HSE's Failure to Enforce the Duty to Prevent Occupational Diseases:

What can TU H&S Reps do?

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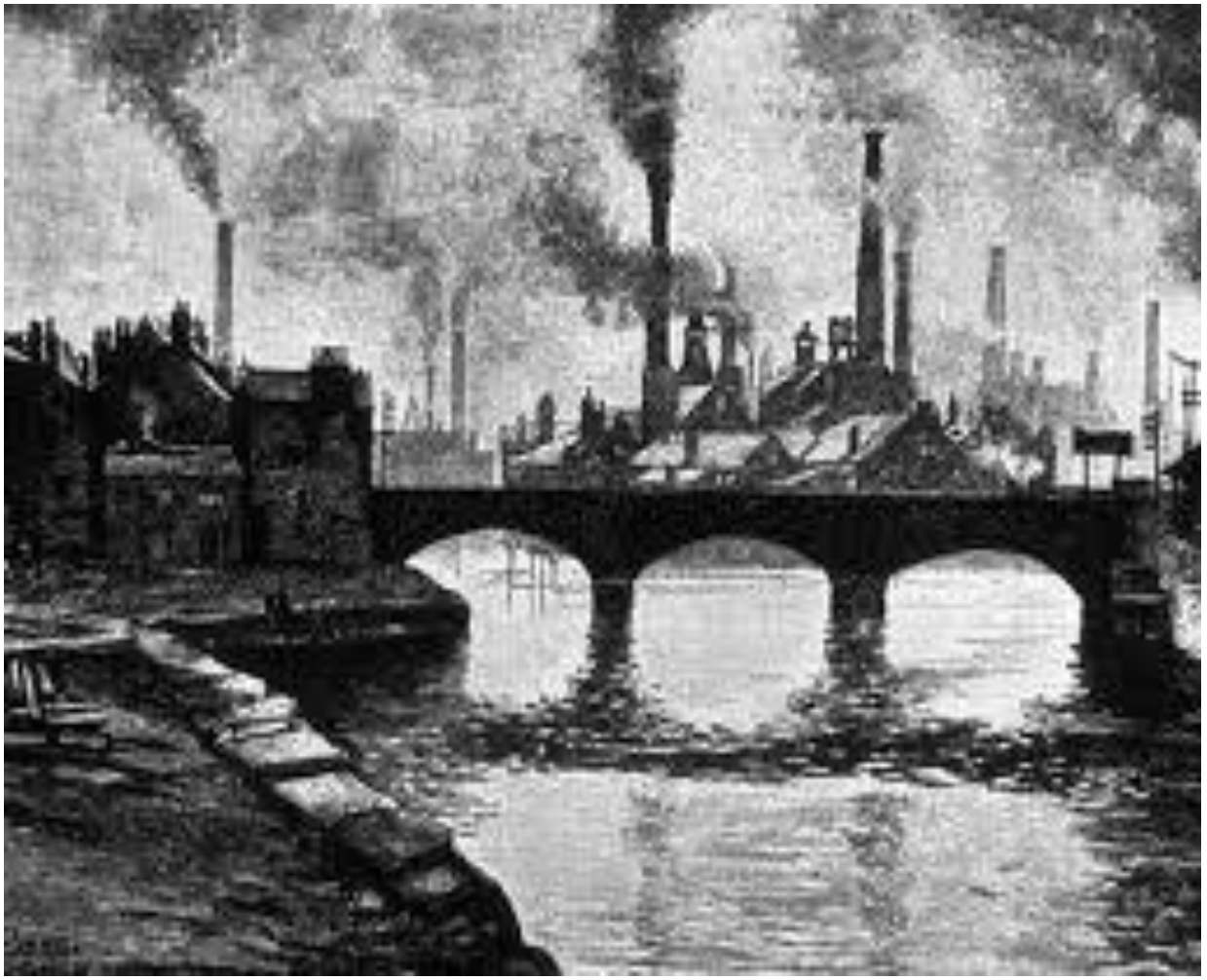
INDUSTRIALISATION

Being the earliest country to industrialise from circa 1760, the UK was in the forefront of recognising the hazardous effects of these exposures on the health of workers



FIRST FACTORIES ACT 1802

After decades of failed attempts, the Parliamentary Act in 1802 succeeded.

