safety in the workplace is a majoritarian concern. We summarise our findings by workplace in Figure 11 which tells us two interesting things. First, the levels we observe on all of our metrics should give rise to concern. Even looking at the lowest results (the green boxes in the chart), we

still see one-quarter (25 per cent) of office workers worried about virus transmission at work; over one-third (35 per cent) of factory and warehouse workers not raising concerns they have; more than a quarter (28 per cent) of office workers not seeing their worries fully addressed when ventilated; and over one-third (37 per cent) of workers in the caring professions not knowing where to take a complaint outside of their organisation. Second, the relative differences are also striking (the red boxes). For example, while public attention may have focused significantly to date on making the workplaces of those in caring professions safe, both levels of concern and a disinclination to report these concerns remain high. Likewise, those in customer-facing workplaces perform poorly on all the metrics we have studied, but when it comes to knowing where to turn to flag a workplace health and safety concern, those in 'closed' workplaces such as factories and warehouses have the lowest level of knowledge.

FIGURE 11: **Employees in customer-facing workplaces score poorly across the board**

Summary of YouGov survey findings for employees, by question: UK, 17-22 September 2020

	Active concern	Didn't report concern	Concern not resolved	Don't know where to go
Caring (e.g. schools, medical)	44%	44%	29%	37%
Customer facing (e.g. shops, restaurants)	41%	55%	37%	56%
At home or other	31%	40%	30%	49%
Outdoors or mobile	34%			43%
Behind the scenes (e.g. warehouse, factory)	33%	33%		57%
An office	25%	38%	28%	49%

■ Lowest concern   ■ Medium concern   ■ Highest concern

NOTES: Due to small sample sizes, results for 'Concern not fully resolved' for 'At home or other', 'Outdoors and mobile' and 'Behind the scenes' are average for all three groups. Similarly, results for 'Didn't report concern' for 'At home or other' and 'Outdoors or mobile' are average for both groups. For further details, see notes for Figure 4 (active concern), Figure 6 (did not report concern), Figure 8 (concern not resolved) and Figure 9 (do not know where to go). These figures have been analysed independently by the Resolution Foundation.
SOURCE: RF analysis of YouGov, UK Adults Age 18 to 65 and The Coronavirus (Covid-19) – September wave.

But low awareness as to how to seek redress, combined with a lack of power to take effective action, is a combination often observed when we look at other workplace

rights.[16] Indeed, in recent years, the growing recognition that individual workers are often poorly-equipped to challenge unlawful employer practice has motivated the state to take a more proactive approach to labour market enforcement.[17] In light of our survey findings, then, how could more be done to enforce best practice in the workplace so that workers' concerns about Covid-19 transmission are effectively addressed? We begin our examination of this question with Box 1 which provides a brief overview of the work of the Health and Safety Executive (HSE) and local authorities, the governmental bodies responsible for ensuring that employers abide by the law on workplace health and safety.

BOX 1: Enforcing workplace health and safety in Great Britain today

The Health and Safety Executive (HSE) is the primary body providing a strategic steer on workplace health and safety in Great Britain today, as well undertaking enforcement action in workplace that have been conventionally seen as high risk. However, there are other key players in the health and safety enforcement field, local authorities which countrywide have responsibility for ensuring that workplaces conventionally viewed as low risk – such as shops, offices, pubs and restaurants – are secure and healthy places to work.[18] This division of labour is important, not least because in numerical terms local authorities have responsibility for considerably more premises than HSE: we estimate that

in 2020, local authorities oversee more than 1.8 million workplaces in Great Britain, compared to around 1.2 million for the HSE (equivalent to around 60 per cent of total premises).[19]

HSE and local authorities place a great deal of energy on education and advice to help employers comply with their legal duties. However, they also have a number of tools at their disposal to ensure that employers abide by the law. To begin, they can inspect premises with little or no notice (although since 2011, local authorities have been unable to inspect certain types of workplace without cause);[20] offer verbal advice to employers; issue a formal letter giving notification of contravention; impose an improvement notice requiring action

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16 See, for example: N Cominetti and L Judge: From rights to reality: Enforcing labour market laws in the UK, Resolution Foundation September 2019.

17 See, for example: D Metcalf, United Kingdom labour market enforcement strategy 2019/20, Director of Labour Market Enforcement, July 2019; BEIS, Good work: A response to the Taylor Review of modern working practices, HMG February 2018.

18 The Health and Safety Executive has responsibility for: factories, farms, building sites, mines, schools and colleges, fairgrounds, gas, electricity and water facilities, hospitals and nursing homes, central and local government premises, off-shore installations. Local authorities have responsibility for: private offices, shops, hotels, restaurants, leisure premises, nurseries and playgroups, pubs and clubs, private museums, places of worship, sheltered accommodation and care homes.

