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Business Risk Management Practices: The Influence of State Regulatory Agencies and Non-State Sources

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Bridget M. Hutter and Clive J. Jones[1]

Abstract

The influence of external organizations and pressures on business risk management practices has hitherto been examined through the influence of state regulatory regimes on businesses. This literature concentrates on key socio-legal concerns about the influence of the law in social and economic life (Heimer 1996) which is an important source of information about business risk management practices. However most of this work does not clearly differentiate the importance of state regulatory regimes relative to other external pressures on business. We know that the sources of regulation and risk management are diversifying, as are the tools and techniques employed to manage and regulate risks. What we do *not* have is much empirically informed research about the range of sources influencing the business world and in particular the weighting of influence exercised by them. In this paper we will explore the different external pressures upon business risk management through an empirical study of the management of food safety and food hygiene risks. A broader objective is to throw some further light onto the debate about regulation within and beyond the state.

External influences on business risk management: beyond the state

In this paper we consider regulation as a way of managing risks in modern societies (Hutter 2001). It is a means of shaping motives and preferences (Shearing 1993).[2] In asking how influential is regulation – whether this be state-based or beyond the state – we are asking how influential is regulation in getting businesses to manage the risks posed by their activities.

The use of the law as a means of regulating risks in modern societies and more particularly the role of regulatory law in the management of business risks are well established areas of academic study. There are now substantial literatures on the enforcement of regulatory law and a growing literature on business responses to this

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1 Bridget Hutter is Professor of Risk Regulation and Director of CARR and Clive Jones is Research Assistant and Project Manager, CARR. We would like to thank the anonymous referees for their very helpful comments, Attila Szanto for his excellent research help and the Michael Peacock Trust for their generous sponsorship of this study.

2 Regulation has a multiplicity of meanings (see Black 2002). In this paper we see regulation as a means of managing risks so we focus on organizational responses to the risks generated by business activities and we consider responses originating within and beyond the state.

regulation. This literature identifies factors which may encourage or limit the role of the law as a risk management tool – although seldom is the research framed this way, typically the focus is more on issues of legal compliance.

The existing literature identifies a number of factors which influence the impact of regulatory law on businesses. For example, variations in knowledge of the law, regulations (and their requirements) and sanctions for non-compliance have all been identified according to levels of business motivation (Genn 1993), location in organizational hierarchies (Dawson et al. 1988; Hutter 2001) and size of business (Brittan 1984; Di Mento 1986; Genn 1993). Research indicates the need for sanctions and state influence through law appears as a necessary but not sufficient influence upon business risk management (Gunningham and Kagan 2005; Hutter 2001). It is perhaps for this reason that a regulatory mix which harnesses sources of regulation beyond the state is seen as one of the hallmarks of so-called 'smart regulation'.

In the early 1990s Ayres and Braithwaite (1992) advocated tripartism in regulation, involving regulators, businesses and public interest groups. Similar themes are reiterated by Gunningham and Grabosky (1998) who suggest a range of regulatory arrangements which go beyond the state to include business, third parties, non-governmental organizations (NGOs), insurers and consumers. All regard these as 'smart' regulation and also as a means of empowering different participants in the regulatory process in order to maximize the promotion and achievement of risk management.

More recently a series of studies have highlighted the importance of focusing on the interplay of economic, political and social forces in understanding corporate regulatory factors. Also relevant is their interaction with the internal organization of a business and the views and behaviours of its management and employees (Braithwaite and Drahos 2000; Gunningham, Kagan and Thornton 2003; Hutter 2001; Parker 2002). There has of course been a growing recognition that the state is not the only influence on business risk management practices. Indeed there is increasing acknowledgement of regulation beyond the state, where regulatory space is occupied by the state and other non-state players and where there is a move to outsource public management functions (Hancher and Moran 1989; Osborne and Gaebler 1992; Scott 2001).

External influences on business risk management: economic and civil

Analytically we can identify two sources of regulation which are autonomous and independent from the state, namely the economic sector and civil society (Hutter 2006). The economic sphere includes a broad range of profit motivated organizations and activities embracing, for example, finance and industry. These include, for example, industry or trade organizations and companies themselves (Gunningham and Rees 1997). There are of course important hybrid forms of self-regulation, for example, enforced self-regulation which involves a mix of state and corporate regulatory efforts. The government lays down broad standards which companies are then expected to meet (Braithwaite 1982; Hutter 2001). Some market participants sell risk management products and risk management advice, for example, insurance companies and consultancies. Others may exercise influence through their investment or consumer choices.

The term civil society embraces a fairly broad range of actors and organizations (Hutter and O'Mahony 2004). Accordingly the range of sources of regulation in the civil sector is diverse. Perhaps the best-known regulatory sources in this sector are NGOs, a category which itself includes a diverse range of organizations which may operate at the local, national or international levels. Also important in the civil sector are standards organizations which produce standards about product quality, quality assurance, and risk management (Brunsson & Jacobsson 2000) and professional organizations which have long played a very important regulatory role in regulating entry conditions to the professions and laying down standards of conduct. Again the influence of civil society sources on state regulation has been discussed but what is now needed is more empirical information on the influence of civil society on risk management practices. Standard setting agencies clearly have the capacity to set industry and product standards and thus have a very direct influence on business. NGOs and professional representatives may also have influence either directly as part of the business decision-making apparatus or indirectly from outside the business.