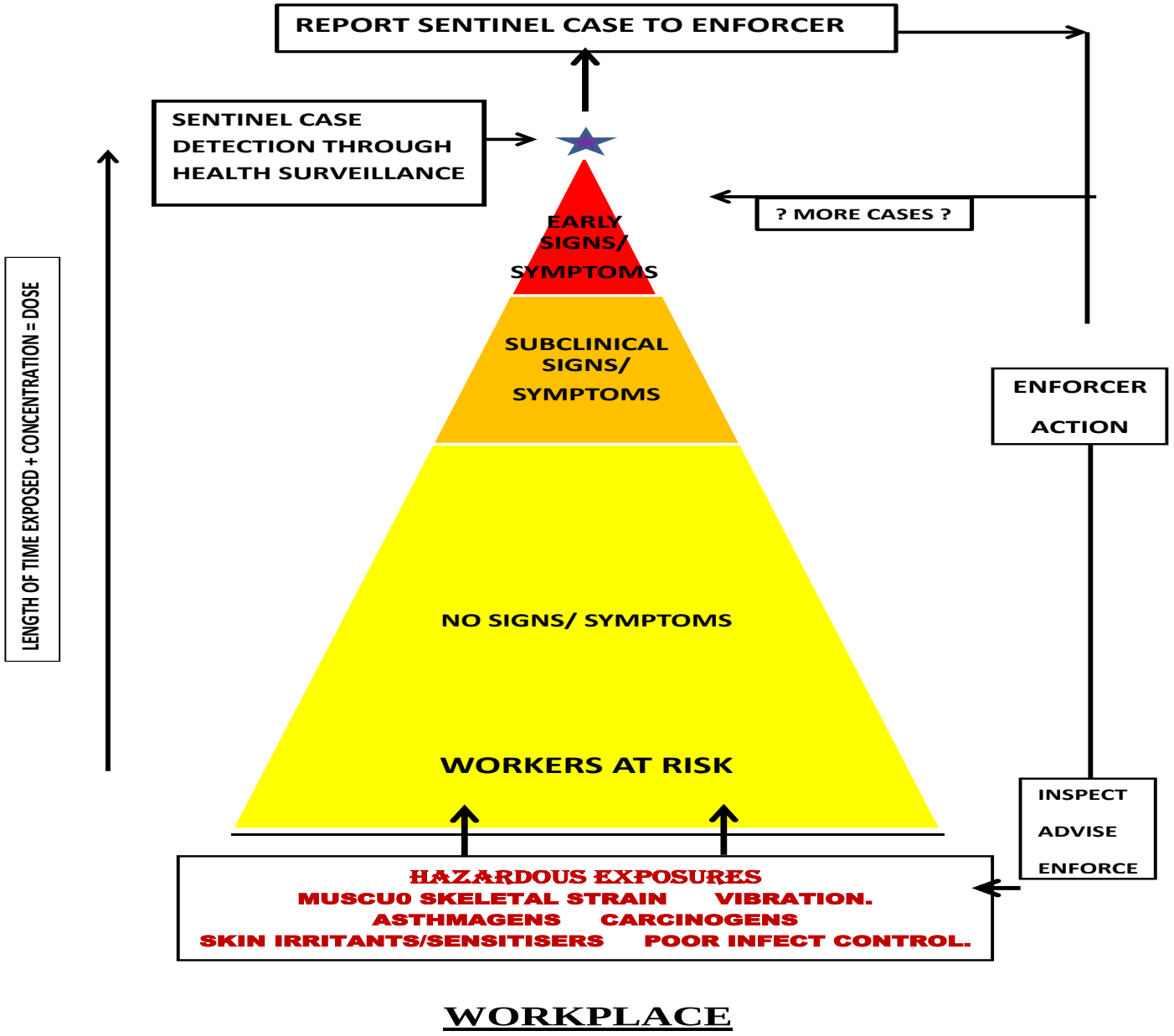
It established a departure from the "laissez faire" modus operandi in the workplace, to the principle that **the state has a duty to protect those citizens who cannot protect themselves**

