Author:
Ryan, Angus K

Title:
Punishing safety crime in England and Wales: using penalties that work

Punishing safety crime in England and Wales: using penalties that work

Angus Kirk Ryan

A dissertation submitted to the University of Bristol in accordance with the requirements for award of the degree of Doctor of Philosophy in the Faculty of Social Sciences and Law. School for Policy Studies March 2022.

Word Count: 80,758

Abstract

Crime can evade detection and prosecution by criminal justice systems. This can include safety crime, briefly defined here as violations of law that either do, or have the potential to cause sudden death or injury as a result of work-related activities. Research estimates that 2.3 million people across the globe succumb to work-related incidents and diseases every year, and that safety crime causes nearly 900 annual deaths in Britain. Despite this largescale harm, safety crime fails to attract major political, public, or academic attention. One consequence of the lack of attention to safety crime in policy discussions is a significant gap in the body of knowledge on how to effectively punish safety criminals. This thesis aims to address how the effectiveness of penalties for safety criminals can be improved to reduce safety crime. To fulfil this aim, this study answers: which theories are currently informing the punishment of safety criminals in England and Wales? Which theories are effective at punishing safety criminals and why are they effective? How can penalties be used to effectively punish safety criminals? This qualitative study explores 21 stakeholders' views on the relationship between the punishment of safety criminals and the prevalence of the theories of deterrence, retributive justice, rehabilitation, and incapacitation in England and Wales. The findings of this study indicate that there is a lack of punishment for safety criminals in England and Wales, and that the theories of deterrence, retributive justice, rehabilitation, and incapacitation can be used in varying degrees of effectiveness against these persons, typically dependent on how penalties are used to achieve these theories. The interview data suggests numerous methods of improving current penalties and effectively punishing safety criminals. This study concludes that a mixture of sanctions in a pyramid of penalties should be used to punish safety criminals more effectively.

Acknowledgements

I would like to thank the Economic and Social Research Council for their generous funding. A particular thank you to the University of Bristol and the South West Doctoral Training Partnership. I am particularly indebted to my supervisors, Professor Christina Pantazis and Dr Demi Patsios. Your insight and support have been integral in my accomplishment of this thesis and has undoubtedly helped me develop as an early career researcher. I am greatly appreciative of your friendly and often humorous guidance throughout my time at the University of Bristol.

My deep appreciation goes to the 21 participants of this study. Each of you generously dedicated your time to participate in this research. Thanks to your help, I hope that this study contributes to preventing safety crime and bringing safety criminals to justice for their crimes.

Matthew, thank you for helping me when I needed it most. Geoff, thank you for the nights down at the Mardyke. Maya, Oli, Louis, and Adam, thank you for supporting and believing in me throughout what at times felt like a never ending, yet static, journey.

Author’s declaration

I declare that the work in this dissertation was carried out in accordance with the requirements of the University's *Regulations and Code of Practice for Research Degree Programmes* and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the dissertation are those of the author.

SIGNED: Angus Kirk Ryan DATE: 22 March 2022

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List of Acronyms

CDDA Company Directors Disqualification Act

CPS Crown Prosecution Service

ESRC Economic and Social Research Council

HSE Health and Safety Executive

LFS Labour Force Survey

MAPs Monetary Administrative Penalties

NGO Non-government and not-for-profit organisation

SFO Serious Fraud Office

Chapter 1

Introduction

1.1 Introduction

Crime is a major concern of public opinion, social policy, and criminal justice systems. A vast amount of effort and resources are invested in identifying and preventing crime. However, particular types of crime can evade detection and prosecution by the criminal justice system. This can include crimes committed by powerful persons like wealthy employers, large organisations, and government organisations, such as safety crime, briefly defined here as violations of law that either do, or have the potential to cause sudden death or injury as a result of work-related activities (Tombs and Whyte 2007). Worldwide approximately 2.3 million people succumb to work-related incidents and diseases every year (The International Labour Organisation 2022), leading Tombs and Whyte (2007, p.62) to state that 'the annual death toll of people caused by work globally rivals the death toll caused by wars and dwarfs the death toll caused by acts of terrorism'. Tombs and Whyte (2007; 2017; 2020) suggest that safety crime causes nearly 900 annual deaths in Britain, and research indicates that workplace pollution results in 21,000 to 40,000 deaths each year in Britain (O'Neill *et al*. 2007; Hämäläinen *et al*. 2009; Public Health England 2019).

For safety crime academics, safety crime is a part of capitalist society because 'risks are built into the very system of capitalist production' (Tombs and Whyte 2007, p.76). It is commonly held that 'occupational or environmental safety crimes tend not to be one-off acts of commission, but are actually ongoing states or conditions' (Pearce and Tombs 1998, p.294), because safety crimes 'are committed in order to advance financial goals or maintain profitable systems of production' (Tombs and Whyte 2007; Whyte 2007, p.127). As Ramirez (2005, p.935) argues, 'corporate decisions are driven by cost-benefit analysis rather than social responsibility' like ensuring safe working practices. This is because for-profit organisations that abide by health and safety regulations are arguably at a financial and competitive disadvantage relative to those businesses that do not follow regulatory law and gamble on the likelihood that they will not be caught, convicted, or severely punished (Braithwaite 1985; Ramirez 2005; Tombs and Whyte 2007). This argument that safety crimes are ongoing acts that result from cost-benefit analyses and are endemic in capitalist society corresponds to arguments by the influential economists Adam Smith (1776) and Karl Marx (1887), namely capitalist society is founded on the prioritisation of profit and economic prosperity. For Marxist criminologists Bonger (1916) and Greenberg (1993), economic profit as a culturally recognised aim

leads to selfish individualism that manifests as egoistic acts and crimes, such as, for example, safety crime.

Three infamous cases illustrate how the drive for economic profit has led to safety crime. Throughout the 1970s in Northern America a defective design of the Ford Pinto car's fuel tank led to at least hundreds of deaths as the fuel tank would too easily puncture and explode on collision (Dowie 1987). Dowie notes that although the faulty fuel tank design was identified in production, the Ford Motor Company decided to continue with the car's production rather than issue a mass recall. This decision not to issue a mass recall was based on a cost-benefit analysis that it would cost $137 million to fix the fuel tank but only $49.5 million to pay for victim compensation and legal costs (Dowie 1987). Dowie estimates that the Ford Motor Company's decision not to issue a mass recall resulted in at least 500 deaths, although only 17 of these were legally attributed to the Ford Motor Company.

In October 1999 the Ladbroke Grove train crash in London resulted in 31 deaths and over 400 people injured (Health and Safety Commission 2000). The Health and Safety Commission's (2000) inquiry concluded that it was probable that poor signal sighting caused the train driver to erroneously proceed through a stop signal and collide with another train. Concerns had previously been raised with the signal in question because it had caused eight similar instances over six years of train drivers erroneously passing the stop signal due to poor visibility (Health and Safety Commission 2000). Throughout this period the train provider, Thames Trains, had decided not to install a failsafe system that would have automatically applied the train brakes in response to erroneously passing the signal because a cost-benefit analysis concluded that the safety benefits did not justify the costs (Health and Safety Commission 2000).

The first phase of the Grenfell Tower Inquiry (2019) into the London tower block fire that killed 72 people in June 2017 states that there is compelling evidence that the external walls of the tower did not comply with building regulations to resist the spread of the fire, but in fact, actively promoted the fire. Considering that phase one of the inquiry explicitly notes that it refrains from investigating the extent in which the building complied with health and safety regulations, it can currently be speculated that the building's probable failure to abide by health and safety regulations was due to a cost-benefit analysis to use cheaper and inadequate fire proof material. This speculation is corroborated by Cooper and Whyte (2022) as they argue that a cost-driven downgrading of the tower's cladding resulted in hazardous conditions. These three cases illustrate that, like many safety

crimes that result from commission or omission, the prioritisation of financial profit often leads to deaths to workers and members of the public (Braithwaite 1984; Slapper and Tombs 1999; Tombs and Whyte 2007).

In response to this largescale and endemic harm, academics have criticised state attempts to regulate and punish safety criminals (i.e. individuals or companies that commit safety crime) in England and Wales. As Chapters 2 and 3 examine in more detail, a safety criminal's likelihood of being caught, convicted, and severely punished is relatively small. Even if safety criminals are caught, convicted, and punished, often the money 'made from evading regulations is of a different order from anything the company is likely to be fined' (Slapper and Tombs 1999, p.204). Safety criminals can be punished under the common law offence of gross negligence manslaughter, the Corporate Manslaughter and Corporate Homicide Act (CMCHA) 2007 for corporate persons, and most frequently, the Health and Safety at Work Act (HSWA) 1974. However, safety crime academics attest that most penalties for safety criminals either have no significant effect or they result in unintended consequences on innocent workers and consumers (Slapper and Tombs 1999; Gobert and Punch 2003; Tombs and Whyte 2007). It can therefore be argued that the punishment of many safety criminals currently fails to achieve the theories of punishment and to prevent these persons from committing safety crime. This thesis collects qualitative data from 21 experts, including government authorities, non-government and not-for-profit organisations (from here forward termed NGOs), academics, and members of Parliament, to explore how penalties for safety criminals can better achieve the theories of punishment and prevent these persons from committing safety crime. The rest of this chapter details the research aims and questions of this study, as well as the overall structure of this thesis.

1.2 Research aims and questions

This thesis aims to critically explore how safety criminals can be more effectively punished in England and Wales. To justify this aim of punishing safety criminals and imposing harm or depriving these persons of their freedom, methods that are generally considered morally inacceptable, this study turns to Canton's (2017) three justifications for punishment (also see Garland 1990; Walker 1991; Tonry 2011). As Garland (1990) states, a philosophical inquiry into punishment should answer what punishment is, what it does, what it represents, and what it means to society.

Canton's (2017, p.7) first justification, termed sociological inquiry, holds that 'punishment is felt to

be necessary to defend and uphold the social order by demonstrating to all members of the community that some actions are not acceptable and showing them the consequences of misconduct.' Put differently, punishment is a method of denouncing crime and affirming the values that binds communities and makes them more than just a collection of people living side by side. For Croall (2001, p.141), 'the criminal law, it can be argued, remains the most powerful expression of moral disapproval of harmful activities', and as Slapper and Tombs (1999, p.224) state:

> The gravity of the punishment is supposed to reflect a real or judicially-desired level of social appropriation. Punishment levels, for that reason, can act as indicators of seriousness relevant to those responsible for policing and prosecuting. The more often, for example, that corporations have imposed on them serious sentences for recklessness resulting in loss of life or severe damage to the environment, the more that these offences will be likely to enter the public consciousness as serious crimes.

Second, Canton's (2017) political inquiry justification concerns the different purposes that people set for the imposition of punishment and the institutions and practices of punishment in general. These purposes can relate to saving lives or the need to deter, punish, rehabilitate, or incapacitate criminals. Third, Canton's (2017) ethical inquiry justification relates to why society should punish, either because punishment reduces crime, it acknowledges the harm done to victims, or it ensures that the moral responsibility of the offender is recognised. In short, ethical inquiry translates to why or how some punishments are justified whereas others are not.

Canton (2017) suggests that these three justifications for punishment are inter-related in different ways. For instance, the punishment of criminals in the short-term may achieve Canton's (2017) second justification of political inquiry, such as punishment resulting in retributive justice, and in the long-term may achieve sociological inquiry by changing people's attitude on what is morally acceptable behaviour. Overall, the punishment of criminals can be viewed as the foundation of the criminal justice system. Punishment can demonstrate that a violent safety crime resulting in death is worse than a speeding ticket or littering on the street. Punishment gives structure to the criminal law by demonstrating that the worse the crime, the worse the punishment.

Having argued for the justification of punishment for criminals, this thesis aims to critically explore how safety criminals can be more effectively punished in England and Wales. Specifically, this qualitative study investigates how penalties and the theories of deterrence, retributive justice,

rehabilitation, and incapacitation can be used to effectively punish safety criminals. This thesis draws on the perspectives of 21 stakeholders representing various government authorities, NGOs, academics, and members of Parliament. In doing so, this study discusses the academic, legal, political, and regulatory framing of safety crime.

To achieve this study's aim, three research questions are put forward:

1) Which theories of punishment are currently informing the punishment of safety criminals in England and Wales?

2) Which theories are effective at punishing safety criminals and why are they effective?

3) How can penalties be used to effectively punish safety criminals?

This is the first qualitative study that through discussions with key stakeholders explores the relationship between the traditional justifications for punishment and safety criminals in England and Wales. It investigates which theories are currently influencing the punishment of safety criminals in England and Wales, the effectiveness of these theories and why they are effective, and how penalties can be used to effectively punish safety criminals. By answering these research questions, this study attempts to maximise the benefits of using the theories of punishment and penalties against safety criminals, to limit the disadvantages of punishing safety criminals, and to reduce the amount of safety crime. The recommendations of this study will be useful for informing criminological and policy discussion and reducing the knowledge gap on the effective punishment of safety criminals.

1.3 Thesis structure

This thesis is divided into nine chapters. Chapter 2 reviews the academic literature concerning the prevalence of safety crime and the academic, legal, and regulatory framing of safety crime. Chapter 2 argues that safety crime causes significant physical, psychological, and financial harm in England and Wales, but despite this harm, a series of academic, legal, and enforcement shortcomings prevent the effective identification and criminalisation of many safety criminals. This chapter examines how the academic study of safety crime has remained outside of mainstream discussions of crime and criminology, and as a result of the lack of a universally used safety crime term and

definition, this chapter proposes its own definition of safety crime for the purposes of this thesis. Furthermore, Chapter 2 reviews the historical and political difficulties of identifying, regulating, and punishing safety criminals since the 19th century Factory Act legislation. This includes discussion on the creation of strict liability, the identification principle, and the senior management element as methods of convicting safety criminals, as well as the 1970s and onwards deregulatory agenda of reduced health and safety inspections and prosecutions. Not only does this chapter conclude that that more, rather than less, health and safety enforcement is needed to effectively identify and convict safety criminals, but the successful regulation of safety crime relies on effective penalties either as a first or last resort.

Having suggested that more health and safety enforcement is needed to effectively identify and convict safety criminals, Chapter 3 reviews the academic literature on the effective punishment of these persons. This chapter focuses on the effectiveness of the traditional theories of deterrence, retributive justice, rehabilitation, and incapacitation for safety criminals, alongside the extent that penalties achieve these theories for these persons. This chapter argues that the theories of deterrence, retributive justice, rehabilitation, and incapacitation can be used in varying degrees of effectiveness against safety criminals, although most penalties need to be amended and improved to better achieve these theories for these persons.

Chapter 4 details how qualitative methods were used to answer the aim and research questions of this study. It takes account of using constructivism and interpretivism to understand how knowledge is made, and the use of generic purposive sampling and the sampling criteria that was used to select the sample for this study. Data from 21 stakeholders was collected using expert and elite interviews (now on shortened to expert interviews), and this data was analysed using NVivo 12 software and Braun and Clarke's (2006) reflexive thematic analysis. This study follows numerous ethical guidelines and uses Lincoln and Guba's (1985) criteria of authenticity and trustworthiness to ensure that the research methods abided by rigorous research practice.

Chapters 5 to 7 present the results of the thematic analysis of the 21 participants' data. Chapter 5 reports the themes that were created from the participants' data in relation to research question one: which theories are currently informing the punishment of safety criminals in England and Wales. The participants had mixed views on the theories currently influencing the punishment of safety criminals in England and Wales. To understand why some theories are not influencing the punishment of safety criminals, this chapter explores the participants' views on safety crime

obscurity, the difficulty of convicting safety criminals, and the lack of safety crime enforcement. Next, Chapter 6 presents the themes that were constructed from the participants' views on research question two: which theories are effective at punishing safety criminals and why are they effective. The participants' data indicates that the theories of punishment can be used in varying degrees of effectiveness against safety criminals. This chapter is separated into four themes: deterring safety criminals from committing safety crime, retribution and appropriately punishing safety criminals, rehabilitation makes workplaces safer for some employers, and using incapacitation to prevent safety crime. Lastly, Chapter 7 reports the themes that were created from the participants' data in relation to research question three: how can penalties be used to effectively punish safety criminals. These themes relate to ensuring that penalties have a financial impact on companies, repair safety crime harm and make communities safer, avoid the unintended consequences of punishing safety criminals, and that increased resources are needed to achieve incapacitative penalties.

Chapter 8 discusses how the themes that were constructed from the participants' data correspond or conflict with the academic literature. This chapter begins by discussing the lack of punishment for safety criminals. This lack of punishment can be ascribed to the participants' mixed views on the theories currently influencing the punishment of safety criminals, or in other words, the theories failing to clearly inform the punishment of safety criminals. The lack of punishment for safety criminals can also be attributed to safety crime obscurity, political and structural barriers to convicting safety criminals, and the scarcity of resources to enforce adequate health and safety. Next, this chapter discusses the varied effectiveness of the four main theories for punishing safety criminals. This relates to deterrence and safety criminals as rational actors, proportional and 'safe' penalties, rehabilitation and educating safety criminals, and incapacitating safety criminals and avoiding unintended consequences. The final section of this chapter discusses the participants' suggestions on how safety crime penalties can be improved or used to effectively punish safety criminals. This refers to fixing fines, publicising shaming, supporting the victims of safety crime and improving community safety, rectifying safety crime harm, educating safety criminals, and methods of incapacitating individual safety criminals.

Chapter 9 concludes this thesis by answering the research questions, outlining this study's original contribution to policy and research, reflecting on the strengths and weaknesses of this thesis, and by recommending areas for further research. Most notably, this chapter combines the themes created from the participants' data with the academic literature to propose a pyramid of penalties that uses the various penalties in a complementary manner to achieve the theories of deterrence, retributive

justice, rehabilitation, and incapacitation.

Chapter 2

Literature Review

> What strikes us, then, in the English legislation of 1867, is, on the one hand, the necessity imposed on the parliament of the ruling classes, of adopting in principle measures so extra-ordinary, and on so great a scale, against the excesses of capitalistic exploitation; and on the other hand, the hesitation, the repugnance, and the bad faith, with which it lent itself to the task of carrying those measures into practice (Marx 1887, p.541).

2.1 Introduction

This literature review chapter provides an overview of the academic origin and definition of the safety crime term, how much harm safety crime causes, and how safety crime is regulated and framed in law and policy in England and Wales. Section 2.2 starts by examining the academic origin and definition of the safety crime term, beginning with Edwin Sutherland's introduction of the white-collar crime term in 1939, the creation of the corporate crime term following the 1972 North American Watergate scandal, and the development of the safety crime term by Tombs and Whyte (2007). Next, section 2.3 considers the largely hidden physical, psychological, and financial harm that results from safety crime in Britain, as Tombs and Whyte (2007; 2017; 2020) estimate that there are up to six times as many fatal safety crimes than what is officially reported. Lastly, section 2.4 reviews the historical and political regulation of safety crime in England and Wales. This includes the shortcomings of the 19th century Factory Act legislation and the difficulty of enforcing this legislation on employers, as indicated in the opening quotation of this chapter concerning Marx's (1887) disapproval of the Factory Extension Act 1867. Moreover, section 2.4 examines the development of strict liability, the identification principle, and the senior management element as methods of convicting safety criminals, alongside decreasing health and safety enforcement amongst a backdrop of self-regulation and deregulation since the 1970s. This chapter concludes that increased health and safety enforcement is needed to effectively identify and convict safety criminals, and that the successful regulation of safety crime relies on effective penalties either as a first or last resort.

2.2 Defining safety crime

The academic origin of the safety crime term can be firmly traced back to 1939 with Edwin Sutherland's (1940) Presidential Address to the American Sociological Society, entitled 'The White-

Collar Criminal'. Sutherland (1940) was interested in the relationship between crime and business and he defined white-collar crime as crimes committed by persons of respectability and high social class in the course of their occupation, such as antitrust violations including fraud and embezzlement. Before Sutherland, Marx (1887) and Engels discussed how the relentless demand for profits in capitalist societies resulted in safety crimes against workers during the 19th century (Friedrichs 1996), Schoepfer and Tibbets (2011) wrote of 'robber barons', 'industrial crime', and 'corporate crime', and Morris (1935, p.153) referred to criminals of the upper world 'whose social position, intelligence and criminal technique permit them to move among their fellow citizens virtually immune to recognition and prosecution as criminals'. However, these references to white-collar crime and safety crime were marginal, whereas Sutherland's (1940) research firmly addressed a form of wrongdoing that had largely gone unnoticed or been ignored.

Sutherland's (1940) concept of white-collar crime was a distinct addition to criminology at the time, as academic literature focused on poverty and broken homes to understand crime (Maguire 1997). In contrast to this, Sutherland (1940, p.4) recognised that wealthy and respectable members of society commit criminal workplace acts, that the 'financial cost of white-collar crime is probably several times as great as the financial cost of all the crimes that are customarily regarded as the "crime problem"', and that these white-collar criminals were not represented in any criminological theories. Furthermore, Sutherland (1944, p.139) argued against a strict legal definition of crime by stating that although white-collar offences do not conform to a predetermined notion of crime, they nonetheless represent a type of criminal behaviour since 'white-collar crimes, like other crimes, are distributed along a continuum in which *mala in se* are at one extreme and *mala prohibita* at the other'. In other words, Sutherland (1944) highlighted the fact that crime has no ontological being and any notion of crime must first be based on what is wrong in itself (*mala in se*) before it can be framed as legally wrong (*mala prohibita*). It is this abstract and interpretive nature of crime that allows Sutherland (1944, p.132) to define crime as 'socially injurious, and legal provision of a penalty for the act'.

Sutherland's (1944) broad interpretation of crime and consequential introduction of the term white-collar crime was criticised and dismissed on legal grounds by the lawyer-sociologist Paul Tappan (1947). Tappan argued that the term white-collar crime illegitimately covers acts that do not violate statutory and case law, and Sutherland would have to draw sharper distinctions between criminal and civil law. Tappan (1947) rejected the criminal concept of white-collar crime by drawing attention to what precisely constitutes crime, as he argued that offenders can only be called criminals after

being adjudicated by the criminal courts, and many of Sutherland's white-collar crimes such as embezzlement and fraud came under regulatory rather than criminal law or were even considered normal business practice at the time. For Tappan, Sutherland used the criminal label before official adjudication and therefore entered a sphere of moralising that clashed with the legal system, as Sutherland's (1944, p.132) definition of crime as 'socially injurious, and legal provision of penalty for the act' invited subjective nomenclature and 'individual systems of private values to run riot' (Tappan 1947, p.99). Tappan (1947, p.98-99) was therefore dismissive of the term white-collar crime, stating that 'vague, omnibus concepts defining crime are a blight upon either a legal system or a system of sociology that strives to be objective… it is not criminology. It is not social science… It may easily be a term for propaganda.'

Tappan's (1947) critique illustrates a fundamental question concerning white-collar crime and criminology more widely: what is crime and does white-collar crime and similar workplace crimes such as safety crime truly constitute crime? The introduction of the term white-collar crime challenged the prevailing understanding of crime at the time, although this challenge was short lived as Tappan's overly dismissive critique as a lawyer rather than sociologist failed to expand on the merit of white-collar crime and its impact on criminology. That is, the term white-collar crime illustrated the need for concise definitions of different types of harm and crime, and, more importantly, Sutherland (1944) highlighted the abstract and hierarchical nature of crime as some crimes, such as white-collar crime, carry relatively minor criminal and societal stigma compared to street crimes such as homicide.

This lack of white-collar crime stigma can be seen by the topic's failure to achieve widespread recognition at the time. As Geis and Goff (1983) suggest, this lack of recognition can be ascribed to North American conservative politics that discouraged radical thinking and encouraged conservatism, as well as criminology's preference for quantitative and positivist supposed value-free empirical research on street crime rather than qualitative research on white-collar crime that had insufficient data to lend itself to mathematical modelling. Sutherland therefore started but was unable to finish the conceptual discussion concerning white-collar crime, although in retrospect, Sutherland's white-collar crime research can be considered ground-breaking as it 'altered the study of crime throughout the world in fundamental ways by focusing attention upon a form of lawbreaking that had previously been ignored' (Geis and Goff 1983, p.ix).

Aside from some infrequent contributions to the white-collar crime literature by Clinard (1952),

Cressey (1953), and Geis (1968), and 'little more than wide-ranging collections of essays designed for teaching in undergraduate and graduate programs' (Gobert and Punch 2003, p.4), academic focus on white-collar crime did not re-emerge until after the 1972 North American Watergate scandal. The substantial illicit money laundering and corporate malpractice of this scandal led to the general and academic scrutiny of big businesses in North America and abroad (Krisberg 1975; Pearce 1976; Katz 1980). From the 1980s to 1990s there was a surge of white-collar crime literature in North America. With a critical lens on corporations academics began to define fields of enquiry based on white-collar crime (Geis and Stotland 1980; Croall 1992; Nelken 1994), such as occupational crime (Green 1990), economic crime (Edelhertz 1970), organized crime (Ruggiero 1996), commercial crime (Snider 1992), crimes at the top (Johnson and Douglas 1978), crimes of the powerful (Pearce 1976), crimes in the suites (Timmer and Eitzen 1991), elite deviance (Simon and Eitzen 1976), crimes of capital (Michalowski 1985), business crime (Clarke 1990), organisational crime (Ermann and Lundman 1982; Vaughan 1983; Punch 1996), and corporate crime (Clinard and Yeager 1980; Braithwaite 1984; Pearce and Tombs 1998). These terms are not simply semantic disputes as almost all of these concepts refer to different types of crime in the workplace with each term varying in its similarities to one another. In what Friedrichs (1992, p.8) astutely refers to as 'the war between the white collar criminologists', this plethora of different concepts is a hindrance to the precise definition and study of crime in the workplace, as academics such as Friedrichs (1992), Hartley (2008), and Van Slyke *et al*. (2016) note that these terms are used interchangeably whilst referring to disparate types of crime.

Despite the lack of universal definitions, a comparison of the academic literature, most notably Slapper and Tombs (1999) and Van Slyke *et al.* (2016), suggests that the concepts of occupational crime and corporate crime can be used to divide and categorise the remaining terms of crime in the workplace. Occupational crime, which can include most of the above terms including white-collar crime, can refer to the illegal use of a person's occupational position for personal gain by the embezzlement of a company and its goods (Green 1990). Conversely, corporate crime can refer to illegalities that are committed for and congruent with the goals of legitimate (i.e. registered) companies such as price fixing or circumventing health and safety regulations (Schrager and Short 1978; Clinard and Yeager 1980; Pearce and Tombs 1998). Most of the terms previously identified fall under occupational crime as they do not refer to crimes congruent with legitimate companies. Of the remaining terms, corporate crime appears to be the most commonly used term to refer to crimes congruent with the goals of legitimate businesses, as seen in the works of Braithwaite (1984), Pearce and Snider (1995), Pearce and Tombs (1998), and Gobert and Punch (2003).

Considering that this study is concerned with health and safety offences that are congruent with the goals of legitimate companies, rather than offences that benefit persons at the expense of companies, health and safety offences can be called corporate crimes, which are defined by Pearce and Tombs (1998, p.108) as:

> Illegal acts or omissions, punishable by the state under administrative, civil or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organisation. These acts or omissions are based in legitimate, formal, business organisations, made in accordance with the normative goals, standard operating procedures, and/or cultural norms of the organisation, and are intended to benefit the corporation itself.

This definition is used because it is a comprehensive amalgamation of previous definitions of corporate crime by Schrager and Short (1978), Clinard and Yeager (1980), Box (1983), and Kramer (1984). Three key observations can be made about Pearce and Tombs' (1998) corporate crime definition. First, Pearce and Tombs (1998) follow Kramer's (1984) example of referring to culpable negligence and omission. With reference to acts and omissions that may not include the *actus reus* (guilty act) and *mens rea*[1] (guilty mind) of crime, this adds to the conceptual complexity of whether corporate crime constitutes crime (for a continuation of this discussion see section 2.4 on criminalising safety crime). Despite this added complexity, the introduction of omission and culpable negligence is necessary for defining health and safety offences, since these offences can occur without intent or the actual visitation of harm (Tombs and Whyte 2007). Second, with reference to illegal acts or omissions punishable under administrative, civil, and criminal law, this superficially circumvents any concern whether health and safety offences constitute crime. The repercussion of this, however, is that the criminal stigma of corporate crime is reduced by reference to civil and administrative offences that are distinct and typically do not hold the same moral and social condemnation as criminal offences (Slapper and Tombs 1999). Moreover, the grouping of disparate civil, administrative, and criminal crimes requires some sort of hierarchy of how these transgressions of varying type and severity are regulated and punished, and the fundamental question remains – hence the superficial wording earlier – at which point in this hierarchy are offences regulated and punished by criminal rather than civil means. Third, Pearce and Tombs' (1998) corporate crime

[1] The mental element of a person's intention to commit crime or knowledge that one's action or lack of action would cause a crime to be committed.

definition can refer to financial illegalities in addition to workplace health and safety offences.

To specifically refer to workplace health and safety offences, Tombs and Whyte (2007, p.1) re-use Pearce and Tombs' (1998) definition with the addition of 'violations of law by employers that either do, or have the potential to, cause sudden death or injury as a result of work-related activities'. Tombs and Whyte's (2007) definition of workplace health and safety offences, which they call safety crime, is notable for two reasons. First, the phrasing of 'violation of law by employers' excludes employees in the formulation of safety crime, which is problematic considering similar numbers of employees and directors are convicted for safety crime (Tombs and Whyte 2015, cited Tombs 2016, p.194). Second, the wording of 'cause sudden death or injury' can be interpreted to exclude health and safety offences that cause pernicious harms from illnesses and diseases. This is the intention of Tombs and Whyte (2007) as they consider the distinct differences between occupational health offences and occupational injury offences, as the former involve a more complex and contestable causal chain such as a series of exposures to noxious substances rather than a single event. The contestable nature of occupational health offences makes it difficult to measure these harms and demonstrate the burden of proof (Whyte 2010), leading Tombs and Whyte (2007) to focus on more identifiable harms and their causes that result from occupational injuries. This stance of separating occupational injuries from occupational illnesses and diseases can be criticised, as it can be argued that the academic study of health and safety offences should include harms from injuries, illnesses, and diseases, because this would more closely resemble the legal framing of health and safety offences set out by the HSWA 1974: 'It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.'

Despite the legal framing of health and safety offences clearly including an employee's health and welfare, this study follows the aforementioned justification of Tombs and Whyte (2007) to use the safety crime term to solely refer to occupational injuries rather than pernicious health harms that result from illnesses and diseases. This pragmatic decision to separate injury and health harms facilitates a more precise study of one type of harm in the workplace, particularly for a study the size of a doctoral thesis. Unlike Tombs and Whyte's (2007) definition, this thesis uses the following definition that does not exclusively refer to employers and can include employees in the definition of safety crime: illegal acts or omissions that either do, or have the potential to cause sudden death or injury as a result of work-related activities, punishable by the state under administrative, civil, or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organisation. These acts or omissions are based in legitimate, formal, business

organisations, made in accordance with the normative goals, standard operating procedures, and/or cultural norms of the organisation, and are intended to benefit the corporation itself.

Since the introduction of the term safety crime in 2007 by Tombs and Whyte (2007), and even prior to 2007, the study of workplace health and safety offences has remained outside mainstream discussions of crime and criminology (Box 1983; Slapper and Tombs 1998; Tombs and Whyte 2007). Alongside obstacles to criminalising and regulating safety criminals (see section 2.4), some academics argue that the politics of crime, law, and order dictate how criminological research is produced and consumed (Brake and Hale 1992; Downes and Morgan 2002; Hale 2004), and this can explain why some types of crime, particularly non-state defined crimes such as white-collar crime or safety crime, remain periphery to academic and general discussions of crime (Tombs and Whyte 2003; 2007; Walters 2003). Consequently, the term safety crime has only been used by Alvesalo and Whyte (2007), Tombs and Whyte (2007), and Alvesalo *et al*. (2016). When studies do refer to workplace health and safety offences, they are more likely to use the term corporate crime and thereby also refer to financial, state, or environmental crime (see Gobert and Punch 2003; Whyte 2009; Snider 2015; Tombs and Whyte 2020). It can therefore be observed that Tombs and Whyte's (2007) safety crime definition and term are yet to introduce uniformity into the study of workplace health and safety offences, and the safety crime subject continues to suffer from disparate terminology and relative obscurity in comparison to state defined and mainstream discussions of crime.

2.3 Mapping safety crime harm

This section estimates the harm that results from safety crime and occupational illnesses and diseases in Britain[2]. The United Nations social and economic justice agency, the International Labour Organisation (2022), estimates that worldwide 2.3 million people succumb to work-related incidents and diseases every year – corresponding to 6,300 deaths every day – alongside 340 million non-fatal incidents and 160 million victims of work-related illnesses. Hämäläinen *et al*. (2017) suggest that most work-related deaths occur in Asia, which has 12.99 fatalities per 100,000 persons employed, followed by America and Europe with a fatality rate of 5.12 and 3.02 respectively. According to Eurostat[3] (2022), data from 2010 to 2018 suggests that Britain has one of the lowest occupational

[2] Although this thesis focuses on England and Wales, this section refers to Britain because most occupational injury data sources, including the Health and Safety Executive, only have data on Britain.
[3] Eurostat is the statistical office of the European Commission that received occupational injury data from Britain's Health and Safety Executive until 2018.

fatality rates compared to EU-27 nations. For instance, in 2018 Eurostat (2022) reported that Britain's 249 fatal safety crimes corresponds to 0.78 fatalities per 100,000 workers, which was tied second lowest with Germany in the EU-27, as well as being below the United States (United States Department of Labor 2019) and Australia's (Safe Work Australia 2017) fatal injury rate per 100,000 workers, standing at 3.5 in 2019 and 1.5 in 2016 respectively.

In Britain the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013 place a legal duty on employers to report over seven day (henceforth major) and fatal workplace injuries to Britain's health and safety regulator, the Health and Safety Executive (HSE) (2022). In 2019/20 the HSE (2020) recorded 111 fatal and 65,427 major injuries in Britain. For the previous year in 2018/19 the HSE (2020a) estimated that work-related injuries and ill-health annually cost £16.2 billion, with an estimated £9.6 billion falling on individuals through 'human' costs like the impact on an individual's quality of life and, for fatal injuries, the loss of life, and £6.7 billion falling on employers and the government through the 'financial' costs of the loss of production and healthcare costs. In 2010 the HSE (2016) also estimated that work-related cancer costs Britain £12.3 billion each year. Moreover, the HSE includes data from the United Kingdom's Labour Force Survey (LFS) in its annual statistics. The LFS is a household self-report survey of employment data in Britain that collects a range of occupational injury statistics. In 2019/20 the LFS (HSE 2022a) recorded 216,000 over three day injuries, 168,000 major injuries, 1.6 million workers suffering from ill-health, including 0.5 million work-related musculoskeletal disorders, 0.8 million cases of work-related stress, depression and anxiety, 38.8 million working days lost due to ill-health and non-fatal injuries, and an estimated 13,000 deaths from past exposure to chemicals or dust at work.

These statistics are useful for demonstrating the largescale physical, psychological, and financial cost of health and safety crime[4] in Britain, although they are most notable for highlighting the discrepancy between HSE and LFS data in relation to major injuries. The LFS consistently records approximately twice as many major injuries than the HSE. For example, for the years 2017/18, 2018/19, and 2019/20, the HSE recorded 71,062 (HSE 2018), 69,208 (HSE 2019), and 65,427 (HSE 2020) major injuries respectively, whereas the LFS (HSE 2022a) recorded 135,000, 138,000, and 168,000 major injuries throughout this same time period. In consideration of this discrepancy, the HSE (2022b, p.1) recognises that 'employers substantially under-report these non-fatal injuries: current levels of overall employer reporting of RIDDOR defined non-fatal injuries to employees is

[4] Although this thesis focuses on safety crime, this section uses the term health and safety crime to reference occupational injuries, illnesses, and diseases.

estimated at around a half.'

This underreporting is not unique to major injuries. In contrast to the LFS's (HSE 2022a) estimate of 13,000 annual deaths from workplace pollution, researchers from the European Agency for Safety and Health at Work estimate that work-related illnesses and diseases cause 21,000 annual deaths in Britain, and this figure might 'still be an under-estimation' as work-related diseases are 'increasing' (Hämäläinen *et al*. 2009, p.127). Similarly, Public Health England (2019) states that air pollution is the largest public health risk in Britain, as an estimated 28,000 to 36,000 people die to human-made air pollution each year, and O'Neill *et al*. (2007) argue that work-related cancers cause 40,000 annual deaths in Britain.

For fatal injuries, what some call the most reliable category of injury data (Health and Safety Commission 1996; Nichols 1989; 1994; 1997), Tombs (2016, p.195) states that the HSE's headline fatality figure relating to employee and self-employed workers 'omits vast swathes of fatal injuries', as Tombs and Whyte (2007; 2017; 2020) suggest that this headline figure reveals roughly 15% or one sixth of the total amount of fatal occupational injuries each year in Britain. Tombs and Whyte (2007) ascribe this underreporting to two questionable practices. First, the HSE (2020) records but does not include occupational deaths to members of the public in its headline figure. Second, RIDDOR 2013 does not require employers to record certain categories of deaths in the workplace, despite these deaths representing an employer's failure to abide by the HSWA 1974 to ensure, as far as reasonably practicable, the health, safety, and welfare of their employees. Excluded categories include deaths from sea fishing and merchant vessels, deaths traveling by air or sea, and most significant, deaths involving a moving vehicle on a public road (other than vehicles involved in loading and unloading operations, working alongside the road such as road maintenance, escapes of substances from vehicles, and incidents involving trains) (HSE 2022c; 2022d). Tombs and Whyte (2007) argue that these categories of workplace deaths should be included in the HSE's headline fatality figure, particularly as the last category, work-related roadway deaths, likely cause large quantities of fatal incidents. In 2003 the HSE (2003) estimated that a third of all road traffic incidents in Britain are work-related, resulting in approximately 1,000 occupational road fatalities each year, leading the Trades Union Congress in 2005 (cited Tombs and Whyte 2007, p.46) to state that 'Britain's roads are the country's most dangerous workplace'. By including these aforementioned categories of workplace deaths, Tombs and Whyte (2007) calculate an annual fatality rate of approximately 1650 for the years 1996/97 to 2004/05 in Britain, that being between six to seven times larger than the HSE's mean annual headline fatality figure of 251 for the same time period (see Tombs and Whyte

2007).

More recently in 2016 the Royal Society for the Prevention of Accidents (2016) estimated that more than a quarter of all road traffic incidents in Britain involve someone driving for work[5], meaning that out of the 1,752 road deaths in Britain in 2019 (Department for Transport 2020) at least 438 of these are likely to be work-related. If this figure of 428 work-related roadway deaths is combined with the HSE's (2020) 2019/20 headline fatality figure of 111, this results in 549 fatal safety crimes. Moreover, if these fatalities are added to the 106 workplace deaths to members of the public in 2019/20 (HSE 2022e), this fatality figure increases to 655 – a figure nearly six times as high as the HSE's (2020) headline fatality figure in 2019/20.

The under-recording and underestimation of safety crime has been ongoing since the 1970s when Robens (1972) acknowledged this very issue. In what Box (1983, p.16) describes as a 'collective ignorance', Stevens (1992, cited Tombs and Whyte 2007, p.39) estimated that the HSE only recorded 40% of employee and 10% of self-employed injuries during the 1980s. In 2007 the HSE (2007) similarly found that only 32% of employee and 12% of self-employed injuries were reported. If major injury data from the LFS (HSE 2022a) and estimates of work-related roadway deaths and workplace deaths to members of the public are compared to the HSE's headline fatality figure, this suggests that official HSE data might record just 15% of fatal and 50% of major injuries in Britain each year. This underreporting can be ascribed to a range of reasons, such as the safety crime subject area failing to attract mainstream academic attention (see section 2.2), the politics of crime, law and order (Brake and Hale 1992; Downes and Morgan 2002; Hale 2004) that deprioritise safety crime (Slapper and Tombs 1999; Tombs and Whyte 2007), the way in which many safety crimes are represented as accidents or non-work related deaths rather than crimes of violence (Alvesalo and Whyte 2007; Tombs and Whyte 2003; Tombs and Whyte 2007), and the legal obstacles to identifying, regulating, and convicting safety criminals (discussed further in section 2.4 on the criminalisation of safety crime).

As a result it is difficult to discern the true extent of health and safety crime harm in Britain. As O'Neill (2007, p.xiii) puts it, 'if you don't count the bodies, the bodies don't count'. To summarise the conflicting estimations of health and safety crime harms, for the LFS (HSE 2022a) there are 168,000 major injuries in contrast to the HSE's (2020) 65,427 major injuries in 2019/20. For Hämäläinen *et al*. (2009) there are 21,000 annual workplace deaths resulting from illnesses and diseases, in contrast to

[5] This estimate was attributed to the HSE but the original source is no longer accessible.

the LFS' (HSE 2022a) estimation of 13,000 annual deaths, and this is dwarfed by Public Health England's (2019) estimation of up to 36,000 annual deaths by human-made air pollution and O'Neill *et al*. (2007) estimation of 40,000 annual deaths from work-related cancer. For Tombs and Whyte (2007; 2008; 2017; 2020) there are likely to be six times as many fatal injuries than what is reported by the HSE, and, corroborating Tombs and Whyte's conclusions, by adding estimates of work-related roadway deaths and workplace deaths to members of the public to the HSE's (2020) 2019/20 headline fatality figure, this results in nearly six times as many fatal injuries, rising from 111 to 655. At the very least, these estimates suggest that significant quantities of health and safety crime are invisible to the HSE and a significant hidden figure of safety crime harm exists; particularly in light of the informal economy and zero hour contracts that remain outside the purview of official statistics, speculation that many safety crime deaths are instead recorded as deaths from natural causes or suicides (Tombs and Whyte 2007), and the HSE's non-recording of over three day and under seven day injuries, which according to LFS (HSE 2022a) data, stands at 216,000 in 2019/20.

On the premise that fatal injuries are the most reliable category of occupational injury data (Health and Safety Commission 1996; Nichols 1989; 1994; 1997), if this multiplier of six is applied to HSE (2020) and LFS (HSE 2022a) data for the year 2019/20, this would suggest that each year in Britain there are approximately: 874 fatalities if using the mean HSE (2022f) fatality figure from 2010/11 to 2019/20, between 390,000 and 1 million major injuries from HSE and LFS sources respectively, 78,000 deaths from illnesses and diseases, £97 billion in costs from injury and ill health, £73.8 billion in costs from cancer, 9.6 million workers suffering from ill-health, and 233 million working days lost due to ill-health and non-fatal injuries resulting from health and safety crime. On the assumption that these statistics are accurate, health and safety crimes are likely to have far greater costs than most 'conventional' crimes represented in the English and Welsh criminal justice system (Slapper and Tombs 1999; Tombs and Whyte 2003; 2007; 2017; 2020). For instance, the aforementioned estimated annual fatal safety crime rate of 874 already surpasses the 673 homicides in England and Wales from April 2019 to March 2020 (Office for National Statistics 2022). Furthermore, if this multiplier of six is applied to Eurostat (2022) data in 2018/19, this being the same data collected under RIDDOR 2013 by the HSE, Britain would become the deadliest nation to work in in the EU-27, with 1,494 fatal injuries corresponding to a fatal injury rate of 4.68 per 100,000 persons employed, followed by Romania, without adjusting its fatal injury rate by a factor of six, with 235 fatalities corresponding to a 4.33 fatal injury rate per 100,000 persons employed. It is likely that most nations suffer from similar levels of safety crime underreporting, but as the HSE (2022g) points out in regard to European nations, countries have different recording, reporting, and enforcement standards of

occupational injury data and this makes it difficult to compare international safety crime statistics.

Lastly, the HSE (2020b) states that its 2019/20 statistics largely fall outside of the impact of the Covid-19 pandemic, as 'the emergence of Covid-19 as a national health issue over the first quarter of 2020 does not appear to be the main driver of changes seen in the 2019/20 data, though it is possible that Covid-19 may be a contributory factor'. HSE (2020b) statistics at the end of 2019/20 may have been affected by employers not reporting injuries because work had stopped or because some data from local authorities was suspended, as was the case for reports on fatal injuries to members of the public. Moreover, LFS estimates on work-related injury and ill-health, including stress, depression and anxiety, showed statistically significant increases from 2018/19 to 2019/20, although it cannot be identified if this increase is linked to Covid-19 since the HSE (2020b) suggests that 'in the absence of Covid-19, we would still have seen an increase in rates'.

2.4 Criminalising safety crime

Having defined safety crime and estimated the harm that results from this phenomenon, this section reviews England and Wales' attempts of criminalising and convicting safety criminals. The first English and Welsh law concerning safety crime was the Health and Morals of Apprentices Act 1802 (HMAA), designed to regulate and improve the working conditions of apprentices in cotton mills. As Marx (1887) describes, most 19th century industrial workplaces were characterised by harsh and prolonged working hours, resulting in unsafe and often deadly working conditions. The HMAA 1802 attempted to ameliorate these conditions by setting basic cleanliness requirements and allowing local magistrates to appoint inspectors, called visitors, to inspect workplaces and refer non-compliant employers to the court of petty or quarter session to be fined (Raithby 1807). However, the HMAA 1802 was not legally binding and it was rare for magistrates and visitors to enforce the Act because these persons were 'either in sympathy with or drawn from the ranks of the manufacturers' they were to enforce (Peacock 1984, p.197). As Marx (1887, p.190) notes, 'the masters [manufacturers] sat in judgement on themselves' and usually acquitted themselves. Moreover, the sheer scale of offences under the HMAA 1802 (Marx 1887) most likely made it seem impractical to enforce the Act.

In response to the difficulty of criminalising employers that did not abide by the HMAA 1802, the Factory Act 1833 established the Factory Inspectorate under the control of the Home Secretary to supersede visitors and enforce health and safety standards on employers (Djang 1942). However, it

can be observed that the Inspectorate suffered from two key disadvantages. First, it appointed only four inspectors to regulate approximately 3,000 premises, and although this number of inspectors increased to thirty-five by 1868 (Royal Society for the Prevention of Accidents 2022), it is unlikely that this was sufficient to effectively enforce the various Factory Act legislation across England and Wales. As one mine-owner noted in 1867, coal mines were only inspected once every ten years (Marx 1887). Second, as was the case under the HMAA 1802, the magistracy was still reluctant to prosecute employers (Peacock 1984). As Norrie (2001, p.85) states, magistrates were 'required to criminalise what was normal within the factory system… to criminalise a body of men not on the periphery of moral life, such as displaced or poverty-stricken workers, but men who were at the centre of the emerging political and social order'. In other words, magistrates were reluctant to endorse 'collective criminalisation which extended far beyond some opprobrious minority' and target the wealthy social caste (Carson 1979, p.48). Not only can it be speculated that a significant number of offences did not reach the courts due to a lack of enforcement, but those that did were often returned with non-guilty verdicts based on a technicality or were issued 'derisory fines' that complied with the Factory Acts in name only (Peacock 1984, p.197). As Carson (1979) notes, the courts often imposed the minimum penalty of £1 for over two thirds of convictions between 1836 and 1842. For Carson (1979, p.40), the early 1802-1831 Factory Acts were 'almost entirely ineffectual' and the new laws after 1831 were 'contravened on a substantial scale' as to make them 'a dead letter' (Carson 1981, p.136).

Due to the continued difficulty of enforcing the HMAA 1802, Factory Act 1833, and similar Factory Act legislation, the Factory Inspectorate was given powers to impose administrative responsibilities upon employers to make it easier to convict these persons, such as requiring employee time-books and certificates of age (Djang 1942). Breaches to these administrative duties assisted inspectors in convicting and punishing employers with fines. Administrative responsibilities, which would later be known as strict liability, thereby partially circumvented the *mens rea* of crime as employers were 'guilty in the first instance' and required to prove their due diligence (Carson 1980, p.164). Since strict liability was created in 1833, if not in name then in effect, the term has grown to include vicarious liability and inchoate liability. Vicarious liability, also called corporate liability or *respondeat superior*, holds that 'an employer is strictly liable for the torts of his employees acting in the course of their employment' (Giliker 2010, p.23). This type of liability resulted from the influx of corporations since the 19th century, as 'there was little incentive for companies to curb illegal but profitable practices' and vicarious liability was introduced to help convict negligent employers (Gobert and Punch 2003, p.56). Inchoate liability refers to the intentional or actual breach of health

and safety law regardless of the substantive effect. Inchoate liability therefore 'fails to distinguish those companies which have caused death and injury from those companies which may be unsafe but which have not yet caused harm' (Bergman 2000, p.39).

The implementation of strict liability into the Factory Act legislation is significant for two reasons. First, administrative breaches are distinct and thus differentiated from other crimes of violence due to their partial circumvention of the two key elements of crime: *mens rea* and *actus reus*. Whereas vicarious liability partially sidesteps the issue of attaining *mens rea* by assuming guilt in the first instance and requiring defendants to prove themselves not guilty, inchoate liability disregards the *actus reus* by removing the consideration of harm. As Tombs and Whyte (2007, p.118) state, 'disconnecting harm from offence is crucial in reframing the "criminal" nature of the offence', as 'some notion of harm has always been a central notion in modern criminal justice systems'. For instance, Smith and Hogan (2002) note how virtually all established criminal law textbooks identify the prevention of physical harm as a founding principle in criminal law, and for Mill (1962, p.135), 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others'. Second, and likely due to strict liability's partial circumvention of *mens rea* and *actus reus*, health and safety offences were punished with fines whereas other crimes of injury and death resulted in capital punishment or custodial sentences at the time. As Tombs and Whyte (2007, p.124) observe, the partial removal of *mens rea* and *actus reus* means that the courts 'interpret a lower degree of seriousness and therefore attach a less severe punishment to the offence' (for more information on the punishment of safety criminals see Chapter 3).

Despite the development of strict liability as a means of convicting safety criminals, three legal defences were often used up until the middle of the 20th century to exonerate these persons. First, the principle of *volenti non fit injuria*, 'to a willing person, injury is not done', was used to argue that employees were not entitled to compensation for their injuries since they consented to the terms of employment. As Lord Bramwell (1889, cited Slapper and Tombs 1999, p.25) stated, 'on what principle of reason or justice should the master be liable to him in respect of that hurt?' Next, contributory negligence held that injured employees could not sue for compensation if they had contributed to their injury by carelessness (Brazier 1988), and third, the defence of common employment argued that injured employees were not able to sue for compensation if their injury was inflicted by a co-worker. Although these defences were eventually abolished or overruled in the context of employment, as seen in respective order in *Bowater v Rowley Regis Corporation* 1944, the

Law Reform (Contributory Negligence) Act 1945, and the Law Reform (Personal Injuries) Act 1948, Slapper and Tombs (1999) estimate that these defences likely absolved a great deal of safety criminals throughout the 19th century and first half of the 20th century. As Fleming (1983) and Gobert (1994) argue, during this period it was common for judges to view safety crime as an inevitable consequence of the industrial economy and subordinate the wellbeing of employees to the requirements of capital.

In addition, the English and Welsh criminal justice system has historically struggled with convicting corporate safety criminals (Slapper and Tombs 1999; Gobert and Punch 2003; Tombs and Whyte 2007), which according to Tombs and Whyte (2015, cited Tombs 2016, p.194), account for approximately 95% of HSE prosecutions. Up until the early 20th century it was reasoned that 'a corporation is not indictable but the particular members are' since corporations have no will to be guilty and no body to be punished (Lord Holt 1701 cited Slapper and Tombs 1999, p.26). Although, the proliferation of companies led to the need to regulate these entities using the criminal law, as they were 'so numerous that there would have been grave public danger in continuing to permit them to enjoy immunity' (Turner 1966, p.76). It was not until 1944 that three cases led to the criminal conviction of a company by attributing the *mens rea* of one or more of a company's directors to the company itself. First, the Divisional court convicted a company with intent to deceive in the case of *DPP v Kent and Sussex Contractors Limited*. As Lord Caldecote (1944 cited Slapper and Tombs 1999, p.29) concluded, 'although the directors or general manager of a company are its agents, they are something more. A company is incapable of acting or speaking… except in so far as its officers have acted… the officers are the company for this purpose'. Here, Lord Caldecote extends the *mens rea* of a company's directors to the company itself. Second, *R v ICR Road Haulage Ltd* held that an indictment could lie against a company for the common law offence of conspiracy to defraud. Third, in *Moore v Bresler Ltd* the precedent of the previous two cases was followed and a company was prosecuted with intent to defraud. As Welsh (1946, p.346) notes, these three cases were 'revolutionary' as together they led to corporate *mens rea* by first obtaining the *mens rea* of at least one of the company's directors. To refer to Lord Denning's (1957 cited Slapper and Tombs 1999, p.31) well-cited statement, 'a company may in many ways be likened to a human body… the state of mind of these managers is the state of mind of the company and it is treated by the law as such'. Considering the necessity of identifying and convicting the directors or controlling mind of a corporation, this method of corporate conviction came to be known as the identification principle (Slapper and Tombs 1999).

However, the distribution of managerial responsibilities throughout large and diffuse corporations makes it difficult to identify and convict the individuals responsible for safety crime, and thus the corporation and its controlling mind. This difficulty of using the identification principle can also be seen in Canada's criminal justice system (Alvesalo *et al*. 2016). As Braithwaite and Geis (1982, p.298) state, 'when enforcement officers decide that a corporation is probably guilty of an offence and deserves to go to court, a conviction is usually not the result'. This can be illustrated by the unsuccessful prosecution of Townsend Thoresen for its role in the capsizing of the MS Herald of Free Enterprise in 1987, as all five senior employees were acquitted because no single individual or controlling mind was found culpable, meaning that the company avoided conviction despite the deaths of 193 passengers and crew (Department of Transport 1987).

It might be assumed, then, that the aggregation of the *mens rea* of a company's officers should be aggregated to form corporate *mens rea*, although case law was clear, as Lord Justice Bingham (1989 cited Slapper and Tombs 1999, p.32) declared in *R v H.M. Coroner for East Kent, ex parte Spooner*, that the aggregation of a company's senior officers' *mens rea* is not imputable to the organisation itself:

> Whether the defendant is a corporation or a personal defendant, the ingredients of manslaughter must be established by proving the necessary *mens rea* and *actus reus* against it or him by evidence properly to be relied on against it or him. A case against a personal defendant cannot be fortified by evidence against another defendant. The case against a corporation can only be made by evidence properly addressed to showing guilt on the part of the corporation as such.

Bingham's ruling illustrates the difficulty of convicting organisations in a criminal justice system founded on the criminalisation of individuals and on the reliance on obtaining *mens rea.* Despite legal personhood being based on the aggregation of often numerous individuals and the likelihood that significant portions of safety crime result from an aggregation of causes attributed to various persons (Tombs and Whyte 2007), Bingham, perhaps counterintuitively, ruled that the aggregation of individuals' *mens rea* is not imputable to corporate *mens rea*. Companies, which lack a body and mind, are clearly distinguishable from individuals and there is no reason that the concepts of *mens rea* and *actus reus* have to be applied to corporate persons in the same way as individuals. As Gobert and Punch (2003, p.53-54) argue, 'laws often are more the product of history than logic' as 'the judges might have been better advised to have accepted from the outset that fresh doctrines were

going to be needed that took account of the unique characteristics of organisational entities'. To further demonstrate the difficulty of convicting companies using the identification principle, in light of Tombs and Whyte's (2007) estimation of approximately 1650 annual fatal safety crimes from 1996/97 to 2004/05 in Britain, Tombs (2018) highlights that there were merely eight convictions for work-related corporate manslaughter from 1994 to 2009 in England and Wales.

In contrast to Bingham's ruling, the CMCHA 2007 superseded the identification principle – alongside the common law offence of gross negligence manslaughter as it relates to organisations – with the aggregation of senior management element. The aggregation of senior management element holds that the *mens rea* of individuals that play a significant role in the decision making of a company's management, or the actual management of a substantial part of the company's activities, can be aggregated to form corporate *mens rea*. In theory, this makes it easier to convict corporations because the Crown Court no longer relies on identifying and prosecuting the *mens rea* of a single director or controlling mind, but must simply find fault in the way that a company's activities are managed or organised by senior management, such as a series of systemic failings in occupational health and safety.

Although, the senior management element still relies on demonstrating the senior managements' *mens rea*, and Gobert (2008, p.414) observes that the CMCHA 2007 may simply 'perpetuate the same evidentiary stumbling blocks that frustrated prosecutions under the identification doctrine'. Stuart (2016), Roper (2018), Tombs (2018), and Hebert *et al.* (2019) certainly question the effectiveness of the senior management element as it has only resulted in twenty-six convictions against mostly small companies since its introduction to December 2019. Moreover, Tombs (2018) notes the reduction of gross negligence manslaughter prosecutions against individuals since the CMCHA Act 2007 compared to the identification principle prior to 2007, leading him to argue that the CMCHA 2007 renders individuals less likely to criminalisation in favour of corporate criminalisation. This is called the corporate veil effect by Tombs and Whyte (2015) and Tombs (2018), whereby corporations protect executives and senior managers from prosecution. As a result of low levels of corporate convictions, Almond (2013, p.32), Hebert *et al*. (2019), and Tombs (2018) suggest that the CMCHA 2007 'steers a path between the symbolic need to do something about companies that kill while not unduly harming business interests', or in other words, without earnestly attempting to punish (see Chapter 3) and regulate safety criminals.