19 RF analysis of NOMIS, UK Business Counts – local units by industry.

20 For a critical examination of local authority regulatory powers over time, see: S Tombs, 'Better regulation': Better for whom?, Centre for Crime and Justice Studies, May 2016.

be taken by a specific deadline; issue a prohibition notice that effectively closes the workplace until the risk to health and safety is remedied; and in the most serious cases, recommend that a firm be prosecuted for breach of health and safety law. Moreover, while financial penalties for non-compliance can only be imposed in the event of a successful prosecution, the HSE also recovers enforcement costs from recalcitrant firms.[21]

So, how have HSE and local authorities responded to the rapid escalation of risk to health and safety in the workplace over the past six months? In Figure 12, we look first at a simple performance metric, the number of HSE inspections that have been undertaken since the pandemic took hold in March (data to examine the work of local authorities over the same period is currently unavailable).[22] As this makes clear, workplace inspections all but ceased from April to June, although site visits have picked up subsequently. A number of factors potentially sit behind this picture: HSE was clearly concerned about its own staff safety at the outset of the pandemic, for example, and in the early weeks and months, a share of workplaces overseen by HSE were of course effectively closed.[23]

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21 While not technically a penalty, the 'Fee for intervention' that firms must pay to cover HSE costs when an inspector determines there has been a material breach of the law operates as a financial deterrent for firms. For further discussion of the role that penalties can play in enforcement regimes, see: L Judge and A Stansbury, Under the wage floor: Exploring firms' incentives to comply with the minimum wage, Resolution Foundation January 2020.

22 A lacks of local authority data is part of the reason we largely focus on HSE in this report. However, it should also be noted that HSE are responsible for policy and set the strategic direction of local authorities when it comes to health and safety enforcement.

23 See, for example: Work and Pensions Select Committee, Formal meeting (oral evidence session): Health and Safety Executive, 12 May 2020.

FIGURE 12: **HSE workplace inspections stalled in the spring, although they have picked up since**

Number of Health and Safety Executive physical workplace inspections: Great Britain, April-September 2020
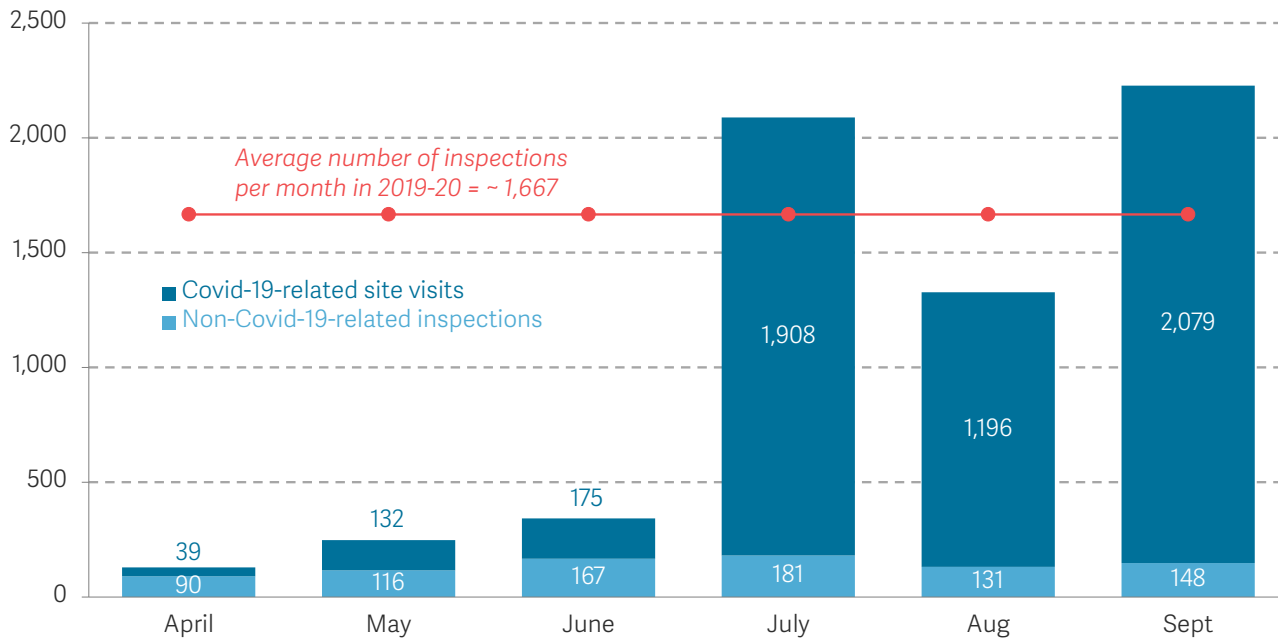
NOTES: Historical figures of the number of HSE workplace inspections are not publicly available. The 2019 figure used here is derived from HSE evidence to Work and Pensions Select Committee, March 2020 at which it was stated that the usual number of workplace inspections each year is "20,000-odd or something of that order".
SOURCE: HSE, management information database, extracted October 2020.

Clearly, for the many millions of key workers who have continued to go to work throughout the pandemic, a more visible regulator presence in the early days would have been welcome, and HSE has been publicly criticised for what has been viewed as a dilatory response in checking on workplaces.[24] When new funding came on stream in May, however, HSE (and to some extent, local authorities) supplemented their physical inspections with a system of 'spot-checks', whereby high-risk workplaces are inspected remotely via a phone call.[25] If action is required on the part of an employer as a result of a spot check, they must subsequently provide video or photographic evidence that they have taken the required steps. A sample of firms will then be physically inspected, but in the absence of this, corroboration from employees or their representatives is sought (if there is no union or health and safety committee in the workplace, HSE must rely on the evidence of employees that are put forward by the employer).