These organizations may influence regulation and business risk management in a variety of ways. The distinction drawn by Hood et al (2001) between the context and content of regulation is helpful here. The context of regulation refers to 'the backdrop of regulation' and the content to 'regulatory objectives, the way regulatory responsibilities are organized, and operating styles' (2001: 28). In the case of businesses one might use similar distinctions to identify those having a background and indirect influence from those who have a much more direct influence on business risk management practices. NGOs, for example, may be both part of the context and content of regulation. For instance, they may exert normative background pressure or in some cases they may be formally incorporated in business risk management and corporate social responsibility initiatives (Enderle and Peters 1998).

Management of food safety and food hygiene risks

The purpose of this research was to examine how businesses understand and manage risk, in particular to gain an understanding of the nature of food safety and food hygiene risks in the food retail and catering sectors, what influences and drives business risk management practices; and the extent of variability between businesses in understanding and management of risk. This project focused on the management of food safety and food hygiene risks by businesses in south-east England and Scotland. Data were collected in two phases. The first phase involved consultations with a range of expert opinion from senior figures related to the food industry. This included meetings with representatives from EU agencies, UK central government departments and agencies, local government departments, academics, retail and producer business leaders, trade associations, and consumer groups.

Discussions during the first phase of research were broad-ranging and offered a variety of perspectives on the state of food safety and food hygiene in the retail and catering sectors in the UK. It is clear that there is no broad consensus about what the state of food safety and food hygiene is in the UK today. It soon became apparent that there are distinctly different views with one person's matter of fact being another's point of contention. An example of relevance to this paper centres on the value of asking managers about their knowledge of and compliance with state regulation. In the view of some of those we spoke to this is a nonsensical question which will reap very obvious responses, namely that if something is a matter of law then it is known about and complied with – 'food safety hazards must be controlled by law by the business, therefore these are not options'. Others disputed this. They believed that not everyone does know or understand the law and they saw one of the major challenges of regulation being to attain and maintain compliance. In addition some confusion existed as to what exactly was being complied with (or over complied with); a law, regulatory guidance or a company rule.

The second phase comprised a questionnaire survey which was structured according to business type; notably the food retail and catering sectors and the size of business.[3] Further subdivisions of the sectors were made. The food retail sector, often also referred to as the grocery sector, was segmented into supermarket, convenience store and specialist retailer. The catering sector, often also referred to as the hospitality sector, was segmented into restaurant, take-away and contract catering. A total of 204 individuals across 31 businesses responded to the survey.

State regulators

State regulatory arrangements for food retailers and catering outlets in the UK are organized on a national and local basis. In very general terms central government sets food safety policy through the Food Standards Agency (FSA) and local government implements this policy through their individual Environmental Health Departments. The officers of these departments monitor compliance with the minimum standards required by government legislation, promoting guidance and best practice on higher standards. Enforcement action may be taken against businesses which are non-compliant with minimum legal requirements.

The regulatory treatment of food safety is frequently located alongside that of food standards (the accurate description of food). Food safety is often the responsibility of local government Environmental Health Officers (EHOs) and food standards, the responsibility of local government Trading Standards Officers (TSOs). The exception to this arrangement is in London and Scotland where both food safety and food standards are the remit of EHOs and they may have the title of Food Safety Officer. EHOs do not only inspect food production, catering and retail premises on matters of food safety they perform additional duties such as housing standards, other public health risks, pollution control, health safety and welfare and noise control (Hampton 2005).

The FSA is a non-ministerial department which is a policy making body with responsibility for guidelines, standards and codes of practice. It does have an enforcement arm, the Meat Hygiene Service (MHS) whose activities are independent of and parallel to those of Environmental Health Officers and as such are outside the boundaries of this research. Each of the home nations of the UK, except England, has a devolved branch of the FSA: FSA Scotland, FSA Wales and FSA Northern Ireland

[3] Company size definitions: Large firm: over 250 employees; medium firm: 50 - 249 employees; small firm: 10 - 49 employees; micro-firm (including sole trader): 0 - 9 employees. Source: European Commission (1996) and DTI (2006).

which all connect to the devolved administration. The FSA inspects and audits the environmental health departments of local authorities which in turn inspect food retail businesses.

Those we met in the first phase of the research differed widely in their views about how much would be known about state-based regulatory systems. State regulatory arrangements were considered by some discussants to be very confusing and they expected that we would encounter a great deal of uncertainty in business about the role of the FSA, EHOs and TSOs, especially amongst small- and medium-sized enterprises (SMEs).[4] They particularly questioned how well known the FSA would be in the food retail and catering industry. Accordingly the research did not take for granted that state legislation is familiar to everyone working in this industry. Rather it problematized this issue aiming to discover the extent of knowledge about different regulatory systems (state and non-state). The fundamental questions are what levels of knowledge are there and how does this knowledge vary between different parts and groups within the food retail and catering sectors?

In the second phase of the research managers of food businesses were asked about a range of matters, for example, their understandings of food safety and food hygiene risks, their sources of information about these risks, business controls to manage risks and, the subject of this paper, external influences on their risk management sources. These included a very general question about the extent to which their consideration of food safety and food hygiene risks is influenced by sources external to the business. Table 1 details the aggregate responses we received. In the rest of the paper we will consider these alongside the other interview and survey data we collected, considering the influence of state regulators and then the influence of those beyond the state.

Environmental Health Officers

The survey we conducted found that state regulatory agencies were, alongside consumers, the most important external influence on food businesses and of these, EHOs were held to have the most influence (see Table 1). This confirms pilot research which indicated that main point of contact with a state regulator for most food businesses is likely to be EHOs. The strength of the influence is revealed in the constancy of the findings across different groups. For example, 68% of managers and 67% of micro and small business managers claim EHOs are a strong influence when they are considering food safety and food hygiene risks with only 2% of managers and no micro or small business managers claiming EHOs are of no influence.