Numerous safety crime academics argue that the state's reluctance to regulate safety criminals can

be attributed to the deregulation of workplace health and safety since the 1970s in England and Wales (Pearce and Snider 1995; Tombs 1996; 2015; Tombs and Whyte 2007). According to these academics, this deregulatory agenda began with Robens (1972, p.7) committee report – which heavily influenced the HSWA 1974 – as it recommended a self-regulatory approach between employers and employees in the prevention of safety crime, as the primary responsibility for improving occupational safety concerns 'those who create the risks and those who work with them'. Robens (1972, p.80) envisaged the state as an adviser that disseminates advice and encourages employer and employee negotiation over worker health and safety, and although the law must be 'rigorous where necessary' and 'flagrant offences call for the quick and effective application of the law', punitive state enforcement should only be used as a last resort. In combination with Robens (1972) self-regulation, Margaret Thatcher and subsequent governments including New Labour championed a neoliberal ideology of free-market capitalism and the deregulation of state health and safety enforcement (Dodds 2006). Neoliberalism holds that markets should be free of government control so that the natural balance of market forces can self-regulate and achieve economic liberalisation, and that workers accept risks to their health and safety when they freely enter contractual agreements with employers (Hayek 1972; Friedman 1982; Moore 1991). Evidence of neoliberalism and deregulation can be demonstrated by a series of government sanctioned health and safety reports from 2004 to 2011, such as *Common Sense Common Safety* (HM Government 2010), among others[6], that use the rhetoric of reducing burdens on business and risk-based regulation to reduce health and safety enforcement. It can also be observed that this deregulatory trend has been accelerated by austerity measures (Guderjan *et al.* 2020; Leruth and Taylor-Gooby 2021); and although it is largely unclear what effect the United Kingdom's departure from the European Union in January 2020 might have on health and safety enforcement, Moretta *et al.* (2022, p.3) argue that Brexit is likely to contribute to deregulation in 'a highly risky race to the bottom' in terms of reducing the state's health and safety responsibilities.

Robens (1972) self-regulation approach can be referred to as a consensus style of regulation (Bardach and Kagan 1982; Hawkins and Thomas 1984; Hutter 1997), as opposed to command and control regulation (Pearce and Snider 1995), whereby the former prioritises negotiation, compromise, and consensus between employers and employees, and the latter prioritises state

[6] Such as *A Strategy for Workplace Health and Safety in Great Britain to 2010 and Beyond* (International Labour Organization 2004); *Regulation – Less is More: Reducing Burdens, Improving Outcomes* (Better Regulation Task Force 2005); the Hampton (2005) Review's *Reducing Administrative Burdens: Effective Inspection and Enforcement*; *Good Health and Safety, Good for Everyone: The next steps in the Government's plans for reform of the health and safety system in Britain* (Department for Work and Pensions 2011); *Reclaiming health and safety for all: An independent review of health and safety legislation* (Lofstedt 2011).

enforced punitive sanctions to effectively regulate workplace health and safety. Consensus styles of regulation appeal to the good intentions and cooperative nature of corporations, or as Haines' (1997) states, corporate virtue. Consensus regulation also incorporates game theory's rational choice perspective that asserts that the best outcome for two players (i.e. employers and employees) is attained through cooperation and compliance, as seen in the 'prisoner's dilemma', whereby the most favourable solution can only be reached if one player makes a cooperative move and then each player follows a 'tit for tat' strategy (Axelrod 1984). Scholtz (1984) extends game theory to the regulatory paradigm as he argues that the most optimal outcome can only be achieved by first attempting compliance.

However, academics such as Woolf (1973), Dawson *et al.* (1988), Tombs (1996), Tombs and Whyte (2007; 2010; 2012; 2017; 2020), and James *et al.* (2012) criticise self-regulation for its susceptibility to deregulation. Not only does the prevalence of safety crime fundamentally contradict the good intentions consensus regulation places in corporations in ensuring the health, safety, and welfare of employees, but Dalton (2000) argues that employers control the employee-employer consensus due to a lack of trade union presence. Furthermore, Robens (1972) states that three conditions are needed to prevent self-regulation from degrading into deregulation: the presence of inspectors to detect safety crime if self-regulation fails, that these inspectors are likely to enforce punitive measures on criminal employers as a last resort, and that these punitive measures are effective at punishing safety criminals. As Slapper and Tombs (1999) and Tombs and Whyte (2007; 2017; 2020) argue, these three conditions have rarely been present since the introduction of the HSWA 1974 (for further information on the punishment of safety criminals see Chapter 3).

To illustrate the lack of inspectors to effectively detect safety crime, Tombs and Whyte (2007; 2008; 2017) and Tombs (2016) note that HSE and local authority enforcement staff have been steadily decreasing since 1994. Tombs (2015; 2018) and Tombs and Whyte (2012) indicate that between 2004 and 2016 the HSE and local authorities have reduced their inspectors from 1483 to 980 and 1149 to 711 respectively, corresponding to 69% fewer inspections by the HSE from 2003/04 to 2015/16, 75% fewer inspections by local authorities from 2003/04 to 2014/15, and similar reductions in improvement notices, prohibition notices, and convictions throughout this period. Whereas the Home Office (2021) employs 220,519 persons in the police workforce in England and Wales as of March 2021, the Department for Work and Pensions regulates safety crime by employing 2,399 staff in the HSE (2020c) as of March 2020. In 2015/16 Tombs (2018) observed that the HSE employed 980 inspectors to conduct 18,000 inspections of approximately 900,000

workplaces in Britain, meaning that, statistically speaking, workplaces can expect to be inspected once every fifty years. As Slapper and Tombs (1999, p.204) state, 'many companies decide to take the risk of unsafe systems as there is a very low chance of being inspected', and for Braithwaite (1985a, p.7), 'given the great rewards and low risks of detection, why do so many business people adopt the "economically irrational" course of obeying the law?'

In addition to the lack of inspectors to detect safety crime, the state's commitment to educative over punitive health and safety enforcement can be seen in the government sanctioned reports *Common Sense Common Safety* (HM Government 2010), *Good Health and Safety, Good for Everyone: The next steps in the Government's plans for reform of the health and safety system in Britain* (Department for Work and Pensions 2011), and *Reclaiming health and safety for all: An independent review of health and safety legislation* (Lofstedt 2011). Furthermore, the HSE's 2004 (Health and Safety Commission 2004, p.4) and 2015 Enforcement Policy Statements (HSE 2015) are clear that advice and enforcement notices (i.e. prohibition and improvement notices in Chapter 3 sections 3.4.7 and 3.4.8 respectively) are the main measures of dealing with safety crime:

> [g]iving information and advice, issuing improvement or prohibition notices and withdrawal or variation of licences or other authorisations are the main means which inspectors use to achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm.

As Tombs and Whyte (2007, p.149) state, 'rarely do inspectors seek to gather evidence or information upon which any future prosecution might be based. In other words, the HSE inspection mindset is not one that is geared towards the detection of "crime" or "criminals"', and Tombs and Whyte (2020, p.19) highlight that 'typically only 80-90 [work-related fatal injuries] lead to successful prosecutions per annum or around 6%' of the total amount of fatal safety crimes in Britain. Moreover, HSE (2021; 2022r) enforcement data reveals that the number of HSE convictions have decreased from approximately 1,400 in 1995/96 to 450 in 2019/20[7]. Consequently, for Tombs and Whyte (2017, p.4) safety crimes 'typically remain outside the ambit of mainstream criminal legal procedure. If they do become subject to law enforcement, they tend to be separated from the criminal law and processed using administrative or informal disposals rather than prosecution'.

[7] HSE (2021) convictions have further decreased to 230 in 2020/21, although the Covid-19 pandemic likely resulted in fewer than usual convictions.

As a result of the lack of inspectors to detect the large amount of safety crime estimated in section 2.3 and the HSE's preference for educative over punitive enforcement, Tombs and Whyte (2007; 2008; 2017) view health and safety enforcement as 'processes of non- or de- criminalization', as neoliberal principles of self-regulation have given way to deregulation (Dawson *et al.* 1988; Pearce and Tombs 1990; 1991; Tombs and Whyte 2007; 2017; 2020). For Friedrichs (1996), Kramer *et al.* (2002), and Whyte (2009), safety crime is tolerated and possibly encouraged by the state under neoliberal ideals to promote economic efficiency, leading Tombs (2016a) to argue in *'Better Regulation': Better for Whom?* that regulatory trends of reducing burdens on business means business friendly regulation and the state's inability to deliver social protection (for further discussion on the regulation of safety crime, see Snider 1987; 1991; Pearce and Snider 1995; and Tombs and Whyte 2007; 2020). The continued reduction of occupational health and safety enforcement and prosecution will likely result in fewer safety crimes being identified and prosecuted and a larger hidden figure of safety crime harm, especially in light of evidence that inspection and state enforcement is likely or necessary to achieve employer compliance with health and safety legislation (Davis 2004; Mischke *et al.* 2013; Parliamentary Select Committee 2004 cited Tombs and Whyte 2007, p.149).

In light of the above arguments that health and safety self-regulation has degraded into deregulation due to a lack of safety crime detection and punitive enforcement, this underlines the importance of Robens' (1972) third condition for effective regulation: effective penalties for safety criminals. Robens (1972, p.80) was clear that 'flagrant offences call for the quick and effective application of the law', and Braithwaite (1982; 2000), Braithwaite and Fisse (1987), and Ayres and Braithwaite (1992) state that if self-regulation fails the next preferred strategy is enforced self-regulation underlined by punitive state enforcement. Whether the state uses self-regulation with the threat of sanctions as a last resort, or command and control regulation that prioritises punitive enforcement, both types of regulation have in common the need for effective penalties (see Chapter 3).

2.5 Summary

To conclude, official data and academics estimate that safety crime causes significant quantities of physical, psychological, and financial harm in Britain. Despite Eurostat (2022) data on the EU-27 suggesting that Britain is one of the safest nations to work in with 249 workplace fatalities in 2018, research by Tombs and Whyte (2007; 2017; 2020) estimates that there are up to six times as many annual fatal safety crimes than what is officially reported. However, just as Morris (1935) spoke of

criminals of the upper world whose social position permits them to move virtually immune to recognition and prosecution as criminals, this chapter has reviewed the academic, legal, and enforcement obstacles to identifying and convicting safety criminals.

Academia has been largely negligent in identifying crimes of the powerful such as safety crime and its precursor white-collar crime. Although Sutherland (1944) viewed white-collar crime as firmly representing *mala in se* and *mala prohibita,* this was not how it was seen by the rest of academia as Tappan (1947) criticised the concept for its subjectivity and white-collar crime failed to attract further recognition until the 1972 North American Watergate scandal. This scandal led to an influx of terms to describe the study of crime in the workplace. These terms, however, fail to introduce precision and uniformity in the academic study of workplace crime, and without well-known and distinguishable terminology and definitions, the academic study of safety crime remains on the periphery of discussions on crime.

Another obstacle to identifying, criminalising, and convicting safety criminals concerns the legal difficulty of assimilating these persons into a criminal justice system founded on obtaining *mens rea* and the punishment of individuals. This can be seen by how employers have largely remained outside the jurisdiction of the criminal justice system due to the reluctance of 19th and 20th century magistrates to punish employers that violated the Factory Act legislation, the legal defences of *volenti non fit injuria*, contributory negligence, and common employment that exonerated a great deal of safety criminals until their abolishment in the 1940s, and the difficulty of attaching *mens rea* to safety crimes that result from an aggregation of causes attributed to numerous persons and negligence rather than intent. This difficulty of acquiring *mens rea* is particularly notable in organisational settings, as criminal justice systems based on the conviction of a single controlling mind are ill-suited to criminalising companies with a diffuse structure of responsibility.

Furthermore, ever since Robens' (1972) advocacy for self-regulation between employers and employees, Thatcher and subsequent neoliberal governments, and a series of government backed health and safety reports from 2004 to 2011, a neoliberal agenda of self-regulation and decreased state enforcement of workplace health and safety has resulted in the deregulation of safety crime in England and Wales.

These obstacles to identifying, criminalising, and convicting safety criminals not only reduce the criminal label of workplace health and safety offences and result in the deregulation of safety crime,

but, as the following chapter aims to demonstrate, these obstacles also reduce the severity of most safety crime penalties to an extent that arguably removes any significant consequence from committing safety crime. Therefore, rather than reducing safety crime enforcement that will likely result in fewer safety crimes being identified and prosecuted, this chapter suggests that increased state enforcement backed by effective sanctions is required to effectively regulate, punish, and possibly prevent safety crime. Whether the state continues its self-regulatory approach or relies on greater punitive enforcement, both types of regulation have in common the need for effective penalties either as a first or last resort.

Chapter 3

Theories and Penalties

> If there are no meaningful sanctions for wrongdoing, companies may see little to be gained by being a good corporate citizen, and much to be lost if less scrupulous rivals exploit their commitment to the law (Gobert and Punch 2003, p.214).

3.1 Introduction

Having argued for the need for effective penalties to regulate safety crime in the previous chapter, this chapter critically reviews the theories of punishment and penalties that can be used to punish safety criminals in England and Wales. This includes academic perspectives on the effectiveness of the theories of deterrence, retributive justice, rehabilitation, and incapacitation for safety criminals, alongside the effectiveness of the penalties used to achieve these theories for safety criminals.

3.2 Theories of punishment

3.2.1 Deterrence theory

Beginning with the theory of punishment that uses the fear of punishment to prevent crime, the classical school of deterrence has historically been a dominant theory in most western criminal justice systems (Norrie 1991). Jeremy Bentham (1996) and Cesare Beccaria combine utilitarian arguments that individuals seek pleasure and avoid pain with rational choice theory that postulates that individuals govern their actions by rational decisions, thereby suggesting that individuals can be deterred from crime if the certainty and severity of punishment is proportionally greater than the benefit of crime (Hostettler 2011).

Deterrence theory can refer to specific deterrence that aims to discourage persons from committing crime by matching the penalty relative to the crime, and general deterrence that aims to deter everyone from committing crime by punishing offenders not only for their crimes 'but against the sum total of such evils that might be produced in the whole society but for his punishment' (Norrie 2014, p.342). General deterrence means that an offender's punishment can be proportionally larger than the crime committed so that the deterrent effect reaches as many people as possible. The

severity of penalties can therefore vary dependent on the aims of specific or general deterrence (Hart 2008). It is commonly held, mostly on ethical principles, that general deterrence cannot proliferate on the basis of the over-punishment of offenders (Lacey 1988; Norrie 1991). Despite this, Bentham (1996) argues in favour of general deterrence as he suggests that a loss of deterrent value from a weak system of detection can be countered by an increase in punishment for those caught. It is not unheard of for judges to invoke exemplary punishments or general deterrence, especially during times of crisis. For example, the 2011 London riots resulted in some sentences beyond those recommended by guidelines to 'send a clear and unambiguous message which I trust will deter others from engaging in this type of behaviour in the future' (Roberts 2012, p.441). Overall, though, it is rare for punishments to aim to achieve general deterrence over specific deterrence (Norrie 2014).

Considering that general or specific deterrence does not deter all crime (Brody 1976; Beyleveld 1980; Walker and Padfield 1996), demonstrated by the 26% overall reoffending rate from July 2019 to September 2019 in England and Wales (Ministry of Justice 2021), it is clear that only '*some* people can be deterred in *some* situations from *some* types of conduct by *some* degrees of likelihood that they will be penalised in *some* way' (Walker and Padfield 1996, p.101). To answer why some people are deterred and not others, Norrie (2014) frames the answer to this question by dividing society into three groups. First, there are those who refrain from breaking the law because they have a conscience and believe that crime is wrong. Second, those that cannot be deterred because they have no conscience. Brody (1979, p.10) terms this group the 'undeterribles' and states they are likely comprised of 'seriously unbalanced' individuals who lack comprehension of the criminal consequences of their actions. In addition to Brody's psychological rationale, Box (1987) offers the sociological explanation that undeterribles may commit crime if they feel alienated from society and feel as though they have nothing to lose by committing crime, namely material or moral disincentives such as the loss of money or social standing. This second group most likely fits the 'bad apples' explanation of criminal behaviour (see Gross 1978; Clinard 1983). Norrie's (2014) third and final group refers to persons that have a conscience and fear being caught and punished but not sufficiently so to be completely law abiding. Considering this third group, the question of deterrability becomes what factors contribute to a person's decision not to commit crime, and these factors of deterrence refer to the likelihood of being arrested, convicted, and whether the punishment outweighs the benefit of crime (Bentham 1996; Mendes 2004; Hostettler 2011; Norrie 2014).

Not only do safety crime academics concur that safety criminals conduct cost-benefit analyses that consider these factors of deterrence, but deterrence might be more effective for safety criminals than street criminals because these factors of deterrence are more accessible and readily understood by safety criminals (Braithwaite and Geis 1982; Braithwaite 1985; Croall 1992; Pearce and Tombs 1998; Slapper and Tombs 1999; Tombs and Whyte 2007; 2013). For these academics the factors of deterrence are usually more accessible and readily understood by safety criminals than street criminals because street criminals are less likely to know the probability of being arrested, convicted, and punished, and they may not have enough time to weigh these potential costs against the benefits of committing crime. As Katz (1980) and Canter and Alison (2000) note, street crimes such as assault often result from impulsive or expressive emotional acts without rational calculation of the criminal repercussions, and Chambliss (1967) argues that some street criminals may be committed to crime as a means of living and perpetrate crime despite an awareness of the criminal repercussions, thereby consisting of Box's (1987) alienated persons. On the other hand, safety criminals usually have access to information gathering systems (e.g. computing and information technology), lawyers, and accountants that collect information to govern their actions, such as information on the likelihood of being caught and the punishments involved, and safety criminals are generally future oriented and make rational assessments on the benefits and consequences of their actions (Braithwaite 1989; Slapper and Tombs 1999; Tombs and Whyte 2007). Furthermore, unlike Katz's (1980) and Canter and Alison's (2000) impulsive or expressive emotional acts of violence, Braithwaite and Geis (1982) argue that corporate crimes – and safety crimes by extension – are rational and instrumental in achieving a particular goal. Lastly, in contrast to Chambliss' (1967) framing of street criminals that commit crime as a way of life, considering that Tombs and Whyte (2015, cited Tombs 2016, p.194) estimate that 95% of HSE prosecutions are against organisations and that these persons are legitimate businesses, as per the definition of safety crime in section 2.2, safety criminals are unlikely to commit safety crime as a way of life.

In light of Norrie's (2014) three groups, a strong case can be made for the effectiveness of deterrence theory for safety criminals. Considering that Norrie's (2014) first and third groups consist of persons that consider the factors of deterrence, deterrence theory is the precise means to dissuade these persons, such as safety criminals, from committing safety crime. It can also be speculated that the group that deterrence has no effect on – Norrie's (2014) second group comprised of persons who do not consider the criminal repercussions of their actions – is unlikely to consist of safety criminals since this section has argued that most safety criminals, namely organisations, use cost-benefit analyses to consider the criminal repercussions of their actions (see

the Ford Pinto example in Chapter 1 section 1.1).

However, Zev's (1998) criticism of rational choice theory can be applied to deterrence theory, namely not all persons make rational choices because persons may not possess complete information. More importantly, deterrence theory fundamentally relies on the factors of deterrence outweighing the financial motives of committing safety crime. This is problematic considering that Greenwood and Abrahamse (1982) and Hostettler (2011) suggest that it is the probability of being caught and convicted, rather than the severity of punishment, that is most effective at deterring potential criminals, and Chapter 2 highlighted that large quantities of safety crime go unidentified and unconvicted. As Bentham (1996) proposes, penalties could therefore be sufficiently severe to compensate for a weak system of inspection. Not only does this risk overly harsh penalties and what Coffee (1981) calls the 'deterrence trap', but most corporate crime (Croall 2001; Gobert and Punch 2003) and safety crime academics (Slapper and Tombs 1999; Tombs and Whyte 2007) argue that penalties for safety criminals are not effective enough to achieve deterrence. As Braithwaite (1985, p.91) states, 'deterrable though they [corporations] may be, they have not often been deterred in practice because of paltry fines'. For Pearce and Snider (1995, p.271), 'unless fines really do hurt, employers are likely to treat them as a cost of doing business, particularly if the likelihood of being inspected is small, as when the inspectorate is small'. The academic literature therefore supports deterrence for safety criminals in principle, although in practice current safety crime penalties are not effective enough to achieve deterrence (for further discussion on safety crime penalties see section 3.4 onwards).

3.2.2 Retributive justice

One method of achieving deterrence is retributive justice, or 'just deserts' as it was coined in the 1970s, which is the theory of doing justice and 'punishing individuals justly and proportionately to their crime' (Norrie 2014, p.345). Retributive justice aims to legitimate punishment in society and to set the boundaries of punishment (von Hirsch 1976; 1976a; Ashworth 2015). It can be argued that retribution is inherent in all criminal justice systems as the general aim of decreasing crime and protecting the public involves punishing criminals one way or another (Hart 1968). Accordingly, most penal systems use some type of tariff system that approximates the relative punishment to the crime. For safety crime the Sentencing Council (2016) guidelines on health and safety offences introduced in England and Wales in February 2016 link the harm and culpability of offences to the corresponding penalty.

However, a primary criticism of retributive justice is its inability to determine an appropriate system of proportional punishments (von Hirsch 1976; 1976a; Ashworth 2015). This criticism is implicit in the work of Hegel (1952) and Kant (1965) as they both supported the need for equality between crime and punishment but neither was able to formulate an operable system of approximate and proportional punishments. Kant (1965) championed the principle of *lex talionis* (i.e. an eye for an eye) and argued for the equal pairing of crimes and punishments. This approach, however, has clear limits such as the inappropriateness of subjecting safety criminals to the same physical harm that they may have caused, including maiming and death. Alternatively, Hegel (1952) categorised crimes and punishments so that the value of penalties reflect the value or injury of crime. The issue with this abstract matching was that Hegel had difficulty in specifying actual punishments. As the Criminal Law Commissioners (1843, p.92) recognised, 'there is no real or ascertainable connexion or relation existing between crimes and punishments which can afford any correct test for fixing the nature or the extent of the latter, either as regards particular offences or their relative magnitudes'.

To create a system of proportional punishments von Hirsch (1986) combines Kant's and Hegel's ideas to form ordinal and cardinal measures of proportionality. The ordinal magnitude of punishment 'concerns how a crime should be punished compared to similar criminal acts, and compared to other crimes of a more or less serious nature' (von Hirsch 1986, p.40). This measurement is most similar to *lex talionis* as it aims to match penalties to the harm and culpability of crime. On the other hand, cardinal proportionality anchors the scale of punishments 'by fixing absolute severity levels for at least some crimes' (von Hirsch 1986, p.43). Cardinal proportionality follows Hegel's work as it categorises crimes to their minimum and maximum punishment. To answer the dilemma of how to ascertain the cardinal limits, von Hirsch (1986) turns to the premise of deterrence theory, namely the requirement that punishments should be severe enough to deter persons from crime if they knew they would be caught. Although this still leaves some ambiguity in how severe and what these punishments should be, it at least grounds retributive justice and punishments in deterrence and allows further speculation to narrow down which punishments are likely to deter crime.

von Hirsch's (1986) ordinal and cardinal parameters are useful in framing proportional punishments and these measures of proportionality work well with organisational characteristics such as size and turnover in specifying a scale of penalties for different safety crimes. However, that is not to say that these guidelines practice proportional punishments, as von Hirsch's (1986) cardinal scale can also

explain why some crimes are not proportionally punished. If the ordinal scale is based on the harm and culpability of crime, then although the cardinal scale is similarly based on these concepts, it is also based on criteria other than harm and culpability (Norrie 2014). The cardinal scale therefore operates on some degree of subjectivity and for Ashworth (2010, p.39) this subjectivity 'depends on general political trends and judicial disposition in the jurisdiction concerned'. Just as Chapter 2 section 2.4 reviewed the legal difficulty of identifying, convicting, and regulating safety crime, these political and judicial trends can also shed some insight as to why the Sentencing Council's (2016) cardinal scale of punishment might fall short in creating proportional punishments that reflect the harm and severity of safety crime, as argued in section 3.4.1.

3.2.3 Rehabilitation

One shortcoming of deterrence and retributive justice is that these theories do not alter the conditions that lead to crime. As Moore (1987) argues, classical criminology does little to ameliorate the criminogenic variables of organisations and after prosecution criminals may return to the same criminogenic environment and reoffend. In contrast to deterrence and retributive justice that focus on the characteristics of the offence, the positivist school of criminology and rehabilitation focuses on the characteristics of the offender and aims to explain the biological, psychological, and sociological causations of crime and how offenders can be rehabilitated (Pelfrey 1980). Rehabilitation was hailed as the way forwards in penology at the start of the 20th century (Allen 1959). Although this theory is exempt from opposing arguments that offenders should not be rehabilitated, there are various psychological, sociological, and economic theories suggesting why persons commit crime and understanding how individuals can be 'cured' from criminality is unclear (Gobert and Punch 2003, p.217).

Considering that sections 1.1 and 3.2.1 argued that most safety criminals conduct rational cost-benefit analyses to govern their actions, and that Tombs and Whyte (2015, cited Tombs 2016, p.194) suggest that 95% of HSE prosecutions are against organisations, this study refers to structural theories, namely Merton's (1957) anomie theory, Bauman's (1989) moral indifference, and Sutherland's (1947) differential association, rather than pathological theories, to suggest why safety crime occurs; and consequently, why safety criminals can only be educated on how to prevent safety crime rather than be cured from committing safety crime in capitalist societies. Anomie theory holds that deviance results in response to barriers to culturally recognised goals (Merton 1957), such as safety crime resulting from social regulation restraining the *raison d'être* (reason for being) of most

companies to make profit (Blau and Scott 1962; Parsons 1963; Bernard and Vold 1986). Not only is this deviance morally insensitive (Bauman 1989) by disregarding considerations of workplace health and safety (Croall 2001; Punch 1996), as seen in the Ford Pinto safety crime in Chapter 1 section 1.1, but this deviance spreads through environments by a process of differential association whereby through interaction individuals learn the techniques and motives for criminal behaviour (Sutherland 1947). In other words, many safety crimes result from the rational, if unethical, prioritisation of profit in capitalist societies (Pearce and Tombs 1988; Slapper and Tombs 1999), as Tombs and Whyte (2007, p.127) state that safety crimes 'are committed in order to advance financial goals or maintain profitable systems of production'. Safety criminals 'are therefore less likely to be seen as being in need of help and advice or as amenable to strategies aiming to change their motivations' (Croall 2001, p.134). This fundamentally questions the efficacy of using rehabilitation to cure or dissuade safety criminals from deciding to commit safety crime, and for Marxist criminologists such as Bonger (1916) and Greenberg (1993), economic profit as a culturally recognised aim explains why some crimes, such as safety crime, are endemic in capitalist societies.

Rather than using rehabilitation to cure a safety criminal's pathology, rehabilitation can provide training to prevent safety crime, particularly safety crimes resulting from negligence, and rehabilitation can help restore parts of the community that are damaged by safety crime (Braithwaite 1984; Gobert and Punch 2003; Tombs and Whyte 2007). Braithwaite (1989) also argues that the rehabilitation of individuals is more likely to be effective if it takes place in the same environment that gives rise to crime and aims to integrate offenders into the community, termed reintegrative shaming and in contrast to disintegrative shaming, which aims to exclude offenders from the community.

Furthermore, in the context of organisations Braithwaite and Geis (1982, p.310) suggest that:

> Rehabilitation is a more workable strategy with corporate crime than with traditional crime because criminogenic organizational structures are more malleable than are criminogenic human personalities. A new internal compliance group can be put in place much more readily than a new superego.

Braithwaite (1984) argues that an organisation's practices are easier to change than an individual's psychology by improving the organisation's culture, monitoring standards, and accountability, and Croall (1992) suggests that organisational rehabilitation can be particularly effective for small

businesses because offences often occur from omission and ignorance rather than commission.

In a similar manner to rehabilitation, Braithwaite (2002; 2002a; 2003) and Macrory (2006) advocate for the effectiveness of restorative justice and corporate crime. According to the Restorative Justice Consortium (2006), restorative justice aims to:

> Resolve conflict and repair harm. It encourages those who have caused harm to acknowledge the impact of what they have done and gives them an opportunity to make reparation. It offers those who have suffered harm the opportunity to have their harm or loss acknowledged and amends made.

It is difficult to assess the effectiveness of this theory for safety criminals because, despite Braithwaite's (2002; 2002a; 2003) and Macrory's (2006) advocacy for restorative justice and corporate crime, safety crime academics are yet to discuss the effectiveness of restorative justice and safety criminals. Although, in light of the similarities between corporate crime and safety crime, and considering that Braithwaite (2002a) occasionally references safety crime, many of Braithwaite's arguments on restorative justice are applicable to safety criminals. Braithwaite (2002a) notes that companies can effectively achieve the aims of restorative justice and include a range of rehabilitative, incapacitative, and thus deterrent processes. For example, safety criminal restorative justice can result in senior managers being dismissed from employment and remedial orders (see section 3.4.9) can instruct companies to repair harm. However, amongst Braithwaite's (2002a) more general criticisms of restorative justice, the most applicable to safety crime is that restorative justice is prone to 'capture' (i.e. being controlled) by the dominant group – namely powerful safety criminals. Braithwaite (2002a, p.161) states that having a third party representative can help protect against corporate capture, although 'there can be no doubt that capture by dominant groups is an ineradicable reality of restorative justice'. For Braithwaite (2002a, p.167), restorative justice has several advantages and disadvantages for corporate crime and safety crime by extension, although the 'immature literature' is 'short on theoretical sophistication, short on rigorous or nuanced empirical research' and further research is needed.

3.2.4 Incapacitation

The final theory of punishment considered here, incapacitation, aims to prevent crime by isolating offenders that are a danger to society (Pelfrey 1980). Incapacitation can be divided into selective or

collective incapacitation (Greenberg 1975, p.542):

> By selective incapacitation, we mean the prevention of crime through physical restraint of persons selected for confinement on the basis of a prediction that they, and not others, will engage in forbidden behaviour in the absence of confinement. By contrast, collective incapacitation refers to crime reduction accomplished through physical restraint no matter what the goal of confinement happens to be, and where decisions about who is to be imprisoned need not necessarily entail predictions as to future conduct.

Collective incapacitation, then, is the general means of stopping offenders from committing further crime, whereas selective incapacitation uses predictive techniques to incapacitate and prevent crime. Academics tend to support selective incapacitation over collective incapacitation (Greenberg 1975; Greenwood and Abrahamse 1982; Cohen 1983; Gottfredson and Gottfredson 1985; Chan 1995) on the premise that a small portion of offenders commit a significant number of offences (Greenwood 1983; Decker and Salert 1986) and selective incapacitation can be used to identify and incapacitate these prolific criminals. Furthermore, collective incapacitation in the form of custodial sentences carries various criticism (see section 3.4.10 on custodial sentences). Despite the aforementioned academics preferring selective incapacitation over collective incapacitation, a fundamental weakness of selective incapacitation is its inability to accurately identify habitual or the most dangerous criminals (Chan 1995; Cohen 1983; Gottfredson and Gottfredson 1985; Decker and Salert 1986; Ashworth 2010), meaning that contemporary discussions on incapacitation refer to collective over selective incapacitation.

There is a scarcity of research on the effectiveness of collective and selective incapacitation for safety criminals, although Tombs and Whyte (2007) argue that collective incapacitation is effective for these persons because a safety criminal's capacity to commit safety crime can be removed, termed incapacitation of privilege by Tombs and Whyte (2007). For example, Wells (1993), Croall (2001), and Gobert and Punch (2003) discuss methods of incapacitating the capacity of individuals and corporations to commit safety crime, such as disqualification orders (see section 3.4.6) that remove individuals from their directorship, or prohibition notices (see section 3.4.7) that prohibit companies from carrying out dangerous work. Not only do these penalties achieve incapacitation without the use of prisons but they remain connected to the community and facilitate Braithwaite's (1989) reintegrative shaming.

However, three disadvantages of incapacitation for safety criminals can be noted. First, as summarised in Chapter 2 section 2.4, the practical and legal difficulty of attaining individual and corporate conviction makes it difficult to sentence safety criminals with incapacitative penalties. Second, the incapacitation of individuals may not prevent safety crime as criminogenic organisations can go on to commit safety crime (Croall 2001). As Moore (1987, p.395) states, company directors can be removed but the company remains, 'as do the criminogenic forces that led to unlawful behaviour in the first place'. Third, incapacitative penalties can result in collateral damage to innocent parties if employees are prevented from working or if consumers lose the services of a company or provider of health or social services (Braithwaite and Geis 1982; Croall 2001; Tombs and Whyte 2007).

3.3 Combining the theories of punishment

Before examining the range of safety crime penalties to achieve the theories of punishment, previous attempts to combine these theories should be considered. Croall and Ross (2002) and Tombs and Whyte (2007, p.189) argue that a 'sentencing mix' of the different aims of punishment should be used to punish safety criminals. Braithwaite (1985), Ayres and Braithwaite (1992), and Braithwaite (2002) have produced an elementary but to date the most comprehensive attempt of combining the theories of punishment in the concept of an enforcement pyramid in Figure 3.1. Braithwaite (2002) places restorative justice at the base of the pyramid or the first response to crime, followed by deterrence and then by incapacitation, and for Ayres and Braithwaite (1992), incapacitation at the top of the pyramid or final penalty can take the form of license revocations. In a similar manner to Braithwaite's (2002) enforcement pyramid, Macrory (2006) proposes a slightly different sanctioning system that heavily relies on civil sanctions like warnings, civil fines, and enforcement notices. However, Braithwaite's (2002) and Macrory's (2006) suggestions do not include the full range of safety crime penalties, particularly penalties aimed at achieving deterrence and retributive justice.

Figure 3.1: Braithwaite's (2002) pyramid of escalation.

3.4 Penalties

Having examined the theories of punishment to inform the punishment of safety criminals, this section reviews the academic literature on the effectiveness of penalties to achieve the theories of deterrence, retributive justice, rehabilitation, and incapacitation for safety criminals.

3.4.1 Fines

Beginning with the most common penalty for safety criminals, in 2020/21 fines accounted for 80% of HSE (2021a) prosecutions in Britain. Nearly all of these prosecutions are breaches to the HSWA 1974 and are triable either way, and Tombs and Whyte (2015, cited Tombs 2016, p.194) estimate that 95% of HSE prosecutions are against organisations, 3% are against directors, and 2% are against employees. If used correctly fines can achieve all four theories of punishment. Retributive justice can be achieved if fines are proportional to the severity, culpability, and amount of harm caused by safety crime, and if proportional fines outweigh the financial benefits of safety crime then deterrence can also be achieved. The incapacitation of companies can be achieved if large fines force

companies into insolvency, and although fines themselves do not achieve rehabilitation, the money raised from fines can contribute to the rehabilitation and training of safety criminals. For instance, the magistrates' courts and Crown Court can issue compensation orders that order defendants to pay compensation to their victims to help them recover from injury (HSE 2022h). In the magistrates' courts the maximum compensation order was limited to £5,000 per offence until December 2013, in which this limit was extended to an unlimited amount similar to the Crown Court (HSE 2022h). However, there is currently no HSE or academic data on the frequency or effectiveness of compensation orders.

The majority of safety crime fines are sentenced in the magistrates' courts. Prior to March 2015 the maximum fine in the magistrates' courts was limited to £20,000, until the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 introduced unlimited fines in March 2015, thereby matching unlimited fines in the Crown Court. From 2005/06 to 2014/15 the average fine from local authority, HSE, and Crown Office and Procurator Fiscal Service convictions ranged from £14,000 to £40,000, as seen in Figure 3.2.

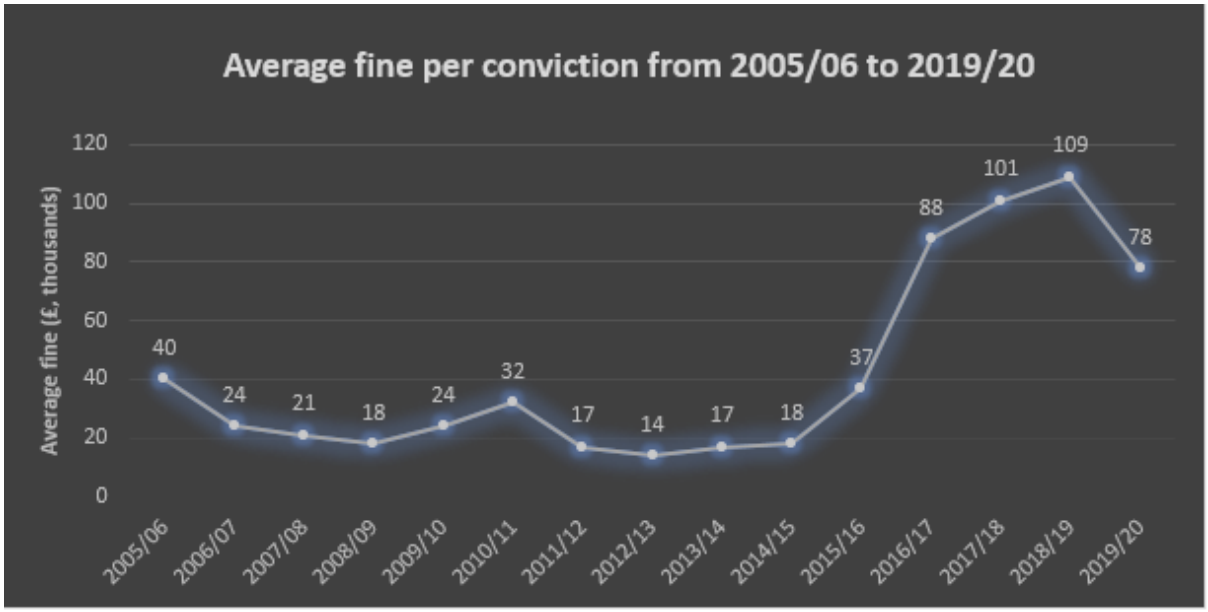

Figure 3.2: Average fine from local authority, HSE (2021; 2022i), and Crown Office and Procurator Fiscal Service convictions from 2005/06 to 2019/20. No data for local authority fines can be found for 2006/07, resulting in the mean local authority fine from 2005/06 and 2007/08 being used instead.

This range of fines, however, is frequently criticised for being too small to adequately punish or deter safety criminals with large incomes or turnovers (Croall 2001; Gobert and Punch 2003; Slapper and Tombs 1999; Tombs and Whyte 2007; Tombs 2018). For example, in 2005 Transco plc was fined

£15 million for causing the deaths of a family of four, this being the largest fine to date issued by the HSE (Health and Safety Commission 2006). Although, this fine barely dented the company's £2.215 billion turnover in 2004/05 (National Grid Transco 2022), corresponding to just 0.68% of the company's annual turnover. This is proportionally smaller than a £200 default fine for fly-tipping (Gov.uk 2022) for someone earning the average annual wage of £27,456 in Britain in 2019 (Office for National Statistics 2019), equivalent to a relative fine of 0.73%.

To combat low fines, from 2016 the average safety crime fine increased, as seen in Figure 3.2, as a result of the introduction of unlimited fines in the magistrates' courts and the first set of guidelines for punishing safety crime introduced by the Sentencing Council (2016). The Sentencing Council (2016, p.26) health and safety offence guidelines acknowledged that fines, particularly fines for large organisations, need to be severe enough to fulfil 'the purposes of sentencing'. These purposes of sentencing relate to the Sentencing Council's (2016, p.25) objectives of linking fines to the harm of the offence and to the culpability and means of the offender, to remove any economic gain derived from the offence, to meet the aims of punishment and deterrence, and 'to have a real economic impact which will bring home to management and shareholders the need to achieve a safe environment for workers and members of the public affected by their activities'. To achieve these objectives, the Sentencing Council's (2016) guidelines base fines on the turnover of organisations, grouped into micro (less than £2 million), small (£2 million to £10 million), medium (£10 million to £50 million), and large (£50 million and over) turnovers, alongside categories of low, medium, high, or very high culpability, and by the degree of harm the offence creates or is likely to create, categorised from 1 (high) to 4 (low), as seen in Table 3.1 below. Under these guidelines, the prescribed maximum fine for organisations is £10 million for HSWA 1974 offences and £20 million for CMCHA 2007 offences. Fines for individuals follow similar culpability and harm categories, although a significant difference is that individual fines are directly proportional to the individual's weekly income, illustrated in Table 3.2 below, with the highest individual fine being 700% of their weekly income, or put differently, nearly 13.5% of their annual income. The Sentencing Council's (2016) guidelines are a positive development that aims to ameliorate the criticism that fines are not large enough to punish or deter safety criminals, as these guidelines represent the state's intent to punishing safety criminals with proportional, retributive, and deterrent principles.

Large Turnover or equivalent: £50 million and over	Starting point	Category range
Very high culpability		
Harm category 1	£4,000,000	£2,600,000 – £10,000,000
Harm category 2	£2,000,000	£1,000,000 – £5,250,000
Harm category 3	£1,000,000	£500,000 – £2,700,000
Harm category 4	£500,000	£240,000 – £1,300,000
High culpability		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
Harm category 2	£1,100,000	£550,000 – £2,900,000
Harm category 3	£540,000	£250,000 – £1,450,000
Harm category 4	£240,000	£120,000 – £700,000
Medium culpability		
Harm category 1	£1,300,000	£800,000 – £3,250,000
Harm category 2	£600,000	£300,000 – £1,500,000
Harm category 3	£300,000	£130,000 – £750,000
Harm category 4	£130,000	£50,000 – £350,000
Low culpability		
Harm category 1	£300,000	£180,000 – £700,000
Harm category 2	£100,000	£35,000 – £250,000
Harm category 3	£35,000	£10,000 – £140,000
Harm category 4	£10,000	£3,000 – £60,000

Table 3.1: Fine bands for large organisations with a turnover of £50 million or more for HSWA 1974 offences (Sentencing Council 2016).

FINE BANDS

In this guideline, fines are expressed as one of six fine bands (A, B, C, D, E or F).

Fine Band	**Starting point** *(applicable to all offenders)*	**Category range** *(applicable to all offenders)*
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income
Band D	250% of relevant weekly income	200–300% of relevant weekly income
Band E	400% of relevant weekly income	300–500% of relevant weekly income
Band F	600% of relevant weekly income	500–700% of relevant weekly income

Table 3.2: Fine bands for individuals (Sentencing Council 2016).

Although, it is still questionable whether fines are currently large enough to adequately punish and deter safety criminals (Tombs 2018), and Figure 3.2 demonstrates that the average safety crime fine per conviction has halted its four year increased in 2019/20 and has in fact decreased. This criticism that fines are too small to adequately punish or deter safety criminals is largely directed at corporate safety criminals considering that not only are 95% of prosecutions against organisations (Tombs and Whyte 2015, cited Tombs 2016, p.194), but fines for organisations tend to be proportionally smaller than fines for individuals, and individuals can be sentenced with custodial sentences or community sentences whereas organisations are overwhelmingly sentenced with fines (HSE 2021a). To illustrate

how fines from 2015/16 onwards can still be considered small relative to an organisation's turnover, in 2015 Merlin Attractions was fined £5 million for the Alton Towers 'Smiler' crash that left several people seriously injured (HSE 2022j). This fine corresponds to merely 0.4% of the £1.278 billion revenue of the parent company Merlin Entertainments (2015) in 2015. Similarly, in 2018 the largest safety crime fines were against Stagecoach Group for the deaths of a 7-year old and a 77-year old, resulting in a £2.3 million fine (Health and Safety at Work 2019), and a £3 million fine against BUPA Care Homes for the death of an 86-year old (HSE 2019a). Neither of these fines can be considered large compared to the turnovers of each company, standing at approximately £3.941 billion for Stagecoach Group (2017) in 2017 and £12.2 billion for BUPA (2017) in 2017, corresponding to proportional fines of 0.06% and 0.02% respectively. Although the Sentencing Council's (2016) guidelines state that it may be necessary to move beyond the suggested range of fines for very large organisations that greatly exceed a £50 million turnover, this is yet to occur. Despite the companies in the above examples clearly exceeding a £50 million turnover, at the time of writing the largest fine since the Sentencing Council guidelines of £5 million jointly belongs to Merlin Attractions in 2015 (HSE 2022j) and Valero Energy in 2019 (HSE 2022k), this being half of the prescribed maximum fine of £10 million. Furthermore, since the inception of the CMCHA 2007 to 2017 only 4 out of 21 convictions under this Act have led to the purported minimum fine of £500,000, and the largest of these, against CAV Aerospace, works out to be just 0.8% of the offender's annual turnover (Tombs 2018).

Considering the objectives of the Sentencing Council (2016) guidelines highlighted earlier, such as achieving the aims of punishment and deterrence, it is counterintuitive that these guidelines recommend a low range of fines that fail to substantially impact large organisations. Just as Almond (2013) and Tombs (2018) argue that the CMCHA 2007 serves the symbolic need of being seen as doing something about companies that kill without harming business interests, so too can it be suggested that the Sentencing Council guidelines serve the symbolic need of being seen as doing something about safety crime without harming business interests and without earnestly trying to punish safety criminals with retributive and deterrent aims (thereby possibly demonstrating the deregulatory agenda highlighted in Chapter 2 section 2.4).

Furthermore, fines under the Sentencing Council (2016) guidelines are proportionally more substantial for smaller organisations than larger organisations. Table 3.3 demonstrates that a comparison of the organisation turnover categories and their recommended fine ranges for HSWA 1974 offences results in median fines that are twice as large for each descending turnover category

from large, medium, small, and micro, corresponding to proportional median fines of 4.2%[8], 8.3%, 15.8%, and 30% respectively. In other words, the median proportional fine for micro organisations is seven times larger than the median proportional fine for large organisations, standing at 30% and 4.2% respectively, meaning that fines for smaller organisations are more likely to achieve deterrence, retributive justice, and incapacitation if the company goes into liquidation. For example, in 2018 R K Civil Engineers and R K District Heating were fined £1 million each for the fatality of one of their workers (Health and Safety at Work 2019b), this being a significant fine compared to their total assets, valued at £3.3 million for the former in 2014 and £1.1 million for the latter in 2016 by Company Check (2019; 2019a). Both companies have since gone into liquidation. As a consequence of fines being too large for small organisations, and conversely, fines being too small for large organisations, the Sentencing Council (2016) guidelines can be criticised for their lack of proportional fines.

Organisation turnover headings	Maximum fine range	Medium proportional fine (for the highest degree of culpability and harm)
Large Turnover: £50 million and over (an upper limit of £250,000,000 has been set to calculate the median fine)	£2,600,000 - £10,000,000	4.2%
Medium Turnover: between £10 million and £50 million	£1,000,000 - £4,000,000	8.33%
Small Turnover: between £2 million and £10 million	£300,000 - £1,600,000	15.83%
Micro Turnover: not more than £2 million	£150,000 - £450,000	30%

Table 3.3: Median proportional fine and the maximum range of fines per organisation turnover for the highest degree of culpability and harm for offences under the HSWA 1974 (Sentencing Council 2016).

3.4.2 Unit fines

One method of increasing safety crime fines and achieving proportional fines is to directly link fines to the organisation's ability to pay in the same way as individual fines, termed unit fines (Gobert and

[8] Considering that the largest turnover category of £50 million and over has no upper limit, following the trend that each descending turnover category is five times as small, an upper limit of £250,000,000 has been set to estimate the median fine.

Punch 2003; Tombs and Whyte 2007). Unit fines are used in almost half of all European Union countries such as Finland, Germany, and France (Kantorowicz-Reznichenko and Faure 2021), as well as in commercial law in the United Kingdom under the Office of Fair Trading and the Data Protection Act 2018. Unit fines for corporate safety criminals would assist in achieving equality of punishment as organisations with varying turnovers would be proportionally fined similar amounts. This is likely to achieve the Sentencing Council's (2016, p.10) objectives to create fines that 'meet, in a fair and proportionate way, the objectives of punishment, deterrence, and the removal of gain derived from the commission of the offence'.

In reviewing the academic literature on the appropriate range of unit fines, the now defunct Centre for Corporate Accountability (1999) and Tombs and Whyte (2007) recommend unit fines of 5% to 15%, the Sentencing Advisory Panel's (2007) consultation paper on the CMCHA 2007 recommended unit fines of 2.5% to 10%, and European Union competition law advises a maximum unit fine of 10% (European Commission 2011). This would likely result in unit fines of hundreds of millions of pounds, similar to fines administered by the Serious Fraud Office (SFO). For example, in 2017 Rolls-Royce was fined £497 million for bribery and corruption offences (SFO 2014), alongside an additional £140 million payment to the United States Department of Justice (2017). Similarly, Tesco Stores was fined £132 million for false accounting practices in 2017 (SFO 2014a). These examples demonstrate that fines in England and Wales can reach the hundreds of millions of pounds.

However, one criticism of fines as they are currently used and unit fines is that companies can distribute the fine as they see fit, such as levying fines onto workers in the form of wage cuts or the loss of employment (Gobert and Punch 2003), onto customers in the form of increased commodity prices, and reductions in the health and safety maintenance of the company (Coffee 1981; Tombs and Whyte 2007). Coffee (1981) aptly refers to this as the 'overspill' effect. In addition, Bergman (1992) and Tombs and Whyte (2007, p.181) point out that the courts 'have very little knowledge about the financial status' of companies to arrive at a suitable unit fine. Lastly, large unit fines against public sector or government organisations are counter-productive since these organisations are publicly funded, resulting in 'budgetary shuffling with money deducted from one arm of government passing back into general revenue' (Fisse 1990; Clarkson and Keeting 1994, p.243; Tombs and Whyte 2007).

3.4.3 Equity fines

To counter the above criticism that companies can levy fines onto innocent parties, Coffee (1981) advocates for equity fines that subtract from the shares of a company instead of its running costs. Under equity fines, convicted companies would be required to issue a number of their shares to the state and these shares should equal the necessary monetary fine to achieve retributive justice and deter safety criminals. Coffee's (1981) equity fines have gained minor attention in an academic and policy sense. The only attempt to implement equity fines came from the Scottish Parliament (2010) in 2008 as the Criminal Sentencing (Equity Fines) Bill met general approval in its draft stage as only two out of twelve responses expressed opposition, although it was decided that the Bill was not within the legislative jurisdiction of the Scottish Parliament and was therefore withdrawn. In England and Wales the HSE (2019b) briefly mentioned equity fines in a 2005 consultation but there has been no further discussion on this penalty.

Despite the lack of recognition of equity fines, this penalty is notable for three reasons (Coffee 1981). First, equity fines eliminate or at least significantly reduce the overspill effect of fines onto innocent parties by targeting a company's equity instead of its capital, meaning that companies do not need to resort to employee layoffs or increased commodity prices to pay for a fine. Second, equity fines have the ability to dwarf contemporary fines since the market value of an average company's shares generally exceeds the capital available to that company. Third, equity fines represent a unique deterrent of threatening to alter the control of a company's management.

Although, one criticism of equity fines is that it is unfair to penalise shareholders who are unaware of the criminogenic conditions or have no control over the management of the company (Coffee 1981; Croall and Ross 2002). However, this criticism is countered by the argument that it is ultimately the shareholders who benefit from the financial advantages of safety crime (Tombs and Whyte 2007) and shareholders are already punished by way of contemporary fines that subtract from the capital of companies. Overall, only a small number of academics have discussed equity fines, namely Coffee (1981), Mokhiber (1989), and Tombs and Whyte (2007), and equity fines may carry unforeseen disadvantages or difficulties that have not yet been identified in the academic literature.

3.4.4 Publicity orders

Another penalty aimed at achieving retributive justice and deterrence is publicity orders. Introduced and only used for offences under the CMCHA 2007, publicity orders publicise a company's illegal conduct, conviction, and the resulting penalty to engender a sense of remorse in offenders and to

deter others from committing similar crimes (Sentencing Council 2016). As Fisse and Braithwaite (1983, p.246) argue:

> If we are serious about controlling corporate crime, the first priority should be to create a culture in which corporate crime is not tolerated. The informal processes of shaming unwanted conduct and of praising exemplary behaviour need to be emphasized.

Penalties based on stigmatic shaming have been used in varying degrees across multiple jurisdictions for centuries (Lynd 1958; Deonna *et al*. 2011), such as the 19th century English Bread Acts that authorised magistrates to publicise convictions for adulterating bread (Fisse and Braithwaite 1983), or the widespread use of shaming in Japanese criminal justice systems (Baradel 2019). The premise behind publicity orders is that a company's reputation is one of its most valued assets as 'corporations and their officers are genuinely afraid of negative publicity arising from their illegitimate activities' (Braithwaite and Geis 1982, p.301). As social control theorists[9] state, companies have a more profound stake in conformity (Zimring and Hawkins 1973; Geerken and Gove 1975; Clinard and Meier 1979). This is because negative publicity can damage the social standing of companies by framing them as malevolent or dangerous offenders, and this has the potential to affect the financial success of companies such as how many customers they receive or their market value (Fisse and Braithwaite 1983; Tombs and Whyte 2007). For instance, one news article estimates that the negative publicity arising from the 2015 Alton Towers 'Smiler' crash resulted in a reduction of visitors and a loss in shares worth approximately £47 million for the parent company Merlin Entertainments (BBC 2015).

However, not only is there are no HSE data to quantify the effectiveness of publicity orders, but this penalty relies on the reaction of customers, opinion leaders, and society in general, and if this public reaction is not sufficiently severe then this reduces the effectiveness of publicity orders to shame, punish, and deter safety criminals (Gobert and Punch 2003; Slapper and Tombs 1999). Publicity orders rely on the public being aware of the order and making the conscious decision to avoid the company's services or goods. The decision to boycott convicted companies may be difficult if the company does not operative in a competitive market, such as having a monopoly of control, or if the company's market does not include the general public, if for instance the company operates oversees. For example, Slapper and Tombs (1999, p.217) state that the 1970s Ford Pinto case meant

[9] Social control theorists argue that social norms, values, and beliefs encourage people not to break the law, and that a greater stake in society reduces the propensity to commit deviant acts.

that the Ford Motor Company 'suffered very badly from the undisputed revelation that it has used a cost-benefit analysis in deciding to leave on the road thousands of vehicles whose safety was in question', although 'the Ford Motor Company is still the world's leading motor manufacturer'. Similarly, Slapper and Tombs (1999, p.211) note how BP's fine of £750,000 for the deaths of three workers in 1987 'was a major news item at the time yet there is no evidence of any consumer boycott of BP products as a result.'

Overall academics tend to agree that corporate shaming is effective for achieving retributive justice and deterrence (Clinard and Yeager 1980; Braithwaite and Geis 1982; Fisse and Braithwaite 1983; Mokhiber 1989; Slapper and Tombs 1999; Gobert and Punch 2003; Tombs and Whyte 2007), although it is rare for the courts to issue publicity orders as the CMCHA 2007 has only issued six publicity orders out of 21 prosecutions from 2008 to 2017 (Tombs 2018). In combination with the low level of fines from the CMCHA 2007 identified in section 3.4.1, Almond (2013) and Tombs (2016) argue that the lack of publicity orders can be ascribed to the symbolic need of the CMCHA 2007 to be seen as doing something about safety crime whilst not unduly harming business interests (thereby possibly demonstrating the difficulty of criminalising safety criminals discussed in Chapter 2 section 2.4).

Lastly and in conjunction with publicity orders, Gobert and Punch (2003) suggest that a ban on company advertisements throughout the duration of the order can be effective for achieving retributive justice and deterrence by reducing the company's public figure and the concurrent loss of revenue. However, Gobert and Punch (2003) note that a ban on advertising may lead to disproportionate harm in an advertising-sensitive industry, and the full implications of this penalty are unclear as it has not been discussed elsewhere in the academic literature.

3.4.5 Custodial sentences

Moving on to penalties that prioritise incapacitation and the second most common penalty for safety criminals, in 2019/20 suspended and immediate custodial sentences accounted for 14% and 8% of HSE (2021a) convictions respectively. Under the Sentencing Council's (2016; 2018) guidelines the maximum custodial sentence for HWSA 1974 offences is two years, and 1-18 years custody for the common law offence of gross negligence manslaughter. The primary advantage of imprisonment is the certainty of incapacitation as offenders are completely removed from society and the environment in which the offence took place, and the loss of freedom and harsh lifestyle of

imprisonment is also likely to achieve some degree of retributive justice and deterrence (Levitt and Miles 2007; Chalfin and McCrary 2017).

However, the imprisonment of safety criminals is likely to exacerbate prison abolitionist concerns (see Price 2015), namely prisons may act as a 'school for crime' whereby minor offenders are exposed to the techniques of hardened criminals (Gobert and Punch 2003, p.217), 'even a modest reduction in crime involves paying a heavy price in terms of increases in prison population: a ten per cent decrease in crime typically requires a doubling of the prison population' (Chan 1995, p.10), and the high financial cost of imprisonment as each inmate costs approximately £25,000 per year (Ministry of Justice 2017).

In addition, not only does imprisonment prevent Braithwaite's (1989) reintegrative shaming principle in rehabilitation, but considering that section 3.2.1 argued that the likelihood of being caught and convicted is a key factor of deterrence, the difficulty of convicting safety criminals highlighted in Chapter 2 section 2.4 is likely to reduce the deterrent effect of custodial sentences (Greenwood and Abrahamse 1982). Moreover, custodial sentences, alongside all other individual incapacitative punishments such as disqualification orders, ignore any organisational practices that may have contributed to the offence. If organisational procedures promote criminogenic practices or risk factors the organisation may simply replace convicted individuals and go on to repeat safety crime (Moore 1987; Croall 2001), thereby suggesting that incapacitative penalties that target organisations are important for incapacitating safety criminals, such as prohibition notices in section 3.4.7.

3.4.6 Disqualification orders

One incapacitative alternative to custodial sentences is disqualification orders that prevent individuals from directing or otherwise controlling a company's affairs. Under the Company Directors Disqualification Act (CDDA) 1986 convicted individuals may not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation, or management of a company. Though primarily concerned with directors, disqualification orders can apply to anyone as long as they have some connection to the management of a company – including its affairs, business, and activities. The test is the activity, not the nominal status of the individual (HSE 2022l). Disqualification orders last a minimum of two years and a maximum of five years in the magistrates' courts and 15 years in the

Crown Court.