24 See, for example: Work and Pensions Select Committee, DWP's response to the coronavirus outbreak, 22 June 2020; S O'Connor, We need health and safety at work now more than ever, Financial Times 25 May 2020.
25 The HSE management information database records the following numbers of spot-check calls to firms over the past six months: April = 10; May = 90; June = 2072; July = 4952; August = 5604; September = 9120. Data extracted October 2020. HSE has supported local authorities to undertake spot checks by sharing a standard script plus will also conduct them on behalf of councils when asked.

Long-term lack of resourcing has impeded efforts to ramp up health and safety activity during the pandemic

Of course, there is another reason why HSE may have been less than nimble in responding to the new challenges presented by the pandemic, and that is capacity. In Figure 13 we show how HSE's total budget has fallen over the past decade, largely because funding from Government has dropped by almost 60 per cent in nominal terms, from £219 million in 2010-11 to £127 million at the start of this financial year. Over the same period, we estimate that the number of premises under the HSE's jurisdiction has grown from 973,000 to over 1.26 million, stretching resource still thinner.[26] As a result, while the £14.1 million announced by Government in May to help the HSE cope with the pressures of the pandemic was no doubt very welcome, the body still has a total operating budget equivalent to just £100 a year per premise it is responsible for, compared to £224 per workplace in 2010-11.

FIGURE 13: **While HSE's budget has been cut over the past decade, the number of premises it is responsible for has risen**

Total annual budget of Health and Safety Executive: Great Britain, 2010-11 to 2020-21
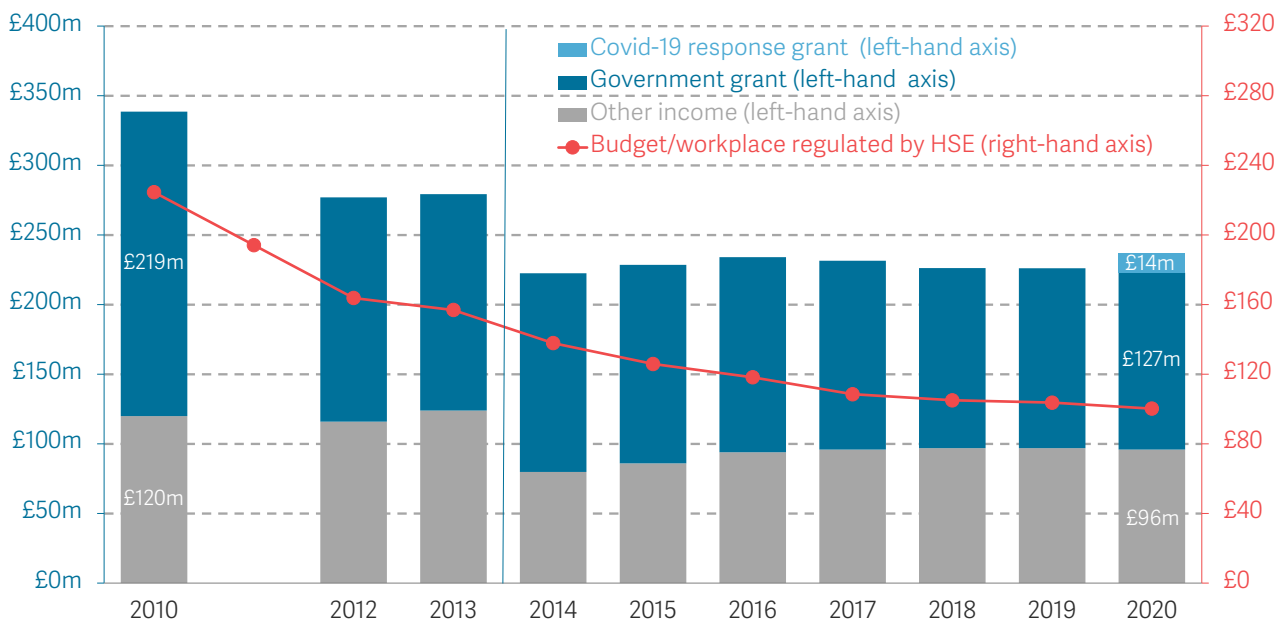
NOTES: Dates indicate lead year in financial year e.g. 2010 = 2010-11. No data available for 2011-12. In 2014-15, responsibility for workplaces in nuclear installations was transferred from HSE to the Office of Nuclear Regulation. Figures showing budget per workplace reflect this.
SOURCE: RF analysis of HSE, Business Plan, multiple years & NOMIS, UK Business Counts – local units by industry.