[4] We have also included micro businesses (0 – 9) employees in the SME definition.

Table 1: The range of influences upon managers when considering food safety and food hygiene risks based on the statistical mean of all questionnaires (completed) by managers.

Source of influence – ranked by level of influence	**Influence**	**Influence index** (Mean values of questionnaires)
EHO	Most influence ↑	1.35
Consumers		1.36
FSA		1.74
TSO		1.90
Media		2.46
Insurance		2.85
Lawyers		3.19
Pressure group/NGO	Least influence	3.23

Respondents were able to give more detailed questions about EHOs. Most businesses were inspected by an EHO once a year although a small minority claimed to have gone several years without being inspected by an EHO.[5] The point of contact in each business varied. It is known that in many businesses managers were often not present during an EHO visit or in large organizations as the visit was 'handled' by a specialist from head office or a more senior manager. This is not the case with micro and small businesses where the manager has direct and personal contact with the EHO. This may in part explain the additional finding that micro and small businesses tended to claim better quality relationships with EHOs than most medium and large size businesses.[6]

[5] This does not mean that an EHO visit has not taken place, widespread high staff turnover within a particular branch of an organization can contribute to a weakening of organizational memory with regard to risk events and regulatory encounters.

[6] Not a single business in the entire sample claimed to have a bad or very bad relationship with an EHO. Nor did any manager or director mention experiencing the serving of an enforcement notice or being prosecuted.

This said one of the surprising findings of the survey is that with one exception (1 out of 15 respondents) none of the micro size catering businesses proactively sought advice from EHOs. This is especially surprising as EHOs emerged as an important source of information for other food businesses. Two-thirds of the businesses we surveyed actively seek advice from the EHO. Inspection appears to be an important educative channel and it may be that micro businesses find these visits especially helpful – thus the perception that they have a good relationship – yet they may simultaneously lack the confidence to actively ask EHOs for advice in the way larger businesses do.

The other local authority regulators we questioned respondents about were TSOs. They are clearly of influence (62%) on our food businesses but not as strong an influence as EHOs (91%). Knowledge about TSOs was patchier than was evident in the case of EHOs. For example when asked about TSOs 52% of micro and small businesses indicated a response of 'Not applicable' or 'Don't know' compared to 10% who did not or could not respond on the subject of EHOs. Little patterning was evident according to the size of business or whether the business was a retail or catering business. TSOs received almost no spontaneous mention elsewhere in the survey where they were mentioned by less than 2% of respondents. This would suggest that an awareness exists of trading standards matters but managers, directors and owners have had little experience of direct contact with a TSO[7].

Food Standards Agency

During the first phase of research the role of the FSA was, as one might expect from this group of experts, well known. There was a great deal of uncertainty in the first phase about how well known the FSA would be within the food industry. Yet in our second phase survey the FSA was ranked as the third most important external influence on food retail and catering businesses. This ranking did vary between businesses. For example, almost two-thirds of managers from a large take-away chain did not indicate that the FSA had any influence upon them by either ticking 'Not applicable' or not responding to the question. This response was consistent with most of the other responses regarding external regulators from this company – they were characterized by a medium to high proportion of 'not applicable' or non response to questions on this topic.

In comparison, 90% of managers of a medium-sized catering chain claimed the FSA as their strongest influence – more than the influence of EHO (80%). We suspect that this finding should be treated with caution as their managers did not reference the FSA elsewhere in their responses.[8] Further evidence of confusion is that the retail manager reported that his branch had been audited by the FSA.

[7]Business managers that only ever worked in Greater London would not have contact with a local government enforcement official who was a dedicated TSO; functionally such an enforcer would be a combined EHO and TSO whose official job title is likely to be Food Safety Manager – Environmental Services Department. This difference in function is due to geographical variation in the structure and responsibilities of local government within the UK.

[8] This phenomena was not unique to this business or to this question – it occurred in responses throughout the questionnaire.

At a basic level there did seem to be an inability to distinguish between the role of the local authority EHOs and the national FSA. It is highly unlikely that any manager met employees of the FSA as it is the local authority EHOs who inspect and enforce against businesses. As an arm of central government the FSA's role is to audit Environmental Health Departments (often referred to as regulating regulators), to communicate public health messages (risk communication) and to set food safety standards after conducting risk identification and risk assessment, and developing risk management strategies.

Those with a detailed knowledge of the FSA tended to be at the highest levels within businesses, that is within 'head office' specialist functions and similarly specialist functions within trade associations. Some senior business figures within the broader food retail sector often combine two or more roles serving as a part-time representative of a trade or professional association, or unpaid advisory members of government-organized committees and boards in addition to their business role.

General confusion seems to surround the division of responsibility and functions of state regulators. Similarly a sizeable minority of respondents did not realize that the EHO is an employee of the local council. Several specific references in the research were made to non-specific state bodies such as, 'the government' (7 references), 'the authorities' (2 references) or 'the council' (6 references).

Non-state regulators

The growth of non-state actors in regulation and risk management practices was well understood by our experts who in addition to state regulators and supranational institutions, identified a variety of non-state sources of regulation. In the economic category they cited trade organizations, commercial consultants, the insurance industry, lawyers, private standards required by specific supermarket groups and self-regulation/best practice. In the civil category they noted professional associations and other epistemic communities such as scientists, advocacy and pressure groups, external accreditation agencies and assurance schemes, consumer NGOs, the public and the media.

The second phase of data collection questioned respondents about a variety of sources of non-state influence. As we can see from Table 1 the most influential of these groups are consumers who, along with EHOs, exert the greatest influence over respondents' food safety and food hygiene management.