Disqualification orders are advantageous as they circumvent criticism aimed at custodial sentences, and by removing individuals from the privileged position they are a danger to whilst maintaining the connection between the penalty and the community, disqualification orders facilitate Braithwaite's (1989) reintegrative shaming and achieve Tombs and Whyte's (2007) incapacitation of privilege. However, by avoiding the harsh and restrictive lifestyle of imprisonment, disqualification orders may not achieve the same degree of retributive justice and deterrence as custodial sentences. Levi (2000) and Gobert and Punch (2003) also point out that disqualification orders can be bypassed if disqualified individuals surreptitiously continue to direct the company, such as establishing a partnership rather than an incorporated firm or by directing the company through friends and family members.

Perhaps due to these criticisms it is rare for disqualification orders to be used against safety criminals. Since the CDDA's 1986 creation to 2005 only 10 individuals have been sentenced with a disqualification order for health and safety offences (HSE 2007a) and there has been no indication that this sentencing rate has increased since 2005. One HSE (2007a) report in 2007 concluded that the lack of health and safety related disqualification orders is due to low awareness of the Act and its provisions on behalf of national and local health and safety authorities, and a low priority accorded to disqualification orders in general. These findings are in stark contrast to the use of disqualification orders (and custodial sentences[10]) in corporate insolvency and financial crime, which equate to roughly 1,200 disqualified directors each year (The Insolvency Service 2018).

It is unclear why this disparity exists between the frequency of disqualification orders in the punishment of financial crime and safety crime. For academics such as Pearce and Tombs (1998), Slapper and Tombs (1999, p.196), and Croall (2001), this disparity is evidence that punishments tend to be stronger for economic regulation offences over social regulation offences, as 'capitalism is much more allergic to financial chaos or subversion than it is to the sacrifice of consumers or workers in the pursuit of profit'. As Lofquist (1993) and Etzioni (1993) suggest, barriers to the effective punishment of organisations might be political rather than technical (such as neo-liberal politics in England and Wales and the HSE's preference for educative over punitive safety crime enforcement outlined in Chapter 2 section 2.4).

[10] Custodial sentences are frequently used for offences under the Fraud Act 2006 (see SFO 2019; 2019a).

3.4.7 Prohibition notices

The HSWA 1974 grants HSE inspectors the ability to issue prohibition notices that incapacitate safety criminals by preventing workplace activities that are likely to cause serious injury from being carried out. Prohibition notices are issued on-the-spot rather than through the courts, and in 2019/20 the HSE (2022m) issued 1,920 prohibition notices, down from approximately 2,900 annual prohibition notices since 2015/16 (likely due to the deregulation of safety crime discussed in Chapter 2 section 2.4). It is unclear how effective prohibition notices are since the academic literature rarely discusses this penalty, although Tombs and Whyte (2007) criticise penalties issued outside of the criminal courts because this reinforces scepticism whether health and safety violations can be described as crimes.

More generally, most western criminal justice systems do not use incapacitative penalties aimed at companies, like license revocations, with the exception of the Italian criminal justice system in relation to financial crime (Gobert and Punch 2003). Penalties that incapacitate a company's ability to operate, such as nationalising companies by transferring a company to a new parent company with a law abiding record (Tombs and Whyte 2007), restricting a company's licence (see Moore 1987; Mokhiber 1989), or the corporate death penalty (Ramirez 2005; Ramirez and Ramirez 2017) are not currently used for safety crime in England and Wales and are rarely advocated in the academic literature. This is most likely due to the fact that companies can disband and re-create themselves to avoid severe incapacitative penalties. As such, this thesis only briefly touches upon incapacitative penalties aimed at organisations.

3.4.8 Improvement notices

In a similar manner to prohibition notices but centred on rehabilitation, HSE (2022n) inspectors can issue improvement notices that require safety criminals to remedy a HSWA 1974 contravention without being sentenced by the courts. Improvement notices are more common than their incapacitative counterpart, as there were 5,000 improvement notices issued in 2019/20, down from roughly 6,200 annual improvement notices since 2015/16 (HSE 2022n). Similar to prohibition notices, improvement notices are rarely discussed in the academic literature and there is currently no academic or HSE data on the effectiveness of this sanction.

3.4.9 Remedial orders

The HSWA 1974 and CMCHA 2007 enables the courts to order companies to take steps to remedy the causes of an offence such as installing effective monitoring systems, and to remedy any matter that appears to the court to have resulted from the relevant breach and to have been a cause of a safety crime. Remedial orders can be viewed as a more comprehensive and court issued improvement notice, as 'this penalty may be particularly relevant where the case involves failure to comply with the requirements of an enforcement notice' (HSE 2022h). Remedial orders can therefore result in the rehabilitation of safety criminals. However, remedial orders are rarely used and there is no data on the use or effectiveness of this penalty, as according to the HSE (2022h), matters have usually been remedied during the investigation either voluntarily or after the service of an enforcement notice.

Although remedial orders are rarely discussed in the safety crime literature, numerous academics (Fisse 1981; Etzioni 1993; Gruner 1993; Gobert and Punch 2003) discuss a similar penalty of corporate community sentences that require companies to undertake work that benefits the community, such as environmental restitution. Sanctions aimed at environmental restitution are more common in the United States and Australia, termed corporate probation and enforceable undertakings respectively. For instance, Mokhiber (1989) and Gruner (1993) note how a convicted company was ordered to clean up an oil spill in one case in the United States, and in *United States v Danilow Pastry Corpn* 1983 a convicted bakery was ordered to supply fresh baked goods without charge to needy organisations for a 12 month period. Although remedial orders are largely focused on remedying the causes of an offence, under the description of remedying 'any matter that appears to the court to have resulted from the relevant breach' (Legislation.gov.uk 2021), this penalty can be used to force companies to take on environmental restitution work, such as the examples above.

3.4.10 Community Sentences

When it comes to rehabilitative penalties aimed at individuals, community sentences accounted for 8% of HSE (2021a) sentences in 2012/21. This penalty is normally eschewed in favour of custodial sentences or fines, because in most cases the court is likely to consider a fine to be a more appropriate sentence (HSE 2022h). Community sentences combine punishment with 40 to 300 hours of unpaid work that benefits the community, namely manual labour such as removing graffiti or clearing wasteland (Gov.uk 2022a). The Sentencing Council (2017, p.4) also states that community sentences can include 'any appropriate rehabilitative requirements', although it can be observed

that community sentences primarily result in menial environmental restitution such as litter picking. Considering this menial work, community sentences primarily achieve environmental restitution in addition to some level of retribution or deterrence.

Community sentences are supported by several white-collar crime (Wells 1993) and corporate crime academics (Mokhiber 1989; Punch 1996) because it is 'appropriate for offenders whose talents and resources could be better used serving the community than sending them to prison' (Croall 2001, p.138). The United States Sentencing Commission (2018), for example, emphasises the educational and vocational skills relevant to determining an appropriate community sentence, such as *United States v Mitsubishi Intl Corp* 1982 whereby a convicted executive was ordered to help design a rehabilitation programme for ex-offenders. Although, Tombs and Whyte (2007) point out that safety criminals may not be qualified to undertake rehabilitative tasks considering that these individuals are being punished precisely due to their lack of health and safety standards. Also, Croall (2001, p.138) notes that community sentences might be seen as a 'soft' option, and similarly, Wells (1997) suggests that sometimes there is a cultural expectation that directors should be imprisoned for major safety crimes to achieve retributive justice.

3.5 Summary

This chapter has critically reviewed the effectiveness of the traditional theories of punishment and the penalties used to achieve these theories for safety criminals in England and Wales. The theories of punishment can be used in varying degrees of effectiveness against safety criminals, usually dependent on how penalties are used to achieve these theories. Deterrence can be effective because safety criminals are likely to consider the factors of deterrence, although deterrence relies on these factors – namely the probability of being caught, convicted, and the severity of punishment – outweighing the financial benefits of safety crime. Retributive justice can be effective because organisational characteristics such as size and turnover lend themselves to ordinal and cardinal measures of proportionality, but the effectiveness of retributive justice depends on these measures resulting in proportional and deterrent penalties. Deterrence and retributive justice can be achieved by fines, although fines as they are currently used tend to be too small to achieve these theories for large organisations. One solution to achieving larger and proportional fines is unit fines that directly link fines to the offender's ability to pay, however, larger fines exacerbate the criticism that companies can levy fines onto innocent parties such as workers by employee layoffs or consumers by increased commodity prices. Equity fines can circumvent this criticism that fines can punish

innocent parties, although considering only a handful of academics have discussed this penalty and it has not been used in practice, further research is needed to explore any potential pitfalls. In addition to fines, publicity orders and stigmatic shaming can be used to achieve retributive justice and deterrence for companies and there are few disadvantages to using this penalty, other than the unpredictable nature of publicity orders as they rely on the reaction of customers, opinion leaders, and society in general.

Incapacitation can be effective because a safety criminal's privileged position to commit safety crime can be removed, although incapacitative penalties can lead to collateral damage to employees if they are unable to work and consumers might lose the services of an employer. One method of incapacitating organisations is prohibition notices that prevent dangerous work from continuing, although it is unclear how effective this sanction is due to the lack of academic scrutiny. Instead, the incapacitation of safety criminals primarily refers to individual incapacitation such as custodial sentences or disqualification orders. However, not only are these penalties rarely used due to the difficulty of convicting safety criminals examined in Chapter 2 section 2.4, but they do not ameliorate the criminogenic risk factors that may have led to safety crime. Moreover, whereas custodial sentences exacerbate prison abolitionist concerns and obstruct Braithwaite's (1989) reintegrative shaming, disqualification orders can be circumvented if safety criminals put their friends or family members in charge of the company.

Rehabilitation can be effective because a company's structure is easier to reform than an individual's psyche. By using structural theories to suggest why safety crime occurs, namely Merton's (1957) anomie theory, Bauman's (1989) moral indifference, and Sutherland's (1947) differential association, the rehabilitation of safety criminals can be framed as using education and training to reduce the risk of safety crime, rather than to change a safety criminal's psychology to desist from safety crime. Moreover, despite not being widely discussed in the safety crime literature, Braithwaite's (2002; 2002a; 2003) arguments for the effectiveness of restorative justice and corporate crime can also apply to safety crime, although more research is needed to assess how restorative justice can be effectively used on safety criminals. Penalties for achieving rehabilitation include improvement notices, remedial orders, and community sentences. However, these penalties are either rarely used or there is no academic literature on their effectiveness, and as Tombs and Whyte (2007) state in relation to community sentences, safety criminals may not have the competency to undergo rehabilitative tasks as these persons are being punished precisely for their incompetency.

In conclusion, the academic literature proposes various penalties and methods of improving these penalties for achieving the theories of punishment for safety criminals. Some of these theories and penalties are comprehensively discussed and have clear advantages or disadvantages, such as deterrence and fines, whereas others like selective incapacitation, prohibition notices, and disqualification orders are rarely discussed and their effectiveness for safety criminals is unclear. More research is therefore needed to determine which penalties safety crime policy should pursue and if new sanctions should be introduced, particularly research surrounding penalties aimed at companies considering that Tombs and Whyte (2015, cited Tombs 2016, p.194) estimate that 95% of HSE prosecutions are against organisations. Additionally, Braithwaite (2002) suggests that these theories and penalties can be combined into a pyramid of escalation to complement one another and to effectively punish safety criminals, although further research is needed to take into account the full range of theories and penalties for safety criminals. The following methodology chapter outlines this study's approach of identifying, collecting, and analysing stakeholder data on which theories are currently informing the punishment of safety criminals, the effectiveness of these theories and why they are effective, and how penalties can be used to effectively punish safety criminals in England and Wales.

Chapter 4
Methodology

4.1 Introduction

The previous two chapters reviewed the academic literature on the need for effective theories and penalties to effectively punish and regulate safety criminals. This chapter sets out this study's aim to explore how safety criminals can be more effectively punished and how this aim is achieved. This study adopts the ontology of constructivism and the epistemology of interpretivism to understand how knowledge is produced, namely knowledge is constructed from the meanings individuals attribute to social reality and that the researcher plays an influential role in understanding the various and continually evolving social realities of individuals. To understand these variable social realities, qualitative methods in the form of generic purposive sampling, expert interviews, and thematic analysis were used to identify, collect, and analyse the participants' data. This thesis identified 84 stakeholders to take part in the research, although due to issues of 'studying up' and the Covid-19 pandemic, 21 stakeholders agreed to participate. This sample included academics, members of Parliament, and individuals representing government authorities and NGOs. To ensure rigorous research practice, this study abided by several ethical guidelines and used Lincoln and Guba's (1985) authenticity and trustworthiness criteria of credibility, transferability, dependability, and confirmability.

4.2 Research aims and questions

In light of Chapter 2 that concluded that the effective regulation of safety criminals relies on the effective punishment of these persons either as a first or last resort, and Chapter 3 that concluded that more research is needed to determine which penalties should be pursued or if new sanctions are needed for safety criminals, this study aims to explore how safety criminals can be more effectively punished in England and Wales. To achieve this aim, three research questions are put forward:

1) Which theories of punishment are currently informing the punishment of safety criminals in England and Wales?

2) Which theories are effective at punishing safety criminals and why are they effective?

3) How can penalties be used to effectively punish safety criminals?

Whereas research question one explores which theories are currently influencing the punishment of safety criminals in England and Wales, research questions two and three explore how the theories and penalties can be used to effectively punish safety criminals and why they are effective. These research questions stem from the gaps identified in the literature in Chapters 2 and 3. These questions have also been designed to avoid ambiguity considering that social research and qualitative research in particular is often criticised for its ambiguous approach (Flick 2014; Bryman 2016). Taken together, these research questions aim to use primary data to explore the effectiveness of current policy and practice and recommend how the punishment of safety criminals can be improved. This is the first qualitative study that uses stakeholder views to explore the effective punishment of safety criminals in England and Wales. The recommendations of this study will be useful for informing criminological and policy discussion and reducing the knowledge gap on the effective punishment of safety criminals.

This study's research questions share similarities to five of Marx's (1997) categories of research questions, specifically: the literature, a social problem, gaps between official versions of reality and the facts on the ground, counter-intuitive practice, and new methods and theories. First, the study aim and research questions fulfil Marx's research question category of advancing the literature and suggesting solutions to unanswered questions, namely, how to effectively punish safety criminals using the theories of punishment. Second, Marx's research question category of a social problem can be demonstrated by Chapters 2, 3, and 8 on the issues of safety crime harm and the lack of regulation and punishment for safety criminals in England and Wales. Third, research question three fulfils Marx's research question category of gaps between official versions of reality and the facts on the ground. This can be seen by how the empirical data in Chapter 7 argues for the need for more effective penalties for safety criminals, whereas Chapter 3 indicates that official policy does not make similar arguments that penalties need to be improved to achieve the theories of punishment for safety criminals. Consequently, this demonstrates the counter-intuitive practice of current punishment policy for safety criminals in England and Wales, this being Marx's fourth research question category. Lastly, research questions two and three aim to develop new methods to effectively punish safety criminals, thereby fulfilling Marx's new methods and theories research category.

4.3 Research ontology and epistemology

This study acknowledges that there is not a correct or incorrect method of conducting research, whether it is qualitative, quantitative, or both (Becker 1996; Creswell 2014), just that research questions lend themselves to one approach or another. Considering that this study's research questions aim to explore theory, this being an inductive approach (often referred to as a 'bottom up' approach) rather than a deductive approach that tests theory (Flick 2014), and that the research questions are unlikely to be answered by numerical or quantitative data, this study use qualitative methods to answer the research questions. In accordance with qualitative methods this study adopts the ontological stance of constructivism that knowledge is constructed from the meaning individuals attribute to their social surroundings and that the researcher plays an active and influential role in the creation of knowledge (Hollis 2003). To comprehend these social realities, this study uses the epistemological perspective of interpretivism that champions the nuanced and variable nature of social reality as seen through each individual (Lincoln and Guba 1985; Bryman 2016).

By using qualitative methods, constructivism, and interpretivism, this study aligns itself to a specific understanding of the relationship between research design and method (Becker 1996), as well as the advantages and disadvantages of these approaches. The primary advantage of qualitative research, constructivism, and interpretivism is that they offer rich or 'thick descriptions' of social issues (Geertz 1973, p.6). Although, these approaches have been criticised for their lack of rigour and issues of generalisability and reliability (Bryman 2016). As Labuschagne (2003, p.100) notes, 'the whole concept of qualitative research is unclear, almost foreign, or "airy fairy" – not "real" research'. This criticism is based on the argument that qualitative methods do not follow the same rigorous guidelines as quantitative methods due to the subjective role the researcher plays in qualitative research (Creswell 2014). Because qualitative researchers immerse themselves in the research to understand their data, they are 'inevitably involved *in* the research' (Stanley and Wise 1993, p.59), and this includes the researcher's own perspectives or values of social reality. The researcher's theoretical assumptions thereby dictate what and how data is collected and analysed (Adler and Adler 1987). As Creswell (2007, p.15) notes, qualitative research is therefore value-laden:

> The research design process in qualitative research begins with philosophical assumptions that the inquirers make in deciding to undertake a qualitative study. In addition, researchers bring their own worldviews, paradigms, or sets of beliefs to the research project, and these

inform the conduct and writing of the qualitative study.

This value-laden and interpretive nature of qualitative research makes it difficult to generalise the conclusions of qualitative studies to the wider population, because the responses of participants may be affected by the characteristics of the researcher (i.e. personality, gender, age, or vested interests) and the researcher's or the participant's perspective of social reality is unlikely to be the same across two, often far apart, points in time (Creswell 2014).

However, just because qualitative methods are not subjected to the same evaluative criteria as quantitative methods, that is not to say that qualitative methods cannot be rigorously applied to data. In fact, there are concerns that rigid criteria may limit the freedom and stifle qualitative methodological development (Elliott *et al*. 1999; Parker 2004), as Reicher (2000) argues whether the incredibly diverse range of qualitative methods can or should be subject to the same quantitative criteria. For instance, qualitative research may not generalise to populations in the same manner as quantitative methods, but instead may generalise to theory. As Mitchell (1983, p.207) states, it is 'the cogency of the theoretical reasoning, rather than statistical criteria, that is decisive in the generalisability of qualitative research'. The quality of this theoretical generalisation is dependent on the plausibility and credibility of a researcher's truth claims (Mitchell 1983; Yin 2009), or in other words, dependent on the thoroughness and transparency of the data collection, analysis, and ethical aspects of the study. There are several considerations of researcher transparency, study trustworthiness and authenticity, and these are discussed further in section 4.7.

4.4 Sampling

Sampling concerns the selection of cases and how to extrapolate data from these cases to wider aspects of the population. To achieve this, Flick (2014) differentiates between formal and substantial sampling criteria, the former concerning the representativeness of cases to the general population, and the latter concerning the specific features of cases (i.e. particular individuals or groups) that are relevant for selecting a sample. For Flick (2014), formal or statistical sampling is typically used in quantitative research due to the paradigm's preference of extrapolating samples to larger aspects of the general population, whereas substantial or purposive sampling is typically used in qualitative research that is less interested in the statistical representation of a sample and more interested in particular features of cases. Generally, whilst statistical sampling generalises to populations, purposive sampling generalises to theory (Mitchell 1983). Of these two approaches, this study used

purposive sampling since the aim here is to sample specific cases that are relevant to the research questions.

Purposive sampling is a type of non-probability sampling that selects cases that are likely to provide useful data for answering the research questions. As Ritchie *et al*. (2003, p.113) note:

> In a non-probability sample, units are deliberately selected to reflect particular features of or groups within the sampled population. The sample is not intended to be statistically representative: the chance of selection for each member of the population is unknown but, instead, the characteristics of the population are used as the basis of selection. It is this feature that makes them well suited to small-scale, in-depth studies.

However, by selecting participants at the beginning of the data collection stage this prevents any new participants from being introduced, such as if interviewees were to recommend other participants, as is the case with snowball sampling. As Flick (2014, p.170) states in regard to purposive sampling, 'if the aim of your study is the development of theory, this form of sampling restricts the development space of the theory in an essential dimension'.

Therefore, this study used 'generic purposive sampling', coined by Bryman (2016), that allows for the introduction of new participants. Generic purposive sampling is a type of sampling that incorporates various other types of more commonly known sampling techniques[11]. This sampling technique is adaptable as it can be employed in a contingent manner whereby the sampling criteria evolve throughout the research process (Teddlie and Yu 2007), or in an *a priori* manner whereby the sampling criteria are fixed at the start of the research process (Hood 2007). This means that generic purposive sampling can be used for the generation of theory without the iterative style of contingent sampling typically found in theoretical sampling or grounded theory (Glaser and Strauss 1967). Another reason for using generic purposive sampling is that Hood (2007, p.152), Flick (2014), and Bryman (2016) point out that there is a tendency among researchers to 'identify all things qualitative with "grounded theory"', and similarly, a tendency to overuse theoretical sampling – which is typically used in grounded theory research – with qualitative research. As a result, both Hood (2007) and Bryman (2016) have argued for more generic inductive approaches without a contingent style of using case data to inform the selection of further cases.

[11] Such as typical case sampling, critical case sampling, and stratified purposive sampling, among others (see Patton (1990)).

The sample for this study mostly used *a priori* criteria as the sample was largely fixed at the beginning of the research process, although contingent sampling was also used by probing the participants for contact information on other stakeholders to take part in the study. The sampling criteria can be grouped into what Morse (1998) terms primary and secondary selection criteria. By primary selection criteria Morse (1998) refers to participants that have the necessary knowledge and experience of the social issue, the capability to reflect and articulate their answers, and are able to participate in the interview. For this study the primary selection criteria refers to stakeholders that are likely to have expert knowledge or expertise on the punishment of safety criminals. Morse's (1998) secondary selection criteria refers to participants that may not have the necessary knowledge and experience of the social issue, but are still willing to take part in the research. In relation to this thesis, secondary selection criteria refers to stakeholders that are legal professionals, police crime other than safety crime, contribute to research or policy on the punishment of criminals, politically represent constituencies or local government, work with or represent the victims of safety crime, or represent employers and employees such as businesses or trade unions.

In deciding the appropriate sample size this study aimed for data saturation. Data saturation or theoretical saturation refers to the cessation of data collection when no new or significant data is collected (Saunders *et al*. 2018). Josselson *et al*. (2003) argue that data saturation is a key determinant of sample size. However, it is unclear how large the sample needs to be to achieve data saturation, and there is a lack of academic consensus on recognising or establishing a set of criteria for achieving data saturation (Guest *et al*. 2006). Crouch and McKenzie (2006) note that 20 interviews or fewer are acceptable as the small number of interviews facilitates the generation of fine-grained data, Warren (2002) argues that qualitative studies should include at least 20 interviews, Adler and Adler (2012) suggest that 30 interviews are sufficient to provide a strong conclusion, whereas Gerson and Horowitz (2002, p.223) state that 'fewer than 60 interviews cannot support convincing conclusions and more than 150 produce too much material to analyse effectively'.

This study contacted 84 stakeholders from September 2019 to January 2021, including: 3 academics, 3 All Party Parliamentary Groups, 3 local authorities, 4 ministerial departments, 5 trade unions, 7 members of Parliament, 8 Select Committees, 11 professional bodies and other, 20 NGOs and charities, and 20 non-ministerial government departments or agencies. Appendix 2 contains a table of the stakeholders contacted, their aims and responsibilities, and the rationales for their inclusion.

These stakeholders were primarily contacted by their publicly available email address or telephone number, and in some cases by post or the social media platform Twitter. Despite numerous efforts and up to 15 separate attempts to contact some of the stakeholders, 63 of the stakeholders did not reply to the study invitation, or in some cases, they did not think that their knowledge or organisation was relevant to the study aims and the issue under investigation. For example, the Sentencing Council and Crown Prosecution Service (CPS) are primary stakeholders for their expertise and knowledge on issuing sentencing guidelines for health and safety offences or prosecuting cases in the magistrates' and Crown courts. However, after multiple attempts of interviewing these stakeholders (see Appendix 2), the study invitation was repeatedly rejected on grounds that no one was interested in participating, resource limitations, and the CPS responded that they would not be able to usefully contribute to this topic. Furthermore, the Covid-19 pandemic and resulting national lockdown reduced the likelihood of successfully contacting stakeholders, as these persons worked from home rather than the office and were therefore less likely to reply to phone calls or emails, as was the case for the Trades Union Congress Scotland and the Welsh Local Government Association. In other cases, some of the stakeholders stated that they were too busy to take part in the study due to additional responsibilities resulting from the Covid-19 pandemic, namely the National Police Chiefs Council. Overall, section 4.8 examines how issues of 'studying up' likely contributed to the difficulty of successfully contacting and interviewing experts and the stakeholders in this sample.

As a result of the difficulty of contacting most of the stakeholders, throughout the data collection stage the number of secondary criteria stakeholders was increased to include more trade unions, criminal research agencies and charities, and NGOs. Moreover, greater emphasis was placed on contingent sampling and asking participants for the contact details of any other interested stakeholders. This resulted in 21 stakeholders accepting the interview, namely 1 legal practitioner, 2 members of Parliament, 3 academics, 6 government authorities, and 9 NGOs (see Table 4.1). Most of these participants consisted of *a priori* sampling criteria, as five of the participants, namely academic#3, government authority#6, legal practitioner#1, member of Parliament#2, and NGO#4 were contacted using contingent sampling. Additionally, 11 of the participants fulfil Morse's (1998) primary selection criteria, whereas 10 participants represent Morse's secondary criteria (see the italicised participants in Table 4.1). Although this study aimed for data saturation, considering the difficulty of successfully contacting most of the stakeholders throughout the data collection period, data saturation was likely not achieved.

Participant designation	Participant's name (if available)
Academic#1	David Whyte, Professor of Socio-Legal Studies
Academic#2	John Braithwaite, Emeritus Professor
Academic#3	Richard Macrory, Emeritus Professor
Government authority#1	Health and safety authority*, personal views
Government authority#2	*Policing authority**
Government authority#3	*Policing authority**
Government authority#4	Health and safety authority*, personal views
Government authority#5	*Select Committee*, personal views*
Government authority#6	Environment Agency
Legal practitioner#1	Thompsons Solicitors
Member of Parliament#1	*Member of Parliament**
Member of Parliament#2	*Claire Baker, Member of the Scottish Parliament*
NGO#1	Institute for Crime & Justice Policy Research
NGO#2	Families Against Corporate Killers
NGO#3	Transform Justice
NGO#4	*Scottish Hazards*
NGO#5	*British Occupational Hygiene Society, personal views*
NGO#6	*Institution of Occupational Safety and Health, personal views*
NGO#7	*Royal Society for the Prevention of Accidents*
NGO#8	Scottish Centre for Crime and Justice Research
NGO#9	*Victim support charity**

Table 4.1: Study participant designations, and where applicable, their identifying information. Participants with an asterisk denote anonymity. Italicised participants signify Morse's (1998) secondary selection criteria.

4.5 Data collection

In light of the study aim to explore the influence and effectiveness of the theories of punishment and penalties for safety criminals, as well as the approaches of inductive theory, constructivism, interpretivism, and generic purposive sampling, qualitative interviews were used to collect the participants' data. Qualitative interviews are an in-depth method of examining people's perceptions of social reality and acquiring rich and detailed information on the issue under study (Rubin and Rubin 2012). The aim of qualitative interviews is to develop a comprehensive snapshot of the participant's point of view of the issue, rather than a short or general response to the study issue as might be the case with qualitative questionnaires. In accordance with the ontological and epistemological stances of constructivism and interpretivism, this study acknowledges that data collected in interviews is constructed by the interviewee and the interviewer (Rapley 2004). In deciding what type of interview to use, Flick (2014) differentiates between focused, semi-standardised, problem-centred, ethnographic, and expert interviews. These types of interviews are useful for extracting data from either a particular population, such as expert interviews being used

for professionals (see Littig 2009), or with a particular method in mind, such as focused interviews being used to determine the response of participants when exposed to a specific situation (see Merton and Kendall 1946).

For this study expert interviews were used to collect data and to answer the research questions. Expert interviews are a form of semi-structured interviewing that is useful for acquiring knowledge from specific groups, such as experts in institutions or high-ranking representatives of organisations, and this type of interview is most interested in the experts' knowledge rather than the personal characteristics of the participants (Meuser and Nagel 2009). In deciding who constitutes experts, Deeke (1995, p.7) states:

> Who or what are experts can be very different depending on the issue of the study and the theoretical and analytical approach used in it… we can label those persons as experts who are particularly competent as authorities on a certain matter of facts.

This broad definition is corroborated by Bogner and Menz (2009), as they argue that experts can constitute anyone who has technical, specialist, or practical knowledge relevant to their professional sphere of activity. Bogner and Menz (2009) suggest a threefold typology of expert interviewing: exploration, to orientate a new field by generating thematic structure and hypotheses; theory generation, aimed at developing a theory or typology about an issue from reconstructing the knowledge of various experts; and the systematising expert interview, which can be used to collect contextual information complementing insights from other methods. Bogner and Menz's (2009) first and second typologies are useful for framing the type of expert interviews used here, as this study aims to explore and develop theory.

The primary issue of expert interviewing is gaining access to these experts in the first place. As section 4.4 demonstrates, 63 out of the 84 stakeholders contacted did not reply or accept the study invitation. Study invitations to experts, particularly experts from large organisations, might be ignored or overlooked, and stakeholders might be unwilling to accept the interview if they feel as though they might not represent their organisation's values. Furthermore, experts are likely to have demanding constraints on their free time and this can inhibit their willingness to take part in interviews (Flick 2014). As Empson (2017, p.60) notes:

> With senior professionals working 80+ hours a week, an hour with an academic represents

> the loss of an expensive billable hour or, perhaps more valuably, an hour lost with family or catching up on sleep. A researcher is asking elite interviewees to forego things they value (money and time) and to talk openly about issues which are potentially commercially sensitive or highly personal. Why should they bother?

In light of the Covid-19 pandemic that prevented face to face interviewing, most of the interviews took place over voice calls, or in some cases, video calls. There is some debate concerning the differences between face-to-face and phone interviewing. Sturges and Hanrahan (2004), Vogl (2013), and Bryman (2016) argue that there are few or no noticeable differences between the two, whereas Irvine *et al*. (2013) concluded that face-to-face interviewees tended to talk for longer durations. The advantage of phone interviews is that it grants access to all of the stakeholders at a convenient time for them, which is important considering that experts may have limited time to participate in the interview. The disadvantage here, however, is that experts have greater control over when the interview ends as they can simply terminate the phone call. The participant information sheet (see Appendix 3) clearly stated that each interview was expected to last 30 minutes and this was clarified at the beginning of every interview. Although longer interviews would have resulted in more data, this was balanced against acquiring access to the stakeholders in the first place, as fewer stakeholders may have agreed to be interviewed if the interview lasted longer than 30 minutes. In some cases once the interview started the participants agreed to be interviewed for up to 60 minutes.

The participants were questioned using an interview guide (see Appendix 4) that was formulated from the literature review chapters and contained a list of issues and questions. The questions in the interview guide were mostly open-ended because this gave the participants the opportunity 'to explain exactly what they mean in their own terms rather than trying to fit themselves into the terms of reference proposed by the researcher' (Schoenberger 1991, p.183). This is important for eliciting the participant's own view of social reality. In addition, the interview guide contained closed-ended questions to elicit a direct response on a key question or to clarify the participant's viewpoint. This flexibility, however, can lead to interviewer bias if certain questions are omitted or if certain topics are favoured by multiple follow up questions. The interview guide was designed to ask each participant 14 primary questions (these can be seen in red font in Appendix 4) largely relating to the influence or effectiveness of the theories of punishment and the effectiveness of fines and community sentences for safety criminals. Moreover, 25 secondary questions were spread out between all of the participants so that these questions were asked an equal number of times,

namely questions relating to the remaining penalties or concerning the punishment of safety criminals more broadly. Unlike most of the penalties, fines and community sentences were primary interview questions because fines represent the most common penalty issued by the courts (see Chapter 3 section 3.4.1), and because I wanted to explore the effectiveness of community sentences in terms of achieving the theories of criminal punishment. However, considering the short time frame of the interviews, in a minority of interviews it was not possible to discuss every primary interview question. Halfway through the data collection stage the interview guide was amended to include one secondary question on the effect the Covid-19 pandemic will have on the punishment of safety criminals.

The interview guide was then tested in a pilot interview. Pilot interviews are useful for identifying flaws with the interview design and for improving the interview guide for the remaining interviews (Tashakkori and Teddlie 2003; Castillo-Montoya 2016). The pilot interview took place with a leading academic in the safety crime field to help identify any issues with the interview guide, namely academic#1. Considering that no changes were made to the interview guide, the pilot interview was included in the sample for data analysis as 'pilot interviews do not need to be excluded from the data set unless a very radical change of direction or coverage occurs' (Arthur and Nazroo 2003, p.135).

To accurately capture the participants' opinions each interview was audio-recorded (after the participants provided informed consent, see section 4.8) and transcribed verbatim. By transcribing the interviews this assisted with data immersion, theme identification, and new additions for the interview guide (Riessman 1993). Although, interview transcription is a time consuming process. One option to counteract this is to utilise Strauss' (1987) shortcut strategies, namely only transcribing what is deemed relevant by the researcher. This method is also referred to as the pragmatic approach to data analysis by Meuser and Nagel (2009). However, this shortcut of selective transcription can exacerbate issues of researcher bias by only transcribing what the researcher deems necessary and excluding potential new ideas or themes. Each interview was therefore transcribed in full. Another disadvantage of interview transcription is that recording devices can discourage experts from agreeing to be interviewed (Bryman 2016). It is possible that this was a contributing factor in stakeholders refusing to take part in the research. The only interview that was not recorded and transcribed was the pilot interview due to a technical issue with the recording device. Instead, notes were taken throughout the pilot interview.

4.6 Thematic analysis

Qualitative data can be analysed by various methods, and 'unlike the analysis of quantitative data, there are few well-established and widely accepted rules for the analysis of qualitative data' (Bryman 2016, p.570). Qualitative data is therefore an 'attractive nuisance' due to the complexity of analysing its richness (Miles 1979, p.590). Qualitative methods can refer to grounded theory, thematic analysis, or narrative analysis, among others (see Bryman 2016). For this study Braun and Clarke's (2006; 2019) reflexive thematic analysis was used to analyse the data.

Thematic analysis is a generic method of identifying, analysing, and reporting patterns or themes in data, themes that are used to answer the research questions of the study (Braun and Clarke 2006). Thematic analysis is known for being a widely-used yet poorly demarcated method in qualitative research (Boyatzis 1998; Roulston 2001), as it has less of a 'brand' or name as other methods such as grounded theory or narrative analysis (Braun and Clarke 2006). Instead, thematic analysis may be referred to as discourse analysis or content analysis (Meehan *et al*. 2000), or it may be unidentified altogether; for instance, data were 'subjected to qualitative analysis for commonly recurring themes' (Braun and Wilkinson 2003, p.30). Thematic analysis might not be identified because the generic process of identifying and analysing themes is similar to other methods of qualitative analysis, such as grounded theory or discourse analysis. For this reason, Holloway and Todres (2003) identify thematic analysis as a shared generic skill in qualitative analysis rather than a specific method in itself. This is corroborated by Boyatzis (1998) and Ryan and Bernard (2003), as they argue that thematic coding is widely used in some manner or another across various methods of qualitative analysis, and thus rather than being a method in itself, thematic analysis is simply a generic tool. On the contrary, however, Braun and Clarke (2006) argue that thematic analysis is and should be its own method.

Thematic analysis is used here over other methods due to its distinctive lack of any pre-existing theoretical frameworks. Unlike other methods including grounded theory or interpretative phenomenological analysis, thematic analysis is 'essentially independent of theory and epistemology, and can be applied across a range of theoretical and epistemological approaches' (Braun and Clarke 2006, p.5), including both realist and constructivist paradigms. This theoretical freedom makes thematic analysis the most adaptable and accessible form of analysis, especially for qualitative researchers beginning their career. Whether or not thematic analysis is a generic tool or method in itself, it is a fundamental skill of analysing qualitative data by identifying themes and

patterns, and can be seen as 'the first qualitative method of analysis that researchers should learn, as it provides core skills that will be used for conducting many other forms of qualitative analysis' (Braun and Clarke, 2006, p.4). Whilst this study could have used grounded theory, grounded theory is typically used before and influences the literature review chapters (McGhee *et al*. 2007), whereas this study used a literature review to inform the data collection and analysis chapters, thereby resulting in thematic analysis being used over grounded theory.

However, the flexibility of thematic analysis substantiates the 'anything goes' critique concerning the method's lack of clear guidelines (Antaki *et al*. 2002; Creswell 2014). Without knowing what precisely constitutes a theme, how the researcher went about creating a theme and what assumptions informed their decision, it is difficult to evaluate the use of thematic analysis, and this introduces issues of comparing or synthesising the study to similar studies of the same topic. Overall, there is often insufficient detail on reporting the process of thematic analysis (Attride-Stirling 2001; Creswell 2014). For example, elementary statements like 'you discover themes and concepts embedded throughout your interviews' (Rubin and Rubin 1995, p.226) does little to explain how these themes were arrived at (Bryman and Burgess 1994).

Braun and Clarke (2006) criticise Rubin and Rubin's (1995) statement for its passive view of the analytic process that ignores the active role of the researcher's own theoretical values in identifying themes and ordering the importance of these themes over one another. Just because thematic analysis is free of existing theoretical frameworks, this does not mean that the same applies to the researcher conducting thematic analysis. The language of themes emerging 'can be misinterpreted to mean that themes "reside" in the data… if themes 'reside' anywhere, they reside in our heads from our thinking about our data and creating links as we understand them' (Ely *et al*. 1997, p.205-206). Therefore, unless one subscribes to a rudimentary realist view of qualitative research consisting of researchers giving voice to their participants, it is important to acknowledge the researcher's theoretical position (see section 4.3) and to outline the decisions that guided the thematic analysis. As such, it can be argued that the primary criticism of thematic analysis is not the analysis itself, but how transparent the researcher's decisions are in how thematic analysis is conducted.

Therefore, the following steps illustrate how this study used thematic analysis and how the participants' data was used to create themes. Thematic analysis can be separated into five iterative phases (Braun and Clarke 2006), as the analyst moves between these phases to better identify, code,

and assess the data. d's (2009) representation of the codes-to-theory model for qualitative inquiry in Figure 4.1 can be used to illustrate phases 2 to 5 of thematic analysis (for the purposes here, categories and subcategories can be replaced with themes and subthemes). The first phase consisted of identifying and familiarising myself with the data. This phase began during the transcription of the interviews, as potential codes or themes were identified and left for data analysis later on. As Lapadat and Lindsay (1999) and Bird (2005, p.227) state, it is best practice for researchers to transcribe the data themselves as this is 'a key phase of data analysis' that offers a useful degree of insight of the data.

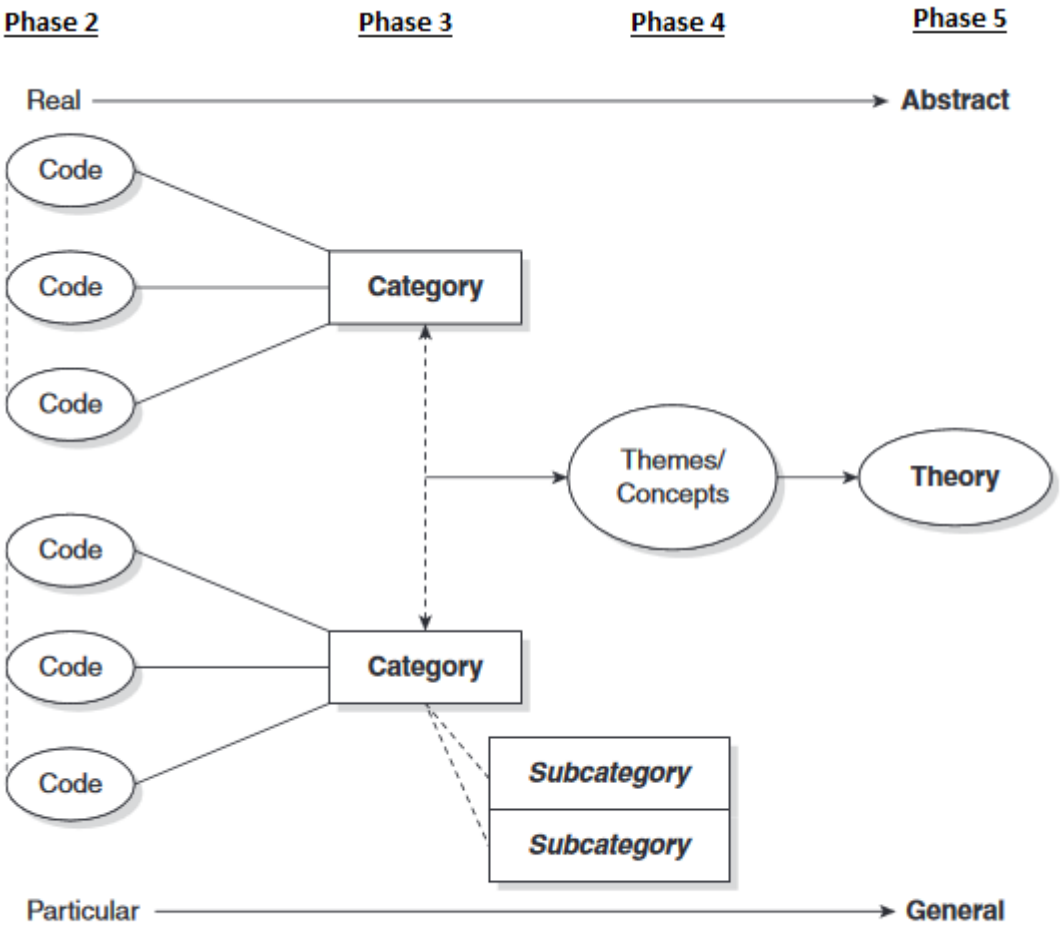

Figure 4.1: An example of the codes to theory model of qualitative inquiry, sampled from Saldana (2009, p.13).

The second phase consisted of coding the data. There is general agreement amongst academics that coding software is beneficial for the analytical process, as it increases the speed and ease of handling large amounts of text-based data (Bryman 2016). This study used NVivo 12 software to code the data by highlighting salient parts of the data and naming these appropriately. Codes were attached to each sentence or key word of the transcripts. These codes captured and represented a datum's primary content and essence by assessing the data with a number of questions, such as: what is the

participant saying or trying to accomplish? Does this include any specific means or strategies? What assumptions are they making? What is striking about this data? Sometimes the same datum or sentence led to multiple interpretations and codes.

There is some contention regarding how much of the data should be coded, with Strauss (1987), Wolcott (1999), and Lofland *et al*. (2006) arguing that all fieldwork should be coded, whereas Seidman (2006) and Saldana (2009, p.16) 'feel that only the most salient portions of the corpus merit examination, and that even up to one half of the total record can be summarized or deleted, leaving the primary half for intensive data analysis'. Only the 'relevant text' should be coded, as Auerbach and Silverstein (2003, p.40) state. The consequence of selective coding is the loss of potentially important data, since selective coding limits inductive analysis as the researcher codes only what they deem important (i.e. deductive analysis). Saldana (2009) points out that it is useful for inexperienced coders to code everything until they become more familiar with which codes are more or less important. Using Saldana's (2009) advice, and similar to the decision to transcribe the interviews in full rather than parts of the interviews, this study coded the entire dataset to limit researcher bias.

Coding is a crucial aspect of data analysis as it can be seen as an organisational exercise of identifying the smaller and more specific building blocks that create sub-themes (Miles and Huberman 1994; Basit 2003), leading Strauss (1987, p.27) to argue that 'the excellence of the research rests in large part on the excellence of the coding'. Codes can either be data-driven, theory-driven, or both, dependent on whether the analysis is inductive or deductive (Braun and Clarke 2006). The coding for this study was both data and theory driven, inductive and deductive analysis respectively, as the codes aimed to truthfully reflect the participants' data, in some instances leading to new ideas or sub-themes, although most of the codes represented ideas or sub-themes previously identified in the literature review chapters. The participants' data was not forced into pre-determined codes or sub-themes, just that several likely sub-themes were already identified in the literature review chapters, such as fines as they are currently used failing to achieve the theories of retribution and deterrence in Chapter 3 section 3.4.1.

Once the dataset was coded, phase three consisted of identifying potential themes and sub-themes by sorting the codes into patterns (Braun and Clarke 2006). This phase moves from data description to data analysis as it interpreted the codes into categories or themes. A theme identifies something important about the data in relation to the research questions and represents some degree of

pattern in the data, and themes were identified in particular interviews and across all of the interviews. Themes were comprised of any number of sub-themes, and sub-themes were comprised of numerous codes, as long as these codes were not too few or too diverse. This study used Patton's (1990) internal homogeneity and external heterogeneity criteria for sorting the codes and designing themes, in that data in each theme held together in some meaningful way and the differences between themes were clear and distinct. For instance, one theme was 'repairing safety crime harm and making communities safer', consisting of the subthemes 'supporting the victims of safety crime', 'remedying safety crime harm', and 'training and educating safety criminals'. These subthemes consisted of various codes across multiple transcripts, such as the subtheme 'training and educating safety criminals' comprised of codes on 'support for education programmes' across different transcripts. There is no 'hard-and-fast answer' of how much data is needed to create a theme or sub-theme (Braun and Clarke 2006, p.10), just that it is the researcher's judgement that determines a theme and this judgement is based on the relevance of the data to the research questions. Although, themes and sub-themes often consisted of several codes to avoid 'anecdotalism' (Bryman 1988) and idiosyncratic themes.

Furthermore, Braun and Clarke (2006) differentiate between semantic and latent themes, the former referring to themes that explicitly resemble the surface meaning of the data, whereas latent themes go beyond this surface meaning and attempt to identify the underlying assumptions and ideologies that shaped the participant's semantic data. According to Braun and Clarke (2006), thematic analysis typically focuses on one of these types of analysis, and latent analysis tends to stem from studies using a constructivist paradigm (Burr 1995) due to the level of interpretation required. This study mostly adhered to a semantic analysis of the data to try and ensure that the codes and themes truthfully reflected the participants' data. The consequence of this, however, is that the analysis mainly operates at a descriptive level and may not offer as much insight or depth as a more interpretive analysis.

Phase four consisted of reviewing and refining the themes. A confounding property of theme construction is that themes cannot always be precisely and discretely bounded – theme boundaries are 'fuzzy' at best (Tesch 1990, p.136). During this phase some themes were removed that were not substantiated (i.e. not enough codes to support them), some themes were merged together, renamed, or new themes were created. For instance, one theme that was removed was the selective incapacitation of safety criminals because there were not enough codes to support this theme. Instead, codes on selective incapacitation were merged into the more general theme of using

incapacitation to prevent safety crime (see Chapter 6 section 6.5). The aim here was to create a story of the data by clearly determining what each theme represents and does not represent.

The final phase entailed selecting themes to discuss in relation to the research questions (Braun and Clarke 2006). Themes were used to illustrate a compelling story of the data that goes beyond description and shows how the themes interrelate to concepts and leads towards the development of theory (Corbin and Strauss 2008). Braun and Clarke (2006) state that thematic analysis can represent a rich description of the whole data set or a detailed account of particular aspects of the data set. This study focused on particular accounts of the dataset as they related to the research questions, namely, how to effectively punish safety criminals.

4.7 Assessing the quality of this research

This chapter has argued that methods are not neutral tools as they are linked to how researchers perceive social reality, as an individual's values and personal beliefs inevitably intrude on the research process (Creswell 2014). To reduce bias from my own theoretical values, not only has this study exhibited reflexivity by outlining my theoretical presuppositions in section 4.3, but this section details how criteria have been used to ensure that the research process has been rigorous. There is debate over which criteria should be used to assess qualitative research (Flick 2014; Bryman 2016), since qualitative studies may not lend themselves to the same criteria as quantitative studies. There are typically two approaches of assessing qualitative research (see Flick 2014; Bryman 2016): to adapt quantitative criteria such as reliability and validity to qualitative research (see Mason 2002), or to develop alternative method-appropriate criteria.

Here, Lincoln and Guba (1985) and Guba and Lincoln's (1994) alternative criteria of trustworthiness and authenticity were used to assess this study. Lincoln and Guba (1985) reject the 'classical' criteria, as Flick (2014) calls it, of reliability and validity for assessing qualitative research, since these criteria rest on the premise of an absolute account of social reality – realism in short – that is incompatible with most qualitative research. Instead, Lincoln and Guba (1985) first criterion of trustworthiness can be separated into credibility, transferability, dependability, and confirmability.

Credibility refers to how accurate or credible the research findings are. This is achieved by ensuring that the research is carried out according to principles of good practice and that the conclusions of the research are true to the data and the researcher has not misinterpreted the data (Lincoln and

Guba (1985). Lincoln and Guba (1985) suggest five techniques of good practice to achieve credibility:

• Prolonged engagement and persistent observation with the participants to understand the phenomenon of interest, and the triangulation of different methods, researchers, and data.
• Peer debriefing by regular meetings with other researchers who are not involved in the research to identify one's own blind spots and to discuss results.
• Negative case analysis as a process of revising the hypothesis or research questions with hindsight so that contradicting themes can be explained.
•Referential adequacy to check the appropriateness of the interpretations and assessments of the data.
• Member checks from the study's participants that the researcher's conclusions accurately reflect the data, also called respondent validation.

Three out of five of these techniques were used in this study, at least to some extent. Whilst this study did not exhibit prolonged engagement or persistent observation with the participants and did not triangulate its methods or researchers, it did triangulate data sources by interviewing a wide range of stakeholders (i.e. government authority and NGO participants) with the aim of providing impartial analysis and results (Denzin 1978). Although the triangulation of researchers was not achieved, peer debriefing was used by periodically submitting parts of this study to two supervisors. However, these supervisors did not review the primary data and this study's interpretations, meaning that referential adequacy was not achieved. Negative case analysis was achieved by coding the entirety of the dataset and amending the research questions to account for the data. For instance, whereas research questions one and two initially concerned the theories of deterrence, retributive justice, rehabilitation, and incapacitation, this was changed to their current and open-ended versions to account for theories that were not included in the interview guide but were advocated by participants, such as restorative justice. Lastly, the final technique of member checking was not achieved. As Morse (1994) and Angen (2000) argue, participant validation introduces multiple criticisms, such as supporting the assumption of an absolute reality by asking the participants to verify the researcher's interpretation, and subsequently, if the participants disagree with the study's conclusions then this introduces the issue of either changing the study's results or disregarding the participant's interpretation. On the basis of constructivism and interpretivism that different individuals have different interpretations of the same phenomenon, this study decided not to seek participant validation. However, the participants were given the opportunity to review their transcript, resulting in two participants taking up this offer.

The second subcategory of trustworthiness is transferability (Lincoln and Guba 1985), which concerns the generalisability of the research findings such as whether similar studies will produce similar results. Qualitative research tends to place less emphasis on transferability than quantitative research, since qualitative studies are merited on their rich and unique descriptions of data rather than how repeatable the study is to wider populations (Geertz 1973; Creswell 2014). However, Lincoln and Guba (1985) suggest that qualitative research can achieve transferability by describing the phenomenon in sufficient detail to allow researchers to evaluate the extent that the study's conclusions are transferable to other contexts. As section 4.3 highlighted, the transferability of qualitative research often relates to the theoretical generalisation of the study's conclusions (Mitchell 1983). This thesis aimed to achieve transferability by clearly delineating this study's theoretical underpinnings and methods in this chapter, as well as making clear the study's contributions to policy and research in Chapter 9 section 9.3.

Next, dependability relates to ensuring that the research process is clearly documented and auditable (Lincoln and Guba 1985). Lincoln and Guba (1985) suggest that researchers should keep an audit trail of all phases of the research process, including problem formulation, selection of participants, and data analysis decisions, so that peers can act as auditors and assess whether the theoretical inferences are justified. Miles and Huberman (1994) agree that an audit trail can be useful for ensuring that the research findings are grounded in the data, the inferences are logical and that theme construction is appropriate, as well as identifying the degree of researcher bias and what strategies were used for assessing the quality of the study. The advantage of dependability is explicit transparency of the research process, at the disadvantage of being more time consuming. This study adopts Lincoln and Guba's (1985) dependability subcategory by explicitly recording and describing each step of the research process of this study throughout this chapter. However, that is not to say that this study will be audited, just that an audit trail exists.

The fourth and final subcategory of trustworthiness is confirmability, which refers to the degree of neutrality of the study by ensuring that the study's conclusions are shaped by the data rather than the researcher's theoretical presuppositions (Lincoln and Guba 1985). The methods of achieving confirmability have previously been identified and adopted in this study, namely by including an audit trail of the research process that is accessible to external researchers, triangulating data by sampling a range of stakeholder groups (i.e. government authority and NGO participants), transcribing and coding the entirety of this data, and exhibiting reflexivity by outlining the

researcher's theoretical preconceptions alongside the criteria to prevent these preconceptions from slanting the results of the study. As Malterud (2001, p.484) states, 'preconceptions are not the same as bias, unless the researcher fails to mention them'.

These subcategories of trustworthiness primarily assess the internal quality of the study. Alongside this, Lincoln and Guba (1985) argue that it is also important to assess the study's broader external or political impact, which they refer to as authenticity criteria. Lincoln and Guba's (1985) authenticity criteria refers to: fairness, whether the study fairly represents different viewpoints among members of the social setting that were sampled; ontological authenticity that helps people better understand their social milieu; educative authenticity that helps people appreciate the perspectives of other aspects of their social setting; catalytic authenticity that provokes people to engage in action to change their circumstances; and tactical authenticity that empowers people to take the necessary steps for engaging in action. In short, these authenticity criteria assess the study's thought-provoking nature to wider society. This study aimed to achieve Lincoln and Guba's (1985) fairness criterion by sampling a mix of stakeholders without prioritising one particular stakeholder group and by truthfully coding the participants' data. It can also be argued that ontological authenticity is achieved by discussing the punishment of safety criminals with the participants and expanding their knowledge on this topic area. However, the nature of this study means that it does not achieve educative authenticity, catalytic authenticity, or tactical authenticity.

In addition to Lincoln and Guba's (1985) trustworthiness and authenticity criteria, this study aims to achieve ecological validity, which concerns how applicable the study's results are to social reality and peoples everyday lives (Bryman 2016), as social research can produce findings that are technically valid but have little impact on peoples everyday lives. According to Bryman (2016), research that is not ecologically valid can be seen as artefacts of data collection and analysis. In light of Chapter 2 section 2.3 that argued that safety crime negatively affects many thousands of people in some form or another, this study aims to achieve ecological validity by informing policy, practice and research on the effective punishment of safety criminals as a method of potentially reducing safety crime.

4.8 Ethics

The research process can create tension between the aims of social research to produce knowledge for the good of society and the rights of participants, such as a participant's right to maintain their privacy (Bryman 2016). A number of ethical issues arise throughout social research and there are at

least two prevailing schools of thought for the application of ethics to social research. The first, deontological ethics, argues that ethical decisions should be based on whether an action is right or wrong under a series of rules, regardless of the results of that action. Conversely, consequentialist ethics holds that ethical decisions should be based on the impact of an action, regardless of the rightness or wrongness of that action under a set of rules. Deontological ethics are most prominent in Kant's (2002) work, whereas consequentialist ethics shares similarities with Bentham's (1996) utilitarian theory. Whereas deontological ethics is criticised for its lack of universality that results in contrasting principles of right and wrong (Hegel 1991), Kagan (1984) criticises consequentialist ethics and utilitarianism on supererogatory grounds as consequentialism demands impractical and more than common-sense morality, termed the demandingness objection.

Despite criticism against deontological ethics, deontological ethics primarily dictate ethical standards, demonstrated by the prevalence of ethical guidelines such as the Belmont Report (HHS.gov 2022). The Belmont Report is a leading ethical framework for the protection of human subjects in health care research, and three ethical principles prescribed by this report have guided the ethics of social research involving human participants. This section outlines the three principles laid out by the Belmont Report and how these have been achieved in this study.

The first principle, respect for persons, holds that participants should be treated as autonomous agents and that persons with diminished autonomy, such as children, are entitled to protection. The most relevant here, treating participants as autonomous agents, was achieved by informed consent that gave participants sufficient information on the study so that they made a voluntary decision to participate. Informed consent was achieved by sending each stakeholder a participant information sheet and consent form (see Appendix 3) prior to being interviewed that included information on what was required of them, the risks and anticipated benefits, how their data was archived and disseminated, the opportunity to ask questions and to withdraw at any time from the study, and information on who is funding the study. The participants were not denied information necessary for making their decision and their acceptance to participate was demonstrated by written or verbal confirmation by the participants.

Respect for persons and autonomy are comprehensive principles as they can include other ethical issues that have developed since the Belmont Report, such as issues of invasion of privacy or data protection. This study did not conduct any covert or deceitful research, thereby avoiding ethical debate on the issue of deceitful research. For example, the aims and objectives of this study, how

the collected data would be used, and issues around confidentiality and anonymity were clearly laid out to potential study participants. However, issues of anonymity, confidentiality and data protection are still paramount. In accordance with the ethical frameworks that guided this study, including the Economic and Social Research Council's (ESRC) (2022) *Framework for Research Ethics,* each participant's anonymity and personal data was protected and anonymised. For this study, anonymisation took place up to two weeks after each interview, in which the participants' personal information was replaced with generic wording, i.e. 'government authority'. However, each participant was given the option of allowing themselves or their organisation to be identified, which resulted in 15 out of 21 participants being identified. To ensure anonymity, particularly whilst personal details were held, all of the participants' data was confidentially and securely stored. Confidentiality was ensured by keeping all data on password protected devices and storing this data on the University of Bristol's network. The anonymised participants' data was then stored on the University of Bristol's Research Data Storage Facility[12] for secondary analysis.

The second principle of the Belmont Report, beneficence, relates to the participants wellbeing and prescribes two rules: non-maleficence and to maximize the possible benefits whilst minimising the possible harm. This may include psychological as well as physical harm, such as stress from 'inducing subjects to perform reprehensible acts' (Diener and Crandall 1978, p.19). The beneficence principle is responsible for the prevalence of risk-benefit assessments for research ethics, similar to the procedural approval this study sought and received from the University of Bristol's Research Ethics Committee in September 2019, approval reference number SPSREC 18-19/050. For this study there was a low risk of psychological harm to the participants by discussing the policy aspect of the punishment of safety criminals in England and Wales. As a precaution, the contact details of bereavement, support and counselling, and mental health charities were at hand if participants exhibited signs of distress[13].