This included initially child-workers, then all workers who have no control over their workplace

The employer's duty not to harm was extended to find harm at the earliest possible stage - health surveillance

Every affected worker reflects a harmful workplace:
When harm is found the workplace must be rectified

Preventive Principle of Health/Medical Surveillance



CHANGES IN THE FACTORIES ACTS

This became the Health and Safety at Work etc Act in 1974

It is SELF REGULATORY

<u>Employers decide</u> what health surveillance they think is necessary based on their own risk assessment , for which they pay directly

Employers can influence the advice they receive from doctors and nurses etc , who have no protection if the employer does not like their reports

Only 0.13% of workers come under statutory medical surveillance.

Only ~10% of workers in the UK receive health surveillance

The medical inspectorate in HSE , which supervises the standards, came under the Employment Medical Advisory Service (EMAS) in 1973, when there were about 60 full time equivalent Medical Inspectors. Currently there are 1.5 for the whole of GB

This system can only work if there is enforcement of medical/health surveillance standards (suitable and sufficient)

PROSECUTIONS FOR FAILING TO DO MEDICAL SURVEILLANCE 2005 – 2015 (Statutory monitoring by Doctors)

Regulation that requires medical surveillance	No of cases per annum 2013/14	2011	2012	2013	2014	2015
Reg 10 of Control of **Lead** at Work Regulations 2002	20 suspensions under CLAW regs	0	2	0	2	1
Reg 22 of Control of **Asbestos** Regulations 2012	2500 mesothelioma deaths Asbestosis and pleural disease	0	0	0	0	0
Reg 24 of **Ionising Radiation** Regulations 1999	?	0	0	0	0	0
Reg 15 of **Diving** at Work Regulations 1997	~25 deaths	0	0	0	0	0
Reg 10 of The Work in **Compressed Air** Regulations 1996	?	0	0	0	0	0
TOTAL	**+3000**	**0**	**2**	**0**	**2**	**1**

SELF REGULATION- DOES IT WORK?

On average there are only 1600 disease notifications under RIDDOR per annum *for the 516 000 new* cases of work-related ill health, that HSE estimate occurs every year (0.03%)

PROSECUTIONS FOR FAILING TO DO HEALTH SURVEILLANCE 2005 - 2015

Regulation that requires health surveillance	No of cases per annum*	2005-2010	2011	2012	2013	2014	2015
Reg.11 of Control of Substs Hazardous to Health Regs 2002 (amended)	8000+ asthma 4 000 COPD deaths 25 000 Upper limb 150 000+ dermatitis	13	1	1	1	0	2 Failed!
Reg.6 Management of the Health & Safety at Work Regulations 1999	244 000 Work related stress	0	0	0	0	1	0
Reg. 9 Control of Noise at Work Regulations 2005	18 000	? Database goes back to October 2008	0	0	1	0	0
Reg 7 of Control of Vibration at Work Regulations 2005	~1000	? Database goes back to January 2011		1	1	0	1
Reg 8 of RIDDOR 2013	+130 000	3	0	0	0	0	0
TOTAL	**+ 516 000 cases +13 000 deaths**	**~ 20+ (Database incomplete)**	**1**	**2**	**3**	**1**	**1**

IS HSE LIKELY TO DO ANYTHING ABOUT IT?

There have been no prosecutions for not reporting deaths or diseases from occupational exposures under RIDDOR over the past 6 years.

This contrasts with the fact that there were prosecutions for nearly all of the 550 deaths due to murder and manslaughter in 2013 despite both causes of death being regarded as due to criminal acts.

