

Work and Equalities Institute Research Briefing

Fragmentation and degradation of regulatory and enforcement work inside the British state: The changing nature of labour inspectors' work

Stephen Mustchin
Miguel Martínez Lucio

Summary

The workforce within agencies tasked with regulation, enforcement and inspection in relation to labour markets, work and employment is a less commonly researched area of the public sector in comparison to health, local government, law enforcement and other functions of the state.

Yet the changing nature of the employment relationship within enforcement and inspection functions ultimately impacts on, and shapes, the nature of the broader scope of employment regulation itself.

These changes have emerged due to the era of austerity and subsequent resource limitations, tensions and contradictions within different areas of employment regulation. They have also emerged due to constraints on the capacity for collaborative work and civil society or union engagement, and changes in skills, social reproduction, work intensification and the nature of regulatory work.

These outcomes have undermined the regulatory capacity of the state and subsequently the enforcement of legal rights and employer obligations due to the way that serious gaps have emerged in terms of the knowledge of the employment terrain and the increasing social distance that inspectors find between themselves and those they interact with.

This briefing explores the impact of these regulatory and organisational changes on those actually working within the state agencies and functions responsible for direct enforcement of employment regulation with a particular focus on the area of health and safety. It draws on interviews carried out between 2016 and 2019 with inspectors at the Health and Safety Executive (HSE), the Gangmasters and Labour Abuse Authority (GLAA), and the HM Revenue and Customs (HMRC) minimum wage enforcement function, with the main focus on the HSE.

Research questions and themes

The overarching research question was 'how has institutional and organisational change impacted on the occupational identity of inspectors, the nature of their work and employment relationship, and the subsequent framing and enactment of labour market regulation?'

The study made sure that the context of change was understood across various dimensions. In turn, four main research themes were explored:

- *The changing nature of employment regulation and its enforcement.
- *The influence of the UK government's deregulatory and more interventionist (in some respects) agenda since 2010 with regard to how the state regulates the labour market.
- *How the nature of labour inspection work has changed in a context of state restructuring and public sector employment under austerity policies.

*The scope for collaboration among enforcement agencies, unions, civil society and other actors involved in employment regulation, inspection and enforcement.

This briefing highlights three dimensions of change that have significantly eroded the reach and effectiveness of the inspector.

Firstly, the impact of austerity and changing state regulatory priorities concerning employment and immigration on the employment of inspectors. Secondly, by analysing teamworking, networking and collaboration between different enforcement agencies and labour market actors pointing out key changes. And thirdly, by looking at notions of flexibility and deskilling and how they are manifested among public sector employees within regulatory agencies and the negative impact they have had.

Labour inspection, enforcement and change within state agencies

It has been argued that the enforcement capability of regulatory agencies depends on three core factors: the ability to collect information on regulatory breaches, either from inspectors themselves, or individuals and civil society actors; to be able to process and act upon this information; and to 'resist efforts by organised interests to block enforcement' (Amengual, 2014).

Furthermore, the UK has increasingly developed a system of focused inspection and enforcement through a range of agencies that cover different remits and collaborate in a variety of ways, although this briefing focuses on health and safety.

In turn, there are three important features that historically underpin the role of the labour inspector in the UK:

- *The ability to develop a level of discretion within their decision-making process, with sensitivity to the specific contexts of the different workplaces in which they intervene, is central to inspectors' implementation of health and safety objectives. The sheer complexity of health and safety issues and traditions across different industrial sectors is so extensive that an historic feature of labour inspection in the UK was the ability of inspectors to establish long-term relationships within particular industries. Inspectors were able to use a wide degree of judgement and discretion due to the experience they had built up over the years in specific areas.
- *This control over their work was facilitated and underpinned by inspectors developing social and organisational networks that led to the development of specific forms of social and political capital among a range of employers and trade unions.
- *The emergence of health and safety regulation coincided with an increasing level of specialisation in the area, but also career paths based on a strong ethical commitment. The expanding role of key state-related agencies dedicated to the implementation and awareness of health and safety regulations facilitated a stronger sense of occupational identity.