The last principle, justice, states that participants should be treated equally by fairly distributing the burdens and benefits of the research, so that everyone equally benefits from research and that particular persons are not consistently selected for harmful research. This principle shares similarities to distributive justice in terms of fairly allocating resources and rewards and is particularly relevant for vulnerable persons, none of which were included in this study's sample.

[12] See https://www.bristol.ac.uk/acrc/research-data-storage-facility/
[13] Namely https://www.cruse.org.uk/, http://www.healthtalk.org/home and https://www.mind.org.uk/

These three principles have guided the ethics of this study, alongside adherence to the ESRC's (2022) *Framework for Research Ethics*, the University of Bristol's (2019) *Ethics of Research Policy and Procedure*, and the British Society of Criminology's (2019) *Statement of Ethics*. By adhering to these guidelines over others, Bryman (2016) points out that social researchers sometimes take sides. For instance, this study was funded by the ESRC, which may suggest that the arguments and conclusions made here are likely to align with the aims of the ESRC in some manner. However, the ESRC is part of UK Research and Innovation, a non-departmental public body funded by the UK government with the broad aim of supporting impactful research regardless of the subject area of research. The ESRC's inclusive definition of impactful research means that the ESRC's guidelines are unlikely to restrict research findings, making it difficult to criticise this study for its affiliation with the ESRC.

Although, that is not to say that the above frameworks are without criticism. The prevalence of ethical frameworks gives the appearance of a reliable basis for resolving ethical dilemmas, but these guidelines may render invisible other ethical issues of qualitative research (Denzin and Giardina 2007; Cannella and Lincoln 2007), such as the difficulty of 'studying up'. Alvesalo-Kuusi and Whyte (2017) criticise ethical guidelines for their narrow individual interests, as they argue that ethical guidelines make it difficult to uncover the harmful activities of powerful persons such as wealthy or large organisations (Tombs and Whyte 2003). According to Alvesalo-Kuusi and Whyte (2017), most ethical guidelines inhibit the identification of harmful activities by powerful persons, as the priority of ethical frameworks to protect individuals also protects power structures that perpetuate harm and preclude research aimed at changing community environments. This is because the principle of respect for persons means that powerful persons can easily avoid academic scrutiny by simply refusing to take part in research. Therefore, for Alvesalo-Kuusi and Whyte (2017), ethical guidelines should make it easier to study powerful persons as it is in the public interest (i.e. the Belmont Report's beneficence principle) to study these persons due to the social impact they have.

The arguments made by Alvesalo-Kuusi and Whyte (2017) contribute to existing discussion on the importance of shifting ethical attention from the 'underdog' to the 'overdog' (see Gouldner 1968; Tombs and Whyte 2003), as Alvesalo-Kuusi and Whyte (2017) make a convincing argument for the need to change ethical guidelines to make it easier to study powerful persons. In summary, there are several barriers to studying powerful persons throughout the research process (see Undheim 2003; Smith 2006; Friedrichs 2010), as funded research might deliberately exclude powerful persons as research participants, it can be difficult to gain access to these subjects, and powerful persons have the resources to contradict unfavourable research by attempting to exclude unfavourable research

from prestigious publication (Whyte 2000) or by funding opposing research (Alvesalo-Kuusi and Whyte 2017). As Tombs and Whyte (2003) state, one of the key effects of power is the ability to operate beyond public scrutiny and accountability. This issue of 'studying up' might account for the difficulty of successfully contacting all of the stakeholders in this study's sample in section 4.4. For this study, if ethical guidelines were amended to make it easier in some form or another to study powerful persons, such as making it a requirement for public organisations to participate in research council funded research, one possible result would be easier access to experts and the stakeholders in this study's sample.

4.9 Summary

This is the first qualitative study that explores stakeholder views on how safety criminals can be more effectively punished in England and Wales. The three research questions explore stakeholder views on the theories of punishment currently informing the punishment of safety criminals, the effectiveness of these theories and why they are effective, and how penalties can be used to effectively punish safety criminals in England and Wales. By answering these research questions, the recommendations of this study will be useful for informing criminological and policy discussion and reducing the knowledge gap on the effective punishment of safety criminals. To achieve this study's aim, this study adopts constructivist ontology and interpretivist epistemology that holds that knowledge is constructed from the meaning individuals ascribe to their social reality and that the researcher plays an influential role in understanding this subjective and variable knowledge. Generic purposive sampling, *a priori*, and contingent sampling criteria were used to create a sample of 84 stakeholders, although only 21 stakeholders accepted the interview. This demonstrates that one major issue of this study was the difficulty of successfully contacting and interviewing the stakeholders in this sample, most likely due to the Covid-19 pandemic and issues of 'studying up' as powerful persons can easily evade academic scrutiny. Expert interviews were used to collect data from the participants and each interview was recorded and transcribed. This data was analysed using an iterative five stage process of thematic analysis in which each sentence of the transcripts was coded and these codes were used to develop themes and subthemes. Some of these themes were then selected to answer the research questions.

To ensure that this study followed good research practice, Lincoln and Guba's (1985) authenticity and trustworthiness criteria of credibility, transferability, dependability, and confirmability were used to improve the research quality of this study. Furthermore, this study followed various ethical

principles as laid out in the Belmont Report, the ESRC's (2022) *Framework for Research Ethics*, the University of Bristol's (2019) *Ethics of Research Policy and Procedure*, and the British Society of Criminology's (2015) *Statement of Ethics*; most notably the Belmont Report's three principles of respect for persons, beneficence, and justice. Having detailed this study's methodology, the next three chapters report the themes and subthemes that were constructed from the participants' data to answer the research questions.

Chapter 5

The influence of the theories of punishment on safety criminals

5.1 Introduction

Chapters 5 to 7 report the results of the thematic analysis of the 21 study participants' views on the current influence of the theories of deterrence, retributive justice, rehabilitation, and incapacitation on the punishment of safety criminals in England and Wales, the effectiveness of these theories for punishing safety criminals, and how penalties can be used to achieve these theories of punishment and effectively punish safety criminals. This chapter presents the participants' opinions on research question one: 'which theories of punishment are currently informing the punishment of safety criminals in England and Wales?' This is followed by chapters 6 and 7 that report the participants' perspectives on research questions two and three respectively.

This chapter presents four themes that were constructed from the participants' data to answer research question one, as seen in Figure 5.1. The first theme, 'mixed views on the theories influencing the punishment of safety criminals', illustrates the participants' overall mixed opinions on the influence of deterrence, retributive justice, rehabilitation, and incapacitation on safety criminals. To suggest why the participants had mixed views or thought that the theories are not significantly influencing the punishment of safety criminals, three themes were constructed from the participants' data. This includes the participants' views on 'safety crime obscurity', 'the difficulty of convicting safety criminals', and 'the lack of safety crime enforcement'.

Figure 5.1: Four themes and their subthemes constructed from the participants' data in response to research question one.

5.2 Mixed views on the theories influencing the punishment of safety criminals

Each of the participants were asked 'which theory or theories do you believe are currently informing the punishment of safety criminals in England and Wales?' This open-ended question gave the participants full discretion in deciding which theories to discuss, meaning that there is more data on some theories than others. The participants had mixed opinions on most of the theories that influence the punishment of safety criminals. This can be seen by how most of the government authority participants argued that retributive justice and deterrence are informing the punishment of safety criminals, whereas some of the academics and NGO participants believed that retributive justice and deterrence are not informing the punishment of safety criminals. In addition, most of the government authority and NGO participants agreed that rehabilitation is not influencing the punishment of safety criminals, and both groups had mixed views on the influence of incapacitation. The three subthemes detailing the participants' mixed views are covered in more detail in the sections below. For clarity purposes ellipses indicate that words have been removed from the interview quotations and square brackets indicate that words have been added, and readers are reminded that Table 4.1 in Chapter 4 contains more information on each participant's identity.

5.2.1 The presence of deterrence and retributive justice in the punishment of safety criminals

Beginning with the theory that the participants discussed the most, five government authority

participants and one NGO participant believed that deterrence is influencing the punishment of safety criminals. For one participant who works for a health and safety authority, deterrence is present because prosecution focuses on punishing and possibly deterring safety criminals rather than aiming to change their behaviour.

> All it [prosecution] does is punish and possibly deter someone from doing it in the future. It does not necessarily change their behaviour. That requires them to go I do not want to get caught again, I do not want to be in this position again, so therefore I will take action. Personally, I would understand that more as a deterrent effect. (Government authority#4)

For another participant who works for a policing authority, deterrence is the most important theory compared to the three remaining theories of punishment, and the risk of being significantly fined is evidence that deterrence is influencing the punishment of safety criminals.

> I think deterrence is certainly there… the fact that you can be significantly fined certainly would help to get my attention on the matter, I do not think there is any question on that. Or indeed corporate manslaughter or what have you. In some ways that is probably the most important I would have thought, of the four. The others are probably more relevant than incapacitation but deterrence is probably the main one. (Government authority#3)

However, three NGO participants argued that deterrence does not influence the punishment of safety criminals. According to one of these participants employers are not deterred because they do not learn from the criminal repercussions of committing safety crime.

> … there is still this unwillingness of employers to pick up what has happened in the world of safety crime… people are getting killed by the same things as a result of the same kinds of accidents in the same sectors… why do companies continually find themselves in court for the same things when they could see, if they looked hard enough, what the consequences are going to be doing certain things… but nobody seems to learn… (NGO#4)

Another participant believed that government policy eschews a theoretical approach – such as deterrence – in favour of a legacy and partnership approach of working with industries to help them develop positive behaviour (although as section 5.2.2 illustrates, this positive behaviour is not necessarily tied to achieving rehabilitation), and penalties are used ‘at the end of a long line’.

> I do not think there is a theoretical approach. It is a legacy approach. The policy rather than theory is based upon a notion of a partnership approach is better, that you are better off engaging with industries and sectors to help them develop positive behaviours and sanction is at the end of a long line. (NGO#5)

And perhaps similar to this partnership approach, one participant who campaigns on behalf of bereaved families suggested that the government pretends it is about deterrence and punishment but in fact does the minimum it can get away with appearing to do without upsetting lobbying groups and corporate organisations.

> I am not sure if there are any great theories informing the punishment of safety crime in Britain. I think the laws, as we have them at the moment, are very much based on what is the minimum the government can get away with appearing to do without upsetting the lobbying groups, the corporate organisations, and they might pretend it is all about deterrence and appropriately punishing people… (NGO#2)

In addition to deterrence, three government authority participants argued that retributive justice is influencing the punishment of safety criminals. According to one participant, retributive justice is present in the Sentencing Council guidelines on health and safety offences that were introduced in February 2016 (for more information on these guidelines see Chapter 3 section 3.4.1).

> I think what you have got is deterrence and retribution… (Government authority#4)

> I suppose if you look at the sentencing guidelines they do consider the extent of the punishment and all the different factors such as how far away did they fall, was there any kind of intent, saving money or things like that, so there is an element of that [retributive justice] within the decision making… (Government authority#1)

Although, three of the participants asserted that retributive justice is not influencing the punishment of safety criminals. For one participant who is a professor of socio-legal studies, there is very little retributive justice because discourse is about showing culpability for due process rather than retribution.

> I see very little retributive justice. The best example to crystallise this issue is Grenfell. There are families of Grenfell calling for retributive justice, but I cannot see this in the system of law, I cannot see retributive logic and I struggle to see where that is in Grenfell, in the system. It depends on the amount of evidence the police can get with particular individuals. Discourse is all about sufficient evidence to show culpability for due process, but you do not hear any discussion on retribution. (Academic#1)

5.2.2 Rehabilitation has a minor role in safety crime

One academic, one government authority and four NGO participants believed that rehabilitation is not currently influencing the punishment of safety criminals.

> I have not seen much evidence of rehabilitation having much of a role in health and safety sentencing at the present time. (NGO#6)

> I guess I would say one penal philosophy I do not see being used very much in corporate crime or health and safety crime is rehabilitation. (NGO#8)

Some of the participants pointed out that rehabilitation does not influence the punishment of safety criminals because companies can rehabilitate themselves before being sentenced to avoid official rehabilitative penalties.

> There is certainly not a kind of rehabilitation aspect to the criminal sanction component largely because the rehabilitation opportunities happen before they are a part of the navigation of the move toward the sanction. (NGO#5)

> … by the time the case got to court the company had put in place all manner of reparative and transformative changes, including sometimes some very big ones. (Academic#2)

And one participant who works for a victim support charity found it difficult to identify when or if rehabilitation happens because most attention is directed at the sentence, namely fines or custodial sentences, rather than the aftermath of the penalty.

> I am sure there are examples of where rehabilitation happens. I do not hear very much of that. People go to prison or get fined or whatever happens, you never hear what happens

> after that… everything seems to be focused on the point in which somebody gets punished, but you do not often hear what happens after. Positively or negatively. I do not know if anyone ever gets rehabilitated. (NGO#9)

As one government authority participant stated, there needs to be something else on top of custodial sentences and fines that rehabilitates safety criminals, as this 'add on' does not currently exist.

> If you are looking at prosecution as the enforcement action I do not think that has a rehabilitative effect…. the actual act of just sending them to prison does not achieve rehabilitation. You have to then do something else on top of that in order to rehabilitate them. That is my understanding. With safety crime, as we are calling it, that add on does not exist in the way that we punish safety crime. All you have is here is your big fine. That is all the court does. (Government authority#4)

5.2.3 Uncertainty over the influence of incapacitation

Three participants believed that incapacitation is influencing the punishment of safety criminals because incapacitation can be seen by the risk of imprisonment.

> Incapacitation as well, the threat of imprisonment for individuals. Deterrence and incapacitation are the two keys one at the moment. (Government authority#1)

> Deterrence, education, and where that does not work, incapacitation. We will come and tell you about it, we will educate you on it, we will give you the opportunity to put things right and if you do not put it right we will either nick you or put a prohibition notice on you. (Government authority#2)

> I do see a value for that [incapacitation] and I have used that when I have been prosecuting offences. (NGO#6)

However, four participants argued that incapacitation in terms of imprisonment is not influencing the punishment of safety criminals because it is uncommon for safety criminals to be sentenced with a custodial sentence. As one participant stated, they do not know of anyone that has gone to prison

for a health and safety offence.

> I think the least relevant is incapacitation. It is not something where someone is locked up to stop them doing it again… (Government authority#3)

> I do not know of anyone that has gone to prison for health and safety. (NGO#9)

And one participant who works for a health and safety authority suggested that incapacitation is not an aim of punishment because most corporate safety criminals are punished with fines that do not incapacitate.

> I do not think, for the most part, that there is incapacitation because the majority of offences and defendants that we punish, corporate defendants, you do not incapacitate them by fining them… for a company I do not think incapacitation is even an aim of the way we are punishing at the moment. (Government authority#4)

Lastly and in a more general manner, one participant recognised that the extent that the theories of deterrence, retributive justice, rehabilitation, and incapacitation influence the punishment of safety criminals is a subjective question as the answer depends on who is responding and their view on the effectiveness of these theories (see Chapter 6 on the effectiveness of the theories of punishment).

> It is hard to say, to a certain extent depending on who you speak to you could say they are all in use, but it is whether they are effective in their usage of them. (NGO#4)

5.3 Safety crime obscurity

To suggest why the participants had mixed views or thought that the theories are not significantly influencing the punishment of safety criminals, this second theme relates to many of the participants' views on the obscurity of safety crime, and it can be argued that this obscurity makes it difficult for the participants to assess whether the theories of punishment influence the punishment of safety criminals. In discussing the obscurity of safety crime the participants referred to the difficulty of identifying safety crime and safety criminals because these crimes are seen as less important than other crimes or are viewed as accidents.

5.3.1 The difficulty of identifying safety crime and safety criminals

A large portion of the participants argued that a significant amount of safety crime is not identified by the criminal justice system (most likely due to the lack of safety crime enforcement in section 5.5).

> Most health and safety lapses are not picked up by the criminal justice system or probably at all. It is a tiny proportion of those lapses that come into the criminal justice system. (NGO#3)

> The critique here is that some of the worst crimes are not caught. (Academic#1)

The participants ascribed safety crime obscurity to the difficulty of identifying safety crime and safety criminals. For example, one participant discussed the difficulty of identifying gradual injuries such as deafness or insidious diseases including mesothelioma because people perceive safety crime as a single event rather than a chronic injury or disease.

> … when you talk about safety crime I think the model in your head and most peoples' head is an event, be it the Zeebrugge ferry disaster or whatever, where something dramatic happens in a short space of time. What about chronic cases, for example deafness through inadequate ear defenders or exposure to asbestos that gives rise to insidious diseases like mesothelioma. (NGO#6)

Whereas other participants spoke about the difficulty of identifying safety criminals because safety crimes are complicated and often it is unclear where the blame lies.

> … they [safety crimes] are complicated are they not, where does the blame lie, and occasionally you hear about a farm where there is a single farmer in charge who clearly was not protected properly or something like that, where it is clearer. But often it is not very clear. (NGO#3)

As one participant remarked, the interconnectivity of modern relations makes it difficult to identify safety criminals because it can be unclear who is solely responsible for safety crime if responsibility can be attributed to numerous persons.

> … layered on top of all of that is the complexity of modern relations. I think the Grenfell Tower inquiry is showing the interconnectivity of things. In the approach to what you would call safety crime, we are trying to spot a villain to prosecute where in fact there is a whole host of people interacting, all with different roles, responsibilities, and contributions. It is difficult to unpick all that and say so and so is the villain. (NGO#6)

According to one participant, it is difficult to identify who is responsible for safety crime because a lot of health and safety violations and the consequential harm are not visibly connected.

> I can imagine a lot of workplace health and safety violations and offences are things that are not visibly connected or immediately connected, and so it is hard to understand how to identify or even care about issues of responsibility in those contexts. (NGO#8)

And another participant suggested that the specific details of the events and conditions that lead to safety crime are not reported well and this makes it difficult to convict safety criminals, as covered in more detail in section 5.4 below.

> There is a long period between when somebody is killed and when it comes to inquest or court, and the ways in which those are reported, there is very poor reporting, most of the people who report it do not really understand the law or what the circumstances are and do not report it very well… (NGO#2)

5.3.2 Safety crime is seen as less serious than other crimes

Several participants stated that safety crime 'gets laughed off' and is seen as less serious than other crimes in society.

> Health and safety gets a bad name. Hanging baskets, conkers bonkers, all this nonsense, it gets a bad name and it tends to get laughed off… (Government authority#2)

> We do not tend to put as high a moral value on safety crime as we probably should do. (NGO#5)

> … that is what has led to the position we have got now where safety crime is seen as less

> serious to the other crimes that take place elsewhere in society. (NGO#4)

One participant who works for a crime and justice research partnership suggested that safety crime is perceived as less serious than other crimes because safety crime is rarely thought about in the context of criminology and discussions on harm tend to be based around street crime rather than safety crime.

> … I think that health and safety offences are rarely thought about in the context of criminology, and we should be thinking about them because we tend to just conceptualise the problem of harm in terms of the harm that has already been conceptualised for us, which is street based crime. (NGO#8)

As one participant argued, workplace harms such as cancer are not seen as safety crimes.

> You go to work and your employer assaults you with chemicals which are going to give you cancer in forty years' time, we see that as a safety crime in the same sort of way but that is not how it is seen. (NGO#2)

In addition, another participant who works for a health and safety authority stated that a lot of the general public probably do not care about health and safety as it has a poor reception in the media.

> Quite hard for the general public, a lot of them probably just will not care. Health and safety has quite a poor reception with the media and stuff like that. (Government authority#1)

And according to two participants, there is a lack of knowledge or appreciation of the consequences and implications of safety crime.

> I think it is a lack of appreciation of the consequences. I think health and safety is not seen as bad as other crimes. (NGO#9)

> In my opinion, in a health and safety point of view I think a lot of it is misunderstanding or not knowing the implications and outcomes of the things you do, such as people working on roofs, planning a property or the expulsion of hazardous chemicals without considering the proper personal protective equipment. (Government authority#1)

Furthermore, one participant argued that safety crime is less of a priority in the eyes of the CPS and the police service because it is less visible politically and publicly, and that concerns about street crime can easily displace concern about safety crime.

> In the police's eyes and the CPS it surely has less priority because it is less visible politically and publicly. Until you get an astonishing safety crime involving a large company that has been very negligent and then you have an uproar, I would not have thought it is at the top of the CPS's priority. You know that crime trends have been falling since 1995 and if they carry on falling, with exceptions like knife crime, it might create space for concerns about safety crime to grow. If the opposite is true, if that downward trend has reached the bottom of the trough and kicks upwards, I think the traditional personal crimes could easily displace concern about safety crime, except when there is something like Grenfell and people feel outraged, but it is unlikely to have any serious political purchase against a background of rising everyday crime. (NGO#1)

Safety crime may be less of a priority for the CPS and police service because, according to numerous NGO participants, safety crimes are perceived as regulatory or administrative issues and burdens on businesses rather than criminal offences.

> We see it as health and safety crime, I do not think that is how governments and corporate bodies and trade organisations actually see it. They still see health and safety as regulatory issues and they still see it as a burden on business, red tape, and health and safety nonsense is all over the top. That is a very strong and powerful narrative, and death at work is not seen as a crime except when multiple people are killed. (NGO#2)

> Through work injury, both physical and psychological, it is not seen as a crime in the same way as other similar injuries inflicted on individuals elsewhere in society. Health and safety offences are not seen as criminal offences, although quite clearly they are. Employers and the general public see it more as a regulatory offence. It is a regulatory breach but the offence itself is actually criminal when they are found guilty of it. (NGO#4)

> By and large most safety crimes are process breaches… it would be inappropriate for retribution theory to be attached to health and safety legislation, which is ultimately an

> administrative crime, or perceived as an administrative crime rather than a moral crime. (NGO#5)

And to demonstrate that other crimes are seen as more important than safety crime, two participants stated that individuals are more likely to face imprisonment for financial offences and animal welfare offences than safety crimes.

> You are far more likely to face imprisonment if you are a financial director of a company and you are found to have acted with some level of criminality, or people that you are in control have acted with a level of criminality, then you are far more likely to face the courts than a director who has responsibility for health and safety. (NGO#4)

> The other issue with that is every year more people go to prison for hurting animals, not necessarily for killing them, but for hurting animals, than have ever gone to jail for killing workers… and we actually did put out a press release saying bunnies are worth more than our families lives. (NGO#2)

5.3.3 Safety crimes as accidents

To illustrate safety crime obscurity and its lack of seriousness compared to other crimes, it was common for many of the participants to refer to safety crimes as accidents.

> People are getting killed by the same things as a result of the same kinds of accidents… (NGO#4)

> A lot of the accidents that happened in the field could have been prevented quite easily, quite cheaply. (Government authority#1)

> I recognise in the HSE you get accidents involving people, they might get their limbs amputated or worse… (Academic#3)

And as some of the participants highlighted, by portraying safety crimes as unintentional or inevitable accidents, this accident terminology reduces the agency or responsibility of the people that cause safety crime, thereby likely contributing to the previous two sections on the difficulty of

identifying safety criminals and the lack of safety crime seriousness.

> A lot of people think an accident might just happen anyway, that it cannot be prevented, that you cannot have life safe from harm. In most cases accidents, in the true sense, are not accidental. They happen as a consequence of some other type of failure. We talk about road accidents and people now want to talk about road crashes. A crash is not an accident. An accident almost suggests there is nothing you can do about it. (NGO#7)

> Accidents, some would say that accidents suggest that something is unintentional, it just happened and could not have been stopped. (NGO#9)

> If you use those terms like accidents and disasters it takes away the agency of the people who have caused them… (NGO#2)

5.4 The difficulty of convicting safety criminals

Alongside and perhaps partly as a result of the obscurity of safety crime, this theme suggests that another reason the participants had mixed views or thought that the theories are not significantly influencing the punishment of safety criminals is due to the difficulty of convicting safety criminals. Specifically, the participants ascribed the difficulty of convicting safety criminals to issues of collecting evidence, the corporate veil[14], and the lack of political will to impose criminal liability on safety criminals.

5.4.1 Issues of collecting evidence

To illustrate the difficulty of demonstrating the *mens rea* of safety criminals discussed in Chapter 2 section 2.4, one participant who works for a social justice law firm stated that it is difficult to convict safety criminals because witnesses are unwilling to testify for fear of making themselves vulnerable to prosecution (this fear of prosecution being one of the reasons that most of the participants argued that deterrence is effective for preventing safety crime in Chapter 6 section 6.2.1).

> … what is happening in the public inquiry is individuals are very circumspect about what they

[14] The corporate veil is an effect of corporate personhood and limited liability that shields individuals from prosecution in favour of the corporation (Tombs and Whyte 2007).

> are going to say because they fear prosecution. You are finding a lot of people are saying they cannot remember. They have clearly been advised by their legal teams what they can say. That comes out as a real challenge to people who want to tell the truth, in terms of getting to the heart of things… people who find themselves in the dock charged with corporate accountability or corporate manslaughter, they are damned if they speak the truth and damned if they try to cover up… they know that anything they say will be subject to criminal investigation, potentially they will be prosecuted anyway. A lot of this is political and you cannot separate criminal investigations from other legal proceedings that are going on. (Legal practitioner#1)

For instance, one government authority participant argued that a lot of people are aware that it is extremely difficult to convict individual safety criminals, particularly senior executives, with a high enough level of *mens rea* to imprison them.

> I would say a lot of people, especially senior people, are probably wise to the fact that it is extremely hard to prove to that level to put you in prison, especially for safety offences. (Government authority#1)

5.4.2 The corporate veil

Some of the participants suggested that another reason that it is difficult to convict safety criminals is because companies can use their resources to defend their employees from being found accountable, termed the corporate veil by a few of the participants.

> … it is very difficult when you have got an organisation that can defend its people at the highest level. The complication of the process gets in the way of making people accountable. (NGO#7)

> … it is this corporate veil where decision makers hide behind the corporation and making decisions and instructing others to do things that are criminal. (NGO#4)

> … we should not let the corporate veil shield individuals… (Academic#1)

As well as the corporate veil, some of the participants were aware that companies can disband and

re-create themselves to avoid conviction and punishment, termed phoenix companies by one participant.

> … you will never create a face to the artificial legal identify, that is the whole point about the artificial identify, the whole point of the veil of the corporation, that you can never really create an artificial corporate person that can be held to account. (NGO#5)

> … if the company is prosecuted often they will just let the company fold so it does not really have any penalty at all, it just escapes punishment. (NGO#6)

> Companies which have been prosecuted often go out of business, smaller companies, even bigger companies, then they often re-create themselves, like phoenix companies, they come back with a different name… (NGO#2)

5.4.3 The lack of political will to impose criminal liability on safety criminals

In addition to the issues of collecting evidence and the corporate veil, three participants discussed the lack of political will to impose criminal liability on safety criminals. One participant pointed out that on the basis that the HSE has not appeared in front of the participant's Select Committee for over ten years, this suggests that government ministers have not recently shown any major interest in the HSE and safety crime.

> … somebody said it is the first time the HSE has come in front of the Select Committee for over ten years, which I think perhaps, if that is right, it has not been an area of great interest over the last ten years or so… it has been very interesting to me to hear people like the Prime Minister speaking very highly of the importance of the work of the HSE, when the ministers of the last ten years have not really shown any interest at all… (Government authority#5)

Another participant spoke about their experience of recommending a new range of safety crime sanctions to the Regulatory Reform Select Committee, although the participant thought that the Committee expressed minor interest in their recommendations and that the participant's new range of safety crime sanctions were not implemented in a sophisticated or successful way.

> I went to give a presentation to them [the Regulatory Reform Select Committee] about where my thinking was going, by then I was beginning to make it clear we need a better range of sanctions. I had looked at other countries like Australia and they had a richer range of sanctions. I could see there were no body response, people were just sitting there with folded arms, they really were not interested, and I said any questions and there were none… the trouble is you make recommendations and everyone accepts it, but then you cannot find who is responsible to taking it forward. I think the Home Office was trying to do so but they never really did that in a sophisticated way, so I do not think it ever really happened. (Academic#3)

And one participant who works for a science-based charity on workplace health risks believed that the judiciary is reluctant to impose criminal liability on safety criminals because the criminalisation of companies 'is very bad for encouraging inward investment' for the state.

> When you look at how the judiciary deal with anything employment based, whether or not it is civil or criminal liability, there has been a traditional reluctance to take a hard view and when you look at the disassociation between the corporate mind and the corporate actor, the person who makes a mistake and the directors etc, there is a real rule of law disliking imposing criminal liability or any further criminal liability than is absolutely necessary on individuals in relation to actions that they are not directly the architectures of. You are running up against the legal establishment anyway in this particular frame. There are a certain number of conservatives which dislike the whole notion, hence the reason it has sort of been so slow to evolve. At the same time you have an inherent dislike of the criminalisation of corporation entities by any state, simply because nobody wants to be in a position where they are locking up CEO's of companies because that is very bad for encouraging inward investment. You are running against that as well. (NGO#5)

5.5 The lack of safety crime enforcement

To speculate on the reasons why the participants had mixed views or thought that the theories are not significantly influencing the punishment of safety criminals, and to suggest why large portions of the participants discussed the obscurity of safety crime and the difficulty of convicting safety criminals, the final theme of this chapter reports the participants' views on the lack of safety crime enforcement because there are insufficient resources to enforce workplace health and safety.

5.5.1 Insufficient resources to enforce workplace health and safety

Many of the participants stated that the HSE and local authorities do not have enough resources to inspect and enforce adequate workplace health and safety. As one participant argued, the amount of businesses outnumber the amount of people to inspect them.

> The HSE has lost half its budget, huge amounts of staff and its ability to enforce has been massively reduced… very many local health and safety authorities do no health and safety at all, no inspections, no enforcement, nothing… the enforcement authorities do not have the funding to do the job. (NGO#2)

> Definitely in Northern Ireland if we had more ability to take cases then that would significantly improve the amount of enforcement action and prosecution we could take… we are completely outnumbered from the amount of businesses there are out there and the amount of people we have to inspect them. (Government authority#1)

> … the HSE has had its funds whittled down pretty consistently over the previous ten years. (Government authority#5)

This lack of health and safety enforcement led numerous participants to highlight the reduction of health and safety inspections, as for one participant, businesses can expect to be inspected once a decade.

> It has meant that the preventive inspections carried out by the HSE inspectors that go into factories have dwindled away. Most businesses would expect a HSE inspector to come in once every ten years. (NGO#6)

Whereas another participant argued that proactive health and safety inspections occur once every 30 to 50 years.

> … you are very unlikely to see a health and safety inspector just coming on proactive preventative visits, once in every 30 to 50 years really. (NGO#2)

As one participant explained, this lack of proactive enforcement means that a lot of safety crime will go unnoticed (this being one reason for the difficulty of identifying safety crime in section 5.3.1).

> It told them [the HSE] that they had to cut their proactive enforcement from thirty odd thousand visits a year to twenty thousand a year. That obviously means a lot of safety crime will be going unnoticed… employers, at this point in time, no longer fear certain inspection. (NGO#4)

Due to less enforcement and fewer inspections, some of the participants also commented on the reduction of prosecutions and enforcement notices such as improvement and prohibition notices.

> Instead, what the HSE has done is to make the most of the prosecutions they bring, and even then the numbers have dwindled. It used to be about 12,000 [enforcement notices], but it is less each year. (NGO#6)

> … in 2014/15 local authorities and the HSE between them, about 12,000 enforcement notices, and that dropped by maybe a thousand in 2018/19, that would be down to resourcing I imagine. The number of [local authority] prosecutions is down from 632 to 394 during the same period. That has to go back to not having sufficient resources. (NGO#7)

And one participant suggested that the HSE does not have enough resources or personnel to ensure that enforcement notices or safety crime penalties are checked up on to ensure that safety criminals satisfactorily complete these sanctions.

> Companies often do not do things properly and the HSE then tries to sit on them. They do not have the resources to do this and make sure that offenders actually do do that. If it is not a death, something less severe than that, it will often be done by letters. So you have got to do this by such a time and the company will be given an extension, and an extension, and an extension, and often it might not be signed off or it might be signed off by phone call. Yes they have done this, there are not enough people to go back and absolutely check that they have done that. So it is problematic in that sense as well. If there are resources to do it properly, that is obviously what should be done. (NGO#2)

As a result of less enforcement and fewer prosecutions, for two participants this explains why 'the

whole framework is not going to work', or more specifically, why there is not a reasonable threat of deterrence (and by extension, not a reasonable threat of retributive justice, rehabilitation, and incapacitation) because employers will not get caught out.

> … if you do not actually have the bodies on the ground to enforce standards then the whole framework is not going to work. (Legal Practitioner#1)

> This is about having a reasonable deterrence, a reasonable fear of a deterrent effect, because of everything I have described to you a lot of employers know they can more or less get away from it, they are not going to be caught out, if something happens they will have to face that, but they are not going to get caught out, there is not a reasonable threat of enforcement in order to power the sort of deterrent effect because of the cuts to funding and all the rest of it. (NGO#2)

The participants discussed three reasons for a lack of safety crime enforcement: deregulatory policies originating from the 1970s, financial austerity, and the impact of the Covid-19 pandemic and waves of national lockdowns. First, some of the participants argued that the reduction of health and safety enforcement is the result of deregulation since the 1970s Margaret Thatcher government in England and Wales, as one participant compared the figurative 'bonfire of regulations' to the Grenfell Tower fire (see Chapter 1 section 1.1 for further description of this incident).

> … waves of deregulation starting during the Thatcher period, carrying on during the Blair/Brown period and very much accelerating. The year 2010 has actually focused on getting rid of some laws, but very much getting rid of the enforcement of laws, reducing the impact of enforcement, banning spot checks, banning proactive preventative enforcement inspections, which have virtually been banned in the majority of so-called low-risk workplaces… we have been banging on about deregulation forever. When everybody could see when Grenfell went up, David Cameron and Margaret Thatcher before had called for a bonfire of regulations. Grenfell was a real life bonfire of regulations and 72 people died in full view of everybody on prime time television. (NGO#2)

> You need the political will behind it because otherwise people will say health and safety interfered too much with the way people went about their business, we have got a deregulatory government. (Government authority#6)

Second, a quarter of the participants suggested that financial austerity in England and Wales has resulted in less health and safety enforcement, less protection of workers, and more risks.

> Austerity has increased the pressure on regulatory authorities. Less inspectors, 47% cut in the safety inspectors budget, and environmental and local authorities have been cut by 40%. Regulation is undercut which means less protection of workers, less interventions and inspections, and more risks. (Academic#1)

> … austerity and public sector cuts have had a massive impact through limiting enforcement agencies. (NGO#2)

To demonstrate how austerity has led to less health and safety enforcement, two of the participants argued that austerity means that services like housing, education, and street crime are prioritised over safety crime enforcement.

> I know the HSE has made massive cuts and you then have to prioritise how you do this, particularly local authorities as well… when it comes to other services like housing, education and social services, they will prioritise those over health and safety enforcement… they still do the food hygiene inspections but the health and safety inspections are not done. The local authorities have stopped doing a lot of safety enforcement… (Government Authority#2)

> I imagine if the CPS and the police have suffered the level of cuts in the region of 20%, I will be astonished if they did not down prioritise safety crime against the more publicly concerning crimes of individual harm. (NGO#1)

And one participant believed that austerity has allowed the government to carry out its deregulatory agenda.

> … it is the fact that austerity divided the UK government to take forward its ideological agenda to deregulate not just health and safety but right across all regulatory bodies and that was a major problem. (NGO4)

Third, some of the participants discussed how the Covid-19 pandemic contributes to the lack of resources to effectively regulate safety crime, as the HSE's responsibility to monitor Covid-19 reduces the agency's normal regulatory functions such as workplace inspections.

> And on top of that the HSE is being charged with the duty of monitoring workplace exposes to Covid-19, and Covid-19 guidance is entirely dealing with Covid-19 rather than other aspects, so the normal functions of inspections and inspection cycles of the HSE are interrupted in their capability to investigate. (NGO#5)

For instance, one health and safety authority participant stated that the Covid-19 pandemic makes it more difficult to prosecute safety criminals because companies that would have been prosecuted have gone out of business, and because the strain of the pandemic on the court system means that prosecutors are placing more importance on the public interest stage[15] and deciding not to prosecute some cases.

> It [Covid-19] is going to have a big impact for a number of reasons. Firstly, we are going to see companies going out of business, and therefore where they have got health and safety breaches that we have been investigating and were going to punish, that is always more difficult when you have a company that has gone out of business. Secondly, there is a huge backlog in the courts that is getting longer and longer so we have to consider even more than normal where the public interest lies before we prosecute. You may well see some cases where previously we would have taken prosecution action, where at the moment due to the pandemic and the aftereffects on the court system, we will not. (Government authority#4)

According to two participants, prosecutors might also decide to ease punishment and reduce fines to compensate companies for their financial hardship resulting from the Covid-19 pandemic.

> Thirdly, I think it [Covid-19] is going to have a big impact when cases actually get to court because I would have thought that every single company or organisation that faces some kind of prosecution, when the judges are looking at what fine to impose, the majority of them are going to be saying well actually we are in an incredibly difficult financial position

[15] The HSE public interest stage considers whether a prosecution is in the public interest if the case passes a series of factors such as whether there has been a reckless disregard of health and safety requirements (see HSE 2022o).

> now. We have taken a hit we have no money; we are at risk of going out of business, it is going to have an impact on those sentence hearings and probably on the sentences that are passed. (Government authority#4)

> In my own personal opinion I would imagine that there will be an easing of punishment in the court system. I think the regulators will still pursue enforcement action and things like prosecutions will still be put forward, but I do think maybe they, the judges and court system, may look more leniently on organisations because of the stresses and pressures they have been under, particularly the financial stresses. I think you might find fines being reduced on account of the significant financial impact and resource impact that Covid-19 will probably have in the long-term… I have personally seen a few comments in the Northern Ireland court system where judges have taken into consideration the large economic downturn, and actually most recently the potential Brexit impacts on agri-food businesses, and they have taken that into consideration when sentencing. I definitely think those same principles will probably apply to Covid-19. (Government authority#1)

And one of these participants was concerned that the Covid-19 pandemic might contribute to more self-regulation and less health and safety enforcement in the future.

> … one of our concerns would be after Covid-19, not to be too critical, but the current government and the things they have in place, we could end up going down the self-regulating route in the future where, like America, you do not have an awful lot of safety enforcement action or government action. (Government authority#1)

5.6 Summary

In conclusion of the thematic analysis of the participants' responses to research question one 'which theories of punishment are currently informing the punishment of safety criminals in England and Wales', the participants had mixed opinions on the extent that most of the theories of punishment are influencing the punishment of safety criminals. Whereas some of the academic and NGO participants argued that retributive justice and deterrence are not informing the punishment of safety criminals, the government authority participants believed that these theories are informing the punishment of safety criminals. Furthermore, most of the government authority and NGO participants agreed that rehabilitation is not influencing the punishment of safety criminals, and

both groups had mixed views on the influence of incapacitation.

To explain the participants' opinions, some of the participants argued that prosecution focuses on retribution and deterrence rather than trying to change an offender's behaviour, and this can be seen by the risk of fines in the Sentencing Council (2016) guidelines on health and safety offences. However, other participants believed that deterrence does not influence the punishment of safety criminals because safety criminals do not learn from the criminal repercussions of committing safety crime, and rather than a theoretical approach like deterrence, government policy adopts a partnership approach of working with industry, lobbying groups, and corporate organisations to develop positive behaviour. Moreover, one participant stated that retribution is not influencing the punishment of safety criminals because discourse is framed in terms of due process rather than retributive justice. Next, the only theory that the participants unanimously agreed is not influencing the punishment of safety criminals is rehabilitation. This lack of rehabilitation can be ascribed to the participants arguing that companies can reform themselves before being sentenced to reduce or avoid official rehabilitative penalties, and one participant suggested that it is difficult to identify when or if rehabilitation happens because most attention is directed at the sentence, such as fines, rather than the aftermath of a penalty. Lastly, some of the participants stated that incapacitation is influencing the punishment of safety criminals due to the threat of imprisonment, although other participants argued that the infrequency of custodial sentences for safety criminals means that incapacitation is not present, and neither are companies incapacitated because most organisations are punished with fines that do not incapacitate.

To suggest why the participants had mixed views or thought that the theories are not significantly influencing the punishment of safety criminals, this chapter explored three themes that were frequently discussed by the participants. Many participants stated that safety crime obscurity means that many safety crimes and safety criminals are not identified by the criminal justice system. The participants ascribed safety crime obscurity to the difficulty of identifying safety crime and safety criminals because safety crime is seen as less serious than other crimes and because some safety crimes are perceived as accidents.

Next, a large portion of the participants highlighted the difficulty of convicting safety criminals due to issues of collecting evidence, the corporate veil that defends individuals from being found accountable and enables companies to disband to avoid conviction and punishment, and the lack of political will to impose criminal liability on safety criminals. This lack of political will to impose

criminal liability on safety criminals was demonstrated by one participant's experience of receiving minor interest from the Regulatory Reform Select Committee to implement a new range of safety crime sanctions, another participant argued that government ministers have not shown major interest in the HSE and safety crime over the last ten years, and one participant believed that the judiciary is reluctant to criminalise companies because this is bad for encouraging inward investment for the state.

Third, and to suggest why a significant portion of the participants discussed the obscurity of safety crime and the difficulty of convicting safety criminals, many of the participants argued that there are insufficient resources to enforce workplace health and safety. The participants ascribed this lack of resources to the deregulation of health and safety since the 1970s Thatcher government, financial austerity that means that services including housing, education, and street crime are prioritised over safety crime, and most recently, the Covid-19 pandemic that reduces the HSE's normal regulatory functions such as workplace inspections, prosecutions, and the severity of safety crime sentences.

These three themes of safety crime obscurity, the difficulty of convicting safety criminals, and the lack of safety crime enforcement can explain, either by themselves or in combination with one another, why the participants had mixed views or thought that some of the theories are not significantly influencing the punishment of safety criminals. Considering that these narratives relate to the politics and economics of regulating and punishing safety crime, rather than the theories of deterrence, retributive justice, rehabilitation and incapacitation, this emphasises the importance of political and economic factors in explaining which theories influence the punishment of safety criminals in England and Wales. The next chapter reports the thematic analysis of the participants' views on the effectiveness of these theories for punishing safety criminals.

Chapter 6

The varying effectiveness of the theories of punishment against safety criminals

6.1 Introduction

This chapter reports the results of the thematic analysis of the participants' views on research question two: 'which theories are effective at punishing safety criminals and why are they effective?' The interview guide (see Appendix 4) was designed to ask each participant whether or not the theories of deterrence, retributive justice, rehabilitation, and incapacitation are effective at punishing or preventing safety crime. The participants had mixed opinions on the effectiveness of the four theories of punishment. Figure 6.1 displays the four themes and their subthemes that were created from the participants' data in relation to research question two, namely: deterring safety criminals from committing safety crime, retribution and appropriately punishing safety criminals, rehabilitation and making workplaces safer, and incapacitation that prevents safety crime. Lastly, no discernible pattern was identified between the participant groups, including the government authority and NGO participants, and the effectiveness of these theories.

Figure 6.1: Four themes and their subthemes created from the participants' data in response to research question two.

6.2 Deterring safety criminals from committing safety crime

Beginning with the most common theory that the participants discussed, the participants had mixed views on the effectiveness of deterrence theory for preventing safety crime. Eighteen participants stated that deterrence is effective for dissuading potential safety criminals from committing safety crime. This is because safety criminals fear being prosecuted and because corporate safety criminals

are more likely than natural persons to be rational actors that consider the factors of deterrence, namely the risk of being arrested, convicted, and whether the punishment outweighs the financial benefit of committing safety crime (for more information on these factors of deterrence see Chapter 3 section 3.2.1). However, 11 participants suggested that deterrence is not effective for preventing safety crime, because some safety criminals do not consider the factors of deterrence and because safety crime penalties are not effective enough to achieve deterrence.

6.2.1 Safety criminals fear prosecution

Many of the participants argued that deterrence is effective for preventing safety crime by deterring companies from endangering their employees, consumers, and the public for financial motives.

> … you are preventing rather than curing in relation to safety crime. A lot of the work is done by officers and inspectors up the line trying to avoid things going wrong. (Government authority#6)

> A route to avoiding crimes in the first place is better than punishing them after the event. (NGO#1)

> Certainly deterrence is important because we want to deter companies from doing things that might save them money but would put their employees at risk. (Government authority#5)

> … without deterrence there is nothing to stop companies to exploit and do what they want. You can reverse this question; the importance of deterrence is about not giving a green light for companies to do whatever they want. (Academic#1)

More specifically, some of the participants stated that the fear of prosecution deters potential safety criminals from committing safety crime or it motivates them to make health and safety improvements to reduce the risk of safety crime. For example, one policing authority explained that they would be deterred from committing safety crime if their colleague received a custodial sentence.

> If I am director of a business and I am running a construction or warehouse company, and

> my colleague down the road, someone gets killed, is run over by a truck or a reversing vehicle, I would look at that and for me the fact that he was probably nicked and he got a custodial sentence for six months or a year, that would have a huge impact. That would make me change the way I operated. I would then be looking at that and think right, he has been nicked for that, I am going to learn from that and make sure I am not going to get nicked. I think the publicity around that would make a difference. But I think using that as a case study to put it to the industry, case studies work really well. Say look, this is your partner, this is a very similar business to what you have been running in your warehouse, and he was nicked and got a year sentence. This could happen to you. (Government authority#2)

And according to this participant, the prosecution of a single person encourages others and whole streets to improve their health and safety standards.

> We would go down a length of road, say around Kensington, and we would inspect the shops. If one was really filthy and disgusting we would prosecute or nick them or serve a notice. That would get around the message, it would go down the whole street and people would be improving things, people would know about it. (Government authority#2)

Put differently, one participant suggested that deterrence occurs at all sorts of different levels to prevent safety crime, including the risk of being caught and prosecuted, regardless of the success or failure of prosecutions.

> You can get these empirical results in the literature that show that deterrence has not worked there because nothing changed after the conviction, but that is not the main point of how deterrence works. The important work that deterrence does is firstly on the street level and on all sorts of other intervening levels between detection by the street level regulator and the prosecution that might succeed or might fail... (Academic#2)

And for one participant who works for a science-based charity on workplace health risks, the fear of prosecution and the apprehension of the concomitant social stigma can be more effective at preventing safety crime and achieving deterrence than the punishment itself.

> The fear of criminalisation is probably a more potent element for safety crime, in terms of

> prevention, than the actual visitation of the financial sanction… I think it [criminalisation] has a place because it gives motivation. Its place is probably not in the actual realisation of the sanction as so much in terms of criminal law, it is the apprehension of the social stigma of the process of the pain of going through that and the potential, the unknown, that is a more frightening element… probably only data offences have been more successful in having larger bark than bite. (NGO#5)

6.2.2 Safety criminals as rational actors

Another reason that most of the participants argued that deterrence is effective for preventing safety crime is because deterrence is more effective for corporate safety criminals than natural persons and street crime.

> A lot of the ways in which it [deterrence and safety crime] works are very different from the ways that deterrence works with common street crime… I think deterrence is a fairly weak doctrine with weak explanatory power with conventional street criminals and it has more power and relevance but in a variety of second order ways [for safety criminals]. (Academic#2)

> I think health and safety offences are dealing with entities who are legal persons, not necessarily human persons. I would be thinking about penal philosophies that are most effective at changing the behaviour or having an impact on legal persons, corporations, and employers. I think a different logic can be applied to individuals. (NGO#8)

According to one academic, deterrence is more effective for corporate safety criminals than natural persons because corporations are more likely to have knowledge of the factors of deterrence, such as the risk of being arrested, convicted, and whether the punishment outweighs the financial benefit of committing safety crime.

> Deterrence is more successful for safety crime and crimes of those in power. You have to have knowledge of the chances of being caught, punished, and the severity of the punishment, and there must be a reasonable chance of being caught for deterrence to happen. For the average offender, people do not know the chances of being caught, do not know the severity of the punishment, and are not future-orientated, if you ain't got nothing

> you got nothing to lose. Corporate directors have the resources to predict the chances of being caught, detailed information on the punishment and offence, greater capacity to be future orientated, and the capacity to care about the consequences of their actions. (Academic#1)

By considering the factors of deterrence, another participant framed organisations as rational actors that weigh up the costs and benefits of their actions and are less moral than individuals, and the more that organisations are rational and 'calculating the more deterrence will bite on them'.

> It strikes me that organisations are much more rational actors than individuals… normative compliance is where you actually want to do the right thing, you are normatively guided to doing the right thing. Instrumental compliance is where you are a rational actor who weighs up the costs and benefits and makes a calculation based on costs and benefits. I think an organisation is probably an amoral body, or much less moral body, or much less open to moral leverage than an individual. Strategies of normative compliance are probably underused but very relevant for individuals, and probably less applicable to organisations… there may well be organisations who are much more calculating, and the more they are calculating the more deterrence will bite on them. (NGO#1)

However, some of the participants highlighted that deterrence is ineffective against safety criminals that do not foresee that they could be convicted and punished.

> It may be sometimes that there is not an awareness that what they are doing could lead to them ending up in prison… I suspect that a lot of the time they do not necessarily see what they are doing as that bad, they do not necessarily really realise it could put them at risk of going to prison, and therefore I am not sure it necessarily has the deterrent effect it might otherwise have. (Government authority#4)

> Whether a single act or cultural act or hobby, I would imagine people do not think that far ahead. (NGO#9)

As two participants suggested, safety criminals may be unaware that they are at risk of being punished if safety crime results from negligence.

> … the crime that we are going to talk about centres largely on mistakes, accidents, and negligent action. (NGO#6)

> I suspect that negligence must be the state of *mens rea* of almost all offenders, rather than clear intent, and given that negligence is the standard form of *mens rea* that offenders will have, most of these strategies of punishment strike me as inappropriate, or not obviously appropriate, I would not say inappropriate… (NGO#1)

6.2.3 Penalties are not strong enough to deter safety criminals

Furthermore, even if safety criminals are rational actors that are aware of the factors of deterrence, some of the participants asserted that safety crime penalties are not effective enough to achieve deterrence and dissuade safety criminals from committing safety crime (see Chapter 7 for further discussion on whether safety crime penalties are achieving deterrence).

> … we would certainly like to see the use of deterrence to be a bigger thing in relation to how safety crime is actually dealt with… there seems to be little eagerness of companies to actually learn from other organisations' failures, and that again shows there is very little deterrent effect on the penalties that are being imposed. (NGO#4)

> If offences could have a greater deterrent or other impact on employer behaviour in the workplace, that would be something we would certainly welcome. (Legal Practioner#1)

As one Select Committee member stated, they have come across concerns that penalties are inadequate at punishing and deterring safety criminals.

> I have come across concerns that penalties are inadequate [at punishing and deterring safety criminals]. It is not something that has been raised with me frequently, it has not been raised with me I do not think by the HSE for example, but I have seen criticisms expressed by others. (Government authority#5)

And according to one academic the Home Office has not done any robust research on the effectiveness of different sanctions for safety criminals.

> … one of the things I got very frustrated with was the sanctions review. We were looking at all the other types of sanctions that were available and talking to the Home Office. I said is there any robust evidence on which sanctions have more effect than other sanctions, have you measured it? I kept on coming to a brick wall, and they said it was very difficult to do. (Academic#3)

6.3 Retribution and appropriately punishing safety criminals

For theme two of this chapter, 13 participants argued that retributive justice is effective for punishing safety criminals and ensuring that penalties fit the crime. On the other hand, 11 participants disagreed with the effectiveness of this theory because they disliked the notion of retribution as revenge and because tougher penalties do not make workplaces safer.

6.3.1 Ensuring penalties fit the crime

One common reason that the participants supported retributive justice is so that penalties fit the crime, termed 'just deserts' by one participant.

> … we want the punishment and the sanction of the court to fit the crime that the individual is responsible for. (NGO#4)

> Trial and retribution, yes I think so, if it fits the seriousness of the crime… we have now moved onto a different realm whereby for work related deaths most of society would want to see just deserts in that. (Government authority#2)

Another participant believed that retributive justice is effective for achieving deterrence and punishing safety criminals in a similar manner to how this type of harm, including major injuries and fatalities, is punished in similar jurisdictions, such as assault and homicide in street crime.

> … retributive justice and punishing these crimes in a similar way to the way in which that sort of harm is punished in other jurisdictions is a very important thing, we think it is very important, and we think and hope it is very important in terms of deterrence… (NGO#2)

And for two participants retribution is effective for providing justice to the victim's family and

demonstrating that workplace fatalities are serious crimes, as small penalties, particularly fines, can be insulting to families because families want fines to hurt so that safety criminals do not profit from lower safety standards.

> … we hope it [retributive justice] is important in terms of providing some justice for the families, and certainly from the families point of view it is important. There was a case in Liverpool some years ago of North West Aerosols Ltd where a faulty electrical panel led to a spark igniting some solvents and a huge fireball, and one man was killed and somebody else was injured and a lot of other people were hurt and the organisation went out of business. They were actually prosecuted and [anonymised] sister and nephew came to the court and the nephew was an adolescent autistic lad, lovely boy, at the end of this he actually said, when the company was fined and read out, one pounds for each of two offences and one pound costs nominal fees because they were in litigation, and this lad said does that mean uncle Chris was killed for three pounds? So retributive justice is important for families… (NGO#2)

As one legal practitioner stated, bereaved families want to see revenge rather than safety criminals 'laughing all the way to the bank' because they have profited from safety crime.

> … retribution, I can certainly see, working with families and such, that is a big part of what they want because the alternative is to have people or companies laughing all the way to the bank thinking okay we may have had to pay a fine and it has all been a bit of a pain to pay some legal costs but ultimately our lower safety standards that may have resulted in injury or death have allowed us to do this work profitably. That is something that you cannot be surprised at bereaved families if they want to see revenge. (Legal practitioner#1)

Furthermore, some of the participants held the view that rather than having an effect like changing behaviour or preventing safety crime, retributive justice is about punishment in its own right and appropriately responding to persons that transgress health and safety regulations. As one participant expressed, there is a human need to see persons brought to justice.

> Punishment is not really about having an effect; it is the belief that society has of what is the right thing to do with people who transgress. Sometimes there is the idea that punishment is going to change behaviour, but there is also the belief in punishment in its own right.

(NGO#3)

It [retributive justice] does not seek to be effective, it seeks to be a response to harm with an equivalent harm. (NGO#8)

In the context of corporate manslaughter it is always one that is much beloved by legal academics and by law students because it all seems really rather obvious that you should have some form of liability that is around homicide and certainly if you are the victim of a corporate homicide you probably want to see some face brought to justice for it. There is a human need. Whether or not it actually solves the bigger picture, which is does it prevent corporate caused fatalities, that is a different question, and whether or not you can achieve fewer fatalities by having that as a residual thing, that is there because you need to have the bogey man. (NGO#5)

6.3.2 Retribution as revenge

However, rather than supporting retributive justice several participants disliked the principle of retribution.

Retribution, is that more about taking it out on someone? I think it is just the phrase I do not like really. (Member of Parliament#1)

I do not think I like the word retribution as a description. (Member of Parliament#2)

It feels like punishment, retribution, it seems less acceptable. I do not know if it was ever acceptable. (NGO#9)

According to two of the participants, retributive justice is less suitable for safety crime compared to other crimes like sexual offences.

I think there is less of an appetite from the public and myself for retribution for this kind of thing [safety crime] then there is for somebody being violent or a sexual crime or whatever. (NGO#3)

> Would you want retribution in a health and safety situation, I am not sure I see the argument for that. (NGO#8)

To explain why some of the participants disagreed with the effectiveness of retributive justice, for two of the participants this is because retribution can be perceived as revenge, which is not what punishment is about.

> Retribution has been described as organised revenge in some respects. (NGO#6)

> It seems like revenge, and I do not think that is what it [punishment] is about. (Government authority#1)

As one academic noted, retributive justice can allow aggressiveness or vigilantism in the criminal justice system.

> Sometimes you do not want retributive justice as it allows aggressiveness or vigilantism in the criminal justice system. (Academic#1)

And for another participant, retributive justice is unlikely to have any long-term effects other than making people more resentful.

> … ultimately a retributory approach, even if you can find the right person, is unlikely to have a long-term effect other than making people a bit more resentful… it is that old thing that René David[16] used to say about English law, that English law is law for dogs, dogs that do something naughty and you hit it afterwards in the hope that it is going to learn from it. (NGO#5)

6.3.3 Tougher penalties do not make workplaces safer

For some of the participants another reason that retributive justice is ineffective is because retribution and tougher penalties do not make workplaces safer.

> What we are talking about is systemic issues as to why people are harmed through lapses,

[16] René David was a 20th century French professor of comparative law.

> and it does not fit human nature to say if the punishment is very severe that is going to stop all these health and safety lapses. (NGO#3)

> I think if you prioritise retribution you can jeopardize the wise foregoing of a punitive approach. You can make things worse. You can have the effect of killing more people. I am a consequentialist… why would you do something that is less safe for no better reason than to get retribution. People's lives are more important than that. (Academic#2)

As one participant argued in relation to tougher penalties and deterrence, there is no correlation between higher sentences and safer workplaces.

> All of your questions are towards should the penalties be tougher. I think this direction is not right… my reasoning would be to start off saying what is our objective. The clear objective is to keep people safe at work, and for any assessment of the effectiveness of deterrence is to say do the penalties imposed cause the workplace to be safer. I have seen no evidence to correlate higher sentences with safer workplaces. (NGO#6)

6.4 Rehabilitation makes workplaces safer for some employers

Moving on to theme three, 15 participants argued that rehabilitation is effective at maximising safety by educating safety criminals on how to avoid safety crime. However, 13 participants disagreed with the effectiveness of rehabilitation because it does not work against what some participants termed 'criminal' and 'compliant' employers that are unlikely to cooperate with rehabilitative penalties.