Consumers

Our first-phase interviews did not identify consumers as having such important potential in the regulatory system and did not indicate how widespread and strong an influence they would be amongst the business managers interviewed in the second phase of the research. For many businesses consumers were either as influential or almost as influential as EHOs.

Most managers in the sample sense a general public awareness of food safety and food hygiene risks. This is well illustrated by Table 2 below which shows how managers responded to a question about their understandings of consumer concerns. In two companies 100% of managers thought that consumers rated food safety and food hygiene issues as ‘Very important’ and in these two companies ‘Labelling and product description’ was seen to be the second highest concern to consumers. Overall ‘Price’ (value for money) was cited as the second highest concern of consumers.

Table 2: The range of perception importance to consumers by managers when considering a range of food attributes commonly related to risk based on the statistical mean of all questionnaires (completed) by managers.

Consumer concerns	**Managers understandings of relative importance of consumer concerns**	**Importance index** (Mean values of questionnaires)
Food safety and hygiene	Most important ↑	1.1
Price (value for money)		1.65
Labelling & product description		2.2
BSE		2.35
Food additives		2.4
GM (Genetic Modification) / Use of pesticides to grow food		2.55 / 2.55
Organic	Least important	2.7

A senior risk manager from a large branded licensed catering chain commented that his business had ‘over complied on GM regulations due to consumer demand’.

The media

The media is often considered one of the most influential opinion formers but in this research their comparative strength of influence was not widely recognized. Two separate forms of the effect of media upon business were detected in the wider study – direct and diffuse. In direct cases the business has been specifically identified becoming the focus of media discussion. In diffuse cases the influence is more generic, either the food industry in general or a food product becomes the subject of media attention and all businesses are influenced.

During the period of study it was known that some businesses in the sample had first-hand experience of direct media attention in the form of the 'undercover investigative television reporter' genre. But specific details were difficult to obtain through the survey. Respondents were however more prepared to discuss the more *diffuse effects of the media.* A small group of individual managers across the sampled businesses criticized the media for creating 'food scares'. Another group of mangers was clearly (possibly unwittingly) 'part' of the food scare in that they would express concern and name as a risk matters of often complex and disputed risk which were receiving extensive press coverage at the time of study. Chief among these were GMO in the food chain, BSE, epidemics and 'chemicals'.[9]

There was also concern that adverse publicity for any part of the industry had a contaminating effect on others:

> When bad practices are shown on TV I think people think that all catering businesses are run the same! Not right.
>
> (Manager– contract catering business)

During a group discussion at an influential trade association meeting a senior public official with expertise in this area commented that the study would 'find a variability in compliance from businesses of a different size'. The group was divided as to whether this implied that small businesses were 'more risky' than larger ones or vice versa.

Insurance companies

Insurance companies are thought by some commentators to have a potentially important regulatory role (Ericson et al. 2003). Insurance is seen to act as a control and seeks to influence behaviour by calibrating premiums according to desirable/undesirable characteristics. For example, higher premiums are charged to smokers and presumably the same principles apply in setting liability insurance for food businesses. Yet very few of those we interviewed and surveyed in our research regarded insurance companies as a significant influence on their management of food safety and food hygiene.

Our experts thought it unlikely that insurance companies would figure prominently as an influence on food safety and hygiene standards but there was a suspicion amongst the experts we interviewed that their influence may be increasing. Some detected a shift in attitude from the finance sector towards food businesses, a result being that some food businesses are having difficulty in obtaining affordable public liability insurance. A degree of scepticism about the ability of insurance companies to play a credible role in the food sector was expressed, comments ranging from a view that insurance companies are not very good at quantifying risk, with others being especially concerned

[9] In the latter stages of data collection this referred to banned contamination by dyes from the Sudan family of red/brown food colorants which were found in several manufacturers of branded and supermarket private label products. The discovery of such a contaminant prompted the FSA to issue a series of Food Alerts to EHOs, manufacturers, retailers and the public leading to a major product recall of over 500 products from some of the UK's major food brands and food retailers. http://www.food.gov.uk/safeeating/sudani/sudanitimeline FSA 2005

about moral hazard problems – ‘Insurance is the enemy of the good as it is designed to average out loss resulting in the good not being rewarded and the bad not being punished’ (interview respondent). More generally the extent to which insurance does play a role in promoting food safety and food hygiene is unknown.

Some 60% of managers of micro/small businesses compared to 50% of medium and large companies[10] claimed to have insurance cover for food hygiene and food safety incidents. Conversely, micro and small business managers (30%) view insurance companies as much less influential than did managers of medium and large businesses (50%). Aside from insurance cover 20% of all managers received information on food hygiene and food safety from their insurance company but only one business (a micro/small business) reported ever having been inspected by an insurance company.

Our survey found that 15% of managers in medium- and large-size businesses regarded insurance companies as having a ‘strong influence’ with the medium and large catering businesses being more inclined to regard them as strongly influential (20%) than the retail only businesses (8%).

Lawyers

The relevance of lawyers to risk management was not well understood by our survey respondents. Lawyers were in fact considered to have the least influence of all the external actors we asked about in the survey. A slight difference in influence does emerge between the catering and retail sectors with the former responding that lawyers have greater influence than was the case with the retail sector.[11] Interestingly almost 90% of managers of micro/small businesses did not answer this question.

Only two managers from phase 1 spontaneously referred to any legal influence upon food safety. This was less a comment specifically regarding lawyers as individuals and more a comment on how the legal system in its broadest sense was perceived to operate. A director of a catering company commented that their risk management approach had a bias towards viewing risk from a legal perspective in an attempt to avoid litigation possibly relating to their business operations in the United States. A senior risk manager from the headquarters of a large licensed catering chain commented on the rise in claims from customers who had ‘fallen over in the car park after leaving our establishments’. He considered this an example ‘compensation culture’. Surprisingly, given the debates about the UK being riddled with a ‘compensation culture’ his was the only explicit mention of this phenomenon in phase 1 and phase 2 of the research. Regardless of accuracy we expected these claims to be reflected in our findings but it was far from the case.