Local authorities, on which so much of the workplace health and safety response has fallen in recent months, were arguably under even more strain entering the pandemic

26   RF analysis of NOMIS, UK Business Counts – local units by industry.

than the HSE. While the budget that is devoted to health and safety enforcement at local authority level is difficult to discern (not least because environmental health officers who undertake health and safety work have other functions such as food safety and pest control), it is possible to get a sense of the falling capacity from other indicators. In Figure 14, for example, we show the number of enforcement notices (both improvement and prohibition) issued by local authorities over the past ten years. Over this time the number of workplaces they had to scrutinise has expanded from around 1.46 million in 2010-11 to 1.82 million today. The dramatic drop– from over 7,000 notices issued in 2010-11 to only slightly more than 1,000 in 2018-19 – may not all be related to capacity; policy could, of course, also be playing a role. However, the picture painted here is consistent with what is known about local authority finances over this period,[27] and the oft-heard comment from local leaders that they are increasingly unable to deliver services beyond their minimum statutory duties.[28]

FIGURE 14: **Local authorities issued 80 per cent fewer health and safety enforcement notices in 2018-19 than they did in 2010-11**

Number of enforcement notices issued by local authorities for health and safety breaches in the workplace: Great Britain 2010-11 to 2018-19
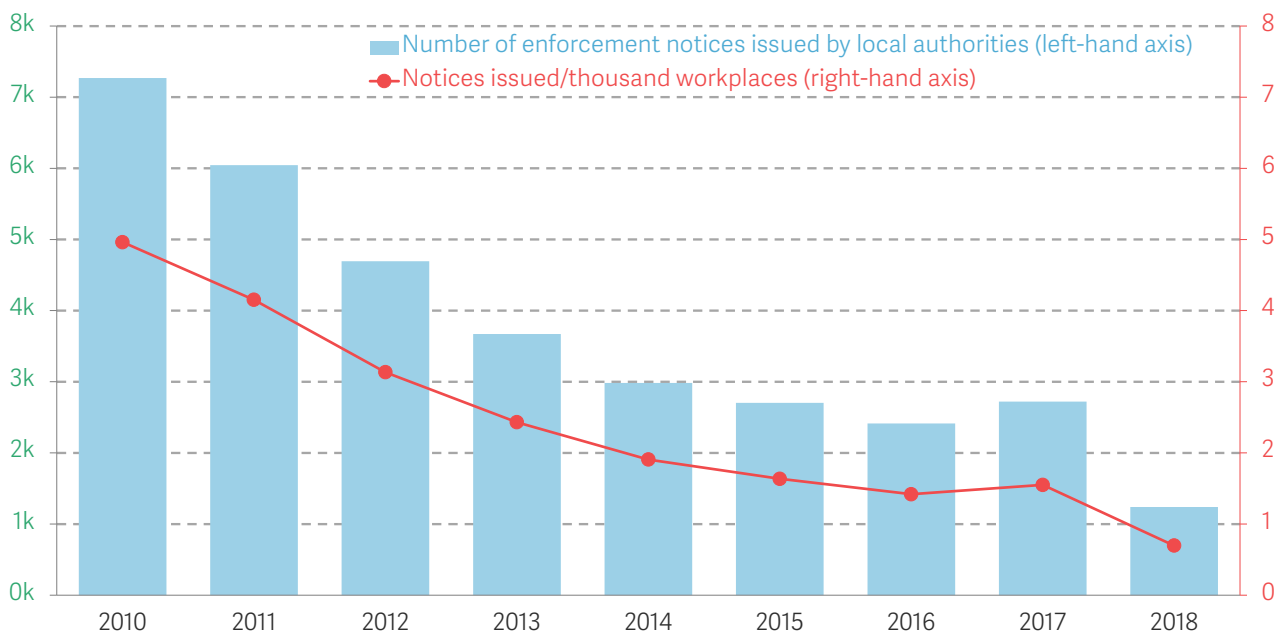
NOTES: Dates indicate lead year in financial year e.g. 2010 = 2010-11. No data currently available for 2019-20.
SOURCE: RF analysis of HSE, Health and safety statistics, various years & NOMIS, UK Business Counts – local units by industry.

27 See, for example: Institute for Government, Local government funding, accessed 22 October 2020, which estimates central government grants, including retained business rates, were cut 38 per cent in real-terms between 2009-10 and 2018-19, from £34.6 billion to £24.8 billion in cash terms.
28 See, for example: Local Government Association, Debate on MHCLG spending estimates: A briefing, July 2019.

That said, the Government has provided significant additional finance to local authorities in recent months, through new and brought-forward grant facilities as well as the deferral of certain transfers back to central government.[29] However, little of the additional money has been ring-fenced for workplace health and safety enforcement. While it is impossible to estimate the extent to which local authorities have directed new resource at this critical strand of work, both historical and current pressures on their funding suggest it may not be significant. Moreover, there is another more practical capacity problem: a simple lack of expert environmental health practitioners (EHPs) in local authorities, leading the Prime Minister to issue a call in September for retired and student EHPs, as well as those working in the private sector, to register to help the Covid-19 effort.[30]

In a rapidly evolving crisis, employees provide vital intelligence about where non-compliance is to be found

The practical challenges the health and safety enforcement bodies have encountered in the face of Covid-19 are without doubt considerable, but is this just a temporary situation of acute strain? In fact, it is arguable that Covid-19 has highlighted some wider systemic issues with the enforcement model that go beyond the pandemic (and indeed, beyond the health and safety system). Crucially, HSE (and local authorities) take a risk-based approach to enforcement, working on the premise that the vast majority of firms will comply with the law so long as they are fully informed of the standards they must reach (see Box 2 for more details of the provenance of the risk-based approach to enforcement in the health and safety field over the past two decades). As a result, significant resource is dedicated to education and engagement with firms, while investigations and other proactive enforcement are targeted at workplaces where the risk of non-compliance is considered to be highest.[31]

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29 For example, the Government announced £1.6 billion of additional funding for local government in late March; a further £1.6 billion on 18 April; and the deferral of £2.6 billion of business rates central share payments due to the Government April-June on the same date. On 8 October they also announced 'surge funding' of £60 million for the policy and local authorities to step up enforcement of Covid-19 rules.