6.4.1 Educating safety criminals and maximising safety

One prominent reason that the participants thought that rehabilitation is effective is because it can educate safety criminals and can help them recognise where they are going wrong and what they can do to maximise safety.

> There is a whole piece around education about what goes wrong so people can share the science and tips between organisations to see this is how you can avoid this. (NGO#7)

> … a small business, a construction worker, if they go around and they are not using the scaffolding properly, working at height or something, it is more appropriate to use education to get things done… (Government authority#2)

> If we are dealing with safety crime I want the criminal law to operate in a way that maximises safety… (Academic#2)

As one participant explained, education has some social utility of preventing safety crime harm in the future.

> The restitutive issue is the one to be applauded. Take the answers away from punishment to repair. Repair can either be in terms of education of the individuals involved, making them do something where there is some social utility… instead of harking back to what has been done, the idea is to change the emphasis on preventing harm in the future. (NGO#6)

For example, two of the participants argued that proactive rehabilitation can put 'people back on the right track' and prevent safety crime.

> I think in a healthier system then something like rehabilitation would be part of it, an earlier stage in the wrongdoing or misguidance you would be putting people back on the right track. Rather than punishing them when someone has died or been seriously injured, you would be getting there earlier and saying this is not great how you have things set up, you want to think about doing it a safer way. Guiding people back onto the path of righteousness a bit earlier, that would be a healthier system. (Legal practioner#1)

> The more the [anonymised] can be out there to inspect premises proactively and find issues before we have the accident, the more, hopefully, that we will be able to take action against those organisations to correct them… the proactive stuff would be the biggest change in the industry. Rather than penalising people, we would be trying to educate them and trying to catch things first and persuade people, rather than hitting them with big sticks when they did something wrong. (Government authority#1)

And as one participant pointed out, an educative approach can help employers emotionally connect to the effects of unsafe work practices.

> Maybe there is potential there to educate employers and corporations and large scale companies about the harm of the actions they are engaging in, and there is scope even to think about trying to emotionally connect with employers about what they are doing when they have unsafe workplaces. (NGO#8)

6.4.2 Rehabilitation does not work with criminal and compliant employers

Although, several participants believed that rehabilitation is ineffective against what some participants termed 'criminal' and 'compliant' employers. By criminal employers this refers to employers that are unlikely to refrain from committing safety crime even after being prosecuted.

> I think it depends on the safety criminal themselves, what they have actually done and what evidence is there before it has been taken to court. When John Monks was a general secretary of the Trades Union Congress in the UK he described employers in four different categories: the criminal, the clueless, the compliant, and the gold standard employers. You will never get the criminals to change their view, so rehabilitation probably will not apply to them. (NGO#4)

> … I think there is evidence that if you have been a bit of a health and safety offender you tend to go on doing that or you go out of business, and you have the very large companies, like we said, Corus, Tata, who have killed a whole number of people. So I am not sure about rehabilitation there. (NGO#2)

> … people who are effectively career criminals who are committing waste related offences. In either of those, many of our offenders are kind of regulars, they are the water and sewage undertakers. We would have loved to be able to rehabilitate them over time. I think it is fair to say we have not quite managed it though. (Government authority#6)

For one participant an example of a criminal employer is someone that will always pick the best financial option regardless of the health and safety outcome (thereby demonstrating the portrayal of safety criminals as cost-benefit actors with limited morality in section 6.2.2), such as employers in lower socioeconomic areas that are 'chasing the buck all the time' and do not want to 'have awareness of their health and safety obligations.'

> … some people would just see it [rehabilitation] as an easy thing to get through to the other side and I do not think it would affect them… some of the people that we have come across, it does not matter what you do for them, they will always pick the easiest or the best financial option over the moral or legal responsibility, every time. (Government authority#1)

> … perhaps in lower socioeconomic groups they are more willing to take on riskier work, perhaps the black economy, but also the employers in these areas tend to have less awareness or maybe absolutely no awareness of their health and safety obligations and would never want to have awareness of their health and safety obligations. They are just chasing the buck all the time. I think rehabilitation would never work for that category. (NGO#4)

And to suggest why rehabilitation might not work on criminal employers, one policing authority questioned the effectiveness of rehabilitation when it is used on persons who are breaking the law for legal reasons of achieving financial profit, rather than illegal reasons such as funding an illicit drug habit. As this participant asked, what are we rehabilitating safety criminals against?

> If someone is doing something dangerously and they are making money, for example if someone is doing roof work and there is a criminal element to it as well like fraud, they are getting up on someone's roof and doing a shoddy job and going on to the next one and not having the right safety equipment so they can make a quick buck, there is crime involved and fraud of elderly people, what are we really rehabilitating them against? They are not feeding a drugs habit. It is a bit less defined for safety crime, I think it is more about profit, more about cutting corners, doing things cheaply, than doing something for the criminal gain of getting that money to feed a habit. (Government authority#2)

In addition to criminal employers, rehabilitation may not work for employers that already believe they are meeting their obligations and feel as they do not need to do any more, termed compliant employers by one participant.

> … compliant employers, they just meet their obligations and no more. That is all they focus on, just meeting their obligations. If somebody who feels that they were meeting all of their legal obligations under the HSWA 1974 really thinks they should not be doing any more, I

> think rehabilitation might not be so good for them because they might find it hard to believe that they have ended up in court in the first place when they thought they were meeting what they had to do. (NGO#4)

6.5 Incapacitation prevents safety crime

For the final theme of this chapter and to further demonstrate the participants' mixed views on the effectiveness of the theories of punishment, seven participants argued that incapacitation is effective for preventing safety crime because it removes a safety criminal's capacity to commit safety crime, termed incapacitation of privilege in Chapter 3 section 3.2.4. However, nine participants disagreed with the effectiveness of incapacitation because it incurs various unintended consequences on employees and the community.

6.5.1 Incapacitation of privilege

Some of the participants argued that incapacitation is effective at removing a safety criminal's capacity to commit safety crime.

> It is that wider view of incapacitation as removing the capacity of the criminal actor to commit the crime... (Academic#2)

According to one academic, incapacitation is more effective against crimes of the powerful than crimes of the powerless, namely wealthy or successful safety criminals and lower socioeconomic street criminals respectively.

> It [incapacitation] is extremely important. Again, in 1982 we argued that incapacitation is a more powerful doctrine with crimes of the powerful rather than crimes of the powerless. I think in some ways even more so today. (Academic#2)

One reason that incapacitation might be more effective for safety criminals than street criminals is because safety criminals are vulnerable to a larger range of incapacitative penalties. For example, in addition to community sentences and custodial orders, one participant explained that disqualification orders can prevent individuals from directing companies.

> Incapacitation, in the more serious cases, I think that is significant because that is where you are talking about disqualifying people as directors so they are not able to set up again. (Legal practioner#1)

Another participant discussed how a care home can be prohibited from accepting new residents to prevent harm to further persons and to prioritise the health and safety of its current residents.

> The state can then say okay here is your deterrent penalty. You are prohibited from accepting any new residents. When one of your beds becomes empty, we are not going to let you fill it. That does not help the problem I just described because it actually selectively incapacitates them from hurting any new residents whilst also protecting the residents that are already there from the deadly effects of being moved, and thirdly it improves their situation because what the regulator is saying to them is you now have to concentrate all your resources on taking proper care of the residents you already have. We are not going to allow you to make new profits by taking new residents in until you get your whole act together and demonstrate to us that you are taking better care of the residents that you have. That will be more possible for you because you are not filling your beds as people die. (Academic#2)

As this academic suggested, a company's licence can be restricted or withdrawn in anticipation of dangerous operating procedures. This academic's suggestion of withdrawing a company's licence in anticipation that the company will commit safety crime demonstrates how selective incapacitation can be successfully used (for more information on selective incapacitation see Chapter 3 section 3.2.4).

> I am working with the Environmental Protection Agency in Victoria at the moment and they give ratings of storage of hazardous chemical sites. If there is a degree of sloppiness in their standard operating procedures for managing hazardous chemicals, even though they have not done any harm yet, their license can be withdrawn, the place can be shut down for those risk anticipation selective incapacitation reasons. (Academic#2)

And according to this participant, it is important that incapacitation 'is open to nuance' that can incapacitate a single part of a company.

> You want a theory of incapacitation that is open to that kind of nuance. You want a theory of incapacitation that says you might not want to close the whole factory but you might want to close a single production line. (Academic#2)

As one health and safety authority participant noted, prohibition notices are one method of selectively incapacitating a company's services.

> I would also say that actually that is sort of what we are doing already with our improvement notices and prohibition notices. You would go in and say actually this is so bad I need to serve you with a notice. A prohibition notice, I suppose, is a form of selection incapacitation. What you are saying is this is so dangerous what you are doing, you are not allowed to do it until you put things right. I suppose that is incapacitation. (Government authority#4)

Lastly, one participant suggested that incapacitation can be followed by rehabilitation because if a company is losing business they will be motivated to 'get back up and running again' and remedy the issue that led to the incapacitative penalty.

> Once the activity is stopped, particularly if they are losing business, they want to get back up and running again so the work will be done. (Government authority#2)

6.5.2 The unintended consequences of incapacitation

In contrast to some of the participants arguing for the effectiveness of incapacitation for safety criminals, other participants were concerned that the incapacitation of safety criminals can result in a range of unintended consequences on employees and the community. For instance, two participants pointed out that the incapacitation of companies might lead to employees losing their jobs.

> Incapacitation also raises the issue of who suffers, as the community loses income and workers lose jobs. (Academic#1)

> … it comes to the question of who was accountable within a company and who is getting harmed by it. If loads of people get made redundant because they were the ones that were ultimately responsible, with all of these it is very difficult. (NGO#9)

Another participant noted that the community might lose the services of an employer if a company with a public utility, such as a transport company, has its licence to operate withdrawn.

> If you withdraw the license of a transport company, say Network Rail, you say you have had too many incidents, who are you punishing there? If you take away their licence, would it just mean there are no trains then. (NGO#6)

And as one academic discussed in relation to healthcare, the incapacitation of a nursing home may increase the risk of safety crime or exacerbate the welfare of the nursing home's residents if these persons are forced to move to a new facility.

> … here is a very common dilemma, you find a big pattern of risk in the nursing home, in the healthcare facility. Understaffing, poor practices to protect staff and residences from Covid-19, a sloppy approach to catching people at the door to test their temperature. Nothing bad has happened, you do not have clear evidence of even any breach of any law, but you know there is a pattern of sloppiness, they are not recording what they are doing, they are not very well set up, they do not have the staff to do the job etc. You want to take some regulatory action against them. Or maybe it has been very serious and some people have died in this healthcare facility because of this pattern of sloppiness. You are tempted to shut the facility down to prevent further deaths. Usually that is a dumb thing to do because what the evidence shows is if you move very old and frail people that increases their morbidity and mortality. Because they are so very old and so very frail, the simple fact of uprooting them from their familiar surroundings, putting them in a new and unfamiliar room, they are more likely to have a fall and break their hip because they are not in touch with their new surroundings and all sorts of other things. Unsettled anxiety and so on. More of them die more quickly more painfully. So that is why you generally want to be very reluctant to close the facility and just put old people out on the street for a while in a condition of uncertainty until you find them a new bed, usually in circumstances where beds are in shorter supply. You may have to put them in a bed hundreds of miles away from their relatives, and that is very bad for their health as well. You need to keep them connected to their families to have a good end of life experience. (Academic#2)

6.6 Summary

To conclude the thematic analysis of the participants' opinions on research question two 'which theories are effective at punishing safety criminals and why are they effective', the participants had mixed views on the effectiveness of deterrence, retributive justice, rehabilitation, and incapacitation because the majority of the participants discussed both the advantages and disadvantages of each theory. The participants' mixed views also means that no discernible pattern was identified between the participant groups, including the government authority and NGO participants, and the effectiveness of the theories of punishment.

Most of the participants argued that safety criminals can be deterred from committing safety crime largely because safety criminals fear prosecution, and because deterrence is more effective for safety criminals than street criminals because safety criminals are more likely to have the resources to rationally consider the factors of deterrence. However, half of the participants recognised that deterrence is ineffective against persons that do not consider the factors of deterrence because they are unaware that they are at risk of being punished, and even if persons are aware of these factors of deterrence, safety crime penalties are not effective enough to achieve a deterrent effect (see Chapter 7 section 7.2 for further discussion on whether safety crime penalties achieve deterrence). In addition to deterrence, over half of the participants stated that retributive justice is effective for punishing safety criminals and ensuring that penalties fit the crime. Although, half of the participants disagreed with the effectiveness of retributive justice because they disliked the principle of retribution which can be perceived as revenge, and because tougher penalties do not make workplaces safer. Next, a majority of participants supported rehabilitation precisely because it educates safety criminals and makes workplaces safer, but 13 participants suggested that rehabilitation is ineffective against criminal employers that continue committing safety crime after being prosecuted and compliant employers that believe they are meeting their obligations and do not need to be rehabilitated. Last, some of the participants argued that incapacitation is effective for preventing safety crime by removing a safety criminal's capacity to commit safety crime, termed incapacitation of privilege in Chapter 3 section 3.2.4. However, other participants remarked on the unintended consequences of incapacitating safety criminals, namely the incapacitation of companies leading to employees losing their jobs, the community losing the services of an employer, and in some sectors of employment such as healthcare, incapacitation may further endanger a company's residents.

To sum up, the participants argued that each theory of punishment is effective in varying degrees. Whereas the effectiveness of rehabilitation depends on who is being punished, the effectiveness of deterrence, retributive justice, and incapacitation largely depends on the penalties used to achieve these theories. Therefore, the next chapter reports the participants' views on how safety crime penalties can be used to effectively achieve the theories of punishment, such as which penalties deter safety criminals and which incapacitative penalties have the least unintended consequences.

Chapter 7

Envisaging effective penalties for safety criminals

7.1 Introduction

This third and final thematic analysis results chapter presents the themes and subthemes that were constructed from the participants' views on research question three: 'how can penalties be used to effectively punish safety criminals?' In answering this research question this chapter revisits the effectiveness of the theories of deterrence, retributive justice, rehabilitation, and incapacitation in relation to the specific penalties that achieve these theories. The interview guide (see Appendix 4) was designed to ask the participants about the effectiveness of the different penalties for achieving their most relevant theory of punishment. For example, the participants were asked if fines are effective at achieving retributive justice and deterrence, if remedial orders are effective at achieving rehabilitation, and if custodial sentences are effective at incapacitating safety criminals. The participants were asked a mixture of questions relating to the different penalties so that an even spread of data was collected. Due to time constraints on the interviews the interview guide prioritised fines because these penalties represent the most common penalty issued by the courts, as seen in Chapter 3 section 3.4.1, and community sentences were also prioritised because I wanted to explore their effectiveness at achieving the theories of criminal punishment.

The participants had mixed views on the effectiveness of most of the penalties for punishing safety criminals, and no discernible pattern was identified between the participant groups, including the government authority and NGO participants, and their opinions on the effectiveness of the various penalties. To illustrate the participants' views, Figure 7.1 displays four themes that were created from the participants' data. First, the participants argued that fines need to be larger and shaming needs to be publicised more to have a financial impact on companies and to achieve retributive justice and deterrence. Second, many of the participants advocated for penalties that repair safety crime harm and make communities safer because this achieves rehabilitation. Third, according to the participants more resources are needed to underpin incapacitation to make it easier to imprison safety criminals, to enforce disqualification orders, and to increase the incapacitative capability of community sentences. Lastly, the participants implied that penalties would be more effective if they avoided the unintended consequences of fining organisations and incapacitating individual safety criminals.

Figure 7.1: Four themes and their subthemes created from the participants' data in response to research question three.

7.2 Having a financial impact on companies

The participants were asked whether fines and publicity orders are effective at achieving retributive justice and deterrence for safety criminals, resulting in the participants having mixed opinions on the effectiveness of these penalties. Although the participants argued that fines and publicity orders can achieve retribution and deterrence, fines need to be larger to have a financial impact on large organisations (i.e. organisations with a turnover or equivalent of £50 million and over, as per the Sentencing Council (2016) guidelines) to change their behaviour, and publicity orders need to be publicised more to ensure that stigmatic shaming leads to a financial impact on companies.

7.2.1 Fines need to be larger

Beginning with the most widely used penalty for safety crime (HSE 2021a), the participants were asked 'to what extent do you feel that fines are effective at achieving retribution and deterrence for safety criminals', leading to 16 of the participants agreeing that fines are effective at achieving these theories. According to most of the participants large fines are effective deterrents because they 'send shockwaves through boardrooms of similar companies' and encourage company directors to take safety more seriously.

> Clearly a significant fine to the [anonymised] policing budget would be a big deterrent.

(Government authority#3)

It [large fines] might encourage the board of directors to say goodness me this has affected our bottom line; we must take safety seriously… (NGO#6)

I think when big fines are publicised I think that does worry the boardroom. So when Chevron and Valero Energy were fined five million pounds recently for killing four workers in an oil refinery in Pembrokeshire, that will send shockwaves through boardrooms of similar companies, but I think most often it sends the sort of shockwave that says how do we insure against this, not Christ how can we stop killing people so we are never in that position. (NGO#2)

As three of the participants explained, fines are seen as effective at punishing and deterring companies because corporations care more about fines than other penalties and because companies are only vulnerable to financial impacts.

Fines hurt organisations because that is what they care about more. (NGO#2)

… you cannot put a company in prison so the only other remit you have for them is to financially penalise them and hurt them in the pocket, which is something every business will understand the impact of. I think that is a message and a method that probably hits them the best and they understand the best. You can tell that to directors and at director level you can understand very easily how much money that is going to cost to have these incidents. I think that is the thing that will make them change their behaviour more than anything else. (Government authority#1)

In reality all you can have is the economic impact on an organisation's ability, and that will always be proportionate to the economic resilience to that organisation. (NGO#5)

And as one participant pointed out, fines can have a deterrent effect on a company's managers if they are at risk of being removed by the company's shareholders.

These kind of fines would have a deterrent effect because it would start to question the management at the highest level and if shareholders lose out, if the shareholders were

> finding out that their investment was going down the tubes because people in the corporation are being negligent, then they would be removed and they will get people in who will sort the problem out. To me that would be an effective deterrent. Not just for the corporation but for the people that manage the business of the company. There is no hiding place basically, shareholders will be saying to them no you will be out. (NGO#4)

Furthermore, some of the participants stated that the introduction of the Sentencing Council guidelines on health and safety offences (for more information on these guidelines see Chapter 3 section 3.4.1) in February 2016 have resulted in larger fines and more deterrence for safety criminals, particularly for small and medium sized businesses that have less resources than large organisations.

> The fines are bigger than they used to be, much bigger, the Sentencing Council guidelines have had that effect… (NGO#2)

> I think fines are getting better in Northern Ireland and in the UK, more significant and more of a deterrent… we are now following closer to the English sentencing guidelines, the judges are trying to follow that. We are seeing a significant improvement; we are now fining £80,000 plus in the last two years, not all of our fines but a lot of them. That is a much more significant deterrent to the industry I think. If you are taking £100,000 plus out of a business for safety offences, I think that makes people realise the consequences outside of the moral consequences to their employees, but the financial impact it could have on a lot of small or medium businesses as well, because the UK runs a lot of them small businesses rather than large organisations that have a lot of resources. (Government authority#1)

For instance, one participant who works for health and safety authority asserted that larger fines are having a deterrent effect because more companies are contesting fines in court (thereby contributing to the difficulty of convicting safety criminals subtheme in Chapter 5 section 5.4), whereas when fines were smaller companies were more likely to plead guilty and pay the fine.

> I think the fact that we have had some quite large fines imposed and the publicity that has gathered, I think they are achieving a deterrent effect, certainly it is anecdotal because I did not prosecute before the sentencing guidelines, but what we are seeing as an organisation is companies fighting much harder when we prosecute. Previously they would have been more

> inclined to plead guilty because they knew the fine they were going to get was not necessarily going to be that high and therefore it was easier to just plead guilty and pay the fine. Now they fight. (Government authority#4)

In addition to retribution and deterrence, one participant who works for a social justice law firm believed that fines can also achieve incapacitation if companies are fined into insolvency.

> I worked on a case 15 years ago, two firefighters died and the owners of the factory were prosecuted individually and also as a corporate entity. One of the inventive things the judge did in that was, the assets of the company had been frozen, the judge levied a fine against the company, the owners were in prison and the company was fined just enough to put it in insolvency because the judge worked out that the insolvency regulators would be able to come in and open up the books in a way that the owners would not have allowed. In terms of incapacitation I thought that was quite a useful manoeuvre. (Legal practitioner#1)

Although, two participants argued that fines do not achieve incapacitation because the courts try not to impose fines that put companies out of business.

> There is no other punishment you can give other than a fine and that does not incapacitate them in general, unless you are putting them out of business, yes that is one way of incapacitating. But applying the sentencing guidelines, in general you would not be putting someone out of business because the courts will try not to impose a sentence that will have that effect in general. (Government authority#4)

> … there was a case some years ago where the judgement was sometimes the fine against a company should be sufficient to put it out of business if the crime was sufficient, but in practice that is not terribly much used… (NGO#2)

Despite many of the participants arguing in favour of fines, 17 participants stated that most fines as they are currently used are not effective at achieving deterrence and retribution for large corporate safety criminals. Just as one participant stated that fines are only effective at achieving retribution and deterrence if they are significant enough to have a financial impact on companies, numerous participants agreed that fines are usually too small and do not have a large enough financial impact on large organisations to change their behaviour.

> I think they [fines] are [effective at achieving retribution and deterrence] as long as they are significant and they have an impact on the business. (Government authority#1)

> Generally, they [fines] are relatively small amounts for businesses the sort of size we are talking about… it seemed relatively small amounts for the seriousness of the behaviour involved. (Government authority#3)

> For a large organisation a fine is a gnat bite. (NGO#5)

> … fines, I would imagine, would generally be interpreted as being not as satisfactory in terms of feeling that justice has been done for retribution and deterrence. (NGO#9)

As one participant noted, if fines achieved deterrence then why are there serial killers that continue committing safety crime after they have been punished.

> British Steel, which became Corus which became Tata, that killed god knows how many people and injured god knows how many people over the past decades and keep being fined very large amounts but keep on killing people, and there are a range of different waste companies that are similar. So if deterrence were such a big thing then you would look at some of those serial killers and look at why they keep on doing that when they have actually directly been punished. (NGO#2)

For example, one participant highlighted that Transco's £15 million fine 'is peanuts' compared to its £2.215 billion turnover in 2004/05 (Health and Safety Commission 2006; National Grid Transco 2022), resulting in a unit fine of 0.68%.

> That might sound like a lot of money but if you saw what Transco's profits were that year, it is peanuts. Less than 1% or something… is that a deterrent for a company that size? (NGO#4)

And one participant who works for a health and safety authority argued that a £25,000 fine for leaving somebody disabled for the rest of their life is a very disheartening message to industry in terms of attempting to achieve deterrence.

> Recent history in Northern Ireland, there are a lot of times in our cases that we found in the last ten and twenty years where we bring things to the court system and it goes to trial, somebody gets a £25,000 fine for taking off somebody's arm or leaving somebody disabled for the rest of their life, that is very disheartening and that is not a message that is good for the industry at all. (Government authority#1)

To ameliorate the criticism that most fines are too small to achieve retribution and deterrence for large organisations, just over half of the participants were in favour of setting fines as a percentage of a company's annual turnover so that fines are larger and relatively the same for each safety criminal, termed unit fines in Chapter 3 section 3.4.2.

> I am happy for an organisation that can afford it to pay the right kind of fine, and obviously it really should be designed according to how big and successful the company is. (NGO#3)

> I guess any kind of mechanism that pegs the fine amount to a corporation's ability to pay is probably more effective than having a flat rate fine, so that small, medium, and large sized employers are all paying the same amount… (NGO#8)

> I do think it is important that the penalties that are imposed are provisionally substantial to attract the attention of senior staff in the organisation. I can see that linking penalties to turnover would have that positive effect. (Government authority#5)

And one participant highlighted that another advantage of unit fines is that they can also be calibrated to avoid putting companies out of business.

> I suppose it [unit fines] means you are not putting people out of business, which is probably appropriate. (Member of Parliament#1)

The participants had different views of the appropriate range of unit fines, ranging from 5% to 100% of a company's annual turnover, with the most common upper limit being 30%.

> Five percent to thirty percent would definitely be more effective… (Academic#1)

> I think 20% is the lowest one and 30% the highest. I actually think that works out well

> because companies that unfortunately are not making money would pay less but they should still have to pay a substantial part of that if they have been found guilty of a safety crime. (NGO#4)

> If the health and safety offence was fundamental to the organisation's operation, I do not see why the fine should not be 100% of turnover. If you were thinking of Grenfell and thinking of some of the behaviours of the cladding firms involved in that, effectively it appears they were engaged in a criminal conspiracy to provide material that in their knowledge was unsafe for the purposes that it was being put. [anonymised company] not all of their business was criminal conspiracy, but to the extent that it was and there was no reason it would not have been if their company was a bit more specialised, then why should they not be just put out of business by a fine when their offences come to light. (Legal practitioner#1)

Although, some of the participants remarked that companies can hide their financial records and make it difficult to ascertain their financial standing to reach an appropriate fine.

> … the point about the sentencing guidelines is that it is based on turnover and our criticism is frequently the HSE does not have sufficient forensic accounting capacity to ensure that they have got the full picture. I think companies are quite good at hiding things, and companies are very good at pretending that a branch organisation that is part of a bigger company is actually a unit on its own, and so that will obviously reduce the fines. (NGO#2)

> … we all understand clever accountants can spend money, move money, and things like that, and make companies seem like they are not doing as well as maybe they are. (Government authority#1)

As one participant argued, forensic accounting is therefore required to ensure that the whole financial picture of companies can be guaranteed.

> We have to look at the link between the level of the fine imposed and company turnover… there has to be sort some of forensic accounting of corporations as part of the sentencing process to ensure that the whole financial picture of the offender could be guaranteed in relation to the fine imposed. (NGO#4)

As well as unit fines, nearly half of the participants suggested that another way to increase fines is to subtract from the shares of a company instead of its running costs and to sell this equity to reach the desired monetary penalty, termed equity fines in Chapter 3 section 3.4.3. As one academic pointed out, equity fines can result in more significant fines than fines in dollars or pounds sterling, particularly if the offender is a large publicly traded company.

> I think the maximum [fine] would be an equity fine rather than a fine in units that convert to dollars, because when you want a really high penalty it is best for the state to take 10% of the shares of the company or whatever. If it is a publicly traded company that is going to be a stupendous amount of money, compared to any fine we are talking about in current discourse. (Academic#2)

> I suppose companies might not love it either. If what we are looking to do is deterrence, then it [equity fines] may well be a deterrent. (Government authority#4)

As two of the participants argued, equity fines are effective at achieving deterrence and retribution because this form of fining targets the company's shareholders and control over the company in a way unlike other fines and penalties. As one academic stated, shareholder immunity needs to be targeted.

> Equity fines, where a company's shares are put in a trust fund, this form of punishment targets the company's shares and investors. This is important because we never think about punishing those who profit from safety crime, as shareholders are protected by limited liability… the advantage of equity fines is that it shifts the way we see accountability onto shareholders. The point of private corporations is to provide rights and relative impunity to shareholders. The logic of shareholders impunity is what we need to deal with. (Academic#1)

> … if you are taking a percentage of shares out of a company, taking that away from the owners of it, then obviously that has a big impact on them, they are losing money, they are losing part control of their organisation. I can see how that could certainly be an effective deterrent. (Government authority#1)

And by targeting a company's shares instead of its running costs this decreases the risk of unintended consequences such as employee layoffs, as discussed in section 7.5.1.

> They [equity fines] also give more power to the courts to direct who pays… equity fines deal with the problem of corporate autonomy over the production of costs and who bears the costs… (Academic#1)

Furthermore, one participant argued that before selling a company's equity the state can transfer this equity to the HSE to rehabilitate the company by introducing new managers 'to sort health and safety problems out', and the extent that the company cooperatives with any rehabilitative reforms can correspond to the company reclaiming part of its equity.

> Not only does it financially punish the company, but it actually passes control of some of the company's shares to the state. We think that could potentially be linked to rehabilitation… where basically people are put in to manage the company and the control is taken away from the day to day board… we suggest that the HSE could do it, an arm of the HSE that would take on that role to sort health and safety problems out. Equity fines are fair enough but the shares would have to be handed back at some point. But I think if the company was to agree to be part of the rehabilitation process or a sort of justice then potentially that equity could be restored to the company far quicker than it would be if they refused to take part in any such procedure. (NGO#4)

However, some of the participants discussed the management issues of the state owning part of a company's equity, such as which part of government would hold the company's shares and the resources needed to manage the company's equity.

> I think the administration is going to be pretty complicated. Who in government would hold the shares? (NGO#1)

> I would be massively concerned about the state's ability to do that, the resources that it would take and whether it was an effective use of those resources. I still instinctively do not love this, I think it is going to be a lot of work, I am not sure it would be the most effective way to do stuff. (Government authority#4)

One health and safety authority participant was concerned that there may be a conflict of interest between the state owning part of a company's equity and the state's role of regulating and assessing when or if companies reclaim their equity, as the state might be criticised for holding onto equity for financial gain.

> I think there would be some difficulty down the line because if we are owning part of an organisation, the government or the [anonymised], whoever takes the shares to begin with, then we are doing the assessment of how well they perform to get the shares back. I would say that would open you up to a lot of criticism if they do not get the shares back, that we are trying to hold onto things for financial gain or whatever it might be. My concern would be there would be a lot of conflicts there in relation to owning it and then assessing them, inspecting them, and enforcing on them… there would be a lot of legal scrutiny because there is no independence then if we are the regulator and then assessing them whether to give them their stuff back. (Government authority#1)

And as another participant highlighted, it might be difficult and take a long time to sell a company's equity, particularly if the company is losing money, and the state might not want to own the shares of some companies if the company belongs to an industry the state does not want to involve itself with, such as a tobacco company.

> The equity fine can get a bit complicated for all sorts of reasons, the company might be losing money, even if they were not before they might certainly… it might be in an industry that the state might not want a huge amount to do with, like a tobacco company or something. I would have thought, whilst it is a nice idea, the government is not best off earning shares in companies. They have been trying to get rid of the Lloyds ones for some time. (Government authority#3)

Lastly and alongside fines in the magistrates' and Crown Court, four of the participants were strongly in favour of a type of civil fine that aims to financially penalise a wider range of safety criminals rather than increase the size of fines. These civil fines, termed Monetary Administrative Penalties (MAPs) by Macrory (2006), can be issued on-the-spot rather than through the courts and have been implemented by the Environment Agency ranging from £100 (Gov.uk 2022b) to £250,000 (Gov.uk 2022c). As one participant argued, there needs to be more interaction between civil and criminal sanctions to find effective financial solutions to punishing safety criminals, thereby implying that

MAPs are effective for achieving retribution and deterrence.

> The rapid realisation was that without the assistance of civil remedies you could not really do very much… the interaction between civil and criminal remedies is vital. At the moment we are hugely exposed because we do not have a strong interaction between those things. There are not civil remedies that are really well developed… but the reality is if you want to find the financial solution to this, you need to have civil powers… (NGO#5)

For these participants MAPs represent an intermediate penalty between cautions and criminal fines that complement the former, financially penalise a wider range of safety criminals in which cautions were having no effect, and save more serious or complex cases for the courts.

> There is serious offending that deserves to be addressed but we simply were not getting any traction on offenders simply by warning them. You could give these warnings out like confetti and it would make no difference whatsoever. The theory is by virtue of having a set of civil sanctions that you can deploy that would ordinarily complement the possibility of prosecuting for the most serious offences, and you could reach lower into your pyramid into those offenders for whom prosecution perhaps was not an appropriate response at this stage but you really needed to get the attention of if you are ever going to change their behaviour… we have come to believe that having a much wider range of options as to how you deal with offences is a really good thing and that you should be saving the serious and complex or difficult or significant matters for the court. (Government authority#6)

> … if say a company was a first time offender, equipment is broken down but the consequences are serious enough you cannot just walk away with a warning, but a criminal prosecution was really not warranted, there should be something in the middle. We call them civil sanctions… I think what they were finding, which I hope, was that the civil sanctions are better than a caution as it does involve the industry being penalised financially for their non-compliance, which of course a caution does not do. (Academic#3)

And as two of the participants pointed out, because MAPs do not rely on the court system they are quicker and easier to administer than criminal fines.

> It [civil fines] gives them [enforcement agencies] an ability to impose their own fines without

> going through the courts system… (Government authority#4)

> What it showed is for the authority that was using administrative sanctions, they took double the amount of enforcement action than the one that was only using criminal. The procedures were much quicker even if you included the appeals procedures to court. (Academic#3)

However, one participant, emeritus Professor Richard Macrory (2006) who recommended MAPs to the Cabinet Office in *Regulatory Justice: Making Sanctions Effective* in 2006, observed that the HSE showed no interest in using MAPs – alongside Macrory's other recommendation of enforceable undertakings in section 7.3.1 – and this demonstrates the lack of political will to impose criminal (or in this case civil) liability on safety criminals (as reported in Chapter 5 section 5.4.3). One reason for this lack of political will to use MAPs, according to Macrory, is that some stakeholders perceived punishment as synonymous with the criminal law and that criminal fines carry a shaming effect unlike civil fines. As another participant noted, there is a perception that civil fines are not as weighty as criminal fines.

> … these health and safety stakeholder groups, they wanted to punish basically. To them punishment meant the criminal law, not even the imposition of a civil penalty. They felt there is a shaming effect with the criminal law, which there undoubtedly is. (Academic#3)

> People will say civil is not as weighty as criminal… (NGO#9)

7.2.2 Publicising shaming

In addition to fines 15 participants asserted that publicity orders are effective at achieving retribution and deterrence for organisations. Publicity orders aim to stigmatise companies by publicising their illegal conduct, conviction, and the punishments involved to reduce their reputation and popularity (for more information on publicity orders see Chapter 3 section 3.4.4).

> There are a lot of potential avenues for sentences that could be imposed by the courts that might be more of a deterrence, such as corporate probation and publicity orders… (NGO#4)

> A potent deterrent effect if they had to take out a full page in the national newspaper to

> explain what they have done wrong and what they propose to do to put things right as their immediate campaign, signed by all directors of the company. (NGO#6)

A common view amongst the participants was that publicity orders are an effective deterrent because companies care about their reputation and publicity orders can damage this reputation and embarrass safety criminals by presenting them as not at the 'top of their game'.

> I think in large organisations, public bodies like councils and things like that, large construction companies, those kinds of players, reputation is massive to them and they do not like being embarrassed or people thinking they are not top of their game. So I think for those organisations it would definitely be an issue for them, a significant factor to consider, they will not like that. (Government authority#1)

> For large organisations reputation harm is one of the main things they are concerned with. Anything that damages the brand, so publicity orders, I am surprised we have not used them more than twenty years ago. (NGO#6)

> Brent Fisse and I, particularly Brent, have been the longest standing advocates of that [publicity orders]. He published an article on that in the sixties, and we published a book together in 1983 called The Impact of Publicity on Corporate Offenders… we argued strongly for adverse publicity orders in that book, and I still think it is an important option to have in the enforcement mix. (Academic#2)

And as two of the participants explained, by negatively affecting a company's reputation and popularity this can affect the company's sales and profits.

> Publicity I think is as equally as effective as punitive punishments i.e. custodial sentences or fines because it affects profit. In this day and age where someone can post something on social media and it is airborne, it has gone viral in minutes or hours, that is huge. (Government authority#2)

> Shaming can contribute to deterring other people, even if it does not deter them. It does deter them because it may impact on their ability to get more business. (NGO#9)

For instance, one government authority participant described how a significant crash at one theme park resulted in negatively publicity and this likely contributed to fewer customers and the company's insolvency.

> Anecdotally, there are some businesses where you can see the publicity will massively dent their business, and it does. If you think about attractions for example, or places people might take their children, so many parents are not going to take their children to somewhere another child has died, they are just not going to do it… just it being out there in the public domain that they have been prosecuted has had a massive dent on their business, and they will be so worried about that. There is a theme park which has recently gone into administration, that is public knowledge that they have gone into administration and they also had an incident and it may well be that that incident played a part… (Government authority#4)

Although, some of the participants argued that publicity orders are not effective at achieving retribution and deterrence. Not only did one academic highlight the infrequent use of publicity orders because regulatory agencies tend to use other penalties – such as fines as seen in Chapter 3 section 3.4.1 – and lack innovation.

> I think regulatory agencies are very habit following and cautious organisations. If they have a pattern of using a certain kind of penalty they tend to stick to that pattern. They tend to not be as innovative as they should be. This has been a very big reason why things like adverse publicity orders have been used so infrequently anywhere really, because the regulator says oh we have never done that before, I would be sticking my neck out being the first person to get one of those happening. (Academic#2)

But one participant pointed out that publicity orders are only effective if they lead to an economic impact on the company.

> There might be a reputation impact but the reputation impact is only really significant if it has an economic dimension to it. (NGO#5)

And as one government authority participant stated, if publicity orders have limited visibility to customers and competitors this reduces the penalty's importance, or in other words, its

effectiveness at financially impacting companies.

> I think it is limited to where that information gets out, whether it comes from the HSE websites, some industry's safety magazine, and stuff like that, it is not that widely seen. How many competitors and customers will actually see if they had been fined or done something wrong or convicted of doing something wrong from a safety point of view. It has a limited amount of visibility which probably reduces its importance. (Government authority#1)

Lastly and similar to the stigmatic shaming of publicity orders, one academic suggested that stigmatic shaming can be achieved by community sentences, although the participant was unsure on the effectiveness of this level of shaming as it may be more effective for senior executives than employees.

> I am not opposed to community sentences. I am not sure how effective this level of shaming is. It is more effective for boardroom offenders than employees. (Academic#1)

And for another participant disqualification orders can leave 'a powerful mark' on offenders that care about their curriculum vitae, thereby suggesting that this penalty may also result in stigmatic shaming. This combination of stigmatic shaming in community sentences and disqualification orders was not suggested by the other participants and Chapter 8 explores the use of shaming in these penalties in further detail.

> … I gave the example of the care home where I pressed for and felt it was necessary to protect everybody to have someone barred. Particularly in industry where people are very jealous about their curriculum vitae, I think a disqualification order against someone is quite a powerful mark. (NGO#6)

7.3 Repairing safety crime harm and making communities safer

Nearly all of the participants were in favour of penalties that repair safety crime harm and make communities safer because this is effective for achieving rehabilitation, although the participants noted several disadvantages of rehabilitative penalties. This includes community sentences, restorative justice, enforceable undertakings, and fines that supports the victims of safety crime, remedial orders that remedy safety crime harm, and mentoring schemes that train and educate

safety criminals on how to avoid safety crime.

7.3.1 Supporting the victims of safety crime

The majority of the participants argued that penalties that support the victims of safety crime, including individuals and the community more broadly, are effective for making communities safer and achieving rehabilitation. This can include community sentences (for more information on community sentences see Chapter 3 section 3.4.10), however the participants discussed types of community sentences that are not currently used in England and Wales. As one member of Parliament noted, community sentences involving waste removal for example do not usually reflect the safety criminal's previous employment, such as senior manager or director, and community sentences could better reflect the individual's skillset.

> Community sentencing, often the work that somebody is given does not reflect what their previous employment has been. The rehabilitative skills they have could be used in a better way. To have a system that recognised that would be good. (Member of Parliament#2)

For example, several participants suggested that managers and directors should use their specialism to support the community by increasing their own and other organisations' health and safety standards or management practices.

> I think if you have people with a lot of skills and a lot of social capital, they are likely to be people like that if they are heading up large companies, really squeezing them to make a social contribution is much better than traditional community service, because you probably get more buy in from them and they would do more good. A key thing you could do in a community order is make them ensure that their company and other companies were much more sensitive to issues of safety offending… I think community orders are flexible enough as things stand that you could structure community orders to do the sorts of things we are talking about. (NGO#1)

> I like the idea of them being encouraged to do outreach work if they have specialism. (NGO#7)

> … we see there potentially being an opportunity to use the skills of a director, whether it

> was to help charitable organisations… it is not just charity shops, there are a lot of charities involved in recycling and things like that, potentially quite hazardous processes... if they could perhaps work with charities to help them manage, it does not just have to be health and safety management practices, it could be anything. It is actually giving back something to society, which is obviously what community sentences are all about. (NGO#4)

And as one academic proposed, a community sentence could be calibrated to the safety criminal's niche skillset, such as ordering the executives of a company that produced fraudulent Covid-19 tests to check the reliability and validity testing of other Covid-19 test manufacturers.

> You have someone who puts on the market a testing kit that is in fact dodgy. It is fraudulent. It does not work reliably. They have not done the testing on the reliability of the product. They may have fudged their data. But they nevertheless have the capability to do it well, precisely because they have done so well at fraudulently producing Covid-19 testing kits… if that is the fact of the situation, you might say to them, what we want you to do is find all of your competitors who are doing the same thing. Do the reliability and validity testing of their test kits to prove their products are also defective and do not work and do not give you reliable outcomes on whether you have Covid-19 or not. That is very relevant. It is like that with complex technological crime. Those who are in the industry are the people with the competence with the best research and development on certain kinds of technical problem solving. Thinking about how you will calibrate community orders is much more important. (Academic#2)

In addition to supporting the community, some of the participants believed that community work has positives effects on people.

> I do think community work has positive effects for people… (NGO#8)

For instance, one participant suggested that community work can help individual safety criminals better understand the hazards their employees face, as well as the financial and emotional impact that results from safety crime (thereby contributing to educating safety criminals, see section 7.3.3).

> If a director had to work in an environment where previously they thought everything was fine and people worked like that, but they had to step down and see the pitfalls and the

> hazards and stuff like that that their employees are exposed to, I think that might be a good way of teaching them. I also think if say people have been left disabled, maybe working in charities where they have to see what peoples families have to go through when people have been left disabled from falls of height issues and the financial and emotional impact that has on families. I think maybe working in those environments might help push some messages onto them. I think that certainly would be a good thing… (Government authority#1)

And another participant pointed out that by looking after the community safety criminals can increase their own reputation and portray themselves as a good employer, thereby achieving reintegrative shaming (see Chapter 3 section 3.2.3 for more detail on reintegrative shaming).

> If you decided you were going to look after a community, you as an employer would make sure that the hazards across the life course, whether it is in the home, on the road, or during leisure, you would help share those messages, you would have an excellent reputation within that community and you would be seen as the employer of choice. There are all sorts of ways you could work with that population, including community service type approaches where you give back to the community and build connections with the community. I think that is a really interesting idea. (NGO#7)

However, not only did one participant highlight the difficulty of convicting individuals with a community sentence because lawyers can deflect the sentence from those responsible (thereby demonstrating the difficulty of convicting safety criminals in Chapter 5 section 5.4).

> I think there are enough smart people and plenty of smart lawyers who can probably deflect it [the community sentence] from the people who possibly are ultimately going to sign off on things. (NGO#5)

But some of the participants doubted that community sentences are tied to the criminal justice system's aim of achieving the four theories of punishment or lowering crime.

> I do not think they [community sentences] are effective at all at achieving any of the four aims of punishment. I do think community work has positive effects for people, but it is not necessarily tied to a criminal justice system's aim of lowering crime... (NGO#8)

For example, two of the participants argued that by increasing the rehabilitative aspect of community sentences this makes them too pleasant or too lenient and reduces the penalty's retributive element.

> … with community service, the current concept you are not just meant to be servicing the community, partly there is a punitive element to it I am sure, it is meant to be not very pleasant… if you are working for a charity you are taking that [punitive] element away… I think the danger is if you make it too pleasant, in a sense actually quite interesting to go to work for a charity, then you do lose that element of you have broken the criminal law and there should be a slight element that this is not going to be that pleasant for you. (Academic#3)

> Community sentence, some people might say it sounds too lenient. Some people might say I would love to do waste removal and get this position for it. They did a corporate crime, is that a reward or a punishment. (NGO#9)

As one participant remarked, community sentences might create a two-tier system of punishment whereby safety criminals advise charities and undergo likewise rehabilitative work whereas street criminals pick up litter.

> I think it [community sentences] creates a two tier system of punishment though, company directors get to advise grass root charities on their bookkeeping practices, but ordinary street convicted people have to pick up litter for a month. So in our punishment system we are just reflecting the social hierarchies and inequalities that we have in our society. (NGO#8)

And another participant argued that the public and victims in particular may be intolerant to seeing serious safety criminals punished with a community sentence.

> I guess there is an issue about public tolerance, if the offence in question is a pretty serious one and the officers of the company got a community order to get out the message of safety crime, some people might be pretty horrified, some victims might be very aggrieved. (NGO#1)

As well as some of the participants arguing that community sentences lack retribution, one government authority participant believed that community sentences send a weak message to industry that fails to deter persons from risk taking, as safety criminals may see it as worth the risk of getting a community sentence if they make money from safety crime.

> … when we do see especially gas engineers getting community service as a sentence, that seems to be very weak, it is not a good message to go out to the wider industries, specifically that industry. I think people would see it as worth taking the risk to get a community service and making the money in the way they would from illegal gas work. I do not see it as a particularly effective deterrent… unless it is an extremely low level offence, I do not see community sentences as being a deterrent to anybody. (Government authority#1)

Also, other participants were aware that extra administrative resources and funding will be required to increase and monitor the rehabilitative aspect of community sentences.

> The problem with community rehabilitation is there are not enough resources that goes into it, there is not enough funding, it is not supported in the same way that there is money for prisons. There is not nearly enough for community rehabilitation orders and community sentences. There would need to be more investment and a more tailored system which looks at something which could be sensible and a better system of what we have, but we need increased resources to deliver something like that. (Member of Parliament#2)

> I think the challenge always with community sentences is that as soon as you try and specialise them they become more expensive for the provider to run. At the moment you got a kind of off the shelf tick box where everyone does the same, which per person becomes cheaper. (NGO#3)

Alongside community sentences, two of the participants suggested that restorative justice can be used to help safety criminals make amends with their victims in terms of understanding the victim's point of view, the impact of safety crime, and what they can do to help the victim (for more information on restorative justice see Chapter 3 section 3.2.3).

> What about restorative justice in relation to this? It seems to me it would be very good, and

> you can do restorative justice as part of a community sentence. At the end of the day this behaviour change is more likely to be achieved through restorative justice than anything else. Well there are other ways, but within the criminal justice sanction envelope, restorative justice seems to be very promising for this kind of crime. So that would involve the perpetrator having an engagement with either the actual victim or victims of that health and safety lapse, and a hearing from the victim's point of view of the impact on them and their family and community, and creating a plan with the victim to make amends. As part of that plan it might involve the things you were talking about, in terms of working for victims, I am a big believer in restorative justice and I think this would suit it very well. (NGO#3)

> But in many ways safety crimes are the sort of crimes where different dimensions of restorative justice can be hugely helpful. People want to know why and how something happened and they want to know who is responsible and what is going on… you can imagine the director has to engage with his own organisation, to go down to the factory floor to look at safety standards etc and be engaged directly, to understand that and to have conversations with the work force to know what it is to do the job. There are so many people who do not actually go to the floor, they do not understand in personal terms what is going on. (NGO#5)

And as one of these participants noted, restorative justice can focus the entirety of a company towards supporting the victim.

> This is why in some ways it is probably easier for a corporate entity to be held in a restorative justice approach because you can bend the entirety of the company towards change. If you look at the more positive dimensions, especially within environmental law, that kind of approach which bends the corporate mission and purpose towards something positive, that has been more effective than trying to put the nebulous artificial person in the dock. (NGO#5)

Two of the participants discussed how restorative justice has been successfully used in relation to financial crime, as one academic described how restorative justice had a dramatic effect on one chief executive who set up a compensation scheme for the victims of fraud and sacked the guilty salesperson.

> There is an extraordinary case, a large national insurance company in Australia found a lot of their salesperson had been overselling policies without explaining the exclusions, they were probably on a commission rate. The insurance regulator said to the company we could prosecute you for this but alternatively we could invite the chief executive to meet some of the people that had been affected. They took that option and the chief executive met the aboriginals who suddenly found they had some illness but they had no cover because they had not been told about the exclusions, horrible stuff. The chief executive was overwhelmed, he had no idea. Immediately they set up a compensation scheme, they sacked a lot of the salesperson… it had a dramatic effect just meeting the people who had been affected by the company's actions. (Academic#3)

And another academic discussed how restorative justice was successfully used in financial crime to help Michael Milken[17] create a more just society by helping developing countries deal with their debt crisis.

> Since Michael Milken got out of prison [for violating U.S. securities laws] he has been helping, he has a foundation that has been helping some developing countries deal with their debt crises. I think he was sincere about it. I am the restorative justice person through and through, even the worst kind of financial criminal can do more good through repairing harm through creating a more just society out there with financial recompense. (Academic#2)

In addition to restorative justice, two participants pointed out that enforceable undertakings can be used to support the victims of safety crime and make communities safer. Enforceable undertakings are similar to remedial orders (see Chapter 3 section 3.4.9) in that they require offenders to address the needs of parties affected by wrongdoing, correct the causes of safety crime, and prevent further breaches and their underlying causes, although enforceable undertakings do not require a court sentence (see Macrory (2006) for further information on enforceable undertakings). As these participants argued, enforceable undertakings are effective because safety criminals have more input in their punishment and this can lead to more long-term rehabilitation.

> I think there is a human nature thing in play there. It is not just about buying your way out of

[17] Michael Milken is a former convicted felon, financier, and philanthropist in the United States. He is noted for his charitable work after his release from prison in 1993.

> trouble. It is about taking ownership and wanting to be in charge, rather than having something done to you. Enforceable undertaking is an opportunity for the offender to make a commitment to put things right… rather than getting convicted they have this better news story that perhaps feels better, they have owned the outcome better and it is just attractive all round. (Government authority#6)

> That [enforceable undertaking] was based on a theory that if somebody dreams up their own penalty and creates their own sanction for themselves it can have more real impact than being wholly imposed externally. Provided it is genuine, you can have a more long-term effect than imposing something from outside. (Academic#3)

And for one participant who works for the Environment Agency, enforceable undertakings can lead to more effective outcomes delivered more quickly than a case that is pursued in the courts.

> An oddity but has been a tremendous success for us has been the concept of enforceable undertakings, where your offender says you have got me, I will put it right, it is going to cost some money and they make amends. We have had great success with that. That has been very popular, particularly with certain types of offender. I have enjoyed using those, you can see better outcomes delivered more quickly rather than going to the courts… there are things that have to be in an enforceable undertaking, such as ensuring that the instance cannot re-occur and you are putting forward appropriate measures to make sure that you are putting right the damage that was caused. There is a statutory framework behind it to make sure people are not just buying their way out of trouble and to make sure there is this remediation, we call it rehabilitation… (Government authority#6)

However, this participant suggested that enforceable undertakings are inappropriate for serious offences, intentional safety crimes, and repeat offenders because these incidents and offenders should be prosecuted by the criminal courts.

> Where there is any perception that you have a very serious offence and it has been committed other than by a complete accident, it is simply not acceptable to the public nor to ourselves that we would do something other than prosecute there… we are not going to accept an enforceable undertaking in an instance where somebody has basically chosen to commit an offence, even if the harm is fairly low… where you are acknowledged as basically

> being a criminal or have committed the offence specifically for economic gain, we do not think that is an appropriate person to accept an enforceable undertaking from. That is wholly the wrong message. Secondly, if you are an organisation or individual with a swathe of recent convictions for alike offending. (Government authority#6)

And emeritus Professor Richard Macrory (2006) who recommended enforceable undertakings to the Cabinet Office in *Regulatory Justice: Making Sanctions Effective* in 2006 observed that the HSE showed no interest in utilising enforceable undertakings, this being similar to the lack of political will to impose criminal (or civil) liability on safety criminals in Chapter 5 section 5.4.3.

> The government accepted all the recommendations of the review. I said we are not going to force this on regulators, it is up to regulators and their sponsoring department to apply for the powers if they want them. The Environment Agency and Natural England were the first. But I always had a problem with the HSE, they just did not seem to be interested. They had a board meeting discussing this and they just said they think our existing powers are perfectly acceptable, we do not need anything else. They have never really embraced those sorts of sanctions… (Academic#3)

Despite many of the participants arguing that community sentences, restorative justice, and enforceable undertakings can be used to support the victims of safety crime, some of the participants pointed out that safety criminals may not have the necessary skills to undertake greater rehabilitative or managerial tasks.

> … but it assumes that safety criminals are good at managing, a director that managed a company that injured or killed workers. Managerial skills are over-emphasized, I do not want to put these individuals on a pedestal. (Academic#1)

As one participant noted, safety criminals are being punished precisely because they did not get it right in the first place.

> The fact you are interacting with this company in the first place is because they got it wrong. One concern might be, if they could not do it right and that is why they are being punished in the first place, are they actually the right person to be telling other people how to do this. You would have to apply a little bit of caution and make sure you are not trying to get some

> absolutely dreadful director who has not got a clue what they are doing, you are assuming just because they rose to that position that they have got some knowledge and some skills which would be useful. (Government authority#4)

And according to one health and safety professional, some safety criminals may be unwilling to carry out rehabilitative tasks or undertake training, underlining the fact that rehabilitative penalties require individuals with good intentions who are open to rehabilitation.

> It [rehabilitation] necessitates having people who are intrinsically well intentioned. If you get decent folk who say we did something wrong we want to put things right, then you got the right line. Whereas I can think of cases I have done in the past where, there is one that springs to mind, a lift shaft demolition operation where the contractors involved were astonishingly hard faced and not willing to do anything. At the inquest I was conducting in the death of these couple of men, we would say things like could you do things in the future and they would say they would look at that. The idea of fobbing things off, these people had no inherent wish to help or do anything, they were just trying to dodge away and circumvent and swerve. (NGO#6)

Lastly, although one participant highlighted that there is no correlation between higher fines and safer workplaces.

> No, where is the correlation between higher fines and safer workplaces? (NGO#6)

A quarter of the participants argued that the money raised from fines should be used for achieving rehabilitation by promoting safety or contributing to compensation for the victims of safety crime and their families.

> The money that is raised from this stuff, where does that go. If money was put into a greater good, promoting safety or stuff like that, that would have a whole different perspective to it. (NGO#9)

> If you are running a business and you chopped someone's fingers off or something and you have not had the guard on the saw, then I think you should say it is your fault and you should pay some sort of compensation to the individual… If they get fined they should be

directing that fine to the rehabilitation of the individual that has been harmed. (Government authority#2)

One of the things that would help would be if all companies where somebody has been killed, if they have to compensate the families. A lot of families are not compensated, particularly where somebody is young and they do not have any dependents, there is not any compensation. Families can be thrown into utter penury through this because they are bereaved. If your 16 year old son is killed and then you suffer from post-traumatic stress disorder, as most people who have had somebody killed in a traumatic incident are, and you cannot function and you cannot get any compensation, then your life is crap. (NGO#2)

Yes definitely there should be some ring fencing of the fines. There needs to be some money that goes to families that are affected by this. (Member of Parliament#1)

7.3.2 Remedying safety crime harm

Another way to increase safety and achieve rehabilitation, according to some of the participants, is to make companies help the local community and remedy the effects of safety crime, termed remedial orders in Chapter 3 section 3.4.9.

In terms of community punishment, personally I would love to see a system whereby the way that we punish companies was to make them do things that benefitted the local community… (Government authority#4)

We do have the opportunity to seek remedial orders from the courts and we do use those ancillary to the sentencing exercises that we get involved with. It is really important for us for there to be remediation. I think that is the equivalent of rehabilitation. (Government authority#6)

As one participant suggested, corporate safety criminals should give something back to the community that it has damaged, such as ordering a company that leaked effluent into chalk streams to remedy the mess they have made rather than be fined.

Yes, that sounds really positive that the company could be required to give something back

> to the community that it has damaged. It is not only workers who are injured by the health and safety offences of companies, it is the wider community, chemical discharges and that sort of thing. Something like Thames Water, who have apparently been pumping effluent into chalk streams, rather than giving them a fine you could set them a goal to clean up the mess they have made. (Legal practitioner#1)

And if the effects of safety crime have already been remedied, one participant stated that companies should be ordered to undertake more general work that benefits the community, such as building a playground in a deprived area or funding the running costs of part of a hospital for a period of time.

> … to say to a company we want you to do something to put right what harm you have done, so build a playground in a deprived area or fund a hospital wing for a year or something of that nature. (NGO#6)

However, one participant acknowledged that the low frequency of remedial orders makes it difficult to judge their effectiveness.

> I think my challenge is the frequency with them [remedial orders] does not allow you to form an opinion. (NGO#7)

And as another participant pointed out, the judiciary currently issue sentences and move onto the next case with no involvement in seeing how sentences are carried out, meaning that another agency is needed to monitor a company's performance.

> The obvious challenge for our judicial system is monitoring that, how would a judge, certainly criminal judges are not in any way used to or equipped to monitor a company's performance on that [remedial order] kind of thing. We would probably have to have the engagement of another agency. In that example of Thames Water, instead of fining you one million pound over the next two years we want you to restore the chalk stream to the way it was. Who would ensure that that actually happened, the Environment Agency might be able to do that? I can see it would require quite a lot of creative thought. In this country the judiciary are used to saying right that is your sentence and they move onto the next case; they do not really have much involvement in seeing how that sentence is carried out. (Legal

practitioner#1)

Also, considering that remedying any outstanding risk is already part of the HSE's responsibility, one participant criticised the fact that completed remedial orders can be used as part of a safety criminal's mitigation in court.