[10] Some 33% of directors/senior managers responded with ‘don’t know’.
[11] The ‘no influence’ responses were particularly high amongst managers of a supermarket chain (49% replied that lawyers had ‘no influence’ when considering food hygiene and food safety risks). However over a third of respondents in three (two large and one medium) of the hospitality chains we surveyed did consider lawyers a ‘strong influence’ or of ‘some influence’.

Pressure groups/NGOs

Pressure groups, especially NGOs, are perhaps one of the most well known regulatory sources in the civil sector. They are especially important for their information-gathering work and for their exploitation of publicity as a way of influencing business behaviour (Braithwaite and Drahos 2000; Hutter and O'Mahony 2004). Yet they did not figure prominently in our research.

Phase 1 data revealed very different views of NGOs. A senior risk manager from a licensed catering chain commented that the Better Regulation Task Force and Food Standards Agency 'even out the influence of the National Consumer Council (NCC) and other (pro-consumer) lobbyists'. A contrasting comment came from a director of a large food retailer who mentioned that as part of developing their Corporate Social Responsibility scheme they were working with a team of academics and consumer-friendly NGOs.

One director in phase 2 suggested that his employees would not know what a pressure group or NGO was and this is to some extent borne out by our data. Overall 40% of our sample was unable to answer questions about NGOs with 86% of respondents in one large UK restaurant chain and 83% from a large UK takeaway chain being unable to answer at all. Generally, 31% of respondents attributed NGOs 'no influence' with just 5% indicating a strong influence.

Private consultancy firms

Management and other more specialist consultancies focusing on selling risk management and regulatory compliance advice cover a range of risk management domains. One of the risks identified by these consultants is that of non-compliance with state regulatory systems. Many such organizations exist, their trade being to sell advice which will assist businesses understand state regulations and guidance, ensure that they have compliance systems in place and even offer advice on how businesses should relate to regulators especially in registering their businesses with regulators, licensing processes, complaints procedures or legal actions.

In our research views about consultancy firms were mixed. Two large private consultancies specialising in the food industry were widely known and highly regarded for their provision of a range of technical, business, scientific, regulatory and legal services relating to risk. These were mentioned by senior policy makers and directors in phases 1 and 2 as providing research, policy and operations support to many businesses in the sector. At least one of our businesses used both of these consultancies. However, knowledge of these two consultancies was dependent upon level of seniority in the staff hierarchy, not a single manager mentioned either of the two named consultancies, only those at directorial level.

Other consultancies mentioned by respondents were typically small consultancies run by former state regulators or former technical employees of large food companies. These were used for advice and inspection. The most direct evidence of influence came from a catering chain where the scores from consultancy audits influenced the calculation of the remuneration of the board of directors. Not a single micro or small business in either the retail or catering sectors represented in the sample used a consultancy as their main source of information about food safety and hygiene risks.

Not all consultancies were viewed positively and some received a great deal of criticism from all of the sectors represented. They were seen to be exploiting the confusion of micro firms and SMEs relating to HACCP[12] – 'consultants are making a killing out of HACCP, just pulling stuff off the net and then selling it' (interview respondent). But there was more than moral indignation, some expressed concern that there is 'over-implementation of risk management practices due to the advice of commercial consultants'. This very much chimes with evidence that consultancy firms may be a source of what has come to be referred to as regulatory creep (BRTF 2004).

Trade associations

Trade associations are a prominent form of economic self-regulation where businesses voluntarily join schemes involved in establishing and maintaining codes of practice (Gunningham 1995; Rees 1997). They may thus play an important risk management role for their members. For example, they may have an educative, training role and liaise with government over the best ways to achieve the required standards and indeed issue their own codes to this end such as the British Hospitality Association Fitness for Purpose voluntary code relating to accommodation and catering standards in the hospitality sector. Trade associations may play a direct regulatory role where they run their own self-policing schemes. Such food assurance schemes include standard setting and inspection and in some cases may embrace food safety and food hygiene matters. But many food businesses may not belong to an association. This is particularly acute in the catering sector where one of our participants estimated that perhaps only one-third of all businesses belong to an association, compared to retail businesses where over 90% are thought to belong to a trade association.

In our survey only senior staff – at director level or above – and working for large organizations were aware of their firm's membership in trade associations. Members included British Retail Consortium, Institute of Grocery Distribution and the Food and Drink Federation. A director of a food retailer mentioned that his business was a member of the Association of Convenience Stores. No branch manager in any of the businesses surveyed was otherwise aware of their firm's membership of trade associations. Some directors thought they were members of trade associations but were unsure of which ones. A senior risk manager from a large group of licensed catering chains commented that the majority (75%) of their food suppliers meet a type of 'private' standard developed by a trade association, the British Retail Consortium Higher standard.[13] Amongst the larger food retailers and catering businesses in general this standard is thought to be widely used and valued.

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[12] HACCP stands for 'Hazard Analysis Critical Control Point'. It is an internationally recognized and recommended system of food safety management focusing on identifying the 'critical points' in food safety problems (or 'hazards') and taking pre-emptive measures. This is sometimes referred to as 'controlling hazards'. Keeping records is also an important part of HACCP systems. http://www.food.gov.uk/foodindustry/hygiene/

[13] This is one of a series of standards now referred to as the 'BRC Global Standard – Food'. The BRC claims it was 'created to establish a standard for the supply of food products and to act as key piece of

Of the micro, small- or medium-sized businesses only one indicated membership of two trade associations (White mentioned the Soil Association and a 'Small Business association'). No trade association that one would expect to find such as the Institute of Directors, British Chambers of Commerce or Federation of Small Business was mentioned.