30 See, for example: Chartered Institute for Environmental Health, PM announces EHP register to help local authorities' pandemic work, accessed 22 October 2020.

31 It is worth noting that the Health and Safety Executive's risk-based approach to enforcement is not unusual: a very similar approach is taken, for example, by the Pensions Regulator. For further details, see: H Slaughter, Enrol up! The case for strengthening auto-enrolment enforcement, Resolution Foundation August 2020.

BOX 2: **The rise of a risk-based approach to enforcement**

The risk-based approach to enforcement in health and safety has its provenance in the 'Better regulation' agenda of the New Labour years. In 1997, the Blair Government set up a task force to examine how regulation was stifling for businesses, a theme which was developed further in the 2005 Hampton Report (which advised that health and safety workplace inspections be cut by one million per year) and 2006 Macrory Review (which set out a number of principles for effective enforcement and sanctioning).[32] This thinking found legal form in the Regulatory Enforcement and Sanctions Act 2008, which established the Local Better Regulation Office (LBRO) whose purpose was to ensure local authorities exercise their powers in a way to minimise the impact of regulation on legitimate businesses. (LBRO was later reconstituted as the Better Regulation Delivery Office, subsequently Regulatory Delivery and today is part of the Office for Product and Safety Standards.)

The REBA 2008 effectively codified what is known as the Ayres and Braithwaite compliance pyramid into UK law.[33] This model posits that the vast majority of firms are complaint with the law, and therefore require only the lightest of regulatory touches. Using a matrix that plots the likelihood of non-compliance against the severity of its consequences, regulators such as the HSE identify entities that are considered 'high risk', and target their enforcement activities at such firms. Finally, when non-compliance is uncovered, enforcement bodies move through a hierarchy of actions, usually giving firms the opportunity to make good before ratcheting up to more prescriptive measures. Overall, the Act established five key principles for regulators, namely that they should be: transparent, accountable, proportionate, consistent and targeted in all their endeavours.

A risk-based approach depends, however, on good intelligence so that large areas of non-compliance are not missed altogether. So how can HSE and local authorities make sure that they are directing their health and safety efforts at the least compliant of firms when it comes to Covid-19? The HSE relies quite considerably on RIDDOR reports,[34] which

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32 For a useful summary of both reviews, see Appendix A in: <u>The Speaker's Committee on the Electoral Commission: Third Report</u>, March 2013, accessed October 2020.
33 See: I Ayres & J Braithwaite, Responsive regulation: Transcending the deregulation debate, OUP 1992.
34 So-called because of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 that set out the requirements.

employers are legally obliged to file with HSE in the event of a death, serious injury or disease in the workplace.[35] But this is a far from perfect source of intelligence. First, HSE itself acknowledges that employers under-report when it comes to RIDDOR: in 2018-19, for example, they received just over 69,000 RIDDOR reports while the Labour Force Survey suggested there were 581,000 non-fatal injuries at work in the same year. Second, and even more pertinently, employers only have to report an incident of Covid-19 in the workplace when a very high threshold of certainty that the virus was contracted at work is reached.[36] The HSE's guidance to employers makes clear that it must be "more likely than not that the person's work was the source of exposure to coronavirus as opposed to general societal exposure", giving firms a large get-out clause when it comes to submitting a RIDDOR report in current times.[37]

It is unsurprising, then, that the number of RIDDOR reports submitting with Covid-19 as the cause has been very small to date. In Figure 15 we chart the total number of reports made since April 2020. As this makes clear, over the last six months there have been just over 10,000 Covid-related reports made by employers, with more than half of these submitted in the early months of the pandemic. But, most critically, the vast majority of such reports come from workplaces that are under the aegis of the HSE rather than local authorities. Given the widespread concern about virus transmission in, say, customer-facing workplaces (which are under the jurisdiction of local authorities) that we uncovered in our survey, it is hard not conclude that RIDDOR reports potentially miss a lot of the current picture.

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35 See, for example: Work and Pensions Select Committee, Formal meeting (oral evidence session): Health and Safety Executive, 12 May 2020, Question 88. Selanie Saxby MP: "Is there a process for compiling all the coronavirus workplace safety concerns that are reported to you, local authorities and other enforcing agencies, so that there is a full picture of what is going on in our workplaces in relation to coronavirus?". Sarah Albon [HSE Chief Executive]: "As far as I am aware, there is not a central place gathering all the different concerns into just one dataset… I do not think that we routinely compile all the different concerns that are raised. What, of course, we do get to see a national picture of, ultimately, are those RIDDOR reports where people are reporting an incident, accident or fatality under the RIDDOR regulations".

36 For an interesting discussion of this topic, see: R Aigus, Statutory means of scrutinising workers deaths and disease, Occupational Medicine (published online ahead of print) September 2020.