> In terms of a health and safety offence companies have to start putting right what is going wrong, and they do that because that then becomes part of their mitigation, and so they do that already and that is very hard for families because quite often companies will say look we have done this, and families think are you serious, so you killed our Ben and then you cleared up and you could not do it beforehand… because the company will be under investigation by the HSE and putting right and removing the risk for workers who are still there is part of the HSE's responsibility, that is what is being done anyway, so I am not sure what impact remedial orders will have on that. Because then companies will use that in their litigation and that actually counts, they did not do it before but they have done it since, that counts for their litigation and that is problematic for families. (NGO#2)

7.3.3 Training and educating safety criminals

Alongside supporting the victims of safety crime and remedying safety crime harm, several participants suggested that the rehabilitation of safety criminals can be achieved by training and educating these persons about the importance of health and safety regulations.

> You might look at the health and safety training of managers and directors, because we all know you need competent and committed board level leadership. (NGO#7)

> Maybe somebody who has broken some fencing regulations for machinery, maybe they should go on a course to understand why we have these regulations. (Academic#3)

> I wonder about whether compulsory training or regular monitoring but making them pay for it, is that something we can do instead. (Member of Parliament#1)

As one member of Parliament argued, education programmes can address the specific crime the safety criminal is responsible for and as part of their training they can teach other businesses about

the seriousness and consequences of safety crime, thereby supporting the community similar to points raised in section 7.3.1, and by explaining what they did and why it was wrong this can also contribute to retribution and shaming (see section 7.2.2).

> I think education programmes need to be part of the punishment and that should be monitored. That would be one way of doing it that is addressing the specific crime they have committed… what if they were required to train and inform other businesses, equivalent businesses or small businesses on what they did and the seriousness and the consequences. That would be part of rehabilitation and retribution as they would be made to explain what they did and why it was wrong. (Member of Parliament#1)

In discussing how education and training can be implemented into safety crime penalties, one academic noted that rehabilitation orders, also known as community sentences, can include training courses to help safety criminals understand why we have health and safety regulations.

> … we had something called a rehabilitation order, the idea was that either small companies or a chief executive, the managing director, would actually be sent on some training course to really understand why do we have these regulations. (Academic#3)

This participant also pointed out that enforceable undertakings can involve companies appointing new managers and undergoing training sessions.

> One idea I took from Australia was the use of enforceable undertakings. Basically what happens is the regulator says you have committed an offence, we are thinking of a criminal penalty, and you can say instead of imposing a criminal penalty on us could we say what we are going to do to get back into compliance and we will make a contribution to a charity or something. That has completely taken off… the company then says what it is going to do to prevent this happening again. It might be appointing a new manager, it might be having training sessions. (Academic#3)

Some of the participants stated that companies should be required to pay for a mentoring scheme between the safety criminal and a health and safety expert or senior manager in another company that has a good health and safety record.

> I think putting them to work with a recognised health and safety expert, so the two work in tandem, and maybe the director financially contributes to the costs of the health and safety expert's time as well. There you have a sort of check and balance on it to make sure the director is not just going rogue on you in whatever they are trying to do. As long as there is a combination in that safety check, that you got somebody you know and trust that is good at health and safety working alongside them, then yes. (Government authority#4)

> A mentoring arrangement between an organisation and a senior manager in another organisation in the area, I think that will be something interesting to look at. (NGO#7)

In addition to being mentored, one participant suggested that safety criminals can conduct outreach work and mentor smaller businesses as part of their training.

> Particularly outreach work with smaller businesses perhaps… I think that would be really helpful, particularly where smaller businesses might be aware that their standards are weaker or non-existent. I think a careful matching with the person who has to make amends with people who really need their help would be a useful way forward. (NGO#7)

And as one participant proposed, mentoring schemes could be linked to a system of deferred punishment whereby the success or failure of the mentoring scheme affects the penalty or fine that the company receives.

> … imposing a probation officer on a company, if they had not shown adequate safety standards, to say here is a consultant paid for by the company, they will come in and tell you what things are needing to be done. It is almost like a HSE inspector but you are on a private basis. That probation officer would owe their duty to the court. You could link that to a system of deferred sentences. The court might say come back in two years and in the meantime you would pay this probation officer health and safety consultant to tell you what needs to be done in the business, and we will see after two years what you have done and that will affect the penalty that we will give you. Instead of harking back to what has been done, the idea is change the emphasis on preventing harm in the future. (NGO#6)

7.4 Increased resources to achieve incapacitation

The majority of the participants were asked how safety criminals can be incapacitated and prevented from committing safety crime, resulting in questions on the effectiveness of custodial sentences, disqualification orders, and community sentences. The participants had mixed views on the effectiveness of these penalties because although custodial sentences, disqualification orders, and community sentences can be effective at incapacitating safety criminals, more resources are needed to make it easier to imprison individuals, to monitor disqualification orders, and to increase the incapacitative aspect of community sentences.

7.4.1 Easier routes to imprisonment

Most of the participants were asked 'to what extent is imprisonment an effective penalty for individual safety criminals? Whether this is for retributive reasons of doing justice, or incapacitative reasons of preventing further crime', leading to approximately half of the participants agreeing that custodial sentences are effective at incapacitating safety criminals.

> I think the main function of prison is incapacitation… you seek to move up the line and when you get to the big fish you really want to put those people in jail for a long time… (Academic#2)

> … when we prosecute individuals and they do face the risk of imprisonment, that can mean they cannot re-offend for that period they are imprisoned. (Government authority#4)

And for some of the participants, the degree of incapacitation from imprisonment is likely to achieve retribution and deterrence.

> It would be a massive deterrent for me as an individual, I really do not want to go to prison. (Government authority#4)

> In terms of deterrence and in terms of justice we feel very strongly that the problem is individuals are not held to account, and we feel this would have a much bigger justice and deterrent effect if the individuals who made those decisions were actually held to account and faced with prison. (NGO#2)

As one participant argued, the threat of imprisonment and having your freedom taken away from

you often keeps people's attention.

> It is the threat, potentially to them as individuals, of going to prison, which everybody understands as the most significant punishment you can get, your freedom taken away from you. Everybody is scared of that, everybody understands that impact. That is a message, when you hear that on training courses or when you talk about industrial conferences and stuff like that, when you talk about those kinds of punishments that often keeps people's attention. (Government authority#1)

Although, some of the participants drew attention to the difficulty of convicting safety criminals with a custodial sentence, thereby demonstrating the difficulty of convicting safety criminals identified in Chapter 5 section 5.4. As one member of Parliament remarked, one reason that it is difficult to imprison safety criminals is because identifying who is responsible for safety crime in large organisations is not straightforward, meaning that custodial sentences unequally affect individuals in smaller companies because it is clearer who is in charge.

> … you will find it tends to be smaller businesses where an individual is responsible for what happened and sometimes will have a prison sentence. It is easier to do that with a smaller business because it is clearer who is in charge. That does not happen with larger corporations and there is an inequality between the two, they are not the same under the law. (Member of Parliament#2)

For this participant, imprisonment is not currently an option for most safety criminals.

> I think it [imprisonment] should be an option. It would be up to the Crown Office to make a decision, it could be a significant fine is what they decide is appropriate and a prison sentence is not appropriate, but it should be an option, at the moment it is not an option. (Member of Parliament#2)

And for one health and safety authority participant, safety criminals would better serve being somewhere else since prison is not necessarily the best place for them because they do not pose a significant danger to other inmates.

> My personal perspective is we imprison an awful a lot of people who actually would better

> serve being somewhere else, because they are not dangerous and prison is not necessarily the best place for them to be… if what you are talking about is a danger to the guy in the next cell, sure, the majority of health and safety criminals would probably not pose that risk. (Government authority#4)

7.4.2 Additional monitoring of disqualification orders

Just over half of the participants suggested that disqualification orders are effective for achieving incapacitation whereby individuals, typically directors, are disqualified from managing a company (for more information on disqualification orders see Chapter 3 section 3.4.6). As one participant argued, disqualification orders can incapacitate offenders by forcing them into a different occupation.

> For big corporate bodies I think the obvious strategies are big fines and to bar people from holding office in limited companies… if I were a finance officer of a large company the prospect of disqualification would be pretty scary. I would have to get a completely different form of occupation, and that might have the same effect of focusing the mind as a substantial fine. A large fine on the company is one thing, but the chief finance officer being barred from operating from any company roll again is a very direct leverage on them. (NGO#1)

And one participant spoke about their experience of using a disqualification order against an employer that prioritised profit over safety.

> A disqualification order against the director is a way of actually driving home the point… I do see a value for that [incapacitation] and I have used that when I have been prosecuting offences. I can think of one example of a fatality in a care home where the manager of the care home, the owner, was really trying to keep the business going and keep staffing levels low, and security was lax and some old person wandered onto a balcony and fell to their death. I saw the argument that the proprietor of the care home really should not be involved in this business because they saw profit as being the objective rather than safety. When I prosecuted that I made the point of getting an order that she be disqualified from having any involvement in a care home business. (NGO#6)

However, some of the participants stated that disqualification orders are not effective at incapacitating individuals because it is difficult to ensure that persons abide by the disqualification order. For instance, several participants pointed out that individuals can circumvent the disqualification order by putting their family members in control of the company and directing them on what to do.

> Directors might be able to get round it quite quickly and easily… when you hear about financial crimes and things like that, you see a lot of those directors that get disqualified get around it just by putting family members in the business and controlling them. That is my understanding anyway with the kinds of things that I have heard. I would guess that kind of punishment can be worked around quite easily by clever people if they want to. (Government authority#1)

> Part of the reason they [disqualification orders] are not too effective is because in small enterprises you knock out the man and just get the family members to step in. You see it with Trump do you not. He is not allowed to run his business empire, but he has got his family members around him and no doubt he is telling them on a day to day basis what to do. He is just one step removed from it. (NGO#6)

Or according to three more participants, directors can surreptitiously create another company.

> But there are ways around it you see. They close down but they open up under a different name. (Government authority#2)

> … people who commit safety crimes are not too fussed about anything else they do and directors who are disqualified often do set up other companies and are not found. (NGO#2)

> … if you look on Companies House for how many people were disqualified for a criminal act, for example fraud, who then re-registered on Companies House with impunity and carry on. (NGO#5)

As two of the participants pointed out, disqualification orders therefore need to be monitored to prevent disqualified directors from setting up new companies (which can exacerbate already restricted enforcement resources, see Chapter 5 section 5.5).

> Disqualifying directors could have a major impact, provided it was for long enough and provided it was also checked up on… (NGO#2)

> I think there is the ability for people to hide who they are and disqualification then becomes more difficult… once you get that disqualification order in place it is then about policing it and monitoring it. You give it to somebody and then you have to monitor it, it is like probation where they keep turning up. You have to keep registering and say I am still not in the business I have not gone back to directorship, and that would require additional enforcing. All this stretched enforcement and stretched judicial system to make sure they police those disqualification orders. It is about policing those and making sure they stick to them. (Government authority#2)

7.4.3 Emphasising incapacitative community sentences

In addition to custodial sentences and disqualification orders, nearly half of the participants believed that the incapacitative capability of community sentences can be increased by requiring individuals to fulfil the community sentence full-time during work hours rather than outside of work hours, thereby preventing individuals from fulfilling their job role.

> Yes, I generally will be in favour of that [greater incapacitative community sentences]. As you say, they would generally be senior management. But I would be in favour of it whether they were or whether they were not. (Government authority#3)

> Yes why not, if you are going to have a community sentence why not have it as your job instead of showing up to your mining factory office and being horrible, you show up to somewhere else and serve them. (NGO#8)

> I would agree that they should have to fulfil it during work hours, it should not be something they can do during their spare time. (NGO#2)

As one participant noted, community sentences can be a good alternative to imprisonment.

> But whether community sentencing can be more widely used for other offences, including

> health and safety, yes I am supportive of community sentencing. I think they offer a good alternative to prison if they benefit the individual and society… I am supportive of community sentencing as an alternative to prison and a whole range of areas. It is something in Scotland where there is a degree of consensus in Parliament that we should be expanding community sentencing. (Member of Parliament#2)

And as another participant stated, a community sentence can last longer than a prison sentence because offenders are required to work a specific amount each month.

> I guess they are a pain as they take peoples time and a community sentence can also be a lot longer than a prison sentence, because you are bound to do so many hours per month. (NGO#8)

Although, some of the participants argued against community sentences being used for serious safety crimes and individuals whose failures have caused the death of somebody, this being similar to the criticisms explored in section 7.3.1 that community sentences may be too lenient if their rehabilitative aspects are emphasised.

> … I do not think we would ever want community service to be seen as an alternative penalty for somebody whose failures have caused the death of somebody. I do not think what is available under community service would go anywhere near the seriousness of that crime. (NGO#4)

> I do not think community service of the type you are describing for somebody who has behaved so negligently that they have killed someone is appropriate… and I think most families, certainly the Families Against Corporate Killers families, feel very strongly that community service is totally inappropriate and an insulting sentence for people who have killed someone at work… (NGO#2)

> I do not think community sentencing is appropriate for the loss of life. (Member of Parliament#2)

7.5 Avoiding the unintended consequences of punishing safety criminals

In discussing the various penalties for punishing safety criminals, numerous participants implied that penalties would be more effective if they avoided the unintended consequences of fining organisations and incapacitating individual safety criminals, this being one solution to the unintended consequences of incapacitation subtheme in Chapter 6 section 6.5.2. The participants were aware that fining companies can result in organisations reducing their health and safety standards, employees, and services to help pay for the fine, and incapacitating individuals may mean that the individual's company will be forced to close and the company's employees will be out of work.

7.5.1 Avoiding the unintended consequences of fining companies

Numerous participants argued that one weakness of fines is that they can have a range of unintended consequences on companies, their employees, and the general community, and this may increase the risk of safety crime. For example, one participant pointed out how Transco reduced its safety maintenance to help pay for its £14 million fine, whereas another participant argued that fines that impede corporate resilience, namely a company's ability to operate and practice safe working conditions, will reduce the company's attention to health and safety.

> Corporations have autonomy over how they [fines] are distributed… even mega fines are not looking like they are having much of an effect as they can be distributed as the company sees fit. Transco, for instance, cut its safety maintenance to pay for its £14 million fine. (Academic#1)

> Punishment does not work with corporate bodies. It can impede corporate resilience and generally speaking, the victims of impeding corporate resilience tends to be exactly the same people as the victims of safety crimes. Perversely, when you damage corporate resilience the first things that go are attention to safety and training. (NGO#5)

As one participant remarked, fines may therefore reinforce the problem of inadequate health and safety rather than reinforce the solution of safer workplaces.

> When it ends up being a state organisation that has then been penalised, and the reason they were lacking safety is because they did not invest because they did not have the money, you are actually reinforcing the problem rather than reinforcing the solution.

(NGO#9)

Furthermore, one participant stated that fining public bodies like local authorities and hospitals may mean that a local authority has to withdraw some of its services to pay for the fine or a hospital has to close a ward or not fulfil a consultancy vacancy, thereby in effect inflicting the penalty on the community.

> It is just sending public wooden dollars around the system. I cannot see it. I am seeing, by virtue of my present role, hospital trusts absolutely strapped for cash. To impose a fine on them just means do they have to close a ward or not fulfil their consultancy vacancy or something of that nature. Fines are fundamentally in the wrong direction… if someone were to prosecute the local authority for some wrongdoing, they would have to sit down and think what service can we withdraw to pay for this. Could we have bin collections every three weeks instead of every two weeks. You are sending the penalty round where it will be inflicted back on the citizens in their area. (NGO#6)

And as two participants noted, companies can reduce their staff members to help pay for a fine, meaning that the company's employees lose employment and this will reduce the organisation's services.

> They might start to say okay four people lost their lives, but £150 million that will be a lot of jobs going, that is probably what the employers would start to say if fines are imposed like that, then our business is going to have to be curtailed. (NGO#4)

> I just think if you were looking at something like a unit fine, which I think is quite a good idea, our turnover is £300 million, so we would be looking at £15 million for 5%, that would have a big impact on what we could do that year. That is a lot of officers. (Government authority#3)

Similarly, some of the participants argued that fines can cause companies to close, meaning that the company's employees will be out of work and the community loses the services of an employer.

> I also think the last thing we want to do is by putting in very high fines you could close businesses down, then you are punishing all the employees, you are taking employment

away from areas as well. (Government authority#1)

The key thing is how grossly negligent they were or how much intention to cut corners, because a huge crippling fine that destroys a company when what they did was negligent is slightly problematic, you would have large numbers of people out of work and so on. (NGO#1)

For example, two participants stated that directors might disband the company to avoid paying for a fine, thereby forcing the company's employees out of work.

By and large, I think a small limited company, a fine is not really a problem because the director just dissolves the company and they set up another company somewhere else. (NGO#5)

If they are hit hard with a fine they can go off and set up another company and do the same thing again. (Legal practitioner#1)

7.5.2 Avoiding the unintended consequences of incapacitating individual safety criminals

As well as the unintended consequences of fining companies, some of the participants raised concerns about the unintended consequences of using custodial sentence and community sentences that take place during work hours against individual safety criminals. That is, custodial sentences and community sentences that prevent individuals, particularly directors, from fulfilling their job may cause the individual's company to close and this will force the company's employees out of work.

… you send someone to prison and the business closes and all their employees are out of work. That again is not a solution. (NGO#6)

I imagine if you have a small company and the director is involved in the work themselves, requiring them to do something else might cause the company to fold. (Legal practitioner#1)

If I have got a director of a company that employees one hundred people and I am taking that director away two days a week to fulfil their community sentence and that means that the company flounders and one hundred people get made unemployed, I do not want to do

> that… I probably rather the director did it on a Saturday or Sunday in their own time. (Government authority#4)

One participant argued that individuals in charge of small companies should avoid fulfilling a community sentence during work hours to prevent it impacting too much on their work, although the participant suggested that community sentences during work hours may be more effective for individuals in large organisations because these individuals would only lose their wages and there would be less impact on the company.

> … if we are talking about people who are in charge of running companies who have committed health and safety failures, then perhaps some sort of community sentence that eats into their own time might be a more severe sanction on them. It would not have to impact on other areas of their work. That certainly would not be the case for larger corporations, where I could see it as being quite effective, because a director of a large corporation having to lose wages or a health and safety manager of a large corporation, someone who loses wages and has to carry out what amounts to a month's community service, then that would hit them in the pocket as well. So it is whether there would be different kinds of community service for different circumstances. (NGO#4)

Moreover, one participant pointed out that the financial repercussions of imprisoning someone and preventing them from earning an income may also mean that directors are unable to work in the same way again in terms of directing a company.

> If it is a small business and somebody is sent to jail, quite often the financial repercussions of that, they may never end up working in that sort of way again. (NGO#2)

Similarly, the financial repercussions of fulfilling a community sentence during work hours may mean that individuals can no longer meet their financial commitments and they may lose their home, although as one participant suggested, this may be an intended consequence of the community sentence.

> But you have got to think of this person who may have a significant mortgage or what have you, do you want them not to be able to work for an extended period of time, do you want them to lose their house, their car and possibly their relationship. Maybe you do.

(Government authority#3)

And as one participant noted, community sentences that occur during work hours and the resultant loss of income might hamper the individual's ability to pay for a fine.

> Although, if they have also received an individual fine, then they might argue that their ability to pay that fine will be compromised by having to do that [community sentence], and so you have got two punishments which you are trying to pursue at the same time and you might have some conflict in them. (NGO#2)

7.6 Summary

This chapter has reported the remaining results of the thematic analysis of the participants' views on research question three: 'how can penalties be used to effectively punish safety criminals' in terms of the most effective penalties for achieving the theories of deterrence, retributive justice, rehabilitation, and incapacitation. The participants had mixed opinions on the effectiveness of the majority of penalties for punishing safety criminals, and no significant correlation was identified between the participant groups, namely the government authority and NGO participants, and their opinions on the effectiveness of the different penalties.

Most of the participants argued that fines and publicity orders that have a financial impact on companies are effective at achieving retributive justice and deterrence. This is because fines can directly threaten the financial viability of companies and this encourages a company's directors and shareholders to enact change and take safety more seriously. However, the participants stated that most fines need to be larger to financially impact large organisations and achieve retributive justice and deterrence. One method to attain larger fines is to set fines as a percentage of a company's annual turnover so that fines are larger and proportional to each company's size, although larger fines might result in unintended consequences such as employee layoffs. Another method to emphasise the retributive and deterrent aspect of fines is to subtract from the shares of a company instead of its running costs. These shares can be sold to achieve the appropriate financial penalty, however some of the participants disagreed with the state owning part of a company's equity due potential issues of managing this equity. In addition to fines, the participants suggested that publicity orders can indirectly threaten the financial viability of companies by damaging the company's reputation and popularity, and this in turn can reduce the company's profits and sales.

Although, some of the participants noted that publicity orders need to be publicised more because this penalty is rarely used, and if publicity orders have limited visibility to customers and competitors this reduces the penalty's ability to financially impact companies.

Next, nearly all of the participants were in favour of penalties that repair safety crime harm, support the victims of safety crime, and train and educate safety criminals on how to avoid safety crime because this is effective for achieving rehabilitation. This includes remedial orders that seek to remedy the harm caused by safety crime, community sentences, restorative justice, and enforceable undertakings that support the victims of safety crime by helping safety criminals make amends with individuals and the community, and mentoring schemes that help safety criminals better understand the importance of health and safety regulations. However, not only did the participants recommend types of community sentences that are not currently used in England and Wales, but some of the participants pointed out that by emphasising the rehabilitative aspect of these penalties this will require additional administrative resources to facilitate and monitor the rehabilitative work.

In addition, a significant portion of the participants argued that custodial sentences, disqualification orders, and community sentences can be effective for achieving incapacitation although more resources are needed to underpin these penalties. That is, the participants' discussion on the difficulty of imprisoning safety criminals suggests that there needs to be easier routes to imprisoning these persons; the participants stated that disqualification orders need to be monitored to prevent individuals from circumventing this penalty; and considering that nearly half of the participants argued in favour of community sentences that occur during working hours, it can be proposed that more resources are needed to develop longer and, as section 7.3.1 argued, more sophisticated community sentences that utilise a safety criminal's expertise.

Lastly, the participants implied that fines, custodial sentences, and community sentences would be more effective at achieving their most relevant theories of punishment if these penalties avoided the unintended consequences of punishing safety criminals. For example, numerous participants highlighted that fines can increase the risk of safety crime if companies reduce their health and safety standards to help pay for the fine, employees may be made redundant if the company reduces its services or disbands, and if the company disbands the community will lose the services of an employer. Similarly, according to the participants custodial sentences and community sentences that prevent individuals from fulfilling their job may cause the individual's company to close and this will mean that the company's employees will be out of work, the community loses the services of an

employer, and the financial repercussions of community sentences and custodial sentences may mean that individual safety criminals lose their home, their ability to direct a company, and the means to pay a fine. It can therefore be interpreted that one way of increasing the effectiveness of safety crime penalties is to avoid these unintended consequences of punishing safety criminals.

In conclusion, the participants had mostly mixed views on the effectiveness of the various penalties for achieving the theories of punishment. According to the participants some penalties have fewer disadvantages or unintended consequences than others. This primarily refers to penalties that aim to achieve rehabilitation, such as remedial orders, restorative justice, and enforceable undertakings, and the participants also discussed relatively few criticisms of publicity orders and MAPs. The following chapter discusses the participants' views on all three research questions in relation to the academic literature to identify how the themes created from the participants' data correlate or conflict with the literature.

Chapter 8

Discussion of Findings

8.1 Introduction

The previous three chapters reported the key themes that were constructed from the analysis of the interview data in relation to the three research questions. These research questions concern the influence and effectiveness of the theories of deterrence, retributive justice, rehabilitation, and incapacitation for punishing safety criminals, and how penalties can be used to effectively achieve these theories and punish safety criminals in England and Wales. This chapter discusses the extent that these themes correlate or contrast with the academic literature presented in Chapters 2 and 3 and identifies this study's contribution to knowledge.

This chapter is separated into three sections. The first section examines the influence of theory on the punishment of safety criminals in England and Wales. In light of the participants overall mixed opinions on the influence of the theories of punishment in Chapter 5 section 5.2, this section argues that the theories of deterrence, retributive justice, rehabilitation, and incapacitation are not significantly influencing the punishment of safety criminals in England and Wales and that there is a lack of punishment for these persons. To explicate why the theories of punishment are not significantly influencing the punishment of safety criminals, the themes of safety crime obscurity, political and structural barriers to convicting safety criminals, and the lack of safety crime enforcement suggest that a large number of safety criminals are not identified and punished by the criminal justice system. Furthermore, just as one participant stated, the influence of the theories of punishment on safety criminals relies on the following section concerning the effectiveness of these theories for these persons.

The second section discusses the participants' views on the varied effectiveness of the four main theories for punishing safety criminals. This includes the participants' support for the suitability of deterrence and safety criminals, although for many participants penalties for safety criminals are not effective enough to achieve the ideals of deterrence and some safety criminals are not aware or are not deterred by the risk of being punished. Alongside deterrence, the participants argued in favour of retributive justice to achieve proportional and deterrent penalties, however, some of the participants believed that retribution is inappropriate because it can be perceived as revenge and because retributive penalties do not make workplaces safer. Furthermore, many of the participants

supported rehabilitation as a way of educating safety criminals and increasing adequate workplace health and safety, but several participants suggested that rehabilitation is ineffective for 'compliant' and 'criminal' employers. Last, whereas some of the participants believed that incapacitation is effective for preventing safety crime by removing a safety criminal's capacity to commit safety crime, other participants highlighted that incapacitative penalties can result in a range of unintended consequences on employers and consumers.

Finally, this chapter considers the participants' mixed views on the effectiveness of the majority of penalties for safety criminals and their views on how these penalties can be improved to better achieve the theories of punishment. This includes the participants' views on publicity orders and a range of financial penalties for achieving retributive justice and deterrence; a selection of rehabilitative penalties that individually and in tandem support the victims of safety crime, rectify safety crime harm, and educate safety criminals on how to avoid safety crime; and lastly, the benefits and disadvantages of using custodial sentences, disqualification orders, and community sentences to incapacitate individual safety criminals.

8.2 The lack of punishment for safety criminals

Beginning with research question one 'which theories of punishment are currently informing the punishment of safety criminals in England and Wales', considering the participants overall mixed opinions on the influence of the theories of punishment in Chapter 5 section 5.2, this suggests that the four theories of punishment are not currently playing a large role in the punishment of safety criminals in England and Wales and that there is a lack of punishment for these persons. It can be argued that there is a lack of punishment for safety criminals because many participants stated in Chapter 5 that a significant number of safety criminals are not identified by the criminal justice system due to the obscurity of safety crime, political and structural barriers to convicting safety criminals, and a lack of safety crime enforcement.

8.2.1 Weak influence of the theories informing the punishment of safety criminals

The participants expressed mixed views on most of the theories currently influencing the punishment of safety criminals. According to some of the NGO participants, deterrence theory and retributive justice do not influence the punishment of safety criminals because government policy enforces these theories as minimally as possible to work with industries to develop positive behaviour. As one participant stated, penalties are used 'at the end of a long line'. The NGO

participants' opinion that government policy prioritises working with industries rather than using the theories of punishment against them corroborates arguments in Chapter 2 section 2.4 that workplace health and safety is regulated by a consensus approach that prioritises negotiation, compromise, and consensus between employers and employees, and punitive enforcement is only used as a last resort (Bardach and Kagan 1982; Hawkins and Thomas 1984; Hutter 1997). For some academics including Woolf (1973), Dawson *et al.* (1988), and Tombs and Whyte (2007; 2010; 2012; 2017; 2020), this partnership approach that prioritises working with industry over punitive enforcement is indicative of the deregulation of workplace health and safety discussed in section 8.2.4.

Moreover, one academic participant argued that discourse and policy is about demonstrating culpability for due process for safety criminals rather than retributive justice. Although the safety crime literature does not frequently discuss due process, parallels can be made with this participant's comment and more general concerns by Mandel (1994), Bakan (1997), and Roach (1999, p.3) that due process and the rights provided to the accused in the Canadian criminal justice system blocks 'the efforts of police, prosecutors, and Parliament to find and convict the guilty.' To illustrate how due process potentially prevents safety criminals from being found criminally accountable and punished with retribution and the remaining theories of punishment, Chapter 2 section 2.4 reviewed how the legal requirement to identify a company's *mens rea* to convict them has been a historic issue for the effective criminalisation and punishment of corporate safety criminals in England and Wales. By providing corporate persons a great deal of the same rights as individuals, as due process advocates, many corporate safety criminals escape punishment because their organisational structure makes it difficult to identify and convict a company's *mens rea* (Slapper and Tombs 1999; Gobert and Punch 2003; Tombs and Whyte 2007). This issue of corporate conviction is representative of the political and structural barriers to convicting safety criminals in section 8.2.3.

In contrast to some of the participants stating that retributive justice and deterrence do not influence the punishment the safety criminals, most of the government authority participants argued that the punishment of safety criminals is influenced by these theories because the Sentencing Council (2016) guidelines on health and safety offences demonstrate that safety criminals are at risk of being significantly fined. The risk of being fined after being convicted for safety crime is certainly plausible considering that 80% of HSE (2021a) sentences in 2020/21 resulted in fines. However, just as one NGO participant suggested that the influence of the theories of

punishment depend on their effectiveness, section 8.4.1 discusses how most fines as they are currently used are not large enough to achieve retribution and deterrence for many safety criminals. As one participant stated, often employers do not learn from the criminal repercussions of committing safety crime. It can therefore be argued that the influence of the theories of punishment for safety criminals greatly depends on how penalties are used to achieve these theories (see section 8.4).

In addition to retributive justice and deterrence, all of the participants that discussed rehabilitation agreed that this theory is not influencing the punishment of safety criminals. According to these participants rehabilitation is not present because most attention is directed at the sentence, such as fines, rather than the aftermath of a penalty and it is therefore difficult to identify when or if safety criminals are rehabilitated. The lack of rehabilitation in safety crime penalties can be demonstrated by HSE (2021a) sentences in 2020/21 largely comprising of fines and custodial sentences that do not rehabilitate safety criminals, as just 8% of penalties were community sentences that have the potential to rehabilitate safety criminals. Although, as section 8.4.3 discusses, the rehabilitative capability of community sentences can be greatly increased compared to how they are currently used. As one of the participants suggested, there needs to be something in addition to fines and imprisonment that rehabilitates safety criminals (such as enforceable undertakings or mentoring schemes covered in more detail in sections 8.4.3 and 8.4.5 respectively).

Lastly, the participants had mixed views on the influence of incapacitation because although custodial sentences can achieve incapacitation, it is uncommon for safety criminals to be imprisoned for safety crime (Tombs and Whyte 2007). This infrequency of custodial sentences for safety criminals can be demonstrated by suspended and immediate custodial sentences representing just 10% and 2% of HSE (2021a) sentences respectively in 2020/21, resulting in 22 custodial sentences out of 185 convicted cases. The lack of imprisonment for safety criminals reflects longstanding difficulties of attaching a high standard of *mens rea* to safety criminals to sentence these persons to imprisonment (see Chapter 3 section 2.4), and more broadly, this is indicative of the political and structural barriers to convicting safety criminals addressed in section 8.2.3. As the rest of this section illustrates, the influence of the theories of punishment on safety criminals is indelibly connected to broader political, structural, and economic factors affecting the punishment of safety criminals.

8.2.2 Safety crime obscurity

Alongside the participants overall mixed views on the theories influencing the punishment of safety criminals, it can be argued that there is a lack of punishment for these persons because, as numerous mostly NGO participants suggested, a significant number of safety criminals are not identified by the criminal justice system. Many of the participants stated that it is difficult to identify safety crime and safety criminals for three reasons, namely: it is difficult to recognise gradual injuries such as deafness or diseases like mesothelioma; safety crimes are seen as accidents and as less serious than other crimes; and because the interconnectivity of modern relations makes it unclear who is solely responsible for safety crime.

In accordance with the participants' viewpoint that it is difficult to recognise gradual injuries or diseases, safety crime (Tombs and Whyte 2003; 2007; 2017; 2020), corporate crime (Box 1983; Pearce and Snider 1995; Slapper and Tombs 1999), and white-collar crime academics (Sutherland 1983; Croall 2001) attest to the difficulty of identifying crimes of powerful individuals and corporations. This can first be illustrated in a definitional sense, as the academic study of workplace health and safety offences lacks universal terminology, subject matter, and precision (see Chapter 2 section 2.2). Whereas the more commonly used corporate crime term collectively refers to safety crime, financial crime, and environmental crime (see Slapper and Tombs 1999), the safety crime term that exclusively refers to workplace injuries has only been used by Alvesalo and Whyte (2007), Tombs and Whyte (2007), and Alvesalo *et al*. (2016). Furthermore, Tombs and Whyte's (2007) decision to exclude work-related health harms from their definition of safety crime, such as mesothelioma from exposure to asbestos, is precisely due to the difficulty of identifying and holding employers legally accountable for pernicious work-related health diseases.

Moreover, the participants' portrayal that safety crimes are seen as accidents and as less serious than other crimes corroborates Alvesalo and Whyte's (2007) and Tombs and Whyte's (2007) argument that accident terminology reduces the seriousness and awareness of health and safety offences as crimes. One reason that safety crime is seen as less serious than other crimes, according to Slapper and Tombs (1999), is because the inclusion of civil and administrative offences in the definition of corporate crime and safety crime means that safety crime does not hold the same condemnation as unambiguous criminal offences such as homicide. Also, similar to one participant's suggestion that safety crime is rarely thought about in the context of criminology and discussions on harm tend to be based around street crime rather than safety crime, Brake and Hale (1992), Downes and Morgan (2002), and Hale (2004) argue that the politics of crime, law and order dictate how criminological research is produced and consumed. This can explain why safety crime remains

outside the remit of the Home Office and is periphery to mainstream political, academic, and general discussions of crime (Slapper and Tombs 1998; Tombs and Whyte 2003; 2007; Walters 2003).

On a more practical level, the participants' viewpoint on the difficulty of identifying safety crime can be seen in Tombs and Whyte's (2007; 2017; 2020) argument that the HSE underestimates the amount of safety crime by up to a factor of six (see Chapter 2 section 2.3). In Tombs and Whyte's (2007) explanation of the HSE's underestimation of safety crime, similar to the participants' argument that the interconnectivity of modern relations makes it unclear who is solely responsible for safety crime, Tombs and Whyte (2007) argue that industry's complex systems of sub-contracting and long supply chains makes locating those responsible for safety crime problematic. Furthermore, as the following two sections discuss in more detail, political and structural barriers to convicting safety criminals and a scarcity of resources to enforce adequate health and safety contributes to the difficulties of identifying safety crime and safety criminals.

8.2.3 Political and structural barriers to convicting safety criminals

The lack of punishment for safety criminals can also be ascribed to political and structural barriers to convicting safety criminals. Many of the participants argued that it is difficult to convict safety criminals due to the lack of political will to impose criminal liability on these persons, thereby corroborating the narrative that barriers to the effective punishment of organisations might be political rather than technical (Lofquist 1993; Etzioni 1993). This lack of political will can be illustrated by the historical and political struggles of criminalising and convicting safety criminals examined in Chapter 2 section 2.4. This includes the magistrates' reluctance to prosecute and fine employers using the 19th and 20th century Factory Act legislation (Carson 1979; 1981; Peacock 1984), the creation of strict liability and a lower standard of *mens rea*¸ criminal liability, and severity of penalties for safety criminals, and the legal defences of *volenti non fit injuria*, contributory negligence, and common employment that were used until the middle of the 20th century to absolve a great deal of safety criminals (Slapper and Tombs 1999). More recently, the lack of political will to criminalise safety criminals can be seen in Chapter 2 section 2.4 regarding the 1970s and onwards neo-liberal agenda of free-market capitalism and the deregulation of health and safety enforcement. For example, similar to the HSE's 2004 (Health and Safety Commission 2004) and 2015 enforcement policy statements (HSE 2015) that prioritise educative over punitive enforcement, one of the participants pointed out that government committees, ministerial departments, and the HSE

expressed minor interest in adopting the recommended sanctions in *Regulatory Justice: Making Sanctions Effective* (Macrory 2006).

In addition to the political barriers to convicting safety criminals, a number of participants stated that structural barriers relating to the operation of criminal justice impede the state's ability to secure convictions for safety criminals. According to the participants, issues of collecting evidence for prosecution and the corporate veil contribute to the difficulty of convicting safety criminals because individuals are reluctant to give evidence to prosecute safety criminals for fear of being prosecuted themselves, and because companies can use their resources and complex organisational structure to defend themselves and individuals from being found accountable for safety crime. This difficulty of convicting organisations for safety crime shares similarities to Chapter 2 section 2.4 on the historical and political struggles of criminalising safety criminals. In particular, the participants' suggestion that the corporate veil prevents safety criminals from being convicted corroborates arguments by Tombs and Whyte (2015) and Tombs (2018) that the corporate veil shields a significant number of individuals and legal persons from being found accountable for safety crime.

8.2.4 The scarcity of resources to enforce adequate health and safety

According to the theme the lack of safety crime enforcement in Chapter 5 section 5.5, there is a scarcity of funds and personnel to enforce adequate workplace health and safety in England and Wales. It can be argued that this lack of resources contributes to safety crime obscurity, political and state barriers to convicting safety criminals, and the lack of punishment for these persons. That is, many of the participants pointed out that low levels of staffing means that workplace health and safety inspections occur very infrequently, and therefore many safety crimes go unnoticed, unconvicted, and unpunished. This viewpoint aligns with the literature in Chapter 2 section 2.4 – namely Tombs and Whyte (2007; 2012) and Tombs (2015; 2018) – that HSE and local authority enforcement staff have been steadily decreasing since the 1990s. For two participants, the scarcity of safety crime enforcement explains why there is not a reasonable threat of the theories of punishment for safety criminals, thereby potentially explaining some of the participants' views in section 8.2.1 on the weak influence of the theories for punishing safety criminals.

Three factors for the lack of safety crime enforcement were created from the participants' data. First, some of the participants argued that the reduction of health and safety enforcement is the result of deregulation pursued by governments since the 1970s. This viewpoint is identical to the

arguments made in Chapter 2 section 2.4 on health and safety deregulation, including the Robens (1972) committee report on self-regulation between employees and employers, Thatcher and New Labours' neoliberal ideology of free-market capitalism (Dodds 2006), and various government sanctioned health and safety reports from 2004 to 2011 like *Common Sense Common Safety* (HM Government 2010) that advocated for less health and safety enforcement. Second, some of the participants stated that the lack of resources to enforce workplace health and safety can be ascribed to financial austerity in England and Wales. As one participant suggested, austerity means that public sectors cuts have had a massive impact by limiting enforcement agencies, thereby resembling similar arguments by Guderjan *et al.* (2020) and Leruth and Taylor-Gooby (2021). Third, a few of the government authority participants suggested that the Covid-19 pandemic is likely to reduce the HSE's resources to regulate workplace health and safety because the HSE's responsibility to monitor Covid-19 reduces the agency's normal regulatory functions, such as workplace inspections, prosecutions, and the severity of penalties. Although this claim cannot yet be substantiated in the safety crime literature, evidence that the Covid-19 pandemic has negatively affected the HSE's ability to regulate safety crime can be seen by the HSE's inability to maintain its annual health and safety statistics. As the HSE (2021b, p.3) states, some categories of injury data 'have been impacted by the coronavirus pandemic to such an extent that no new data is available', such as working days lost due to workplace injury and work-related ill health, and the costs of workplace injuries and work-related ill health in Britain.

Whether considered individually or in combination, the themes of safety crime obscurity, political and structural barriers to convicting safety criminals, and the scarcity of resources to enforce adequate health and safety certainly contribute to the lack of punishment for safety criminals by preventing these persons from being detected and convicted by the criminal justice system. These themes emphasise the importance of politics and economics in the effective regulation and punishment of safety criminals. For assessing the influence of the theories of punishment on safety criminals that are caught and convicted, just as one participant stated that the influence of these theories depend on their effectiveness, the following sections discuss the effectiveness of the theories of punishment and penalties for safety criminals.

8.3 Varied effectiveness of the four theories for punishing safety criminals

Moving onto research question two 'which theories are effective at punishing safety criminals and why are they effective', the participants had mixed views on the effectiveness of the theories of

deterrence, retributive justice, rehabilitation, and incapacitation for punishing safety criminals. The reasons for this varied effectiveness include the participants' opinions that deterrence is effective for safety criminals because these persons fear being prosecuted and are usually rational actors that consider the factors of deterrence, although in practice some safety criminals do not consider these factors of deterrence and safety crime penalties are not effective enough to deter many safety criminals from committing safety crime. The participants also argued that retributive justice is effective for achieving proportional and deterrent penalties, however, some of the participants questioned the appropriateness of punishing safety criminals because retribution can be perceived as revenge and because tougher penalties, such as fines or imprisonment, do not make workplaces safer. Next, the participants discussed a range of novel arguments pertaining to the effectiveness or ineffectiveness of rehabilitation, namely rehabilitation should focus on the education of safety criminals and the terminology of 'compliant' and 'criminal' employers explains why rehabilitation is ineffective for some safety criminals. Lastly, numerous participants argued that incapacitation is effective for removing a safety criminal's capacity to commit safety crime, whereas other participants highlighted that incapacitative penalties are likely to lead to unintended consequences on innocent employees and consumers.

8.3.1 Deterrence and safety criminals as rational actors

The majority of the participants stated that deterrence is effective for dissuading safety criminals from committing safety crime because safety criminals fear being prosecuted and because most corporate safety criminals govern their actions by cost-benefit analyses that consider the factors of deterrence, such as the risk of being arrested, convicted, and whether the punishment outweighs the financial benefit of committing safety crime. The participants' viewpoint that deterrence is effective for preventing safety crime because corporate safety criminals base their decisions on cost-benefit analyses corroborates the prevailing consensus amongst some of the most influential white-collar crime (Chambliss 1967; Sutherland 1983; Geis 1996; Croall 1992; 2001), corporate crime (Braithwaite and Geis 1982; Braithwaite 1989; Ayres and Braithwaite 1992; Pearce and Tombs 1998; Slapper and Tombs 1999; Gobert and Punch 2003), and safety crime academics (Tombs and Whyte 2007; 2013); that deterrence is most effective against corporations and – considering that Tombs and Whyte (2015, cited Tombs 2016, p.194) estimate that 95% of HSE prosecutions are against organisations – therefore most safety criminals because corporations are usually rational actors that examine the risk of being caught and punished.

To elaborate, the participants' opinion that corporate safety criminals base their decisions on cost-benefit analyses is similar to rational choice theory that postulates that individuals govern their actions by rational calculation (Cornish and Clarke 1986). Jeremy Bentham *et al.* (2004) and Cesare Beccaria (Hostettler 2011) use the principle of rational choice theory to argue that rational persons – such as, as Chapter 6 section 6.2.2 argues, corporate safety criminals – can be deterred from committing crime if the likelihood and severity of punishment is greater than the benefit of crime. Sutherland (1983, p.256) certainly refers to the similarities between rational choice theory, deterrence, and organisations in his development of white-collar crime, as he argues that corporations are 'closer to economic man and to pure reason than any person or any other organisations'. Similarly, in the context of corporate crime Pearce and Tombs (1998, p.298) state 'that many corporations do make explicit calculations regarding the costs and benefits of compliance/non-compliance' and 'that deterrent sanctions represent a rational, just and effective response to corporate crime'. Safety crime academics Tombs and Whyte (2007, p.192) are clear that 'safety crimes arise very often from reasoned and cost-balanced decisions. The principle of deterrence therefore must be placed at the heart of any punitive strategy if it is likely to have any effect in preventing future offending at all.' Also, whereas Bentham *et al.* (2004) argue that it is the severity of punishment that is most effective at achieving deterrence, one participant suggested that the fear of being prosecuted is more effective at deterring safety criminals than the severity of punishment, thereby supporting the conclusions of Greenwood and Abrahamse (1982) and Hostettler (2011) that it is the fear of being arrested and convicted, rather than the severity of punishment, that is most effective at deterring potential criminals.

Furthermore, the participants' portrayal of corporate safety criminals that fear prosecution and conduct cost-benefit analyses that consider the factors of deterrence implies that safety criminals do not comprise of Norrie's (2014) second category of persons that deterrence is ineffective against. That is, of Norrie's (2014, p.339) three categories of persons (see Chapter 3 section 3.2.1), deterrence is ineffective against his second category because these persons have no conscience and, as Brody (1979) argues, do not consider the criminal consequences of their actions, or for Box (1987), are alienated from society and are not swayed by the criminal consequences of their actions. However, Norrie's (2014) discussion on these categories does not refer to corporate persons, and Brody's (1979) and Box's (1987) descriptions of persons that do not consider the criminal repercussions of their actions conflict with the participants' viewpoint of corporate safety criminals as rational actors that conduct cost-benefit analyses and consider the factors of deterrence. It can therefore be argued that corporate safety criminals overwhelmingly comprise of Norrie's (2014) first

and third categories of persons that deterrence is effective against.

In contrast to the participants' viewpoint on the effectiveness of deterrence for safety criminals, and in cases where safety criminals may be labelled as one of Brody's (1979) undeterribles that do not consider the criminal consequences of their actions, some of the participants argued that deterrence is ineffective for safety criminals that do not consider the factors of deterrence if safety crime results from negligence. This viewpoint is similar to Tombs' (1992) criticism that companies may strive towards but not always act as rational persons. For instance, companies may be unable to act on their rational calculation, companies may not be unified in their rational decisions (Silverman 1970; Reed 1992; Pearce and Tombs 1993), and decisions may be based on incomplete information (Simon 1976; Zev 1998). In addition, even if safety criminals are aware of the factors of deterrence, numerous participants suggested that safety crime penalties are not effective enough to achieve deterrence. This resembles a common concern amongst academics (Slapper and Tombs 1999; Croall 2001; Gobert and Punch 2003) like Tombs and Whyte (2007, p.178) that safety crime penalties such as fines fail 'as a form of deterrence largely because the penalty is very often, in both absolute and relative terms, set at a derisory level.' In other words, the participants' data and academic literature suggests that deterrence is largely effective in principle but not in practice for safety criminals, and section 8.4 discusses how safety crime penalties can be amended to better achieve deterrence.

8.3.2 Proportional and 'safe' penalties

Just over half of the participants argued that retributive justice is effective for punishing safety criminals by ensuring that penalties fit the crime. This viewpoint corroborates the primary aim of retributive justice to proportionally punish criminals for their crime (von Hirsch 1976; 1976a; Gerber and Jackson 2013; Ashworth 2015), and evidence of this aim can be seen in the Sentencing Council's (2016) health and safety offence guidelines on matching penalties to the culpability and harm of safety crime. More specifically, one participant suggested that retributive justice is effective for achieving deterrence and punishing safety crime in a similar manner to how this type of harm, including major injuries and fatalities, is punished in similar jurisdictions, such as assault and homicide in street crime. This participant's suggestion resembles von Hirsch's (1986) ordinal and cardinal measures of proportionality that crimes should be punished compared to similar crimes of a more or less serious nature, and punishments should be grounded in their ability to deter criminals. This participant's views and von Hirsch's (1986) ordinal and cardinal measures of proportionality not only suggest that retributive justice should be combined with deterrence, but the severity of safety

crime penalties should be modelled after the severity of similar crimes of violence. That is, penalties for safety crimes resulting in major injury or death should correspond in severity to street crimes resulting in actual bodily harm or gross negligence manslaughter, namely a maximum sentence of five years custody (Sentencing Council 2022) or 18 years custody (Sentencing Council 2018) respectively.

However, half of the participants believed that retributive justice is ineffective for two reasons. First, some of the participants disliked the principle of retribution because it can be perceived as revenge, thereby supporting Gerber and Jackson's (2013) framing of retribution as revenge, and resembling academic arguments questioning the appropriateness of using retribution to punish criminals (see Lacey 1988; Moore 1988; Ashwell 2015). Moreover and in a more novel contribution to the safety crime literature, some of the participants suggested that retributive justice is not effective for safety criminals because tougher penalties do not make workplaces safer and may in fact make workplaces less safe and increase the risk of safety crime. For example, one participant noted that companies can pay for large fines by reducing their financial spending on health and safety. The participants' critique that retributive justice does not make workplaces safer has not been explicitly stated in the academic literature although it has been implied, namely by the participants' opinions and academic literature on the unintended consequences of fining safety criminals (see section 8.4.1). It can therefore be proposed that safety crime penalties should be designed to avoid increasing the risk of safety crime.

8.3.3 Rehabilitation and educating safety criminals

Similar to the theories of deterrence and retributive justice, the participants had mixed opinions on the effectiveness of rehabilitation for safety criminals. Over half of the participants stated that rehabilitation is ineffective for safety criminals because it does not work with what some participants termed 'compliant' and 'criminal' employers. For one participant rehabilitation does not work with compliant employers that believe they are already meeting their obligations and do not need to be rehabilitated, namely persons that commit safety crime without understanding their health and safety obligations. The participant's terminology of compliant employers is a novel contribution that has not been introduced or widely used in the academic literature. One likely reason that the compliant employer term is absent in the academic literature is because it conflicts with the prevailing understanding of corporate safety criminals as rational actors, as argued in section 8.3.1, that conduct cost-benefit analyses, including analysis on their health and safety

obligations.

In addition to compliant employers, some of the participants argued that rehabilitation is ineffective against criminal employers that are unlikely to cooperate with rehabilitation because they prioritise financial profit over their health and safety obligations. Although the term criminal employers is another original contribution to the safety crime literature, the argument that safety criminals prioritise profit over their health and safety obligations is widely corroborated by the academic literature, as seen in Chapter 1 section 1.1. For example, it is commonly accepted that the *raison d'être* of most companies is to make financial profit (Blau and Scott 1962; Parsons 1963; Bernard and Vold 1986), and for many safety crime academics such as Slapper and Tombs (1999) and Tombs and Whyte (2007) it is this pursuit of profit, rather than pathological issues, that explains why most safety crimes occur. Therefore, just as one participant queried what precisely rehabilitation is attempting to change when safety criminals are breaking the law for the legal motive of achieving profit rather than illegal motives like funding an illicit drug habit, Greenberg (1993) and Croall (2001) cast doubt on the effectiveness of using rehabilitation to change the motives of certain criminals, such as safety criminals, that typically do not suffer from pathological problems that rehabilitative interventions aim to address. In situations where rehabilitation is ineffective against compliant and criminal employers, similar to Braithwaite's (2002) escalation from rehabilitative penalties to deterrent and incapacitative penalties in his regulatory pyramid (see section 8.3.4), this emphasises the importance of the remaining theories of retributive justice, incapacitation, and deterrence.

Rather than using rehabilitation to reform the motives of safety criminals, most of the participants suggested that rehabilitation can educate and train safety criminals to maximise safety and reduce the risk of safety crime. As three participants stated, rehabilitation can work proactively and prevent safety crime. This viewpoint corroborates a scarcity of academic research that health and safety training assists in preventing safety crime (Woolf 1973; Collinson 1978; Braithwaite 1985). Instead, just as the rehabilitation literature for street criminals focuses on reforming the criminogenic traits of these persons (Norrie 2014; Ashworth 2015), so too does corporate crime (Braithwaite 1984; Gobert and Punch 2003) and safety crime literature (Tombs and Whyte 2007) focus on reforming the criminogenic traits of corporate persons; such as Braithwaite and Geis' (1982, p.311) suggestion that corporate rehabilitation can be achieved by 'probation orders placing the corporation under the supervision of an auditor, environmental expert, or other authority who would ensure that an order to restructure compliance systems was carried out'. In other words, a slight distinction can be made between the corporate crime and safety crime literature that focuses on doing something to

corporations to remove criminogenic traits, such as placing a probation order on them, and the participants' suggestion of doing something for safety criminals to help them avoid safety crime, like providing training classes. Both approaches of rehabilitation are likely to be effective for the four types of employers postulated by one of the participants. That is, rehabilitation can be used to impose changes on compliant and criminal employers that would otherwise not cooperate with rehabilitation, and rehabilitation can be used to provide training for 'clueless' and 'gold standard' employers that are likely to cooperate with rehabilitation to reduce the risk of safety crime.

8.3.4 Incapacitating safety criminals and avoiding unintended consequences

For the final theory of this section, the participants had mixed views on the effectiveness of incapacitation for safety criminals. Approximately one third of the participants argued that incapacitation is effective at removing a safety criminal's capacity to commit safety crime. Moreover, one participant proposed that incapacitation is more effective for crimes of the powerful than crimes of the powerless, such as wealthy or successful safety criminals and lower socioeconomic street criminals respectively. This participant's suggestion resembles arguments by Braithwaite and Geis (1982) and Tombs and Whyte (2007) that incapacitation is more effective for companies and their directors than street criminals. One reason that incapacitation might be more effective for safety criminals than street criminals can be seen in the participants' support for a range of incapacitative penalties that remove a safety criminal's capacity to commit safety crime and are only applicable to these persons, such as prohibition notices, licence revocations, and disqualification orders (see Chapter 3 for more information on these penalties). The participants' support for the effectiveness of these incapacitative penalties corroborates similar conclusions by corporate crime (Braithwaite and Geis 1982; Croall 2001; Gobert and Punch 2003) and safety crime academics (Slapper and Tombs 1999; Tombs and Whyte 2007, p.173) that safety criminals can be removed from their 'position of privilege that safety crimes are committed'.

Furthermore, two participants suggested that the selective incapacitation (i.e. the incapacitation of persons based on a prediction that they will commit safety crime, see Chapter 3 section 3.2.4) of safety criminals can be achieved by prohibition notices that prohibit dangerous workplace practices in anticipation of safety crime. The participants' advocacy for selective incapacitation for safety criminals is an original contribution to the academic literature. Corporate crime and safety crime academics do not appear to have discussed selective incapacitation, most likely because academic discussion on incapacitation refers to collective incapacitation due to selective incapacitation's

fundamental shortcoming of failing to accurately predict street crime (Greenwood and Abrahamse 1982; Spelman 1994; Ashworth 2015). Although, considering that this disadvantage is based on street criminals, and two participants noted the effectiveness of selective incapacitation and prohibition notices for safety criminals, further research is needed to explore the effectiveness of predicting and selectively incapacitating safety crime.

Next, one participant suggested that incapacitation can be followed by rehabilitation because companies that are losing business will want to get back up and running again. Overall there is a scarcity of academic literature on the precise methods of combining the theories of punishment and their respective penalties for safety criminals. As Chapter 3 section 3.3 examined, Braithwaite (2002) and Macrory (2006) suggest an enforcement pyramid or system combining most of the theories and penalties for punishing safety criminals. However, these suggestions do not include the full range of safety crime penalties, particularly penalties aimed at achieving deterrence and retributive justice, and nor do their suggestions include in-depth information on descending steps, such as incapacitation – this being Braithwaite's (2002) final step – giving way to rehabilitation. For instance, the participant's suggestion that incapacitation can be followed by rehabilitation can be achieved by prohibition and improvement notices that prevent dangerous work from continuing until it has been remedied and the incapacitative penalty is removed. It can therefore be speculated that a more comprehensive system or pyramid of punishment covering the precise penalties that achieve the various theories of punishment can be effective for punishing safety criminals (see Chapter 9 section 9.2).

In contrast to some of the participants arguing for the effectiveness of incapacitation for safety criminals, almost half of the participants disagreed with the effectiveness of this theory because incapacitative penalties for safety criminals can result in a range of unintended consequences on employees and consumers. For example, numerous participants noted that the incapacitation of companies can lead to employees losing their jobs and consumers losing the services of an employer. This criticism mirrors concerns by corporate crime and safety crime academics (see Braithwaite and Geis 1982; Croall 2001; Gobert and Punch 2003; Tombs and Whyte 2007) that the incapacitation of companies and their directors can lead to collateral damage to innocent parties.

As a result, each theory of criminal punishment can be effective dependent on how penalties are used to achieve these theories. In the context of incapacitation, the participants' suggestions and academic literature argue that incapacitative penalties should be designed to limit the possible

unintended consequences on innocent employees and consumers. The following section discusses the range of penalties best suited to achieving the theories of punishment and avoiding any unintended consequences.

8.4 Improving penalties for safety criminals

For research question three 'how can penalties be used to effectively punish safety criminals', the participants had mixed views on the effectiveness of the majority of penalties for achieving their most relevant theory of punishment. The participants suggested various methods of improving or ameliorating the criticisms of most penalties for safety criminals. This includes the participants' views on how publicity orders and fines, including unit fines and equity fines, can be used to achieve retributive justice and deterrence. The participants also discussed the effectiveness of a range of rehabilitative sanctions aimed at supporting the victims of safety crime, rectifying safety crime harm, and educating safety criminals on how to avoid safety crime. Lastly, the participants' views on using custodial sentences, disqualification orders, and community sentences to incapacitate individual safety criminals are discussed in relation to the academic literature.

8.4.1 Fixing fines

The participants had mixed views on the effectiveness of a range of fines for achieving retributive justice and deterrence for safety criminals. Many of the participants argued that fines, in principle, achieve retribution and deterrence by threatening the financial viability and survivability of companies and encouraging company directors and shareholders to take safety more seriously. Furthermore, a few of the participants highlighted that the Sentencing Council (2016) guidelines on health and safety offences introduced in February 2016 have resulted in larger fines and more deterrence for safety criminals, particularly for small and medium sized businesses that have fewer resources than large organisations. Similar to how three participants stated that companies fear being fined because corporations are only vulnerable to financial impacts, Gobert and Punch (2003, p.221) point out that the scarcity of punishments for corporations means that 'fines have become the sanction of default for convicted companies', demonstrated by fines accounting for 80% of HSE (2021a) prosecutions in 2020/21. Fines therefore appear in nearly every academic discussion on the punishment of safety criminals and it is commonly accepted that because companies 'behave rationally and use cost-benefit analyses to govern their conduct, fines would be a good general deterrent if companies were certain or almost certain to be caught and fined every time they

offended' (Slapper and Tombs 1999, p.225).

However, the participants raised two criticisms concerning the viability of fines. Numerous participants argued that fines can have a range on unintended consequences on employees and consumers. According to the participants this can include companies reducing their health and safety budget to help pay for a fine, thereby increasing the risk of safety crime, companies can reduce the number of their employees to raise funds to pay for the fine, and organisations, especially public bodies such as local authorities and hospitals, may have to reduce their services to consumers to help pay for a fine. The participants awareness of these unintended consequences of fines corroborates existing criticism in the academic literature that fines can impact innocent employees and the public (Gobert and Punch 2003; Tombs and Whyte 2007), termed the 'overspill' effect by Coffee (1981).