Some 5% of managers for medium and large businesses indicated that a trade association made checks on food safety and food hygiene on their premises. A similar figure indicated that a trade association provided information on food safety and food hygiene to them and 2% indicated this information was provided to their staff. None of these managers named or described these trade associations. It is thought that confusion exists with categories of organization – some managers may believe that a commercial consultancy is a trade organization. Similarly, some managers who mentioned using the services of a commercial consultancy may in fact be the clients of the commercial arm of a trade association. The line between the two is often unclear.

When considering food safety and food hygiene risks directors of large retail businesses were moderately more influenced by an 'industry association' than the directors of large catering business although in both sectors the influence is not 'strong'.

Some participants were very supportive of *self-regulatory schemes* such as the Little Red Tractor launched in the UK in June 2000 by Assured Food Standards which was created by the National Farmers Union (NFU) with government backing (Meat and Livestock Commission).

Other participants preferred greater clarity about whether or not there is a regulatory requirement upon them or not i.e. a legal requirement to comply. There was a view that if schemes such as these are to have any chance of success then strong enforcement is necessary.

Several references were made by managers in the survey to what we believe are in-house schemes or proprietary standards which do not appear to have been created by trade associations or state regulators. Such schemes and standards have either been developed internally within businesses or have been introduced with the assistance of paid external technical or business consultants. These schemes and standards were referred to in passing by several of the managers using an acronym: all of whom worked for the large businesses in the sample. Adherence to these schemes and standards appeared to be mandatory for those working within the business.

One area where our understanding of risk management is not entirely clear is where managers interact with experts from outside their branches. What is obvious is that some of managers in the sample are unsure of the precise identity of the experts they encounter in the course of their work – are they EHOs, consultants, or specialist company staff? When one considers the operational outcome of the combination and

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evidence for UK retailers and brand owners to demonstrate "due diligence" in the face of potential prosecution by the enforcement authorities'.
This publication has now become an international mark of excellence. Certification to the Standard verifies technical competence and aids manufacturers, brand owners and retailers fulfilment of legal obligations. It also safeguards the consumer.' http://www.brc.org.uk/standards/about_food.htm 2006

(possibly contradictory) interaction of the various sources of influence outlined above one would not be surprised if some confusion as to 'what is what' and 'who is who' were to result amongst managers and staff.

Discussion

Knowledge of state regulation

One of the strong messages drawn from the research is that state regulation remains a key influence on business risk management practices despite some confusion at store level about state regulatory arrangements. Knowledge of EHOs, the local authority regulators, was most widespread and most sophisticated. This is not entirely surprising as they are in most contact with the industry at floor level and their remit directly relates to the food safety and food hygiene risks we asked about. TSOs do not work directly to this remit but the survey responses do not seem to have such a nuanced reason for their ignorance – the indications are that they have less knowledge of trading standards. Knowledge of the nationally-based FSA is high at senior management and policy levels of large businesses but less so at junior management level. Overall, however, knowledge of the FSA amongst businesses was much higher than our expert group anticipated it would be.

The confusion about the specificities of the overall regulatory system echoes the findings of other studies, although the general levels of knowledge of EHOs appear to be higher than those found by studies of other regulators. Genn (1993) and Brittan (1984) found great variation in levels of regulatory knowledge in their studies, with confusion about regulators highest on the smaller sites they visited. Genn also found little evidence of the regulated in smaller businesses being prepared to debate with inspectors, rather like the SMEs in this study. In larger companies there is a greater readiness to use regulators as a resource. In Hutter's (2001) study of a national railway company the social dimensions of regulatory knowledge and understanding were striking with senior personnel having a much greater understanding of the regulatory system than those lower down the hierarchy. This of course very much accords with our findings.

The literature on the impact of state regulators reveals a variable impact. The overwhelming majority of railway employees interviewed in Hutter's 2001 study thought that the state regulator was very important in bringing about higher standards of health and safety in the industry. Likewise Gunningham, Kagan and Thornton (2003) conclude that regulation does matter in shaping corporate behaviour. This contrasts with earlier studies by Gricar (1983) and Clay (1984) on OSHA (Occupational Safety and Health Administration) inspectors in the United States. Most studies argue for the necessity of maintaining some kind of outside policing of business risk management primarily to ensure that risk management objectives are established and maintained on a firm's agenda (Gunningham and Grabosky 1998; Hutter 2001) and there is a need for 'credible enforcement' (Gray and Scholz 1991; Gunningham 2002).

Knowledge of non-state influences

Respondents readily understood that there are other non-state external influences on their risk management practices although our survey found that generally these are less influential than the state regulators. The influence of non-state bodies was best understood by our senior experts and policy makers who spontaneously referred to a wide range of such influences. Our survey revealed knowledge of these influences and also presented us with some surprising results. For example, the role of consumers as an important influence on business risk management practices was not flagged up by our experts yet in our survey consumers were cited as one of the strongest influences on risk management. Indeed, not only did consumers figure highly as an influence they were also deemed to rank food safety and food hygiene as the most important consumer concerns.

Interestingly, the influence of the media was deemed to be well below consumers and state officials and the other main sources of civil influence. NGOs, surprisingly, were not well understood as an influence despite their large role in opposing GM foods and promoting organic produce. We had expected a greater knowledge of them and that they would be attributed a more prominent regulatory role. Another surprise is the fairly low influence attributed to lawyers. Given the prominent debate about the compensation culture respondents rarely mentioned the possibility of compensation claims or civil actions.