37 Health and Safety Executive, Further Guidance on RIDDOR Reporting of COVID-19, June 2020 (accessed October 2020).

FIGURE 15: **The number of RIDDOR reports flagging Covid-19 in the workplace is low**

Number of RIDDOR reports filed by employers with the HSE, by type: Great Britain, April-September 2020
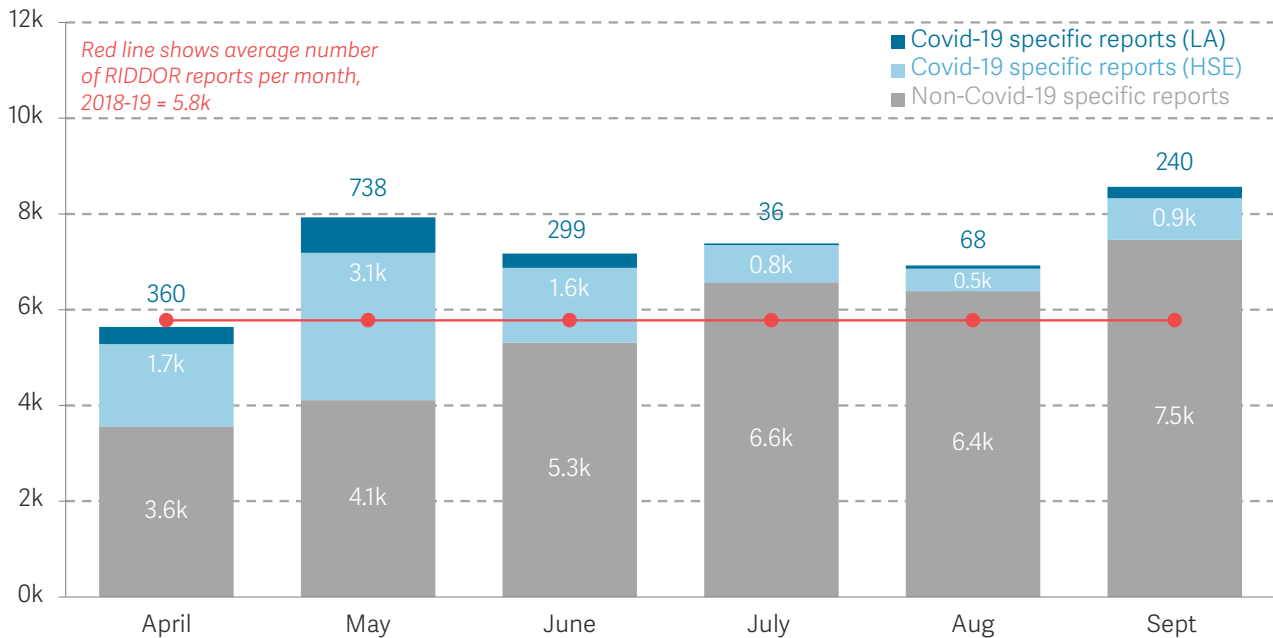
NOTES: 2018-19 used as comparator year because data for 2019-20 currently unavailable.
SOURCE: HSE, management information database, extracted October 2020 & HSE statistics, 2018-19.

This is not to suggest, however, that the HSE relies solely on RIDDOR reports for their intelligence. It is clear that their current risk modelling is sophisticated and takes account of many sources. For example, it factors in, that low-paid workers on contingent contracts are more likely to go into work even if they suspect they are infectious because of the lack of adequate sick pay or worry about losing the job. However, while the organised worker voice is heard – there is a special hotline for senior unions representatives to flag concerns to HSE currently – the mass of information coming into call centres and other sources from individual employees does not appear to be given much, if any, evidential weight.[38] While there may be much that employees raise which is not material, in the rapidly evolving current conditions it is arguable that a vital source of information that could inform enforcement targeting is being missed.[39]

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38 See footnote 37 for further details.
39 This is not a new observation about the HSE's practice. See, for example: In National Audit Office, Effective inspection and enforcement; Implementing the Hampton vision in the Health and Safety Executive, NAO 2008 which stated "The HSE should make better use of the intelligence gathered through its various sources (inspections, RIDDOR3 , Infoline), in order to improve its targeting of business".

Covid-19 warrants a more precautionary approach to health and safety enforcement

Improved intelligence would help the HSE and local authorities target their investigations most efficiently as a risk-based approach to enforcement requires. But what action can they then take when non-compliance is discovered? In Figure 16 we show that the number of enforcement notices issued to firms since April is well below last year, something that is unsurprising given the low level of inspections detailed previously. But, even more strikingly, the number of notices imposed for Covid-19 related reasons is very small, with just 221 having been issued since April. Given the scale of concern in the workplace we have uncovered in our survey, why might this be the case?