However, over the last decade there have been huge pressures on labour inspectors relating to resource constraints, (de)regulatory change and the increasing prominence of regulatory breaches in a context of austerity and deregulation. A breadth of concerns relating to the nature of regulators, their orientations, how open they are to collaborative work, institutional change and discretion are evident in the literature on regulatory enforcement.

But there is relatively less attention paid to the position of inspectors and employees of regulatory agencies and how the nature of their work affects and is affected by such dynamics – hence the discussion below focuses especially on the question of HSE and its inspectorate.

Labour inspection, the employment relationship and the labour process of regulatory work

Internationally, the impact of austerity has been highlighted as having had a negative effect on the resources available for enforcement purposes (Vosko et al., 2016), with technical staff and inspectors suffering pay freezes, leaving for more lucrative private sector jobs, and increasingly performance managed in a way that may be inappropriate to the very nuanced nature of inspection and enforcement activity.

However, much of the focus of critical studies concerns relations with employers, the nature of enforcement, institutional networks and *quantitative* change in resources and capacity within the inspectorate, and is less concerned with matters related to *qualitative* changes in their work and employment conditions.

Pressures relating to austerity, regulatory change and marketisation impact on the role of regulatory agencies, their scope to collaborate with other actors and adopt innovative and inclusive approaches to enforcement, and the extent to which they might overcome enforcement gaps. These pressures determine the nature of their employment relationship within regulatory agencies and, we argue, subsequently influence the nature and process of regulation itself.

The complexity of labour market problems and different legislation and 'protections' enforced by different agencies means there is an increasing emphasis on (internal) teamworking and (external) multi-agency work. A challenge in this regard is when multiple agencies regulate different but related issues within work, and these divides create notable constraints in terms of the work of inspectors, their remit and levels of discretion.

Findings

A challenging landscape: declining resources and support

Labour inspectors and other staff working for regulatory agencies such as the HSE, GLAA and HMRC minimum wage enforcement are employed within the UK civil service which has in recent years been subject to managerial reforms including lean-influenced new public management leading to notable work intensification (Carter et al., 2013), job cuts, pension reductions and pay freezes.

Strikes and membership growth have been evident within the PCS, the main union in the GLAA and HMRC (Hodder et al., 2017), while the main civil service union in the HSE, the traditionally more moderate Prospect, has organised some forms of protest and industrial action in opposition to austerity-led deterioration in working conditions.

Meanwhile the Covid-19 pandemic has fragmented work, made access to workplaces increasingly difficult for regulatory agencies, and made the forms of networking and engagement with employers, managers and unions that are crucial to the effectiveness of inspection enforcement even more difficult to maintain.

A pledge from the government in May 2020 to allocate an extra £14 million to the HSE in order to cope with the pandemic was criticised by Prospect as representing merely a tenth of the real-terms funding reductions the HSE had suffered over the preceding decade.

Declining workforce

A decade of austerity has led to a reduction in the number of HSE inspectors from 1,617 in 2010 to 1,059 in 2020 (James, 2021), with serious concerns over their capacity to recruit and train new inspectors. However, since 2010, employers who underpay workers and breach national minimum wage regulations have been publicly named, and although naming was suspended from 2018 to 2020 following complaints from some employers, the increased fines levied on non-compliant firms by HMRC arguably constitute a more assertive enforcement approach. That said, the reduced workforce means an increasingly reactive rather than proactive approach to regulatory enforcement.

Deteriorating terms and conditions, job insecurity and authoritarian management are common themes in many accounts of public sector reform and restructuring. However, in this context, such pressures have wider implications for the regulation of work and enforcement of employment rights.