Likewise insurance companies also appeared to have a much less influential role than attributed by some commentators. However, the converse was true for other types of service company, namely private consultancy firms. These appear to have influence and, in fact, the potential for substantial influence in some areas of the industry. The nature of this influence is controversial and an important topic in its own right. Trade associations are also potentially important especially as an area of industry self-regulation, but their influence is obviously confined to their membership and the food industry is one where there are significant numbers of businesses which do not fall within the remit of these associations.

The influence of non-state actors on business risk management is not well researched. There is work on the increasing importance of trade and industry organizations and the international standards organizations (Cashore, et al. 2004; Eisner 2004; Hutter 2006; Ronit and Schneider 1999). Private standards such as those promulgated by trade associations are increasingly important in the global food system. Fulponi (2006) argues that such standards have become an important governance tool for major retailers and also that they are increasingly more stringent than those of government. Their importance in the food chain is regarded as especially important (Henson and Hooker 2001). Likewise Holleran et al. (1999) see the potential incentives for food businesses to adopt these standards. These include satisfying customer requirements and helping to meet legislative demands. Trade associations may play an important role in making and communicating standards. Research in the environmental field suggests that they have a significant regulatory influence over environmental performance, particularly in a co-ordinating capacity (Bailey and Rupp 2004).

There is some work in the environmental field about the potential importance of consumer preferences in influencing corporate environmental policies. Grabosky

(1994), for example, argues that preferential buying or consumer boycotts may have the capacity to influence business environmental behaviour more than state regulation. But there is no corresponding research in the area of food safety and food hygiene. A study in the UK found consumers regard food safety as highly important but that they have few concerns about it as they generally agree that standards in the UK are very high (IGD 1998).

The role of broader social concerns in influencing business has been discussed. The notion of the 'social licence to operate' (Gunningham, Kagan and Thornton 2003) is possibly most forceful here. An important component in 'the social licence to operate' is the role of civil society and non-governmental organizations (Gunningham, Kagan and Thornton. 2003). These groups undertake an important monitoring role and their views, alongside those of the local community, are an important influence on business practices. The interesting point in this research is that NGOs were not regarded as that influential. Of course NGOs often gain their influence through their use of the media and here they are deemed to have had some success, a prominent example being the Nestlé baby milk case when negative media campaigning led to consumer boycotts of its products (Hutter and O'Mahony 2004). NGOs' most obvious use of the media is to influence companies.

Generally, the role of the media as a regulatory force is deliberated as a theoretical possibility rather than empirical actuality. Fisse and Braithwaite (1983) discussed how corporate deviance might be controlled by the use of adverse publicity since it targeted the desire of businesses to protect their reputations. Mason and Mason (1992) also examined the mass media as a means of enhancing taxpayer compliance, arguing that this may be a means of persuasion for moral compliance and the promotion of civic virtue. The media plays an important informational role which can influence demand for products such as food (Baron 2005; Swinnen et al. 2005). Some regard this as a positive influence. Lang and Hallman (2005) for example, refer to the media as 'a watchdog of the public interest'. Others regard the media as a source of social amplification (Kunreuther 2002; Pidgeon et al. 2003) although there is disagreement about how serious this is. Frewer et al (2002) argue that the effects of such amplification of food incidents may be short-lived and may move according to changing levels of media reporting. Wakefield and Elliott (2003) found that newspapers though a major source of environmental information were also inconsistent and unreliable and thus were not trusted by the public, especially by those with access to other information networks.

Three of the economic non-state influences we have discussed have attracted little research interest, most especially empirical interest. There is very little research on the role of lawyers in business risk management decisions. There appears to be no compelling evidence that liability laws do have influence on food businesses. While some authors (Holleran et al. 1999) contend that these laws are a potential incentive to food safety others disagree. Buzby and Frenzen (1999), for example, referring to the United States where civil litigation is relatively well used, argue that product liability systems for food are weak and thus offer weak incentives with respect to promoting food safety. Henson and Caswell (1999) feel that the main influence in the UK is indirect, namely that the 'due diligence' concept in UK product liability law is a strong incentive for the use of third party certification and the adoption of private standards. They also argue that '*ex post* liability' is of secondary importance in the UK.

Insurance cover for the food industry is active in two main areas: general liability and product recall. The former is the most common and given the low level of litigation incurs relatively little cost. The latter is a relatively new form of insurance for an event which has the potential to be very costly in both monetary and reputational terms. It is for this reason that Skees et al. (2001: 100) believe that insurance has great potential as an alternative to regulation: ‘Under the right conditions, an insurance underwriter could be more effective than a government meat inspector in getting a processor to change their behaviour in the desired fashion’. But the conclusion of their article is that this has not yet been realized. There is some evidence in the environmental sector that financial institutions such as insurance companies take account of environmental performance in making decisions about business (Grabosky 1994; Eisner 2004) but again opinions differ. Gunningham, Kagan and Thornton (2003) found that financial institutions were a weak influence in the environmental area they researched, namely pulp manufacturing.

Variability

An important objective of the research was to map out variability between businesses. To what extent does knowledge of food safety and food hygiene risks differ between different types of business? How familiar are food businesses with state and non-state forms of regulation? Do they use similar risk management tools and do the same risk management drivers motivate them? If there are differences are they patterned in some way?