FIGURE 16: **The HSE has issued only a small number of enforcement notices to firms**

Number of enforcement notices issued by the HSE, by type: Great Britain, April-September 2020
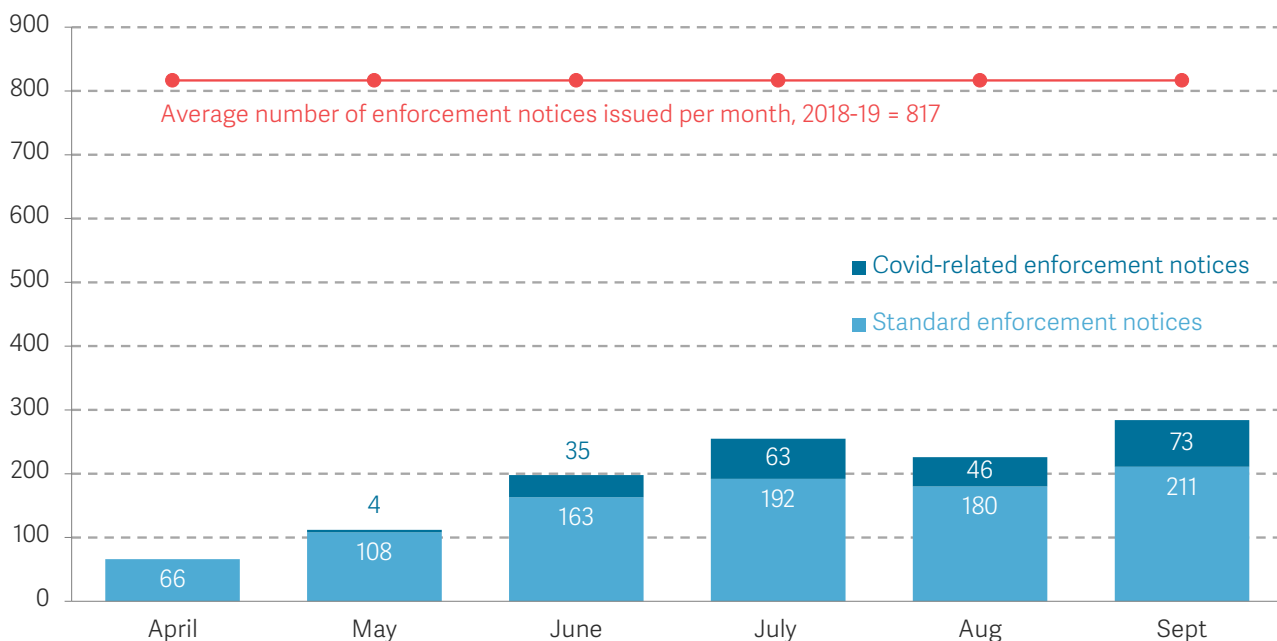
NOTES: 2018-19 used as comparator year because data for 2019-20 currently unavailable.
SOURCE: HSE, management information database, extracted October 2020 & HSE statistics, 2018-19.

To begin, it is clear that the HSE and local authorities have put much emphasis on educating firms to understand their obligations under new (and, it should be said, sometimes shifting) Covid-19 guidance, an approach which is arguably fair. But there are more systemic reasons for the low level of enforcement notices issued in the face of the pandemic. Critically, the HSE has classed Covid-19 as a 'significant risk' but not 'serious risk' in the workplace, a decision that has implications for the enforcement action it,

and local authorities, can undertake which must always be proportionate to the risk.[40] This classification reflects two key principles of health and safety thinking. First, it rests on what is called the 'healthy worker effect', which posits that for a healthy employee, the consequences of contracting the virus will be relatively mild (a few days off work not feeling very well, for example), and logically, the risk to the average individual is low. Second, the health and safety system (and employers themselves) only have jurisdiction over the workplace itself: they cannot control whether employees pick up the virus on the bus on the way to work, for example. As a result, they are not required to be mindful of broader community impact of virus transmission at work.

There are two reasons why we respectfully disagree with HSE's current designation of Covid-19 as a 'significant risk' in the workplace. First, there are clearly many in the workforce who are more vulnerable than the healthy worker, and for whom the consequences of contracting Covid-19 at work could be grave. In recent weeks, evidence has emerged on the 'long-Covid' condition,[41] for example, as well as the more serious impact the virus has on those from lower-income households including many black, Asian and minority ethnic individuals.[42] Second, the average person in the population will be more vulnerable than the average worker, given that those in employment are less likely to be elderly or have a serious health condition. Given that the virus poses a public, and not an individual, risk to health, the profile of the wider community should arguably be taken into account.

As a result, while we acknowledge that the health and safety system clearly cannot control what happens outside of work, it should arguably take a more precautionary approach to minimising the risk of virus transmission in the workplace, and move more swiftly to sanction employers where sub-standard practice is found. In its operation manual, HSE makes clear that risk assessment is a function of the likelihood of harm coupled with the severity of the consequence (so an unlikely eventuality that would not cause much harm would be designated a low risk, compared to an event which is both very likely and would be highly consequential which is high risk).[43] We adapt this model to present a stylised picture of our reasoning in Figure 17. As this makes clear, if HSE were to base its Covid-19 risk level on the impact of contracting the virus on the average, rather than the healthy, worker - or even more imaginatively, the average person in the

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40 See, for example: Work and Pensions Select Committee, <u>DWP's response to the coronavirus outbreak</u>, 22 June 2020 which states: "[HSE] said that issuing a prohibition notice requires an inspector to think somebody is likely to contract Covid-19, considering the likelihood of contracting Covid-19 at all and its prevalence in the general population. We heard that this would restrict prohibition notices to work environments where Covid-19 is particularly prevalent, such as intensive care units and some nursing homes."