Moreover, most of the participants argued that fines are usually too small to financially impact large organisations and achieve deterrence and retribution, thereby supporting a common criticism in the academic literature concerning the inadequacy of most fines (Braithwaite and Geis 1982; Slapper and Tombs 1999; Croall 2001; Gobert and Punch 2003; Tombs and Whyte 2007; 2017; Tombs 2018). To ameliorate this criticism, half of the participants suggested that unit fines, namely fines that are a percentage of a company's annual turnover, can be used to increase fines and achieve deterrence and retribution for larger companies. This viewpoint matches suggestions by Gobert and Punch (2003) and Tombs and Whyte (2007) on the effectiveness of unit fines for safety criminals. The participants recommended unit fines typically ranging from 5% to 30% of a company's annual turnover. This is slightly larger than the 0.5% to 13.5% unit fine range currently used for individual safety criminals (Sentencing Council 2016), the 5% to 15% unit fine range suggested by the now defunct Centre for Corporate Accountability (1999) and Tombs and Whyte (2007), the 2.5% to 10% unit fine range proposed by the Sentencing Advisory Panel (2007) in its consultation paper on the CMCHA 2007, and the maximum 10% unit fine prescribed by European Union competition law (European Commission 2011).

Unit fines are not without their disadvantages, however, as larger fines in the form of unit fines do not ameliorate the participants' criticism on the unintended consequences of fines, including employee layoffs, and larger fines are likely to increase this risk. Moreover, some of the participants remarked that companies can hide their financial accounts and make it difficult for the courts to reach an appropriate unit fine. This issue of accessing a company's financial status has been voiced

by Bergman (1992), Croall and Ross (1999, cited Croall 2001, p.137), and Tombs and Whyte (2007). One solution, suggested by Bergman (1992), is corporate inquiry reports detailing a company's financial standing, similar to the United States Sentencing Commission's (2019) presentence report whereby a probation officer investigates an offender's financial status.

Furthermore and to support a type of fine advocated by Coffee (1981), Mokhiber (1989), and Tombs and Whyte (2007), nearly half of the participants argued that another way to increase fines and to achieve deterrence and retribution is to seize part of a company's equity and to sell this equity for the desired monetary penalty, termed equity fines in Chapter 3 section 3.4.3. As one participant pointed out, equity fines reduce the risk of unintended consequences of fines by targeting the equity of a company instead of its running costs, thereby corroborating similar conclusions by Coffee (1981) and Tombs and Whyte (2007). In a more novel manner that has not been suggested in the academic literature, one participant suggested that before a company's equity is sold this equity can be transferred to the HSE to rehabilitate the company by introducing new managers to remedy any outstanding health and safety issues, and the extent that the company cooperatives with any rehabilitative reforms can correspond to the company reclaiming part of its equity. This participant's proposal to combine equity fines with rehabilitation is another example of how the theories of punishment can be used in collaboration to punish safety criminals, and by offering safety criminals the opportunity to reclaim their equity this can ameliorate potential criticism that equity fines unfairly target innocent shareholders (Coffee 1981; Croall and Ross 2002).

Although, some of the participants were concerned about the state's ability to manage a company's shares. The participants raised concerns about which part of government would hold the shares, the resources needed to manage a company's equity, the conflict of interest between the state owning a company's equity and regulating and assessing when or if companies reclaim their equity, and the state may not want to own the equity of companies in particular industries, such as a tobacco company. Considering that these criticisms have not been discussed in the academic literature, solutions to these criticisms are suggested in Chapter 9 section 9.3.1 on this study's implications and recommendations.

Next, some of the participants argued in favour of a type of civil fine that can be issued on-the-spot rather than through the courts. These participants argued that it is important to combine civil and criminal sanctions to effectively penalise a wider range of safety criminals, and presumably although not explicitly stated by the participants, achieve the theories of retribution and deterrence. The

participants' support for MAPs is partially a novel suggestion considering that this type of sanction has not been discussed in the safety crime literature or included in the interview guide of this thesis. Although, MAPs were advocated by Macrory (2006) to the Cabinet Office in 2006, and the Regulatory Enforcement and Sanctions Act (RESA) 2008 introduced MAPs for local authorities and government agencies for a wide range of sectors, including workplace health and safety (see Bristol City Council (2019) for example). The RESA 2008 links MAPs to the maximum fine for a summary conviction, which was £5,000 until the LASPO 2012 increased the maximum fine in the magistrates' courts to an unlimited fine. However, similar to European Union competition law (European Commission 2011) and The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020, MAPs cannot go beyond 10% of a company's annual turnover. The Environment Agency, for example, prescribes MAPs ranging from £100 (Gov.uk 2022b) to £250,000 (Gov.uk 2022c). Moreover, administrative penalties are used in the U.S., Australia, Canada, and many European countries such as Germany and Sweden (Macrory 2006). Despite the availability of MAPs in England and Wales there is a lack of information on the use and effectiveness of this sanction because it is not used by the HSE and 'there is no statutory requirement for local authorities to provide enforcement statistics to [the] HSE' (2022p). Despite being a civil rather than criminal penalty, the HSE's decision not to use MAPs can be linked to Chapter 5 section 5.4.3 on the lack of political will to impose criminal, or in this case civil, liability on safety criminals.

The participants' views that MAPs are effective for quickly administering fines, increasing the range of sanctions for safety criminals, and saving more serious or complex cases for the courts corroborate similar conclusions in Macrory's (2006) report. Furthermore, the introduction of new sanctions aligns with Wells' (1993, p.35) statement that 'it is essential that any discussion of corporate sanctions addresses the question of how to introduce more variety in the calendar of penalties'. Although, two of the participants, including emeritus Professor Richard Macrory, were aware that some people will argue that civil fines do not carry a shaming effect like criminal fines. Despite this, it can be speculated that MAPs are likely to complement the range of punishments for safety criminals, particularly if they are used early on in the prosecution process or form the base of a pyramid of penalties (see Chapter 9 section 9.2).

Lastly and to discuss the incapacitative capability of fines that is typically absent in the academic literature, one participant pointed out that large fines can incapacitate companies if they are forced into insolvency. The examination of the Sentencing Council (2016) guidelines in Chapter 3 section 3.4.1 illustrates that fines under these guidelines are more likely to incapacitate smaller or less

wealthier organisations. However, not only did two participants state that the courts avoid putting companies out of business, but as this section has argued, fines, as they are currently used, are usually too small to achieve retribution and deterrence for large or wealthy corporate safety criminals, and by extension, too small to achieve incapacitation. Whilst larger fines are more likely to achieve incapacitation, just as some of the participants recommended unit fines of 5% to 30% as opposed to 100% that is significantly more likely to incapacitate companies, it can be observed that the incapacitative capability of fines is rarely advocated by current policy, academic research, and the stakeholders in this study.

8.4.2 Publicising shaming

Most of the participants argued that publicising a company's illegal conduct, the fact of conviction, and the resulting penalty is effective for achieving retribution and deterrence by reducing a company's reputation and popularity, which in turn aims to reduce a company's sales and profits. This viewpoint corroborates a common argument in the academic literature that corporate shaming in the form of publicity orders is effective for achieving retribution and deterrence (Clinard and Yeager 1980; Braithwaite and Geis 1982; Fisse and Braithwaite 1983; Mokhiber 1989; Slapper and Tombs 1999; Gobert and Punch 2003; Tombs and Whyte 2007). However, some of the participants were doubtful that publicity orders achieve retribution and deterrence because this penalty is only effective if it has an economic impact on companies, and this economic impact depends on whether publicity orders are visible enough to customers and competitors. This criticism aligns with concerns raised by Slapper and Tombs (1999), Gobert and Punch (2003), and Tombs and Whyte (2007) that the effectiveness of publicity orders relies on the reaction of customers, opinion leaders, and society in general, and this public reaction may not be sufficiently severe to lead to an economic impact on safety criminals. Furthermore, just as Tombs (2018) commented on the infrequent use of publicity orders, this is corroborated by one participant stating that regulatory agencies tend to use penalties other than publicity orders – namely fines and custodial sentences as seen in HSE (2021a) – because regulators are not as innovative as they should be. These criticisms suggest that publicity orders should be used more frequently to increase their visibility, and in turn, their probability of having a financial impact on companies and achieving retribution and deterrence.

As well as the negative publicity and stigmatic shaming originating from publicity orders, two of the participants suggested that community sentences and disqualification orders can achieve similar outcomes. For one participant shaming in community sentences is more effective for senior

executives than employees, whereas another participant stated that a disqualification order is a powerful mark on an offender's curriculum vitae, thereby resembling Gobert and Punch's (2003, p.278) remark in relation to disqualification orders that few safety criminals will wish to have 'their reputation tarnished in this manner'. The shaming capability of community sentences and disqualification orders is rarely discussed in the academic literature, and although further research is needed to explore the effectiveness of shaming in these penalties, it can be speculated that there are few disadvantages to publicising a safety criminal's illegal conduct, the fact of conviction, and the resulting penalty as part of a community sentence or disqualification order.

8.4.3 Supporting the victims of safety crime and improving community safety

Moving on to penalties that aim to increase workplace health and safety, the majority of the participants stated that community sentences can be effective at achieving rehabilitation by reducing re-offending, supporting the victims of safety crime, and making communities safer. However, the participants discussed types of community sentences that are not currently used in England and Wales. One participant noted that community sentences as they are currently used do not usually reflect the safety criminal's employment, such as senior manager or director, and community sentences should better reflect the safety criminal's skillset. The participants recommended that community sentences should require safety criminals to carry out outreach work and help the community, such as managers and directors increasing their own and other organisations' health and safety standards or management practices, thereby supporting the community and reducing the risk of safety crime. The participants' viewpoint that community sentences should better reflect a safety criminal's skillset corresponds to brief statements by Levi (1989), Wells (2001), and Tombs and Whyte (2007) that the managerial skills of individual safety criminals could be useful for the community, although these statements do not discuss how community sentences should be changed or designed for safety criminals. As one participant proposed, community sentences should be calibrated to the safety criminal's niche skillset. This can involve ordering the executives of a company that produced fraudulent Covid-19 tests to check the reliability and validity testing of other Covid-19 test manufacturers. This participant's suggestion of calibrating the community sentence to the safety criminal's expertise is similar to Etzioni's (1993) proposal of matching a community sentence to the crime, namely Etzioni's example of requiring a company that sold adulterated food to provide soup kitchens for the homeless. In addition, some of the participants suggested that productive work reflected in a community sentence has positive effects on safety criminals as it can help them better understand the hazards their employees face

and the financial and emotional impact that results from safety crime. Also, some of the participants believed that by looking after and giving back to the community this can portray safety criminals as good employers, increase their reputation, and facilitate reintegrative shaming (for more information on reintegrative shaming see Chapter 3 section 3.2.3).

Despite most of the participants arguing for the effectiveness of community sentences, several participants doubted that community sentences achieve the theories of punishment. Some of the participants argued that by increasing the rehabilitative aspect of community sentences this reduces the penalty's retributive element, makes them too lenient, and sends a weak message to industry that fails to deter persons from risk taking. This criticism confirms Croall's (2001, p.138) suggestion that community sentences 'could be seen as "soft options"' for company directors. Moreover, one participant highlighted the difficulty of convicting individuals with a community sentence because lawyers can deflect the sentence from those responsible, this being one political and structural barrier to convicting safety criminals in section 8.2.3. Lastly, just as Tombs and Whyte (2007) point out that safety criminals might be incapable of providing health and safety training to the necessary standard, two participants stated that safety criminals may not have the skills or be unwilling to take on greater rehabilitative work.

In addition to community sentences, two of the participants suggested that restorative justice can be used to change the behaviour of safety criminals and help them make amends with their victims, in terms of understanding the victim's point of view, the impact of safety crime, and what they can do to help the victim. As one of the participants argued, restorative justice can be part of a community sentence for safety criminals. The participants' support for restorative justice for safety criminals is largely a novel contribution considering that this approach has only been broadly advocated by Braithwaite (2002a; 2003) and Macrory (2006) in their support for restorative justice for companies and corporate crime. Just as two of the participants, namely emeriti Professors John Braithwaite and Richard Macrory, discussed examples of how restorative justice has been successfully used against companies in corporate crime, it can be speculated that restorative justice is likely to be effective for safety criminals.

Lastly, a quarter of the participants argued that the money raised from fines should be used for rehabilitation by promoting safety or contributing to compensation for the victims of safety crime and their families. Financial compensation for the victims of crime and their families is presently available through compensation orders (see Chapter 3 section 3.4.1) in the magistrates' and Crown

Courts (HSE 2022h). However, discussion on compensation orders is markedly absent from the safety crime literature and there are no studies on the use or effectiveness of this sanction. It is therefore unclear how much compensation is paid to the victims of safety crime and their families, suggesting that measures should be implemented to record this data.

8.4.4 Rectifying safety crime harm

In a similar vein to supporting the victims of safety crime, some of the participants advocated for remedial orders that achieve rehabilitation by forcing companies to remedy the effects of safety crime harm. This penalty is supported by Gruner (1993), Slapper and Tombs (1999), and Gobert and Punch (2003, p.137) for its capability to require 'a company to correct the illegal and/or dangerous aspects of its operation that give rise to the offence.' For instance, one participant's suggestion that corporate safety criminals that cause environmental damage should clean up the mess they have made is similar to Mokhiber's (1989) discussion on a company that was ordered to clean up an oil spill in the United States. Although, just as one participant pointed out that remedial orders are rarely used by the courts and this makes it difficult to assess their effectiveness, there is currently no data on how many remedial orders the HSE uses. As one participant noted, judges are not equipped to monitor a company's performance and there needs to be the engagement of another agency, such as the Environment Agency, to oversee a company's compliance with remedial orders. In a more novel contribution to the academic literature, the participants emphasised a remedial order's capability to support the victims of safety crime and benefit the local community, even after matters that led to an offence have been rectified. This particular framing is more akin to penalties like corporate probation in the United States whereby companies undertake work that benefits the community, as discussed by Fisse (1981), Gruner (1993), and Gobert and Punch (2003). As one participant argued, if the damage from safety crime has already been remedied then corporate safety criminals should undertake more general work that benefits the community, such as funding part of a hospital wing or building a playground in a deprived area. This is similar to the sentence in *United States v Danilow Pastry Corpn* 1983 whereby a convicted bakery was ordered to supply fresh baked goods free of charge to those in need for a 12 month period.

Moreover, two of the participants argued that enforceable undertakings can be used to ensure that safety crime harm is remedied and cannot reoccur. Enforceable undertakings are nearly identical to remedial orders except they do not need to be issued by the courts, and therefore according to one participant, can achieve rehabilitation more quickly than remedial orders. In addition, the

participants suggested that enforceable undertakings require safety criminals to have some input into their punishment and this can lead to more long-term rehabilitation than externally imposing a penalty on safety criminals. Although enforceable undertakings have been advocated by Macrory (2006) in England and Wales and by Nehme (2010; 2021) and Braithwaite (2017) in Australia, this penalty is not frequently discussed in the safety crime literature. Despite Macrory's (2006) support for enforceable undertakings, this participant noted that the HSE showed no interest in utilising enforceable undertakings, this being one of the political barriers to convicting and criminalising safety criminals in section 8.2.3. Furthermore, one participant from the Environment Agency argued that enforceable undertakings are inappropriate for serious offences, intentional safety crimes, and repeat offenders, as these persons should be prosecuted by the criminal courts. It can therefore be suggested that research should pursue the effectiveness of enforceable undertakings for safety crimes that are not severe or intentional and for first time offenders. Just as Nehme (2010) argues, enforceable undertakings can be used at the beginning of prosecution action, or at the start of a pyramid of punishment (see Chapter 9 section 9.2).

8.4.5 Educating safety criminals

Alongside supporting the victims of safety crime and rectifying safety crime harm, numerous participants argued that rehabilitation can educate safety criminals about the importance of health and safety regulations and increase their health and safety competency. The participants suggested various practices of educating safety criminals, such as including training as part of a remedial order, enforceable undertaking, or mentoring scheme between the safety criminal and a health and safety expert in another company. For two of the participants, safety criminals should be ordered to pay for their health and safety training, thereby helping to ameliorate the scarcity of resources to enforce workplace health and safety discussed in section 8.2.4. Furthermore, two participants suggested that as part of a safety criminal's training they can conduct outreach work and teach other businesses about the seriousness and consequences of safety crime, thereby supporting the community by raising awareness of safety crime and possibly contributing to retributive justice and stigmatic shaming (see section 8.4.2). The effectiveness of educating safety criminals to prevent safety crime has not been widely discussed in the academic literature (see Woolf 1973; Collinson 1978; Braithwaite 1985), and there is even less discussion on how training should be combined with safety crime penalties. Although, the participants' suggestion of a mentoring scheme between the safety criminal and a health and safety expert is similar to Braithwaite and Geis' (1982, p.311) probation order whereby the company is placed under the supervision of an expert or authority to

assist the company in restructuring its compliance systems. One participant also suggested that mentoring schemes for safety criminals can be linked to a system of deferred punishment whereby the success or failure of the training affects the penalty that the company receives. To build on this participant's suggestion, Chapter 9 section 9.2 details how mentoring schemes and the remaining rehabilitative penalties can be incorporated into pyramid of penalties whereby the success of these penalties leads to fewer or less severe retributive, deterrent, or incapacitative penalties.

8.4.6 Incapacitating individual safety criminals

For this final section on incapacitative penalties, the participants had mixed opinions on the effectiveness of custodial sentences, disqualification orders, and community sentences for safety criminals. Approximately half of the participants argued that custodial sentences are effective for incapacitating safety criminals, and for some of the participants, the severity of incapacitation from imprisonment is also likely to achieve retribution and deterrence, thereby corroborating similar conclusions on the retributive and deterrent capability of imprisonment by Levitt and Miles (2007) and Chalfin and McCrary (2017). As one participant stated, individuals fear the threat of imprisonment and having their freedom taken. However, some of the participants noted the difficulty of convicting safety criminals with a custodial sentence because it is difficult to identify who is responsible for safety crime in large organisations, leading one participant to argue that imprisonment is not currently an option for most safety criminals. The infrequency of custodial sentences has already been highlighted in section 8.2.1, as just 22 or 12% of safety criminals were sentenced to imprisonment in 2020/2021 by the HSE (2021a). This criticism confirms Tombs and Whyte's (2007, p.172) argument that 'only a tiny minority of criminal directors and senior managers are ever likely to be given prison sentences', and section 8.2.3 on the political and structural barriers to convicting safety criminals explains why safety criminals are infrequently imprisoned.

Rather than imprisonment, just over half of the participants argued that disqualification orders are effective for achieving incapacitation by preventing individuals from managing a company and taking away their ability to commit safety crime. As one participant argued, disqualification orders are useful for forcing individuals into another occupation. Disqualification orders are not the most frequently discussed penalty in the academic literature and apart from one HSE (2007a) report in 2007 stating that 10 individuals were sentenced with a disqualification order for safety crime from 1986 to 2005, the HSE does not include any data on disqualification orders. Despite this, the participants' support for disqualification orders matches arguments by Gobert and Punch (2003) and

Tombs and Whyte (2007) that this penalty can be used to effectively incapacitate safety criminals. However, some of the participants disagreed with the disqualification order's ability to incapacitate individuals, as persons can circumvent the disqualification order by putting their family members in control of the company and de facto manage the company. This criticism corroborates concerns by Gobert and Punch (2003, p.279) that a director's spouse can 'be appointed to fill the vacancy on the board', and 'it would come as no surprise if the views expressed by the spouse were to prove remarkably similar to those of his/her partner.' In addition, the participants highlighted the issue of directors surreptitiously creating another 'phoenix' company. As two of the participants suggested, qualification orders therefore need to be monitored to prevent individuals from circumventing the order.

As well as disqualification orders, nearly half of the participants were in favour of increasing the incapacitative capability of community sentences by requiring individuals to fulfil the community sentence full-time during their work hours, thereby preventing them from fulfilling their normal work commitments. As one participant argued, individuals carrying out a community sentence should not turn up to their jobs 'being horrible', they should show up somewhere else and serve them. The participants' support for incapacitating individuals with a community sentence is a novel suggestion as the academic literature focuses on the rehabilitative aspects of this penalty. Although, one participant's suggestion that community sentences can be a good alternative to imprisonment by benefitting the individual and society (such as the types of community sentence discussed in section 8.4.3) corroborates Croall's (2001, p.138) proposal that 'individuals could be better used by serving the community than sending them to prison.' In contrast to the participants' support for community sentences, some of the participants argued against community sentences being used to incapacitate individuals whose failures have caused serious safety crimes and the loss of life, this being similar to Croalls' (2001) and the participants' criticism in section 8.4.3 that community sentences might be too lenient to achieve retribution and deterrence.

Lastly, some of the participants criticised community sentences that take place during work hours and custodial sentences for their unintended consequences on employees, thereby demonstrating the unintended consequences of incapacitation in section 8.3.4. According to these participants, preventing individual safety criminals, particularly directors, from fulfilling their job may cause their company to close and force the company's employees out of work. Furthermore, two participants drew attention to the financial repercussions of preventing individuals from earning an income, such as reducing their ability to direct a company in the future, to meet their financial commitments to

maintain a home, and their ability to pay for a fine. Although the academic literature does not frequently discuss the unintended consequences of custodial sentences and community sentences as they relate to individual safety criminals, these unintended consequences share similarities to the unintended consequences of incapacitating corporations in section 8.3.4. To avoid the unintended consequences of custodial sentences and community sentences, other than using these incapacitative penalties for the most serious safety crimes or as a last resort, one participant suggested that community sentences during work hours should only be used for individuals in large organisations so there is less impact on the company.

8.5 Summary

This chapter has discussed the themes that were created from the participants' data in relation to the literature review chapters to identify the extent that this study's findings correlate or contrast with the academic literature and to identify this study's contribution to knowledge. To reiterate, this study's research questioned asked: which theories of punishment are currently informing the punishment of safety criminals in England and Wales; which theories are effective at punishing safety criminals and why are they effective; and how can penalties be used to effectively punish safety criminals?

The chapter began by arguing that there is a lack of punishment for many safety criminals in England and Wales. The participants overall mixed views on the influence of the theories of punishment on safety criminals suggest that these theories are weakly influencing the punishment of safety criminals in England and Wales. Similar to the academic literature, this study's themes of safety crime obscurity, political and structural barriers to convicting safety criminals, and the scarcity of resources to enforce adequate health and safety indicate that there is a lack of punishment for safety criminals because a significant number of these persons are not identified and punished by the criminal justice system. These themes also emphasise the importance of political, structural, and economic factors in understanding the influence of the theories of punishment on safety criminals. Furthermore, as one participant stated, considering that the influence of the theories of punishment on safety criminals relies on the effectiveness of these theories for these persons, the remaining sections of this chapter discussed how the theories of punishment and penalties can be used to effectively punish safety criminals.

For research two and to corroborate many of the arguments in the academic literature in Chapter 3,

this chapter discussed the participants' varied views on the effectiveness of the theories of punishment for safety criminals. The themes constructed from the participants' data and the academic literature suggest that deterrence, in principle, is effective for safety criminals that fear being prosecuted and are likely to rationally consider the risk of being arrested, convicted, and the severity of the punishment. However, several of the participants argued that deterrence is ineffective against safety criminals that do not consider the factors of deterrence if safety crime results from negligence, and similar to the academic literature, half of the participants stated that in practice current safety crime penalties are not effective enough to achieve deterrence for large corporate safety criminals. In addition to deterrence, the academic literature and half of the participants argued that retributive justice is effective for achieving proportional and deterrent penalties. Although, and in a more original contribution to the academic literature, some of the participants highlighted that retributive penalties do not make workplaces safer and may make workplaces less safe. Next, the academic literature and most of the participants supported rehabilitation for its ability to reduce the risk of safety crime. Whereas the academic literature tends to focus on reforming the criminogenic conditions of companies, the participants focused on training and educating safety criminals on how to avoid safety crime. Also, in accordance with the academic literature, some of the participants acknowledged that rehabilitation does not work with 'compliant' and 'criminal employers' that either do not have the skills to undergo rehabilitative training, or are unwilling to be rehabilitated and change their profitable practices. Last, similar to the academic literature, the participants believed that the incapacitation of safety criminals can be achieved by restricting their capacity to commit safety crime, although incapacitation can result in unintended consequences on workers and consumers. In a more novel contribution to the academic literature, several participants argued that selective incapacitation can be used to predict and prevent potential safety crimes.

For research question three, the participants had mixed views on the effectiveness of most of the penalties for safety criminals. To corroborate the academic literature in Chapter 3, the majority of the participants stated that fines are effective at achieving retributive justice and deterrence for safety criminals, because fines can financially threaten the viability and survivability of companies and force directors to take safety more seriously. However, many of the participants concurred with the academic literature that fines can have a range of unintended consequences such as employee layoffs, and that fines are usually too small to have a financial impact and achieve retribution and deterrence for large organisations. One solution to small fines, according to some of the participants and the academic literature, is to introduce unit fines for organisations to achieve larger and

proportional financial sanctions, or by fining a company's equity and selling this equity for the desired monetary penalty. Despite these potential solutions, unit fines are likely to exacerbate the unintended consequences of fines, and some of the participants were concerned about the state's ability to manage a company's equity. In addition to criminal fines and in a more original contribution to the academic literature, some of the participants supported civil fines that can be issued without the courts and can reach a wider range of safety criminals. Although there are virtually no drawbacks to using MAPs, one of the participant's pointed out the HSE's reluctance to utilise MAPs, thereby demonstrating the lack of political will to impose criminal, or in this case civil, liability on safety criminals. Alongside fines, the participants' data and the academic literature suggest that publicity orders and stigmatic shaming can achieve retribution and deterrence by reducing a safety criminal's reputation and profits. However, not only are publicity orders rarely used, but it is difficult to measure or ensure the effectiveness of this penalty as this depends on the publicity order's visibility and the general public's reaction. Also, a handful of participants expressed support for emphasising the shaming effects of community sentences and disqualification orders.

Next, the academic literature and most of the participants advocated for penalties that support the victims of safety crime, rectify safety crime harm, and educate safety criminals on how to avoid safety crime. Many of the participants advocated for novel rehabilitative penalties rarely discussed in the academic literature, such as more complex community sentences that utilise a safety criminal's skillset, enforceable undertakings, restorative justice, and using the money raised from fines for promoting safety and compensating the victims of safety crime and their families. For sanctions that aim to rectify safety crime harm, the participants' views and academic literature concur that remedial orders should require safety criminals to remedy the harm they have caused and to ensure that the risk of safety crime is reduced, although it is difficult to judge the effectiveness of this penalty due to its infrequent use. In addition and unlike the academic literature, the participants suggested that mentoring schemes, enforceable undertakings, and restorative justice can be used to educate safety criminals on adequate workplace health and safety. However, some of the participants and Tombs and Whyte (2007) were concerned that some safety criminals do not have the competency or are unwilling to cooperate with rehabilitative sanctions. Moreover, several of the participants and Croall (2001, p.138) highlighted that by emphasising the rehabilitative element of penalties, this reduces their retributive and deterrent capabilities and portrays rehabilitative penalties as 'soft options'.

Lastly, the participants had mixed views on the effectiveness of custodial sentences, disqualification

orders, and community sentences for incapacitating individual safety criminals. Similar to the academic literature, several participants noted that imprisonment is the most significant form of incapacitation by restricting a person's freedom, and consequently, this is likely to achieve retributive justice and deterrence. According to other participants, disqualification orders are effective at removing individual safety criminals from their executive position and their capacity to commit safety crime, although disqualified individuals can circumvent this penalty by putting their family members in charge of the company or by surreptitiously creating another company. Whereas some of the participants supported community sentences that incapacitate individual safety criminals in their free time, other participants argued, in a more novel manner, for community sentences that incapacitate these persons during their working hours, thereby preventing them from holding employment. Although, some of the participants disagreed with community sentences being used for serious safety crimes and safety criminals that kill. Furthermore and in a more general manner affecting custodial sentences, disqualification orders, and community sentences, numerous participants argued that incapacitative penalties can lead to unintended consequences on workers and consumers, and the difficulty of convicting individual safety criminals means that these penalties are infrequently used.

Taken together, the themes created from the participants' data suggest that the influence and effectiveness of the four theories of punishment is, to a large extent, dependent on how penalties are used against safety criminals. Although, that is not to downplay the importance of political, structural, or economic factors, such as the lack of political will to impose civil or criminal sanctions on safety criminals. The academic literature and many of the participants' views were critical of current penalties for safety criminals, as the most common penalty, fines, was criticised for its inability to achieve retributive justice and deterrence for large or wealthy safety criminals. This chapter has recommended different methods of improving penalties for safety criminals, including novel suggestions by the participants that are underused for safety criminals in England and Wales. The next chapter collates these recommendations and presents them in a pyramid of penalties that aims to combine and mutually reinforce the effectiveness of the theories of punishment for safety criminals.

Chapter 9

Conclusion

9.1 Introduction

This qualitative research is the first study that explores the relationship between the traditional justifications for punishment and safety criminals in England and Wales through the viewpoint of key stakeholders. Drawing on the expert knowledge of 21 participants, the research questions of this thesis investigated which theories are currently informing the punishment of safety criminals in England and Wales, the effectiveness of these theories and why they are effective, and how penalties can be used to effectively punish safety criminals. This chapter re-iterates the answers to these research questions, followed by detailing this study's contributions for policy and research, the reflections on the strengths and weaknesses of this thesis, and the recommendations for further research.

9.2 Answering the research questions

To answer research question one, which theories of punishment are currently informing the punishment of safety criminals in England and Wales, the participants overall mixed views on the influence of the theories of punishment on safety criminals indicate that the theories of deterrence, retributive justice, rehabilitation, and incapacitation are weakly influencing the punishment of these persons. To speculate why these theories are not significantly influencing the punishment of safety criminals, and to corroborate most of the literature in Chapter 2, the themes created from the participants' data suggest that a significant number of safety criminals are not identified and prosecuted by the criminal justice system due to the obscurity of safety crime and safety criminals, political and structural barriers to convicting safety criminals, and a lack of safety crime enforcement. Furthermore, as one participant stated, the influence of the theories of punishment depends on their effectiveness, and as the rest of this section argues, the effectiveness of the theories of punishment on safety criminals varies, dependent on how penalties are used to achieve these theories.

For research question two, which theories are effective at punishing safety criminals and why are they effective, the effectiveness of deterrence, retributive justice, rehabilitation, and incapacitation

varies, largely dependent on how penalties are used to achieve these theories. According to the academic literature and most of the participants, safety criminals can be deterred from committing safety crime because these persons fear being prosecuted and are usually rational actors that consider the factors of deterrence, such as the risk of being arrested, convicted, and whether the punishment outweighs the financial benefit of committing safety crime (Pearce and Tombs 1998; Slapper and Tombs 1999; Tombs and Whyte 2007). However, half of the participants concurred with the academic literature that in practice most penalties for safety criminals are not effective enough to achieve a deterrent effect (Slapper and Tombs 1999; Gobert and Punch 2003; Tombs and Whyte 2007), and for some of the participants, some safety criminals may be unaware of the risk of being punished and thus the factors of deterrence if safety crime results from negligence.

Moreover, over half of the participants agreed with von Hirsch (1976; 1976a), Gerber and Jackson (2013), and Ashworth (2015) that retributive justice is effective for achieving proportional punishments that deter criminals, including safety criminals. Although, several participants disliked the principle of retributive justice because it can be perceived as revenge, thereby resembling broader arguments on the inappropriateness of using retributive justice to punish criminals (Lacey 1988; Moore 1988; Ashwell 2015). As some of the participants stated, retributive penalties do not make workplaces safer and may in fact make workplaces less safe.

Next, whereas the corporate crime (Braithwaite and Geis 1982; Braithwaite 1984; Gobert and Punch 2003) and safety crime literature (Tombs and Whyte 2007) focuses on reforming the criminogenic traits of organisations, the majority of the participants argued that rehabilitation is effective at maximising safety by educating safety criminals on how to avoid safety crime. However, approximately half of the participants stated that rehabilitation is ineffective against 'compliant' and 'criminal' employers, namely persons that are unwilling to cooperate with rehabilitative penalties either because they are not competent enough or feel as though they do not need to be rehabilitated, or because they are unwilling to change their profitable practices.

Lastly, approximately one third of the participants corroborated arguments in the academic literature that incapacitation is effective at restricting a safety criminal's capacity to commit safety crime (Croall 2001; Slapper and Tombs 1999; Tombs and Whyte 2007). Furthermore and unlike the academic literature, some of the participants suggested that selective incapacitation (i.e. incapacitating safety criminals on a prediction that they will commit safety crime) can be effective against safety criminals. Despite these advantages, similar to the academic literature, almost half of

the participants highlighted that incapacitation can lead to unintended consequences on safety criminals, employees, and consumers (Braithwaite and Geis 1982; Gobert and Punch 2003; Tombs and Whyte 2007). This can include safety criminals losing the financial ability to maintain their directorship or mortgage if they cannot work, employees might be made redundant if companies are forced to close, and consumers might lose the services of a company, particularly if the company provided health, social, or transport utilities.

As a result, the effectiveness of the theories of punishment on safety criminals largely relies on research question three, how can penalties be used to effectively punish safety criminals. Despite the participants' mixed views on the effectiveness of most of the penalties for safety criminals, the academic literature and participants' data suggest various methods of improving penalties to better achieve the theories of punishment for safety criminals. To achieve deterrent and retributive penalties, the findings of this study and Chapter 3 suggest that fines should be increased to have a larger impact on organisational safety criminals (Slapper and Tombs 1999; Gobert and Punch 2003; Tombs and Whyte 2007). Perhaps the most straightforward and proportional method of increasing fines is to set fines as a percentage of a company's annual turnover. On one hand, the academic literature suggests that unit fines should range from 2.5% to 15% (Centre for Corporate Accountability 1999; Tombs and Whyte 2007; Sentencing Advisory Panel 2007). These ranges are similar to the 0.5% to 13.5% unit fine range for individual safety criminals (Sentencing Council 2016). On the other hand, the participants typically recommended unit fines of 5% to 30%. To propose a middle value between the unit fine ranges suggested by the academic literature and the participants, this study recommends unit fines for organisations ranging from 4% to 20%, as seen in Table 9.1. This table is based on the same range of harm and culpability categories that the Sentencing Council (2016) guidelines currently use. The range of unit fines is based on the degree of culpability and harm of the safety crime, starting at 4% for the lowest culpability and harm category, and each ascending culpability and harm category corresponds to a larger unit fine up to 20%. This range of unit fines is likely to achieve greater degrees of retributive justice and deterrence for organisations whilst limiting a unit fine's incapacitative capability and thus the unintended consequences of company closure and employee redundancies.

	Starting unit fine	Category range
High culpability		
Harm category 1	16%	15% – 20%
Harm category 2	15%	14% – 16%
Harm category 3	14%	13% – 15%
Harm category 4	13%	12% – 14%
Medium culpability		
Harm category 1	12%	11% – 13%
Harm category 2	11%	10% – 12%
Harm category 3	10%	9% – 11%
Harm category 4	9%	8% – 10%
Low culpability		
Harm category 1	8%	7% – 9%
Harm category 2	7%	6% – 8%
Harm category 3	6%	5% – 7%
Harm category 4	5%	4% – 6%

Table 9.1: Proposed range of unit fines for offences to the HSWA 1974 and CMCHA 2007.

Moreover, in accordance with Macrory's (2006) recommendations, some of the participants suggested that MAPs should be used to reach a wider range of safety criminals in which cautions were having no effect and to leave more serious safety crimes to the courts. Rather than prioritising retribution and deterrence, MAPs prioritise the probability of inflicting a financial sanction on safety criminals. Increasing the probability of punishment is important considering that one participant suggested that the fear of being punished is more effective at deterring safety criminals than the severity of punishment, thereby supporting the recommendations of Greenwood and Abrahamse (1982) and Hostettler (2011). It can be recommended that similar to the Environment Agency (Gov.uk 2022b; 2022c), the HSE should utilise MAPs ranging from £100 to £250,000.

However, many of the participants and academic literature were concerned that companies may reduce their employees, health and safety standards, or services to pay for a fine (Coffee 1981; Gobert and Punch 2003; Tombs and Whyte 2007), particularly public bodies like local councils or hospitals. Aside from subjecting safety criminals, especially public bodies, to rehabilitative or incapacitative penalties; to reduce or avoid these unintended consequences whilst achieving retributive justice and deterrence, rather than subtracting from a company's running costs, Coffee

(1981), Tombs and Whyte (2007), and nearly half of the participants advocated for equity fines that seize and sell part of a company's equity to attain the desired monetary penalty. In response to some of the participants highlighting the state's inability to effectively manage equity fines in Chapter 7 section 7.2.1, three recommendations are suggested. First, based on the National Audit Office's (2018) positive appraisal of His Majesty's Treasury's handling and return of 43% of the shares of Lloyds Banking Group to private ownership from June 2013 to May 2017, His Majesty's Treasury's centre of expertise in corporate finance and corporate government, UK Government Investments, can and should be used to competently manage equity fines. Second, to ameliorate the participants' criticism that there is a conflict of interest between the state owning a company's equity and assessing if companies reclaim their equity, companies should be given the opportunity to reclaim part of their equity if they cooperative with rehabilitative penalties, such as remedial orders. Third, judges should avoid using equity fines against unfavourable companies or industries that the state may not want to involve itself with.

In addition to fines, the themes created from the participants' data and academic literature indicate that publicity orders should be used more frequently to achieve retribution and deterrence for safety criminals (Fisse and Braithwaite 1983; Slapper and Tombs 1999; Tombs and Whyte 2007). It can be suggested that one method of increasing the frequency of publicity orders is to use them in response to breaches to the HSWA 1974 in addition to offences to the CMCHA 2007. Also, some of the participants suggested that community sentences and disqualification orders should emphasise stigmatic shaming to achieve retribution and deterrence.

Next, the participants proposed various novel methods of achieving rehabilitation for safety criminals and the victims of safety crime. For supporting the victims of safety crime and improving the safety of communities, three suggestions were devised from the participants' data. First, safety criminals should engage in restorative justice with their victims to understand the impact of safety crime and how they can make amends with their victims. Second, similar to brief statements by Levi (1989), Wells (2001), and Tombs and Whyte (2007), community sentences should be tailored to the safety criminal's expertise, and if appropriate, involve outreach work such as improving organisations' health and safety or management practices. Third, compensation orders should be used more frequently so that the money raised from fines is used for compensating the victims of safety crime and for promoting safety in the community.

Alongside supporting the victims of safety crime, the academic research and participants' data

suggest that remedial orders should be used more frequently to remedy safety crime harm and prevent safety crime from re-occurring (Gruner 1993; Slapper and Tombs 1999; Gobert and Punch 2003). Also, as one participant stated, if the harm from safety crime has already been rectified, remedial orders can require safety criminals to undertake more general work that benefits the local community, such as building a playground in a deprived area. Similarly, according to some of the participants and Macrory (2006), enforceable undertakings should be used at the beginning of the prosecution process for less serious offences, unintentional safety crimes, and for one off-offences to help safety criminals remedy the effects of safety crime and support the community.

In addition, many of the participants argued in favour of training safety criminals on how to avoid safety crime. Education programmes or mentoring schemes that increase the health and safety competency of safety criminals should be used in conjunction with other rehabilitative penalties, such as community sentences, enforceable undertakings, and remedial orders. Furthermore, per one participant's recommendation, the success rate of this training can be linked to a system of deferred punishment that affects any additional penalties that the safety criminal receives. Similarly, it can be proposed that so too can each of the rehabilitative penalties be linked to deferred punishments that affect the outcome of any additional penalties. For example, a financial penalty against a safety criminal can be reduced on successful completion of a mentoring scheme, enforceable undertaking, or remedial order.

For incapacitative penalties, the participants supported several sanctions that are rarely advocated in the academic literature. Half of the participants stated that custodial sentences are effective at achieving incapacitation, although, similar to Tombs and Whyte's (2007) observation that a minority of individual safety criminals are given prison sentences, the participants suggested that there needs to be easier methods of convicting these persons with imprisonment. Similarly, Gobert and Punch (2003), Tombs and Whyte (2007), and over half of the participants believed that disqualification orders are effective at achieving incapacitation. But disqualified individuals need to be monitored to prevent them from circumventing the disqualification order by managing companies through their family members (Gobert and Punch 2003) or by surreptitiously creating a new company. Unlike the academic literature, nearly half of the participants advocated for community sentences that take place full-time during work hours and prevent individuals from fulfilling their job. Although, similar to Croall's (2001) observation that community sentences might be too lenient to achieve retributive justice and deterrence, some of the participants stated that this form of incapacitative community sentences should not be used for serious safety crimes and the loss of life. Lastly and despite not

being included in the interview guide of this study, two of the participants recommended that prohibition notices can be used to prevent dangerous work from taking place, this being the only form of organisational incapacitation advocated by the participants. Overall, almost half of the participants argued that incapacitative penalties should aim to avoid unintended consequences on individual safety criminals, workers, and consumers; such as employee redundancies or the loss of company services if companies are forced to close, or individual safety criminals losing the ability to meet their financial commitments to pay a fine or maintain their mortgage. This suggests that incapacitative penalties should typically be used as a last resort, or as one participant noted, only used for safety criminals in large organisations so that the incapacitative impact on workers and the company is relatively small.

Considering the varied effectiveness of the theories of punishment and penalties for safety criminals, it is clear that no single penalty or theory is sufficient and that these methods should be combined to effectively punish safety criminals. In light of arguments for a 'sentencing mix' (Croall and Ross 2002; Tombs and Whyte 2007), and to build on suggestions in Chapter 3 section 3.3 by Braithwaite (1985), Ayres and Braithwaite (1992), Braithwaite (2002), and Macrory (2006), one method of combining the penalties and theories of punishment for safety criminals can be seen in Figure 9.1. The pyramid in Figure 9.1 incorporates a more comprehensive range of penalties for safety criminals, particularly penalties aimed at achieving deterrence and retributive justice. This pyramid represents an ascending scale of penalties that can be used against safety criminals, with the least severe penalty appearing at the bottom of the pyramid and the most severe penalty appearing at the top of the pyramid. Each penalty has been colour coded to represent a specific theory of punishment, namely green for rehabilitation, red for retributive justice, and black for incapacitation. Whilst deterrence is primarily achieved by MAPs, fines, and publicity orders in red font, each ascending penalty is likely to achieve greater degrees of deterrence.

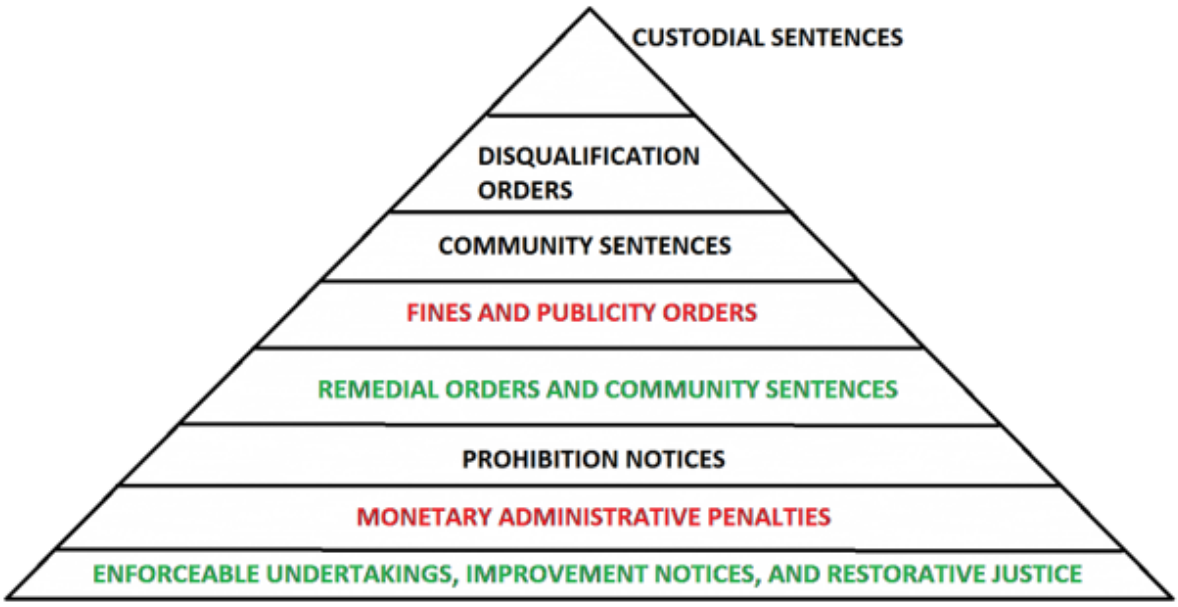

Figure 9.1: Example of a pyramid of penalties for safety criminals.

The pyramid begins with a range of civil sanctions that can be issued on-the-spot without court proceedings. First, enforceable undertakings and improvement notices can be used to rectify the harm that has resulted from safety crime. Safety criminals should also be informed of the opportunity of enforceable undertakings and restorative justice between themselves and the victims of safety crime, and these opportunities should be available throughout the sentencing process. In cases where a retributive sanction is required, MAPs can be used to fine safety criminals up to £250,000 (Gov.uk 2022b). In situations where dangerous working conditions are likely to result in harm, a prohibition notice can be used to prevent this work from continuing.

Remedial orders or community sentences that occur in the individual safety criminal's free time and focus on rehabilitation can be used in cases where enforceable undertakings or improvement notices are inappropriate for intentional and serious safety crimes or repeat offenders. In cases where a retributive penalty is needed, unit fines or equity fines can directly penalise the safety criminal's financial viability, and a publicity order can force the safety criminal to publicise the details of their conviction and sentence. In situations where a dangerous individual safety criminal has been identified, disqualification orders or community sentences that occur full-time during work hours and prevent the individual from working can be used. Lastly and as a last resort, individual safety criminals can be sentenced with a custodial sentence to ensure their incapacitation.

These penalties can be used in any order and in any combination with one another, dependent on

the type of safety crime and safety criminal and the aims of punishment. By using a sentencing mix and a coalescence of different penalties and theories, the pyramid of penalties in Figure 9.1 aims to achieve a cumulative effect that is greater than the sum of its individual penalties by ameliorating the weaknesses of particular penalties or theories with the advantages of other penalties or theories. For example, the risk that retributive or incapacitative penalties can lead to unsafe work or unintended consequences can be reduced by concurrently incorporating rehabilitative penalties. This can be achieved by combining fines or publicity orders with community sentences or remedial orders involving training or mentoring schemes that simultaneously educates safety criminals on safe working conditions, addresses criticism that safety criminals may be incompetent to undertake rehabilitative work (Tombs and Whyte 2007), has the potential to involve outreach work that benefits the local community and the victims of safety crime, and counters criticism that rehabilitative penalties by themselves are too lenient (Croall 2001). Similarly, incapacitative penalties like disqualification orders or prohibition notices can be combined with remedial orders or improvement notices to assist in ensuring that individuals comply with the disqualification order, whilst potentially reducing the duration of this order or prohibition notice and thus decreasing the risk or duration of unintended consequences like company closure (Braithwaite and Geis 1982; Gobert and Punch 2003; Tombs and Whyte 2007).

9.3 Key contributions for policy and research

This section presents the study's empirical and theoretical contributions for policy and research concerning the punishment of safety criminals. Despite the Sentencing Council's (2016) aims of punishment, deterrence, and to have a real economic impact on safety criminals, this study's findings strengthen the narrative that most penalties currently used to punish safety criminals do not effectively achieve the theories of punishment (Slapper and Tombs 1999; Gobert and Punch 2003; Tombs and Whyte 2007). To better achieve the theories of punishment and prevent safety crime, this study suggests a series of changes to current policy in the previous section that answers this study's research questions on which theories and penalties are effective at punishing safety criminals.

However, and to further indicate why most penalties for safety criminals are not currently effectively achieving the theories of punishment, the participants corroborated arguments that the politics of crime, law, and order dictate criminological research and criminal policy (Brake and Hale 1992; Downes and Morgan 2002; Hale 2004). This can be illustrated by the participants' views and

academic literature on the political and structural barriers to convicting safety criminals, such as the lack of political will to impose additional criminal or civil liability on safety criminals, issues of collecting evidence, and the corporate veil that shields many individuals and legal persons from being found accountable for safety crime (Tombs and Whyte 2007; 2015; Tombs 2018). According to the participants and Bardach and Kagan (1982), Hawkins and Thomas (1984), and Hutter (1997), government policy prioritises negotiation, compromise, and consensus between employees and employers over state enforcement using the theories of criminal punishment, namely consensus and punitive regulation respectively. For numerous participants and academics like Dawson *et al.* (1988) and Tombs and Whyte (2007; 2010; 2012; 2017; 2020), this consensus approach illustrates the deregulation of workplace health and safety, as fewer inspections and prosecutions results in fewer safety criminals being identified and punished, and ostensibly, a reduction of safety crime. These political and structural barriers therefore contribute to the obscurity of safety crime by reducing academic, public, and legal conceptions on the criminal stigma of safety crime. Until these political and structural barriers are removed, the hidden figure of safety crime harm will likely increase as many safety criminals continue to enjoy impunity from a credible risk of being identified, convicted, and effectively punished with the theories of punishment. This study suggests that greater political incentives are required to draw attention to the significant harm of safety crime, and in doing so, attract additional resources to better identify, convict, and punish safety criminals using state backed proactive enforcement.

9.4 Reflections on the strengths and weaknesses of this thesis

This is the first qualitative study that through discussions with key stakeholders explores the relationship between the traditional justifications for punishment and safety criminals in England and Wales. By investigating the influence and effectiveness of the theories of punishment and penalties on safety criminals, this study's findings can be useful for informing policy or further research on the effective punishment and prevention of safety crime in countries beyond England and Wales. Furthermore, by studying safety criminals, including wealthy or powerful persons that may have the power to operate beyond public scrutiny and accountability, this research contributes to 'studying up' and unmasking the crimes of the powerful (Tombs and Whyte 2003). However, and to illustrate a typical issue of studying up, this research can be criticised for its small sample size, as the difficulties of data collection resulted in 63 stakeholders failing to respond or refusing to participate to the study invitation. Also, taking into consideration that most of the interviews lasted approximately 30 minutes, only one participant from each stakeholder was interviewed, and that

some of the primary stakeholders (Morse 1998) were not interviewed, it is unlikely that data saturation was achieved and some of the themes or subthemes may be idiosyncratic. Considering the qualitative nature of this study that adopted constructivism and interpretivism to understand how knowledge is produced, not only might the participants' social realities be unrepresentative of other individuals' viewpoints in the same working environment or organisation, but the findings here did not aim to be as generalisable or definitive as quantitative research.

9.5 Recommendations for further research

The findings indicate several promising areas of research for effectively punishing safety criminals and preventing safety crime. Primarily, further research should identify precise methods of implementing the recommendations of this study into policy. This relates to using equity fines, MAPs, restorative justice, enforceable undertakings, community sentences that utilise the skills and expertise of safety criminals, publicity orders or stigmatic shaming in community sentences and disqualification orders, the selective incapacitation of safety criminals to identify and prevent safety crime, and methods of effectively combining and complementing the theories of punishment and penalties for safety criminals. For instance, research should identify an effective range of equity fines for achieving deterrence and retributive justice whilst limiting the unintended consequences of incapacitation, and explore how community sentences can maximise the outreach work of safety criminals. Moreover, the findings of this study indicate that additional resources and political desire should pursue methods of more effective regulation and enforcement of safety criminals to ameliorate the obscurity of safety crime and to achieve improved methods of convicting safety criminals. More broadly, research should seek easier methods of 'studying up' to facilitate the academic scrutiny of powerful persons like safety criminals, including academic scrutiny on key stakeholders that did not take part in this study, namely the CPS, Sentencing Council, and the Ministry of Justice, amongst others. In doing so, these recommendations are likely to result in stronger or less mixed research on the effective punishment of safety criminals and achieve criminal justice.

9.6 Conclusion

The findings of this study suggest that if safety criminals are caught and convicted, there is often a lack of punishment for these persons in England and Wales. Thinking back to Chapter 1 section 1.1 that safety crime results from the prioritisation of profit in capitalist society, this study corroborates

the narrative that punishments are weaker for social regulation offences than economic regulation offences because worker, consumer, and public safety is sacrificed for the pursuit of profit (Pearce and Tombs 1998; Slapper and Tombs 1999; Tombs and Whyte 2007). Just as Lofquist (1993) and Etzioni (1993) suggest that political rather than technical barriers may obstruct the punishment of organisations, this study has highlighted the lack of political will to criminalise safety criminals in England and Wales. Rather than criminal punishment being founded on notions of harm and *mala in se*, the punishment of criminals can be seen as the defence of a particular social order founded on maintaining the predominance of capital and the subordination of safe and healthy workplaces. To achieve criminal as well as social justice, political and societal pressure must challenge the conditions that give rise to safety crime. Punishment is not a panacea for crime, but it should be a possible consequence of it. To do otherwise is to fail to ameliorate the largescale physical, financial, and psychological harm that results from safety crime, harm in which the state is increasingly reducing its ability to detect, criminalise, and bring to justice.

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Appendices

Appendix 1

Glossary

Term	Definition
Actus reus	Latin for guilty act, the external or objective element of crime.
Aggregation of senior management	Individuals that play a significant role in the decision making of a company's management, or the actual management of a substantial part of a company's activities, can be aggregated to form corporate *mens rea*.
Controlling mind	The senior individuals that control a company. Often used in conjunction with the identification principle.
Corporate crime	Illegal acts or omissions, punishable by the state under administrative, civil or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organisation. These Acts or omissions are based in legitimate, formal, business organisations, made in accordance with the normative goals, standard operating procedures, and/or cultural normal of the organisation, and are intended to benefit the corporation itself (Pearce and Tombs 1998).
Identification principle	The acts and state of mind of those who represent the controlling mind and will of the company are imputed to the company itself.
Mens rea	Latin for guilty mind, the mental element of a person's intent to commit crime.
Safety crime	Illegal acts or omissions that either do, or have the potential to cause sudden death or injury as a result of work-related activities, punishable by the state under administrative, civil, or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organisation. These acts or omissions are based in legitimate, formal, business organisations, made in accordance with the normative goals, standard operating procedures, and/or cultural norms of the organisation, and are intended to benefit the corporation itself.
Safety criminal	Individual or corporate persons that commit safety crime.
Street crime	Street crime refers to murder, assault, burglary, robbery, larceny, sex offences, and public intoxication (Sutherland 1983).
White-collar crime	A crime committed by a person of respectability and high social status in the course of their occupation (Sutherland 1983).