Thus, innovation through alliance making and a broader shared approach to regulatory enforcement (Blanc, 2016) has been undermined with regulatory work often reduced to minimalist bureaucratic routines underpinned by more extensive performance measurement. Resource restrictions, institutional barriers to cooperation and entrenched anti-unionism within the British state thus militated against collaborative, team-based approaches.

The challenges of collaboration across boundaries: the limits of innovative collaboration

The tension between policing and civil regulation was evident in terms of reported practice and examples. For instance, it was argued that the GLAA's heavy reliance on former police officers when recruiting inspectors was problematic. As one GLAA inspector told us:

"We've gone down the route of employing a lot of ex-police officers, which is great from an investigation point, not so great when it comes to dealing with victims...they've come in with a totally wrong mindset and, for me, who has been in the job for a long time now it's frustrating, because you want to just shake them and, sort of go, step down a couple of notches now you're dealing with human beings and you're dealing with people and you can't walk in with your police head on anymore."

Another example was given of an experienced GLAA inspector who had become disillusioned by the heavily police-oriented culture in the organisation as well as by the difficulties caused by organisational fragmentation. This had led to them leaving the agency and using their experience to set up an independent consultancy working with private sector clients instead.

From this it can be seen that collaborative working is stymied by inter-organisational tensions, the fragmented nature of both employment regulation and enforcement, and issues of culture and occupational identity within enforcement agencies.

In our research, it was evident that the link between the HSE and unions had also weakened. Where union health and safety representatives had historically been able to liaise with and directly contact inspectors in specific industries, this link was now gone due to the reduced overall number of inspectors, resource limitations and greater job rotation.

Skills, knowledge, teamworking, and performance management: the deskilling of the inspectorate?

Performance management processes have been introduced across the civil service (Carter et al., 2013), with increased managerial evaluation of enforcement processes and outcomes. Interviewees reported rising levels of stress and work intensification within enforcement agencies, and that this was in part driven by the tensions and contradictions within performance management processes. As one HSE inspector told us:

"We've seen the introduction of some form of performance related pay which has caused difficulty, and there's a significant argument being put forward that inspectors should not be subject to performance related pay because it starts to make the whole thing subjective."

Performance related pay is generating various pay inequalities within the workforce, with part-time, older and disabled workers found in union research to typically do worse under performance management than others.

Within all three agencies we analysed, this was generating a short-term culture concerned with caseload management and scaled-back interventions, and this militated against the developmental aspects of the job where traditionally an inspector learnt through a range of taught and experiential methods.

The fragmentation of caseloads also meant that there was a more generalist, less industry-specific focus in some cases which undermined the development of more comprehensive sets of skills and knowledge that could assist in detecting lack of legal compliance.

Notions of skill, experience, qualification and the nature of inspection work had changed markedly, with many interviewees describing a loss of organisational 'memory', experienced staff leaving the inspectorates, an increasing prevalence of trainees by way of replacement, and less technical training for HSE inspectors. As another inspector told us:

"[We're] saturated with the training burden . . . the first five years, for that period you've got a one to one mentor and you are out on joint visits a huge amount of the time . . . you have to kind of put by an hour either in a coffee shop or the office afterwards debriefing . . . to take the time to coax them and mentor them."

Teamworking, skills, training and the reproduction of the inspection workforce under conditions of austerity were extremely challenging issues, and while the GLAA emphasised recruiting former police or investigative employees, training health and safety inspectors via a graduate trainee scheme in the context of resource limitations and deregulation created major challenges both in terms of inspectors' experiences of work itself and by extension the nature of regulatory interventions.

In this respect, some elements of the two-tier professionalism and deskilling seen in other public services were becoming visible in the realm of HSE inspection, with wider implications for the nature of regulation and its enforcement.

Summary: 'Collaboration' and 'innovation' in a context of austerity

In the context of austerity a lack of resources and a thinly stretched inspectorate workforce has militated against approaches to enforcement where regulatory agencies work closely with employers over a sustained period (Piore, 2011). Increasingly such attempts to educate employers around regulation are reduced to the provision of online 'toolkits' and similar rather than closer relationships.