The main variable which emerges as significant in academic literature is the size of a business which is identified, for example, as a key indicator of regulatory capacity. Large companies are generally considered to have greater knowledge and financial capability to manage risks than SMEs. This is not to say that large companies are immune from risk management problems, their very size can involve communication difficulties (Di Mento 1986; Hutter 2001). Typically, however, it is SMEs which are thought to have the most difficulties in managing risks. And this is a significant problem as SMEs constitute a high proportion of businesses in the industrialized world (Gunningham 2002) and more particularly for this paper, a high proportion of food businesses in the UK (Fairman and Yapp, 2004).

Our research findings do reflect the literature. Our discussions with experts in the food sector revealed that many of them believed risk to be strongly related to size, with effort proportionate to the size of the business. Some reflected upon the ability of small businesses to manage risks – ‘Smaller businesses expect inspectors to manage risks for them’. This said there was vocal minority who argued that such statements should not be too sweeping and examples of large companies suffering serious and high profile risk management problems were cited.

Like other studies our SMEs generally had lower levels of knowledge of regulatory laws and state regulatory systems (BRTF 1999; Fairman & Yapp, 2004; FSA 2001; Gunningham, 2002; Henson and Heasman 1998; Vickers et al. 2005). They also appeared to rely on state regulatory systems for education and advice but the evidence from our research suggests that this was advice typically requested when a business was found to be non- compliant by an enforcer rather than advice requested from a regulator at the initiation of the businesses and therefore unrelated to an inspection (cf Fairman & Yapp 2004; Hutter 1988). One reason for SME reliance on state systems is that many small businesses have less contact with non-state sources which provide information and advice. They are neither members of trade or business associations which may provide updates or even training on food safety and food hygiene matters nor do they use consultancies (Fairman and Yapp 2004; Genn 1993)). This of course contrasts with large businesses which have greater regulatory capacity of their own and more likely to belong to associations, employ consultancies and take out insurance cover.

A second factor which may be relevant in any variability between businesses is business type. The food industry comprises two main areas, namely, hospitality (catering) and retail. The former covers catering establishments such as hotels and restaurants and the latter covers food and drink shops. It is estimated that there are approximately 102,537 grocery retail outlets providing 1,184,000 jobs in the UK (DEFRA 2005) and 262,948 caterers (hotels, cafés and restaurants) providing 1,394,000 jobs (DEFRA 2005; BRTF 2000). The large majority are small businesses.

Many of those we spoke to in the research drew a clear distinction between the retailing and hospitality sectors. Retailing was seen to be concerned with distributing rather than manufacturing products. The hospitality sector was identified as 'the biggest challenge' partly because of the high turnover of staff, the handling of cooked and uncooked food together and changing menus being a source of new risks. A further risk factor associated with the hospitality sector is that:

> Catering is demand-led whereas food manufacturing is planned over a long period therefore HACCP sometimes goes out of the window as customers need to be served. Time pressures lead to corners being cut.

Another participant commented that 'the hospitality sector is a very fragmented sector, they don't tend to gel as a sector'.

This accords with an IGD (1998) finding that food consumers are most likely to question restaurant rather than retail hygiene standards and MORI data that the British are especially anxious about the risk of contracting food poisoning in restaurants. The extent to which retailers were regarded as risky partly depended upon the type of food they sold, for example, whether it is fresh or pre-packaged. Also deemed relevant was whether or not they were small independent retailers or part of a broader company or franchise.

Conclusion

Data from this research indicate that the move from government to governance is partially understood by those in business to the extent that they are well aware that there is a variety of external influences on their internal risk management practices. They also point to the enduring importance of state regulatory systems in business risk management decisions. The state remains a key influence but not an exclusive influence, necessary but insufficient. This research thus adds to the growing body of work which calls for a mix of regulation sources (Eisner 2004; Gunningham and Grabosky 1998). This work recognizes that the state has an important role to play but that it also has its limitations which may be mitigated by other influences beyond the state. The mix may be a formalized one, for example enforced self-regulation (Braithwaite 1982; Coglianese and Lazer 2003; Hutter 2001). Alternatively, there may be a more loosely coupled arrangement where the state relies on organizations beyond the state to manage risks or where there are multiple influences acting independently of one another (Hutter 2006). Certainly, the research suggests that economic and civil sector influences are of equal importance.

These findings suggest that in Hood et al.'s (2001) terms the state, consumers, and consultancies, have a direct influence on business risk management practices. The media, lawyers, insurance companies and NGOs are more properly understood as part of the context, that is, as background influences albeit with the capacity to move from the background context to be part of the content. The state's influence is probably the best understood direct influence on business risk management. The role of consumers is less well understood and there is very little at all on the influence of consultancies. These influences do seem to work in mysterious ways and differentially according to the social structure of the business. They certainly warrant more research and investigation as to the nature of their effects. We should not automatically assume, for example, that all consultancies have a positive influence on risk management practices. Certainly, they have been implicated in regulatory creep.

The background influences are of course variable according to topicality and size of business. The ways in which factors play out and interact are not well understood; in fact there is a surprising lack of information on these issues. The academic literature does suggest that each of the background influences has the potential to be a direct influence but as yet we need a great deal more evidence of this and how it might be realized and the conditions under which each influence is likely to be helpful. The influence of insurance companies is an area which particularly deserves greater scrutiny.

We do know that businesses are subject to a complexity of pressures on their risk management practices. Some are external to their organization and others are within their organizational boundaries. We have concentrated in particular upon positive influences which encourage risk management but there are negative influences too. Indeed different pressures may be in tension. As Gunningham, Kagan and Thornton (2003) point out, the nature of these interactions is not well understood and the next step is to explore this further. This paper draws on research undertaken with the food industry. Our next step is to compare this with another risk regulation domain to better understand how the various external influences on business risk management might work across different areas.

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