WHAT CAN H&S REPRESENTATIVES DO?

FIND CASES AND HOLD MANAGEMENT TO ACCOUNT

HAZARD	RELEVANT REGULATIONS	RISK ASSMT DONE?	Competent Person needed? (OH nurse or doctor)
Stress related ill health such as, anxiety, depression and burnout	Reg.6 Management of the Health & Safety at Work Regulations (Mgmt Regs) 1999	Biggest problem in most work places	No: Use of HSE indicator tool in different departments or work processes
Musculoskeletal problems; mainly in the neck, shoulders upper limbs and lower back	DSE 1992 and Mgmt Regs 1999	Next most common problem	No: Use of HSE's checklist: grouped results of symptoms/problems & Body mapping tools
Skin disease, viz contact and irritant dermatitis	Reg.11 of Control of Substs Hazardous to Health Regs 2002	Any job which requires frequent hand washing	Yes
Respiratory disease viz chronic obstructive airways disease, asthma and cancers	Reg.11 of Control of Substs Hazardous to Health Regs 2002	Exposures to dusts, fumes aerosols and vapours. Cleaners ++	Yes
Sick Building Syndrome	Reg.6 Mgmt Regs 1999	Air conditioned buildings	No: Results of group symptoms in different locations
Noise induced hearing loss	Reg. 9 Control of Noise at Work Regulations 2005	Where average noise at 85dB	Yes
Night Shift work	Reg.6 Mgmt Regs 1999	Fitness to work with diabetes, epilepsy, heart disease, breast cancer	Yes

EMAS's role changed

HSE's role as a regulator for occupational disease prevention purposes was changed since its incorporation in 2002 into the Department of Works and Pensions

This has used HSE to push a sickness absence and benefits reductions agenda, to reduce social security costs based on the dubious evidence of the efficacy of a wellbeing promotion approach

WHAT CAN H&S REPRESENTATIVES DO?

- Check if the risk assessment indicates that early monitoring on an individual or group basis (stress, office environment) can find conditions early so that they can be prevented?
- If so, health/medical surveillance should be undertaken
- H&S reps are **entitled*** to the anonymised grouped data
- H&S reps can ensure that management reports relevant conditions to HSE under the RIDDOR regs (~1/3 cases WRIH)
- The ill health data should also be included in the departmental H&S reports
- TU reps can hold management to account on preventive actions

Specific Regulations* Requiring Employers to Provide Grouped Ill- Health Information to Safety Representatives

Hazard	Regulation	Subsections
Hazardous substances including infectious agents and carcinogens/mutagens	The Control of Substances Hazardous to Health Regulations 2002	Reg 12 (2) (e)
Noise	The Control of Noise at Work Regulations 2005	Reg 11 (2) (i)
Vibration	The Control of Vibration at Work Regulations 2005	Reg 8 (2) (g)
Lead	The Control of Lead at Work Regulations 2002	Reg 11 (2) (e)
Hazards from use of display screen equipment	The Health and Safety (Display Screen Equipment) Regulations 1992	Reg 2 (1)-(4) Reg 7 (1)-(7) for disclosure to safety reps.
All other hazards including stress, manual handling, sick buildings and shift work	The Management of Health and Safety at Work Regulations 1999: The Safety Representatives and Safety Committees Regulations 1977	Reg 5 (1) Reg 6 Reg. 4(1) (a) to (e) Reg. 7(2)

IN SUMMARY:

WITH NO REQUIREMENT FOR AN OCCUPATIONAL HEALTH SERVICE IN THE UK

We don't find or report cases, so "no problem exists"

The Future

The change in ethos in British society reflected in the 1802 Act has reversed. In theory the legal framework still exists, but the above evidence shows that it is negligibly enforced.

H&S Reps can play a key role in ensuring that cases of occupational disease are found, recorded and acted on . The watchdog's excuse that these conditions don't occur is then null and void.

ANY QUESTIONS?

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