41 See, for example: D Sleat, R Wain and B Miller, <u>Long COVID: Reviewing the science and assessing the risk</u>, Tony Blair Institute October 2020.
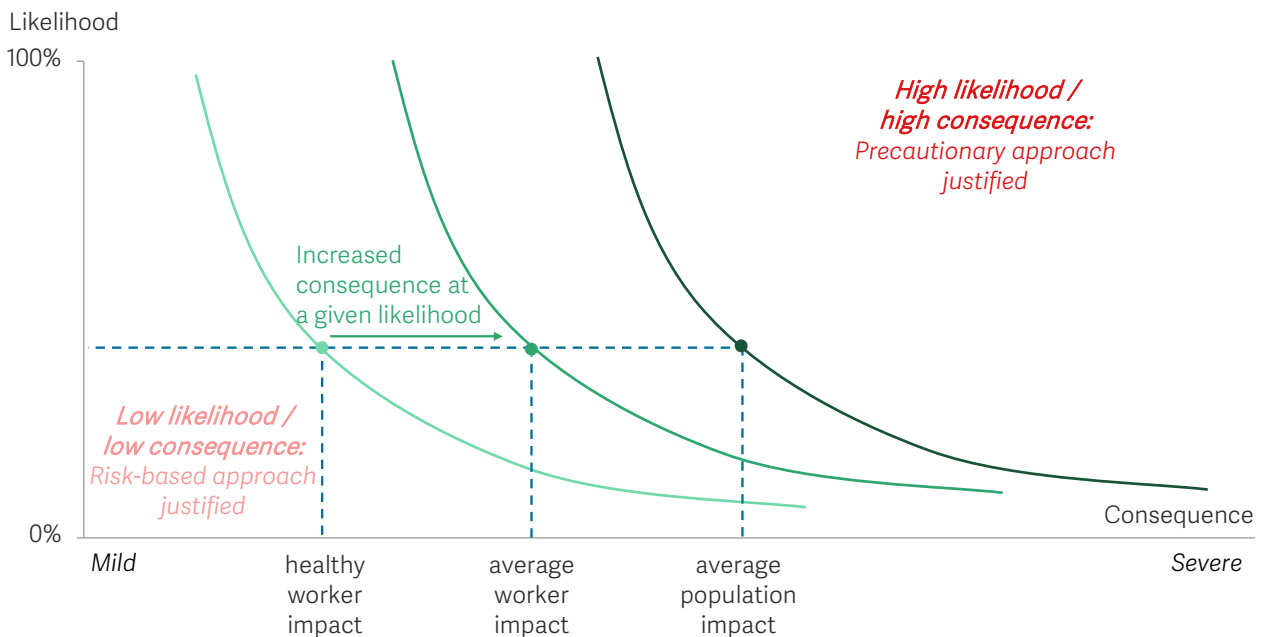
42 See, for example: ONS, <u>Updating ethnic contrasts in deaths involving coronavirus (COVID-19), England and Wales: Deaths occurring 2 March to 28 July 2020</u>, ONS October 2020 which finds that "the higher morbidity/mortality rates in black. Asian and minority ethnic individuals is largely the result of socio-economic factors".

43 HSE, <u>Enforcement Management Manual</u>, 2013, accessed October 2020.

population - the risk level shifts rightwards and towards the zone where a more active approach to enforcement is warranted.

FIGURE 17: **Taking more account of vulnerable workers and the general population justifies a more precautionary approach to enforcement**

Stylised illustration of the impact on enforcement practice of adjusting judgement of worker or general vulnerability to Covid-19

Likelihood
100%

High likelihood / high consequence:
Precautionary approach justified

Increased consequence at a given likelihood

Low likelihood / low consequence:
Risk-based approach justified

Consequence

0%

Mild   healthy worker impact   average worker impact   average population impact   *Severe*

SOURCE: Adapted from HSE, Enforcement Management Manual, 2013.

Conclusion

Covid-19 has stress-tested almost every part of society and government, and the health and safety system has not been alone in grappling with major new challenges over the past six months. Throughout this note we have recognised the serious efforts have been made by both employers and the enforcement bodies to adapt to the pandemic at speed. However, the wholesale nature of the Covid-19 risk in the workplace (as evidenced by our survey), the potentially grave consequences of the virus for some workers (especially those on low incomes), and the broader public health impact of failure to reduce transmission at work all lead us to conclude that a ramped-up version of 'business-as-usual' by the enforcement bodies is not a sufficient response.

Rather, policy makers need to look to the fundamentals when it comes to enforcing health and safety at work, and potentially rethink key tenets of the risk-based approach. We recognise that doing this would involve turning some long-held views on their head: critically, workplace regulation and especially health and safety has routinely been

regarded as a brake on business.[44] But in today's environment, with prevalence of the virus still high, the very opposite is arguably true: only when employers and the state ensures our workplaces are 'Covid-secure' can economic activity flourish, to the benefit of the living standards of all.

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44 See, for example: R Loefstedt, Reclaiming health and safety for all: An independent review of health and safety legislation, DWP, 2011, a review which set out to explore "ways in which health and safety legislation can be combined, simplified or reduced so that the burden on British businesses can be alleviated".