Furthermore, resource constraints, bureaucratic fragmentation and latent anti-unionism mean that processes of collaboration and inter-agency teamworking are limited, and where they do take place are driven by political contingencies relating to immigration control and other priorities rather than the more networked, democratised approach identified in some of the literature on inspection and enforcement.

And pressures deriving from performance management, increasingly commercialised imperatives within regulatory agencies, and the nature of skills, technical training and social reproduction were manifested in different ways within the three agencies discussed here, and ultimately impacted on the areas of regulation and enforcement more generally.

Fragmenting nature of regulatory work

Three prominent issues regarding the shifting, fragmenting nature of regulatory work can be seen to be emerging from these changes:

- *There has been a decreasing level of work-related 'control' and discretion in terms of decision-making amongst inspectors. Inspectors increasingly had to compete with centrally pre-established formulas and criteria that appeared, in part, to displace them and obviate their role.
- *Restricted resources mean there is less time to engage with and comprehend specific industrial changes and trends in a detailed manner, and less time to develop a body of knowledge in relation to the regulatory context. This loss of knowledge was also linked to the greater use of teamworking and trainees, with these team dynamics emerging as a significant constraint on the inspectorate's development of skills and knowledge, especially given the under-resourcing of mentoring and stable senior support within teams. There was a sense of job loading and multi-tasking which generated an increasing level of stress.

*Unease in terms of occupational identity was heightened by a certain 'invisibility' that undermines the status and presence of regulatory work - something accentuated during the pandemic when field visits were minimal.

In addition, the joint inter-agency work outlined above created opportunities to sustain and integrate the work of health and safety inspectors and other agencies which created a series of dilemmas in terms of their legitimacy and identity. Inspectors' work became conflated with coercive and broader policing roles within the state in relation to vulnerable groups of workers, thus potentially undermining more relational approaches to enforcement.

The emphasis on online 'toolkits' also had an impact on the way inspectors could interact with individuals on the ground. This further generated a certain degree of invisibility reducing health and safety-oriented decision-making to managers and trade unionists (or workers) on the ground interpreting such general sets of recommendations and points.

Reduced presence of unions

There was relatively little formalised engagement with unions in the newer regulatory agencies discussed here (the GLAA and HMRC minimum wage enforcement function), while in the case of the HSE unions maintained some residual influence which could be traced back to the design of health and safety regulation during the mid-1970s 'social contract'.

The reduced workplace presence of unions has eroded their regulatory capacity, and while unions maintain some influence within the HSE more centrally, this too has been eroded while resources and staffing levels have fallen markedly.

While such changes are to an extent separate developments, they are consistent with an ideology that has sought to weaken

and exclude unions (as opposed to incorporating them), unravel the vestiges of more corporatist approaches to policy and regulation, and to demonise health and safety regulation as an affront to the liberty of individuals and employers.

Hence, the ways in which more expansive (yet shallower) roles across industrial sectors, state agencies and within virtual/online dimensions have evolved, together with a stronger sense of being exploited in terms of their own work and status, are leading to significant changes in the way inspectors' work is conducted, how they are perceived in occupational terms, and their visibility given their increasingly infrequent physical presence within the workplaces they seek to regulate.

Further reading

For a longer and more detailed version of this briefing go to:

Mustchin, S., & Martinez Lucio, M. (2022). The fragmenting occupation of labour inspection and the degradation of regulatory and enforcement work inside the British state. *Economic and Industrial Democracy*, 0143831X221078337.

The general background to the changes in enforcement within the United Kingdom are also discussed in: Mustchin, S., & Martinez Lucio, M. (2020). The evolving nature of labour inspection, enforcement of employment rights and the regulatory reach of the state in Britain. *Journal of Industrial Relations*, 62(5), 735-757.

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