Appendix 2

Table of the stakeholders contacted, their aims and responsibilities, and the rationales for their inclusion

Key: Out of the 84 stakeholders contacted, this resulted in 21 successful interviews. The stakeholders have been anonymised to protect their confidentiality. Italicised stakeholders signify Morse's (1998) secondary selection criteria.		
Stakeholder	**Aims and responsibilities (taken from the organisation's website)**	**Rationale for inclusion**
Academics (n=3)		
23/9/19 I contacted their email address. They replied and accepted the interview the following day.		A prominent safety crime academic, their views will be valuable for answering the research questions.
12/3/20 I left a message on their website. 16/4/20 I emailed their university address. 19/4/20 I received a reply accepting the interview on the 27/4/20.		Their expertise in criminology, restorative justice, and regulatory capitalism makes them a valuable stakeholder for this study. Furthermore, it is useful to include the views of an academic outside of Britain.
3/11/20 I contacted their email address. 5/11/20 I received a response accepting the interview.		Designed a leading regulatory review that influenced sentencing policy in England and Wales. It will be useful to include this stakeholder for their extensive knowledge on methods of punishment for safety criminals.
All Party Parliamentary Groups (n=3)		
2/10/20 I emailed the chair and registered contact. *12/11/20 I attempted to call the generic telephone number but the call did not connect.*	*To discuss issues of interest and concern to parliamentarians and councillors about local government.*	*I argue that the topic of this study is an important issue to local government and parliamentarians.*
2/10/20 I emailed the chair and registered contact. *12/11/20 I attempted to call the generic telephone number but the call did not connect.*	*To provide a forum for the discussion and promotion of issues relating to occupational safety and health; to provide information to members of both Houses of Parliament on topical issues; and to publish*	*This group's purpose of discussing issues related to occupational safety and health includes the subject area of this study.*

	reports as and when necessary.	
2/10/20 I emailed the chair and registered contact. *12/11/20 I called the chair's constituency number; my call was received and the study invitation was nudged.*	*Falls from height and falling objects from height account for the highest number of preventable fatalities and injuries across all sectors in UK industry. This All Party Parliamentary Group will seek to understand the root causes and propose effective, sensible measures to reduce this toll and send people safely home from work.*	*This group's aim of proposing effective measures to reduce injuries and fatalities at work is similar to the aims of this study.*
Local Authorities (n=3)		
21/5/20 I emailed their generic address. *14/7/20 I emailed their generic address.* *24/8/20 I emailed their generic address and an additional address of theirs.* *21/11/20 I called their generic telephone address; the study invitation was nudged.*	*Champions the views of its councils and engages with government on policy and legislation.*	*It will be useful to include the views of local governments on policy concerning the punishment of safety criminals.*
21/5/20 I emailed their generic address. *14/7/20 I emailed their generic address.* *24/8/20 I emailed their generic address and the separate addresses for the political associations.* *25/8/20 I received a reply from a political officer of one of the local authorities, saying that they do not think anyone on their team can help but they are willing to pass the invitation on to the wider organisation.* *26/8/20 I received a response from the Programme Manager at Research and Information saying that the current pandemic makes it difficult to participate at the present time but they will circulate the invitation so the team is aware of the study.*	*The national membership body for local authorities that works on behalf of its member councils to support, promote and improve local government. It aims to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.*	*Represents most councils in England and their aim of responding to national problems includes the issue of safety crime.*
21/5/20 I emailed their generic address. *14/7/20 I emailed their generic address.* *24/8/20 I emailed their generic address.* *12/11/20 I called their generic telephone number, the automated message said that all offices are closed due to Covid, so I left a voicemail.*	*Represents local government and supports the development of policies that improve public services.*	*It will be useful to include the views of local governments on policy concerning the punishment of safety criminals.*
Members of Parliament (n=7)		
12/11/19 I emailed their generic address, typically used for their constituency. *12/1/20 The interview took place.*	*Member of the Scottish Parliament.*	*It will be useful to include the views of a member of the Scottish Parliament. Moreover, this individual has campaigned on*

		culpable homicide legislation.
30/9/20 I emailed their address.	*Member of Parliament in England.*	*It will be useful to include the views of a member of Parliament on the topic of safety crime policy.*
14/07/20 I emailed their address.	*Member of Parliament in England.*	*It will be useful to include the views of a member of Parliament on the topic of safety crime policy. Additionally, this stakeholder has experience as a public health consultant.*
15/10/20 I emailed their address.	*Member of Parliament in England and leader of a political party. This individual also supported the passage of the CMCHA 2007.*	*It will be useful to include the views of a member of Parliament on the topic of safety crime policy.*
8/6/20 I emailed their address. *10/6/20 I received the response: 'I'm afraid [anonymised] diary is very full at the moment so she will unfortunately not be able to take part in your research.'* *15/7/20 I emailed their address.* *25/8/20 I sent one final invitation.*	*Member of Parliament in England.*	*It will be useful to include the views of a member of Parliament on the topic of safety crime policy..*
30/9/20 I emailed their address.	*Member of Parliament in England.*	*It will be useful to include the views of a member of Parliament on the topic of safety crime policy.*
8/6/20 I emailed their address. *10/6/20 I received a response from the Constituency Office Manager: 'Unfortunately at this time the diary does not allow time for [anonymised] to take on any further opportunities.'* *14/7/20 I sent the study invitation again.* *25/8/20 I emailed the stakeholder's address.* *18/9/20 I received a rejection from the Communications Manager: 'I'm afraid there isn't really anyone in our office who is available to answer this'.*	*Member of Parliament in England.*	*It will be useful to include the views of a member of Parliament on the topic of safety crime policy.*
Ministerial departments (n=4)		
21/1/20 I emailed their generic address. 17/2/20 I called their generic telephone number and was asked to send the email again for someone to check. 4/3/20 I sent a letter of the study invitation to the head of the department. 18/3/20 I called and was asked to send the	Provides legal advice to the government, such as looking at sentences that may be too low. Oversees the main independent prosecuting departments, including the Crown Prosecution Service	Plays a key role in advising government and dictating prosecution policy, suggesting that this organisation will be a key stakeholder for answering the research questions.

email again, which will be forwarded onto the policy team. 26/3/20 I received an email from the Correspondence Officer saying: 'I have spoken with our officials and unfortunately this is not something we would be able to engage with at this time.' 14/7/20 I sent one final invitation. 7/8/20 I called the generic number and was told that the study invitation was passed on, but the policy and management team are not interested in taking part.	and the Serious Fraud Office, the HM Crown Prosecution Service Inspectorate which inspects how cases are prosecuted, the Government Legal Department which provides legal services to the government, and performs other functions in the public interest.	
21/1/20 I used their website form to leave a message.	*This department is responsible for welfare, pensions, and child maintenance policy. It also oversees the Health and Safety Executive, which is responsible for reducing work-related death and serious injury in workplaces.*	*This department's aims do not relate to the research questions as much as other stakeholders in this sample. However, the Health and Safety Executive is under the jurisdiction of this stakeholder, meaning it may be useful to include this parent department.*
21/1/20 I emailed their generic address. 17/2/20 I called their generic telephone number. There was no general enquiries line or option to speak to a person. The various options took me to people who could not help and advised me to use another line or email the address. 27/2/20 I sent letters to the heads of the department. 18/3/20 I called the generic line and chose the option to redirect to specific persons, but the department heads were not on the switchboard. 23/3/20 I called the generic line but any person I spoke to re-directed me elsewhere. 30/3/20 I emailed their generic address. 15/4/20 I emailed their generic address. 11/5/20 I emailed their generic address. 14/7/20 I sent an email to their generic address. 20/7/20 I left a message on their official Twitter feed. 7/8/20 I emailed the addresses of the Secretary of State's, typically used for their constituency. I emailed the individual address of the Minister for Crime and Policing, typically used for their constituency. 18/8/20 I exhausted the first page of hits on	Aims to keep citizens safe and secure the country. This includes the prevention and reduction of crime and ensuring people feel safe in their homes and communities.	The broad aim of keeping citizens safe and reducing crime includes the topic of safety crime policy.

Google search and could not find any contact details for the heads of the department. I left a message on the Permanent Secretary's Twitter. I emailed the individual address, typically used for their constituency, of the Parliamentary Under Secretary of State (Minister for Safeguarding). I emailed the constituency address of the Minister of State. 30/9/20 I called the generic number, since there is not an option to speak to a person I chose every option to try to speak to someone, but each option re-directed my call to a different organisation that could not help me. I emailed their generic address. 2/10/20 I emailed several Parliamentary Under-Secretary's. 5/10/20 I received a reply from the office of one individual that my invitation has been passed on. 6/10/20 I received a rejection on behalf of one of the individual's.		
21/1/20 I used their website to leave a message. 17/2/20 I called their generic telephone number and was transferred to an unknown person's mobile number just as they were entering a meeting. Unsuccessful. 27/2/20 I sent letters to board members. 18/3/20 I called and was given 0207 3785997 to contact, turned out to be payroll, unsuccessful. I called back and was on hold for 12 minutes until the call was terminated. Called, same again. 30/3/20 I used their website to leave a message. 15/4/20 I used their website to leave a message. 11/5/20 I used their website to leave a message. 14/7/20 I sent an email to their generic address. 20/7/20 I left a message on their official Twitter feed. 7/8/20 I emailed the individual address of the Lord Chancellor and Secretary of State for Justice, typically used for their constituency. I emailed the individual address of the Minister of State, typically used for their constituency.	Works to protect and advance the principles of justice by delivering a world-class justice system that works for everyone in society, and is responsible for the courts, prisons, probation services and attendance centres.	This stakeholder is valuable because it is the primary organisation that controls the justice system in Britain.

20/8/20 I emailed the individual address of the Parliamentary Under Secretary of State, typically used for their constituency. I left a message on this individual's Twitter. I emailed the individual address of the Parliamentary Under Secretary of State and Assistant Government Whip, typically used for their constituency. I emailed the individual address of HM Advocate for Scotland and [anonymised] Spokesperson for the Lords, typically used for their constituency. 30/9/20 I called their generic telephone line; I was told to use the online enquiry form. I left a message on their website using the enquiry form. 2/10/20 I emailed several Parliamentary Under-Secretary's.		
Non-ministerial government departments/agencies (n=20)		
13/10/20 I emailed their generic address. *12/11/20 I emailed their generic address.*	*Undertakes research and provides recommendations to reform the law on topics selected by the Attorney-General of Australia.*	*It will be useful to include the opinion of an outside regulator, particularly one that uses several novel sanctions to regulate health and safety offences.*
21/1/20 I emailed their generic address. 17/2/20 I called their generic telephone number and was told my email will be passed on. Later that afternoon I received a voicemail saying that this stakeholder is not interested in taking part and to contact the Health and Safety Executive. 27/2/20 I sent letters to board members. 17/3/20 I called their telephone number, no response. 20/3/20 I called and was told to resend the email. 30/3/20 I emailed their generic address. 14/4/20 I received a rejection from the Special Crime & Counter Terrorism Division Complaints & Enquiries Team: 'Unfortunately, due to resource implications, we will be unable to participate on this occasion. However, information on the Health and Safety at Work Act is included in our published legal guidance on Corporate Manslaughter.' 16/7/20 I sent one final invitation to the Special Crime and Counter Terrorism Division Complaints and Enquiries Team.	Prosecutes criminal cases in England and Wales, ensures that the right person is prosecuted for the right offence, brings offenders to justice wherever possible, and decides which cases should be prosecuted and determines the appropriate charges.	The primary organisation in England and Wales that prosecutes offenders. This is a key stakeholder for this study.

29/7/20 I received a rejection from the Special Crime & Counter Terrorism Division Complaints & Enquiries Team: 'We have reviewed your request and unfortunately, we remain unable to participate in your study. This is due both to resource limitations, and that the [anonymised] would not be able to usefully contribute to this particular topic.'		
18/5/20 I emailed their generic address. I received confirmation that my email has been passed on to the appropriate team. 16/7/20 I sent another invitation. I received confirmation that my message has been passed on to the relevant team. 25/8/20 I emailed their generic address. 30/9/20 I called their generic number and my invitation was nudged and my phone number was taken down in case they call me. 12/11/20 I called their generic number, went to voicemail.	Same as the above in relation to Scotland.	Same as above in relation to Scotland.
13/1/21 I emailed the head of legal services, at the recommendation of one of the academics. I received a response showing support for the study, and I was advised to speak to the Chief Prosecutor.	Aims to protect people and the environment and support sustainable growth	The aims of this stakeholder are similar to the goals of this study. Moreover, it will be useful to include this stakeholder's views on the sanctions used by the Health and Safety Executive.
25/5/20 I emailed their generic address. *27/5/20 I received the rejection: 'Unfortunately, due to our limited resources and high workload, we cannot participate in your study…'. I replied asking perhaps at a later date they might be able to take part.* *16/7/20 I sent one final invitation to the generic address.* *21/7/20 I received another rejection 'unfortunately, due to our limited resources and high workload, we cannot participate in your study.'*	*The European Union's information agency for occupational safety and health. It works to make European workplaces safer and promotes a culture of risk prevention.*	*It will be useful to include the views of a large health and safety regulator outside of Britain.*
21/1/20 I emailed their generic address. *17/2/20 I called their generic telephone number but the call forwarded to voicemail.* *19/2/20 I called and was told to contact [anonymised] and use option 2. I called and was told to forward the email to* [anonymised]. *4/3/20 I sent letters to the director generals.* *16/3/20 I called their generic telephone*	*The government's principle legal advisers that help the government to govern well. This is achieved by providing legal advice on the development, design and implementation of government policies and decisions, drafting secondary*	*The broad aim of advising the government on how to govern well includes the issue of safety crime punishment.*

number, no reply. *23/3/20 I called their generic telephone number and was told to use option 2.* *24/3/20 I called their generic telephone number and made multiple attempts to speak to someone but each of these was unsuccessful and the phone call ended whilst waiting on hold for too long.* *31/3/20 I emailed their generic address. I received a reply from the Deputy Director, Health and Safety Executive and ONR Legal Adviser the same day asking for a copy of the interview guide. I replied.* *16/4/20 I followed up with an email. I received a rejection the same day:* *'Apologies for the delay, it's a very busy time for the team right now. I've reviewed your questions this morning, but I'm afraid I don't think we're in a position to comment on your questions.* *16/7/20 I sent one final invitation.*	*legislation, and working with Parliamentary Counsel on primary legislation. This group is constituted by various other ministerial and non-ministerial departments.*	
There is no publicly available email address for this stakeholder. 14/2/20 I called their generic telephone number and was told no one can help and it is not this stakeholder's role to take part in research interviews. 17/2/20 I called and was told to use the advice form on their website. 27/2/20 I sent letters to two senior officials. 17/3/20 I called and was given the general secretariat email address to contact concerning the status of the letters. 20/3/20 I received a mis-delivery message, wrong email address. 23/3/20 my letters were returned as the named individuals were not listed at that directory. 24/3/20 I received an email response to the message I left on their website on the 17/2/20: 'It is an interesting subject matter that you are researching and I am sorry but we cannot personally assist you with your research or provide you with an interview. That said, you may find our website a useful resource and if you are looking for alternative models, you may be interested to look-up provisional improvement notices which they use in Australia.' 20/7/20 I left a message on their official Twitter feed.	A prominent health and safety authority that prevents work-related death, injury, and ill health.	This stakeholder is a prominent health and safety authority in England and Wales and it will be valuable to include its opinions on the punishment of safety criminals.

12/8/20 Through my attempts of contacting another stakeholder, an employee from this stakeholder accepted the interview. This employee's views are their own and not those of the organisation.		
11/5/20 I emailed their generic address. 15/5/20 I received the rejection: 'Unfortunately all staff are extremely busy due to the current COVID situation and it is taking longer than usual to respond to queries. I am afraid that on this occasion we will be unable to assist you in your research however I would like to take this opportunity to wish you well with the project.' I replied stating that I plan to contact them in the future. 19/5/20 I received an email from an employee: 'I have been passed your details by my Principal Inspector. She has asked me to make contact with you and see if there is anything I can do to assist with your request. Would you mind sending me a copy of the questions you would to ask/discuss and a phone number so I can call you.' 28/5/20 I received an email with short notice to conduct the interview. The interview was successful. This employee's views are their own and not those of the organisation.	A prominent health and safety authority that prevents work-related death, injury, and ill health.	This stakeholder is a prominent health and safety authority in Northern Ireland and it will be valuable to include its opinions on the punishment of safety criminals.
29/2/20 I emailed their address. 13/3/20 I sent a letter to the stakeholder's address, but not to a specific individual as this information is not publicly available. 31/3/20 I emailed their generic address. 16/4/20 I emailed their generic address. 16/7/20 I sent one final invitation to their generic address. 20/7/20 I left a message on their official Twitter feed. 25/8/20 I left a message on the CEO's Twitter feed. I exhausted the first page of Google hits and sent the study invitation to the individual email address of the ex-CEO; I could not find further contact details for the Independent Chair of Board; the Deputy Chief Executive, Operations Director and Board Member, HM Courts & Tribunals Service; the Director of Criminal Enforcement and Confiscations; the Strategy and Chance Director; the Crime	Responsible for the administration of the courts in England and Wales.	The judges that administer the rule of law are key stakeholders for answering the research questions of this study.

Programme Director. I emailed their generic address. 12/11/20 I called their generic telephone number and was told the study invitation would have been passed on and that I should send it again so that it will be nudged.		
There is no publicly available phone number to contact this stakeholder. 22/1/20 I emailed their generic address. 27/2/20 I sent a letter to their address, but not to a specific individual as this information is not publicly available. 31/3/20 I emailed their generic address. 7/4/20 I received a rejection from the corporate service team: 'Thank you also for inviting us to take part in your research although I am afraid that we will have to decline your offer at this stage.' 16/7/20 I sent one final invitation to their generic address. 17/7/20 I received a rejection from their generic email 'With reference to our previous email I am afraid we are unable to take part in your research studies at this present moment.' 20/7/20 I replied asking them to clarify whether they would like to participate in the future or if they are not interested in participating. 20/7/20 I received a firm rejection from their generic address: 'I can confirm that the [anonymised] will not be able to take part in this study.'	Inspects the work carried out by the Crown Prosecution Service and other prosecuting agencies. Aims to enhance the quality of justice and improve the effectiveness and fairness of prosecution services.	Oversees prosecution policy from prominent organisations such as the Crown Prosecution Service, meaning that this is a key stakeholder to include in the sample.
23/1/20 I emailed their generic address. *19/2/20 I called their generic telephone number and was told to send the email again. I received a reply that someone will get back to me and the reference number 1331428.* *4/3/20 I sent letters to the Director General National Economic Crime Centre, and the Director General.* *16/3/20 I called and received confirmation that the study invitation was passed on, the action was nudged.* *31/3/20 I emailed the generic address and I received a reply stating that my invitation is being considered on the basis of '(a) whether it may be appropriate for the [anonymised] to assist your research*	*Aims to cut serious and organised crime by pursuing the most serious and dangerous offenders. This includes a wide range of issues, including fraud and economic crime.*	*Safety crime is not a topic that typically falls under the jurisdiction of this stakeholder. However, it can be argued that serious and organised crime and the most dangerous offenders includes safety criminals, and therefore, this stakeholder should contribute to safety crime punishment policy and the research questions of this study.*

project, (b) whether the [anonymised] has the capacity to assist you given the current national emergency.' *25/4/20 I sent a check-up email.* *28/4/20 I sent a check-up email.* *16/7/20 I sent an email to the generic address.* *25/8/20 I emailed [anonymised] and their generic address.* *26/8/20 I received a rejection from the generic address: 'Unfortunately, due to the volume of requests we receive, we do not currently have the resources to participate in projects of this nature.'*		
2/3/20 I emailed their generic address. *10/3/20 They replied that the study invitation has been forwarded on.* *31/3/20 I emailed their generic address.* *1/4/20 I received a reply stating that due to current affairs they are unable to take part but perhaps in the future they can participate: 'I have now had the opportunity to liaise with our national leads for health and safety matters and unfortunately due to the current climate and the focus on policing COVID19, colleagues will not be able to assist with your request at this time. If it would be possible for you to make contact with the [anonymised] in a few months times, colleagues would be happy to consider if they are able to assist.' I replied saying I will contact them in the future.* *16/7/20 I emailed their generic address.* *25/8/20 I emailed their generic address.* *28/8/20 I received a response directing me to the contact details of two health and safety officers. I sent the invitation to both.* *14/9/20 I received a reply from one of the health and safety officers personally declining the invitation but saying their colleague will be better suited to take part. I responded.* *21/9/20 I received a response from the other colleague declining the invitation but offering to forward it back to the [anonymised].*	*Coordinates national police operations and reforms and improves the police service.*	*This is the primary organisation that sets the strategy and direction of the police service. It will be useful to include this stakeholder for its views on punishment policy.*
3/3/20 I emailed their generic address. *11/3/20 I received the following rejection: 'Please accept our apologies on this occasion as [anonymised] has no experience at all in the field in which you are*	*A policing authority in England and Wales that aims to protect the most vulnerable from harm and contribute to policing strategy.*	*This stakeholder's aim of protecting the most vulnerable from harm and contributing to policing*

conducting your studies and feels she wouldn't be able to offer you anything of any relevance.' *23/3/20 I replied defending my invitation and asked whether anyone on their team would be interested in taking part.* *26/3/20 I received a response asking when my deadline is.* *16/4/20 I responded.* *20/4/20 I received a reply saying that they are happy to take part but not until later in the year after the pandemic subsides.* *16/7/20 I sent one final invitation.* *29/7/20 I received a reply accepting the interview on behalf of [anonymised].*		*strategy is similar to the aims of this study.*
13/3/20 I sent a letter to their address but not to any persons as this information is not publicly available. *1/4/20 I received a response from the Senior Advisor First Aid, saying the that the policing authority cannot take part due to the pandemic: 'I am afraid that at the current time myself and colleagues are really busy dealing with arrangements for the current national pandemic. If you still require an interview in two months' time please contact me and I will try and help, but at this current time there is no spare capacity.' I replied saying I will contact them in the future.* *16/7/20 I sent one final invitation.* *16/7/20 I received a reply that the study invitation was passed onto their team. I received an email from one of the employee's accepting the interview.*	*A policing authority that aims to prevent crime and protect the public in England and Wales.*	*This stakeholder's aim of preventing crime and protecting the public is similar to this study's aims. The participant also has experience in environmental health and workplace health and safety enforcement.*
22/1/20 I emailed their generic address. *19/2/20 I called their generic telephone number and was told to contact [anonymised] and also send another email to the generic line.*	*Works to protect and improve the nation's health and wellbeing. Responsibilities include advising government on health issues, protecting the nation from public health hazards, identifying and preparing for future public health challenges, and researching, collecting and analysing data to improve our understanding of public health challenges and to come up with answers to public health problems.*	*This stakeholder is not typically associated with the punishment of safety crime. However, it can be argued that the effects of safety crime, such as physical injury and ill-health, are included in this stakeholder's aims. This suggests that perhaps this stakeholder should be included in discussions of safety crime regulation and punishment.*

13/10/20 I emailed their generic address. 14/10/20 I received the rejection: 'At present we do not have capacity to commit to taking part.' I was directed to contact the individual states that enforce the regulation of Australia. 15/10/20 I emailed the separate states. 20/11/20 I received a reply from one of the state's enquiring about the study. I responded.	Drives Australia's national policy development on workplace health and safety and works to develop and evaluate national policies and undertake research.	It will be useful to include the views of a national policy adviser outside of Britain, particularly one that uses novel sanctions in the regulation of workplace health and safety.
15/10/20 I tried to leave a message on their website but an error prevented this. *12/11/20 I tried to leave a message on their website but the same error prevented this. There is no email address or other means to contact this stakeholder.*	*The regional body for safety groups in Scotland. It is an advocate for health and safety in Scotland and functions as a liaison between various groups and individuals who have an interest in health and safety in Scotland.*	*It will be useful to include the views of a health and safety agency in Scotland in this study.*
4/12/19 I emailed their generic address. 13/12/19 I emailed their generic address. 18/2/20 I called their generic telephone number and I was told this is 'not something we can get involved in, contact the Crown Prosecution Service.' 27/2/20 I sent a letter to one of the council members. 11/3/20 The council member replied to my letter via email rejecting my invitation: 'I am sorry to decline; however I have asked other members of their council about whether they would be interested in taking part and unfortunately there is no-one who feels able to take part.' 23/3/20 I replied asking whether the persons who designed the 2016 guidelines are available to take part. 26/3/20 I received the reply: 'I am not sure who the members of the council were in 2016 and it would be beyond my remit to try and contact any previous members, unfortunately. As I mentioned, the Council policy officials have already read your letter describing the research you sent to me and they really did not feel able to take part. However, if you would like to write to them directly and check in case any feel they would have something to contribute, please do feel free.' 29/5/20 I emailed the generic website asking for access to members that created the 2016 guidelines.	Issues guidelines on sentencing that the courts must follow. It aims to promote transparency and consistency in sentencing by developing sentencing guidelines and monitoring their use, and by assessing the impact of guidelines on sentencing practice.	The same organisation that developed the current guidelines for health and safety offences in Britain. This is a key stakeholder for answering the research questions.

16/7/20 I sent an email to their generic address. 26/8/20 I emailed their generic address. I searched the first page of Google but did not find any contact details for several of the council members. 11/09/20 I received the firm rejection 'As we have said previously, this is not something that we are able to assist with but we wish you well with your endeavours'.		
8/6/20 I emailed their generic address. 16/7/20 I sent an email to their generic address. 20/7/20 I left a message on their official Twitter feed. 26/8/20 I emailed their generic address. I exhausted the first page of Google hits and sent the study invitation to some of the members of the committee. 30/9/20 I tried calling their generic number and left a voicemail. I emailed their generic address. 1/10/20 I received a reply from the secretary saying that she has forwarded on my invitation to the research council and would like to know more about the study. 8/10/20 I received a response from the Principle Research Officer saying that he has circulated the study to the council members but so far no one has decided to take part, he will update me next week. 15/10/20 I emailed the Principle Research Officer reminding him of the study. 12/1/20 I called but no reply and it went to voicemail.	Introduced in 2015 as an independent advisory body, the Council prepares sentencing guidelines for the courts, conducts research, and provides advice and guidance in Scotland.	Similar to the stakeholder above, this stakeholder aims to promote consistency in sentencing and to promote greater awareness and understanding of sentencing. This is a key stakeholder for answering the research questions.
22/1/20 I emailed their generic address.	*Considers draft regulations about matters such as recruitment, diversity and collaboration between forces. Responsibilities include advising the Home Secretary on general questions affecting the police in England and Wales, and considering draft regulations on non-negotiable conditions of service (i.e. matters of leave and pay and allowances).*	*This stakeholder's aims do not conform to the aims of this study. However, this stakeholder's role of advising the Home Secretary and considering draft regulations may include the topic of safety crime punishment. Moreover, it can be argued that the police service should take a greater role in combating safety crime and therefore the views of this stakeholder should be*

		included in discussions of safety crime policy.
Non-government organisations and charities (n=20)		
4/5/20 I emailed their generic address. *16/5/20 I sent an email to their generic address.* *27/8/20 I emailed their generic address. I exhausted the first page of Google hits and could not find any details for specific managers.* *21/11/20 I tried to call their generic telephone number but I was unable to call their US telephone number from Britain. I sent one final invitation to their generic email address.*	*A global association that supports occupational safety and health professionals to prevent workplace injuries and fatalities by sharing knowledge.*	*This stakeholder's aim of preventing workplace injuries is similar to the aims of this study.*
5/5/20 I emailed their generic address. I received a reply from the Chief Executive Officer, accepting the interview and stating that their views are their own and not those of their organisation.	*A science-based charity that provides information and guidance in the recognition, control, and management of workplace health risks. It represents occupational hygienists who protect against a range of health risks from potential hazards in the workplace.*	*This stakeholder's aim of reducing and preventing health risks from potential hazards in the workplace is similar to the aims of this study.*
11/5/20 I emailed their generic address *16/7/20 I sent an email to their generic address.* *28/8/20 I emailed their generic address. I searched the first page of Google and could not find any contact details for the senior executives.* *30/9/20 I called their generic number and was given an address to send the invitation to. The email bounced back as the new address only receives emails from their own organisation. I emailed the generic address and phoned them asking them to nudge/prioritise the invitation.*	*Campaigns to protect workers from accidents and unsafe conditions and leads health and safety networking forums for all sectors. Its mission is to keep people safe and healthy through education and practical guidance.*	*This stakeholder's aim of protecting workers from unsafe work conditions and to develop best practice is similar to the objective of this study.*
22/5/20 I left a message on their website. *16/7/20 I sent another invitation to their website. There is no staff member list to find individuals to contact.* *28/8/20 I left a message on their website.*	*The UK's leading trade body within the safety industry. It aims to provide guidance on a range of occupational safety issues helping to influence legislation and to provide industry with a source of authoritative information on workplace safety issues.*	*Represents several trade associations and aims to influence legislation. It will be useful to include the views of this stakeholder, and coincidentally, the views of employers and employees.*
22/1/20 I emailed their generic address. 17/2/20 I called their generic telephone	An educational charity that advances public	This stakeholder's aim of effective solutions to social

number and it forwarded to voicemail. 18/2/20 I called their telephone number and was told to re-send the invitation. 19/2/20 I received a rejection via email from the research director: 'This is not something we are interested in taking part in.' 27/2/20 I sent letters to two of the research directors. 9/3/20 I received a response to the letters via email saying they are not interested: 'I regret that it does not seem helpful to you if we were to take part in the suggested interview. We have not recently conducted work in the area of health and safety offences and I would recommend that you contact Professor Steve Tombs who wrote a briefing for us in 2016.' I replied defending my invitation.	understanding of crime and criminal justice. It champions evidenced and just policy and practice. This includes the scrutinising of social harm and its social regulation through criminal justice and the development of holistic and effective solutions to social harm.	harm is a topic that includes the issue of safety crime.
28/11/19 I emailed their generic address. 23/11/19 I emailed their generic address. 24/1/20 I received a reply from the Head of Evidence and Data rejecting my offer: 'Unfortunately, I've discussed this issue with colleagues and none of us feel that we will have much to offer to your research. I'm not sure that our organisation does have expertise or knowledge that influences or even has the potential to influence health and safety crime punishment policy.' I replied with an email defending my invitation. I did not receive a reply. 4/3/20 I sent a letter to the director. 16/3/20 I called but it went to voicemail.	To build a justice system that is fair and effective by resolving the factors that underlie crime and social harm. This is achieved by supporting innovative practice in justice policy reform.	This stakeholder's aim of resolving crime and social harm by policy reform is applicable to the research questions and discussions on safety crime policy reform.
12/10/20 I emailed their generic address.	*Speaks on behalf of 190,000 businesses. Together they employ nearly 7 million people, about one-third of the private sector-employed workforce.*	*It will be useful to include the opinions of private sector employers and employees in discussions of this study's research questions.*
8/6/20 I emailed their generic address. 16/7/20 I sent an email to their generic address. 28/8/20 I emailed their generic address. 12/11/20 I emailed the chair and vice chair.	The only national association entirely committed to working in criminal law. It represents criminal law solicitors throughout England and Wales and aims to maintain the highest standards of practice in the criminal courts and to participate in discussions on developments of the criminal process.	Criminal solicitors play a significant role in the prosecution of safety criminals and this stakeholder is likely to have a wealth of information applicable to this study.

5/10/20 I emailed their generic address. *7/10/20 I received a reply accepting the interview.*	*A victim support charity that helps survivors and bereaved persons to recover from disasters. This charity was founded on the principles of accountability, support and prevention.*	*This charity works towards accountability and the prevention of disasters, examples include the Zeebrugge Ferry incident. It will be useful to include the opinions of a charity that works with the victims of safety crime and bereaved persons.*
4/5/20 I sent an email to their generic address. *16/7/20 I sent an email to their generic address.* *28/8/20 I emailed their generic address. I emailed the Chief Executive; Director of Professional Development; and the Head of Learning and Development.* *30/9/20 I called but there was no reply.*	*A charity responsible for managing risks in all their forms by championing risk management, setting standards, and providing advice. Created to advance professional standards in accident prevention and occupational health throughout the world.*	*This stakeholder's aim of managing risk and preventing occupational accidents is similar to the aims of this study.*
8/10/20 I emailed their generic address and a facilitator of this stakeholder responded and accepted the interview.	A non-profit organisation that campaigns on behalf of bereaved families by workplace deaths. Aims include increased funding for the enforcement of health and safety law and for amendments to the CMCHA 2007 to include individual responsibility of criminal directors.	The aims and campaigns of this stakeholder concentrate on the issue of safety crime and these aims resemble the research questions of this study.
14/2/20 I called their generic telephone number, no response. *17/2/20 I called their telephone number, no response.* *18/2/20 My call was received but I was told that [anonymised] is a two person team and does not have time to take part. It was recommended that I contact their Scottish counterpart.*	*A prominent independent and union-friendly magazine that specialises in workplace health and safety and labour standards.*	*The content of this magazine makes it a valuable stakeholder for this study.*
4/3/20 I sent an email to their generic address. *16/3/20 I called their generic telephone number. My details were taken and I was told someone will get back to me.* *24/3/20 I received a telephone call and email accepting the interview.*	*Same as above.*	*Same as above for the context of Scotland.*
10/10/19 I emailed their generic address. They replied the same day with their refusal: '[Anonymised] works primarily on state related deaths such as those in places of	*Provides expertise on state related deaths and their investigation to bereaved people, lawyers, support*	*This stakeholder's aim of providing advice on state-related deaths can include safety crime and thus the*

detention. We do not do significant work on workplace health and safety related deaths, and as such are likely not best placed to participate'. *16/10/19 I replied defending my invitation, no response.*	*agencies and parliamentarians. This includes deaths in police and prison custody and deaths involving multi-agency failings or where wider issues of state and corporate accountability are in question. Examples include the Grenfell Tower fire.*	*knowledge of this stakeholder is sought after for answering the research questions.*
11/11/19 I used their website to leave a message. 13/12/19 I used their website to leave a message. 17/2/20 I called their generic telephone number and was told to resend the email. I received a reply that my invitation has been forwarded on. 4/3/20 I sent a letter to the President of Council. 17/3/20 I called but it went to voicemail. 18/3/20 I called and was told to resend the invitation. 31/3/20 I emailed their generic address and received the rejection '[Anonymised] hasn't done any work on this topic area so we wouldn't be able to help.'	A membership organisation working for law reform and human rights and to strengthen the UK administrative, civil, and criminal justice system. This stakeholder is primarily constituted by the legal profession, including barristers, solicitors, legal executives, academic lawyers, law students and interested non-lawyers.	The aim of strengthening the justice system coincides with the aims of this study.
5/2/20 I emailed their generic address. 17/2/20 I called their generic telephone number and left my contact details. The same day I received the response: 'Unfortunately, we don't hold any data or comment on specific cases so I don't think we can help!'. I replied defending my invitation. 20/2/20 they replied saying they are not interested: 'We understand your request. However, as my colleague has stated, we are unfortunately unable to assist you on this occasion.' 27/2/20 I sent letters to the Deputy Chief Executive and Director of Policy and Research, and Deputy Chair.	A national charity that provides a voice for magistrates and represents this voice to key decision-makers.	This stakeholder has been included because magistrates play a prominent role in the prosecution of safety criminals, and for the magistrates' expert knowledge in relation to punishment policy and the legal system.
5/2/20 I emailed their generic address. *18/2/20 I called their generic telephone number and was told to forward the invitation to [anonymised].* *4/3/20 I sent letters to the Deputy Chief Executive, and Director of Crime, Justice and Attitudes.* *18/3/20 I called their telephone number and was given an email to re-send the invitation*	*An independent social research agency, working on behalf of government and charities to find out what people think about important social issues.*	*The broad aim of conducting social research concerns the issue of safety crime and the research questions here.*

to. *31/3/20 I emailed their address.* *16/4/20 I emailed their address.* *3/5/20 I emailed their generic address.* *16/7/20 I sent an email to their generic address.* *31/8/20 I emailed the Director of Crime, Justice and Attitudes; Director of Policy Research; and Research Director in Crime and Justice.* *30/9/20 I called their generic number and was asked to re-send the invitation and someone will respond to me this week.* *2/10/20 I received a response stating that my invitation was passed on and they will get back to me next week.* *5/10/20 I received a reply stating that they do not have time to take part and there is nothing else to be done.*		
28/1/21 I emailed their generic address.	*An independent third sector membership body for the field of restorative practice. It provides quality assurance and a national voice advocating the widespread use of all forms of restorative practice, including restorative justice. This stakeholder's vision is of a society where high quality restorative practice is available to all.*	*It will be useful to include the opinions of a restorative justice stakeholder.*
4/5/20 I emailed their generic address. *5/5/20 I received an email from the Occupational Health and Safety Policy Adviser accepting the interview.*	*Vision: Life, free from serious accidental injury. Mission: Exchanging life-enhancing skills and knowledge to reduce serious accidental injuries. Advocates the reduction of serious injuries, primarily road traffic accidents. 'The only UK charity to work across occupational health and safety, and road, home, leisure and education safety' by researching the evidence base for accident prevention and sharing advice and information.*	*This stakeholder's aim of reducing accidents closely aligns with the prevention of safety crime, as it is likely that a high number of occupational and road accidents are safety crimes.*
4/11/19 I emailed their generic address, received a reply, and the director accepted the interview.	A charity that aims to create a better justice system in the UK, a system that is fairer, more open, more humane,	The general aim of creating a better justice system includes the issue of safety crime punishment.

	and more effective by generating research and evidence to show how the system can be improved.	
Professional organisations and other (n=11)		
9/11/20 I left a message on their Twitter.	Founder of a now defunct charitable organisation that advocated for health and safety reforms.	It will be useful to interview the founder of this organisation due to their experience of health and safety punishment policy.
9/6/20 I emailed their generic address. 16/7/20 I sent an email to their generic address. 28/8/20 I emailed their generic address. I searched the first page of Google but could not find contact details for the Chief Executive Officer. I emailed the Adviser to the Chair of the Bar and the Head of Governance. 29/8/20 I received a response stating that it is not anyone's area of expertise. It was suggested that I contact the [anonymised]. I sent the [anonymised] the study invitation.	Plays a crucial role in upholding the principles of government accountability under law and vindication of legal rights through the courts, and makes a vital contribution to the effective operation of criminal and civil courts.	Made up of over 16,500 barristers, plays an important role in the prosecution of criminals and this stakeholder is likely to have valuable information for answering the research questions of this study.
9/11/20 I left a message on their website. 12/11/20 I attempted to leave a message on their website but a server error prevented this.	The professional association for prosecution and defence solicitors, barristers and lawyers who practice in and areas associated with health and safety law. It aims to act as thought leaders and shape the development of health and safety law and issues effecting the enforcement and court process associated with it, and to further research.	The views of legal professionals on health and safety law will be valuable for the research questions of this study.
26/11/19 I emailed their generic address. They replied the next day and accepted the interview with an emeritus Professor in the School of Law.	Undertakes academically-grounded and policy-oriented research on justice. Research concerns justice, fairness and human rights, and a commitment to bringing about improvements in justice policy and practice. The audiences of this research include academics, policy-makers and their advisers, civil society organisations, criminal justice	The encompassing aim of undertaking policy-oriented research on justice includes the issue of safety crime punishment.

	practitioners, and the wider public.	
12/10/20 I emailed their generic address.	*Aims to ensure employee views are taken into account when the government is reviewing policy, legislation or seeking the opinions of the wider business community.*	*It is important to include the views of businesses, particularly directors, in this study.*
4/12/19 I emailed their generic address. 13/12/19 I emailed their generic address. 17/2/20 I called their generic telephone number and was asked to send the email again so someone gets back to me. I received a reply: 'I am afraid that this is not something that we would be able to consider at this time.' 27/2/20 I sent letters to the Chair, and Commissioner. 16/3/20 I called and was told to resend the email. 26/3/20 I received the rejection: 'I've spoken to [anonymised] about this request, and as mentioned in our previous correspondence, as this not an area covered in any of our projects, I am afraid that this is not something that we would be able to consider at this time.'	Aims to ensure that the law is fair, modern, and cost-effective. Also conducts research to make recommendations for consideration by Parliament.	The general aim of achieving fair and cost-effective law includes the issue of safety crime punishment.
27/5/20 I emailed their generic address. 16/7/20 I sent an email to their generic address. 31/8/20 I emailed the Associate Director; Director; and Associate Director. 03/09 I received a reply from a Professor of Criminology accepting the interview.	Aims to advance understanding of crime and criminal justice through theoretical, empirical and applied research. It also aims for its research to impact on policy and practice.	This stakeholder is valuable because of its interest in advancing criminological research and using this to influence policy and practice development in relation to crime and criminal justice.
12/11/19 I emailed their generic address. *13/12/19 I emailed their generic address.* *18/2/20 I called their generic telephone number and the receptionist gave me a new email to send the invitation.* *24/2/20 I received an email that the invitation has been passed on to the policy team.* *4/3/20 I sent a letter to their company address but not to any named persons as this information is not publicly available.* *11/3/20 I received a reply to my letter by email saying they are not interested in taking part as an organisation, but they can forward my request onto individual members.*	*The Chartered body and largest membership organisation for safety and health professionals. It aims to make workplaces safer, healthier, and more sustainable, as well as collaborating with governments to advise policy-makers, commission research and set standards, and run high-profile campaigns to promote awareness of issues affecting workplace safety, health and well-being.*	*This stakeholder's interest in safe working conditions, as well as its aim of collaborating with governments to advise policy-makers, means that this is an important stakeholder for answering the research questions. The participant also has experience as a barrister, solicitor, and handling health and safety prosecutions.*

12/3/20 I replied asking them to do so. *31/3/20 I sent a follow up email.* *4/4/20 I received a reply that the invitation has been passed onto three practitioners and that they have the opportunity to contact me to take part.* *16/4/20 I sent a follow up email to remind the practitioners to reply to me.* *16/4/20 I received an email from one of the professionals suggesting that an interview takes place. The professional's views are his own and not those of his organisation.*		
12/10/20 I emailed their generic address.	*The independent professional body for solicitors in England and Wales. This stakeholder is the voice of solicitors.*	*It will be useful to include the opinion of solicitors, including civil solicitors, for their knowledge and experience.*
8/6/20 I emailed their generic address. 16/7/20 I sent an email to their generic address. 31/8/20 I emailed their generic address. I could not find any contact details on the first page of Google for the Chief Executive; Operations Director; or Partner and Branch Manager for the South West and Wales. 12/1/21 I called their Bristol office and was eventually put through to one of their members who accepted to take part.	A prominent personal injury law firm in the UK, driven by a vision to protect and deliver justice for working people, and is solely committed to claimant only work as it specialises in representing mistreated persons.	It will be useful to include the opinion of an employer that represents injured workers.
5/2/20 I emailed their generic address. *18/2/20 I called their generic telephone number and spoke to the receptionist, I was told that the directors that can respond are away on holiday for one month.* *18/3/20 I called their telephone number and it went to voicemail.* *23/3/20 I called their telephone number and it went to voicemail.* *24/3/20 I called their telephone number and it went to voicemail.* *2/4/20 I called their telephone number and was told there are not enough staff and they are too busy to take part, but they did express some frustration at current Health and Safety Executive practices, particularly the prosecution of smaller companies for relatively minor offences and not larger companies. I was told to ring back when current affairs died down.* *7/8/20 I called and was told to call next week when the directors are back.*	*A medium sized construction company that provides commercial and residential building services.*	*This company has no connection to safety crime policy aside from operating in a sector that is most likely to be affected by safety crime. This stakeholder has been included because it is important to include the opinions of employers in answering the research questions.*

14/8/20 I called their telephone number and it went to voicemail.		
Select Committees (n=8)		
25/5/20 I emailed the committee's generic address. *14/7/20 I sent an email to their generic address.* *15/7/20 I received the rejection: 'I fear that the subject of your research does not fall within the expertise of the committee and it is therefore necessary for me to decline your kind offer to include the committee's views.'*	*Scrutinises proposals in bills to delegate legislative power from Parliament to another body and also examines Legislative Reform Orders.*	*This House of Lords committee has experience reviewing regulatory reform and this experience makes it valuable for answering the research questions of this study.*
7/4/20 I emailed the committee's chair. 29/4/20 I emailed the chair. 27/5/20 I emailed the committee's generic address. 1/6/20 I received a response from the Senior Committee Assistant: 'I am very sorry but nobody is able to assist you with your research. As I am sure you understand, this is a very busy time.' I replied stating I will try again in at least one month's time. 14/7/20 I sent an email to their generic address. 20/8/20 I emailed the Senior Committee Assistant. 12/11/20 I called the generic phone line, no one picked up so I left a voicemail. I received a final rejection: 'Thank you for your voicemail earlier. I'm sorry that we cannot help. The Committee doesn't currently have an inquiry relating to this topic, so we regret that it cannot participate at this time.'	Examines the policy of the Home Office and its associated public bodies.	Oversees the work of the Home Office that has a stake in crime policy, making this stakeholder valuable for answering the research questions of this study.
8/4/20 I emailed the committee's chair. 24/4/20 I emailed the chair. 23/5/20 I emailed the committee's generic address. 28/5/20 I received the rejection: 'I'm afraid the [anonymised] staff aren't able to help on this – the Committee's role is examining the policy and spending of the Ministry of Justice rather than the individual workings of specific pieces of legislation, and we don't have the relevant expertise.' 2/6/20 I replied defending my invitation. 14/7/20 I sent one final invitation.	Examines the policy of the Ministry of Justice and its associated public bodies.	Oversees the work of the Ministry of Justice that has a stake in crime policy and how the courts are run.
25/5/20 I emailed the committee's generic address.	*Examines and reports on certain draft orders laid before the House of Commons under*	*This House of Commons committee has experience reviewing regulatory reform*

14/7/20 I sent one final invitation to their generic address.	*the Legislative and Regulatory Reform Act 2006. It also examines matters relating to regulatory reform.*	*and will therefore be useful for answering the research questions.*
25/5/20 I emailed the committee's generic address. *14/7/20 I sent an email to their generic address.* *24/8/20 I sent an invitation to their generic address. I sent an invitation to the chair x2.* *12/11/20 I called their generic telephone number, no response so I left a voicemail.*	*Examines the policies of the Scotland Office and its associated bodies. The Committee also examines the wider UK Government, to assess policies and legislation that lead to direct impacts on Scotland.*	*This stakeholder is valuable for its expertise in examining policy and it is likely that safety crime policy in England and Wales affects policy in Scotland.*
25/5/20 I emailed the committee's generic address. *5/6/20 I received a firm rejection from an advisor: 'Our general approach to any secondary legislation considers the likely policy effects and whether they are adequately explained or justified to Parliament. We do not routinely collect any data about the nature of the punishment indicated and have no basis for forming an opinion on whether it is likely to be effective. Our role is to sift all instruments as they are initially laid before Parliament and we do not normally undertake any long term follow up of how they worked in practice.'*	*Considers the policy effects of statutory instruments and other types of secondary legislation.*	*This stakeholder is relevant for its experience of examining policy reform and its effects.*
25/5/20 I emailed the committee's generic address. *14/7/20 I sent an email to their generic address.* *24/8/20 I emailed their generic address. I emailed the chair x2* *25/8/20 I received the rejection: 'Unfortunately neither [anonymised] nor the committee are able to participate in this study.'*	*Examines the policies of the Wales Office and its associated bodies. The Committee also examines the wider UK Government, to assess policies and legislation that lead to direct impacts on Wales.*	*This stakeholder is valuable for its expertise in examining policy.*
23/5/20 I emailed the committee's generic address. *27/5/20 I received a rejection from the Senior Committee Assistant: 'I am afraid that we aren't able to suggest a colleague who will be able to do an interview for you. The role of the Committee secretariat (my colleagues and I who support the Committee) is to provide briefing material and other support for the Committee on the issues on which they want to inquire about. The Committee Secretariat must remain impartial and so cannot take part in*	*Examines the policy of the Department for Work and Pensions and its associated bodies, including the Health and Safety Executive.*	*This committee is responsible for the oversight of the Health and Safety Executive, making it a valuable stakeholder for this study.*

research activity. I apologise if you are disappointed by this.' I replied asking whether someone from the Committee might be interested in taking part. *28/5/20 I received a reply directing me to specific individuals of the committee.* *2/6/20 I emailed two of the committee members.* *14/7/20 I sent one final invitation to two of the committee members.* *4/8/20 I received a message from one of the committee members accepting the interview for the 24th of August. This stakeholder's views are his own and not the committee's.*		
Trade unions (n=5)		
22/1/20 I left a message on their website. *17/2/20 I called their generic telephone number but it forwarded to voicemail.* *18/2/20 I called and was told to send the invitation to [anonymised].* *4/3/20 I sent a letter to their Bristol office, no publicly available individuals to contact.* *16/3/20 I tried to call their generic telephone number but it went to voicemail.* *17/3/20 I tried to call their generic telephone number but it went to voicemail.* *18/3/20 I tried to call their generic telephone number but it went to voicemail.* *19/3/20 I tried to call their generic telephone number but it went to voicemail.* *20/3/20 I tried to call their generic telephone number but it went to voicemail.* *23/3/20 I called and spoke to a receptionist who will follow up the study invitation.* *23/3/20 I received an email stating that the study invitation has been forwarded onto the National Health and Safety Officer.* *16/4/20 I sent a follow up email. I received a reply the same day that the study invitation has been nudged.* *2/6/20 I sent a follow up email.* *16/7/20 I sent one final invitation.* *28/8/20 I could not find any information regarding specific individuals to contact.*	*A trade union that represents all workers, fighting for better work pay, terms and conditions.*	*A trade union with no specific connection to safety crime aside from the general aim of working towards better work conditions. This stakeholder has been included because it is important to include the voice of workers, particularly from large trade unions.*
4/6/20 I emailed their generic address. *16/7/20 I sent an email to their generic address.* *1/9/20 I emailed their generic address. I emailed the General Secretary and the Deputy General Secretary.*	*Brings together 5.5 million working people across 48 member unions. It campaigns for safer workplaces.*	*This stakeholder has been included because it is important to include the views of employees in this study.*

12/1/20 I called their generic number, no answer.		
15/10/20 I emailed their generic address. *13/11/20 I emailed their generic address.* *12/1/20 I called their generic number. I received an automated message that no one is in the office due to the Covid-19 lockdown.*	*Our purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland and to promote trade unionism, equality and social justice. This stakeholder represents over 540,000 trade unionists.*	*This stakeholder has been included because it is important to include the views of employees in this study.*
12/11/20 I emailed their generic address for the South West.	*Britain's and Europe's biggest public sector union with more than 1.3 million members, representing workers delivering public and related services. This stakeholder represents members, negotiates and bargains on their behalf, campaigns for better working conditions and pay and for public services.*	*This stakeholder has been included because it is important to include the views of employees in this study.*
4/6/20 I emailed the safety representative's address. I received an automated non-delivery notice. I emailed the secretary's address. *16/7/20 I sent one final invitation to the secretary.* *1/9/20 I emailed two of their branches as there is no overall generic address. I emailed the Scottish Secretary and Regional Manager.* *2/9/20 I received a reply suggesting I contact the Chair of the Health and Safety Committee. I sent the chair the study invitation.* *12/1/20 I called their generic number, no answer and no option to leave a voicemail. I emailed the chair again.*	*Britain's and Europe's biggest public sector union with more than 1.3 million members, representing workers delivering public and related services. Represents members, negotiates and bargains on their behalf, campaigns for better working conditions and pay and for public services.*	*This stakeholder has been included because it is important to include the views of employees in this study, including those in Scotland.*

Appendix 3

Example of the participant information sheet and consent form

Participant Information Sheet

University of BRISTOL

Interviewing stakeholders on punishments for health and safety offences

You are being invited to take part in a research project on how workplace health and safety offences should be punished. Before you decide to take part it is important for you to understand why the research is being carried out and what it will involve. Please take time to read the following information carefully. Please ask me if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part. Thank you for reading this.

Why am I doing the study?

I am a Social Policy PhD student at the University of Bristol funded by the Economic and Social Research Council. My thesis is concerned with how effective health and safety punishments are in Britain. As part of my research I have chosen to carry out interviews with stakeholders on how health and safety offences are punished. The information collected from the interviews will be useful for developing evidence based research on the most effective penalties and policies for reducing health and safety harm in workplaces.

Why have you been chosen?

You are being invited to take part in this study because you represent an organisation that has expertise or knowledge that influences, or has the potential to influence, health and safety crime punishment policy.

Do you have to take part?

No. Participation is completely voluntary. It is up to you to decide whether or not to participate in my research. If you do decide to take part you are still free to stop at any time. If you want to stop you do not have to give a reason.

What will happen if you take part?

If having read this information sheet you are willing to take part in the research, at the bottom of this information sheet is an informed consent form. Please sign this and return it to me, or reply with an email stating that you consent to take part. I will then arrange a convenient time to conduct a phone or Skype interview which will be audio-recorded and last approximately 30 minutes.

What will happen to all the information you provide?

All information collected during this project will follow the Data Protection Act 2018 and the General Data Protection Regulation 2016. Your answers will be held in strict confidentiality and you will not be identified in any publication from this study. You have the opportunity to request to read the transcript of the interview to check for accuracy. Any personal information that can be used to identify participants will be anonymised within four weeks of the interview taking place, including your name and the organisation you represent. This confidentiality will only be breached if someone is at risk of harm. Once your data is anonymised, all remaining identifying personal information will be destroyed. Anonymised data will then be securely stored by the University of Bristol's Research Data Storage Facility (see https://www.bristol.ac.uk/acrc/research-data-storage-facility/). Data stored in this facility will be available for other researchers to conduct secondary analysis. To ensure confidentiality, data will always be stored on an encrypted and password locked device. The findings of your data, including anonymised quotes, will be presented as part of my thesis.

What are the risks and benefits of taking part?

There are minimal risks associated with this research. Participants who have (or know someone who has) experienced a health and safety offence may find it uncomfortable discussing this topic. Information about support services will be provided for those finding the interviewing process distressing. The data you supply may benefit

others as it may increase the policy and academic understanding surrounding effective health and safety punishments, and in turn, this may lead to a decrease in health and safety harm in the workplace.

Can you withdraw your study data after you have participated in the study?

Yes. You have the right to ask for your data to be withdrawn at any point. If you decide that you do not want your data to be used after your participation, you can contact myself or my supervisor to request that your data be withdrawn. You do not have to give a reason for withdrawing your data. However, it may not always be possible to withdraw your data, such as if the study has already been published.

Who has reviewed the study?

This study has been approved by the School for Policy Studies, Research Ethics Committee, University of Bristol.

Study contact details for further information

If you need any further information, please contact me at ar15943@bristol.ac.uk or my supervisor, Christina Pantazis, at the School for Policy Studies, University of Bristol, 8 Priory Road, Bristol BS8 1TZ, 0117 954 6766, c.pantazis@bristol.ac.uk

Informed consent for interviewing stakeholders on punishments for health and safety offences

	Yes	No
Please tick the appropriate boxes		
1. Taking part in the study		
I have read and understood the study information dated DD/MM/YYYY. I have been able to ask questions about the study and my questions have been answered to my satisfaction.	☐	☐
I understand that taking part in the study involves participating in an audio-recorded interview which will be transcribed into text.	☐	☐
I understand my participation is voluntary and I am free to withdraw at any time without giving a reason.	☐	☐
I understand that I have the right to request that all information held about me is deleted.	☐	☐
2. Use of the information in the study		
I understand that the information I provide will be used for data analysis and presented as part of a PhD project.	☐	☐
I understand that personal information that can identify me, such as my name or where I work, will not be shared beyond the author of the research.	☐	☐
I agree that the information I provide can be quoted anonymously in research outputs.	☐	☐
3. Future use and reuse of the information by others		
I give permission for the anonymised interview transcripts that I provide to be deposited in the University of Bristol's Research Data Storage Facility so it can be used by other researchers for secondary analysis.	☐	☐

4. Signatures

_____	_____	_____
Name of participant	Signature	Date
_____	_____	_____
Name of researcher	Signature	Date

5. Study contact details for further information

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Appendix 4

Example of the interview guide

The questions in this interview guide aim to discuss the use and effectiveness of current and alternative penalties for punishing safety criminals, and to what extent these penalties are influenced by the theories of criminal punishment. Approximately 15 questions from the following list will be discussed, mostly those in red font.

Keywords:

Safety crime: a term that refers to workplace health and safety offences. Safety crime can be defined as illegal acts or omissions that either do, or have the potential to, cause death or injury as a result of work-related activities, punishable by the state under administrative, civil, or criminal law which are the result of deliberate decision making or culpable negligence. These acts or omissions are based in legitimate, formal, business organisations, made in accordance with the normative goals, standard operating procedures, and/or cultural norms of the organisation, and are intended to benefit the corporation itself.

Safety criminals: Either natural or corporate persons that commit safety crime.

Literature review

1) Do you think safety crime is a suitable term to describe workplace health and safety offences?

2) Do you think terms like workplace 'accidents' and 'disasters' are suitable to describe safety crime?

Probe: To what extent do you agree or disagree that the terms accidents and disasters are neutralising terms which assist in removing the criminal label from safety crime by removing the criminal intent (*mens rea*) from these phenomena?

2.5) Do you think the punishment of safety crime requires more or less policy response?

Probe: What kind of response is needed?

3) In your opinion, what are the reasons that safety crime still takes place?

4) To what extent do you feel that austerity has had an effect on safety crime?

Probe: In what ways specifically?

5) What effect do you feel that Covid-19 has had or will have on the punishment of safety crime?

Theories of criminal punishment

A review of the academic literature suggests that there are four primary theories of punishment that are important for effectively punishing safety criminals: deterrence, retributive justice, rehabilitation, and incapacitation. We will now discuss how effective you think each theory is for the punishment of safety crime.

Keywords:

Deterrence: A penalty that is relatively greater than the advantages of a crime so that it prevents or deters persons from committing crime.

Retributive justice: The idea of 'doing justice' and punishing offenders appropriately for their transgressions, 'the punishment should fit the crime'.

Rehabilitation: The theory of reforming the offender's behaviour so that offenders abstain from crime. Rehabilitation can apply to both natural and corporate persons. It can also apply to the environment, more commonly referred to as restitution – the repairment of damage to the environment.

Incapacitation: The prevention of crime by physically inhibiting offenders from committing offences. Examples include the imprisonment of natural persons, or by revoking a company's operating license.

6) Which theory or theories do you believe are currently informing the punishment of safety crime in England and Wales?

Deterrence

7) Do you think deterrence is effective for preventing safety crime?
Probe: How so? Why might it not be effective?
8) Some academics argue that deterrence is more applicable to safety crime than conventional crime, since the factors that underlie deterrence – the rational consideration of the probability of being caught, convicted, and the penalty involved – are potentially more visible to safety criminals than conventional criminals. To what extent do you agree or disagree with this statement?
9) In light of fiscal restraint in Britain, what effect do you think this is likely to have on safety crime deterrence?

Retribution

10) Do you think retributive justice is effective for punishing safety criminals?
Probe: Why/why not?
11) Should the severity of safety crime penalties closely align with the same severity for similar offences, such as fines for financial crime or life imprisonment for homicide? For instance, the largest fine for financial crime belongs to Rolls-Royce in 2017, standing at £497 million.

Rehabilitation

12) How effective do you think rehabilitation is for punishing or preventing safety crime?
Probe: Why might it not be effective?
13) Some academics criticise the effectiveness of the rehabilitation of safety criminals since safety crime may result from the rational prioritisation of profit over safety. To what extent do you agree or disagree with this statement, and why?

Incapacitation

14) How important is incapacitation for punishing or preventing safety crime?
Probe: Why might incapacitation theory not be effective?
15) Incapacitation can refer to selective incapacitation, the incapacitation of persons based on a prediction that they will commit crime; or more commonly, collective incapacitation, the incapacitation of persons regardless of any predictions of their criminal behaviour. Due to issues of successfully predicting crime, incapacitation primarily refers to collection incapacitation. However, is it possible for selective incapacitation to effectively predict safety crime? For instance, a company's poor health and safety practices may mean selective incapacitation can be used to successfully predict and prevent safety crime.

Safety crime penalties

We will now discuss the various safety crime penalties and how effective you think these penalties are at achieving the above theories of punishment. The current penalties for health and safety offences can be found at: https://www.sentencingcouncil.org.uk/wp-content/uploads/Health-and-Safety-Corporate-Manslaughter-Food-Safety-and-Hygiene-definitive-guideline-Web.pdf. Pages 7-9 set out the penalties for the majority of health and safety offences. You are not required to read these guidelines but it may be helpful in informing your answers for questions 16 to 21.

16) In general terms, to what extent do you think the Sentencing Council (2016) guidelines are effective at achieving above theories of criminal punishment?
Probe: What are the limitations of the guidelines? How can these be remedied?

Fines

17) To what extent do you feel that fines are effective at achieving retribution and deterrence for safety criminals?
18) There is some concern in the academic literature that on average fines are too small to punish or deter organisational safety criminals. To what extent do you agree or disagree?
Probe: What might explain the level of fines, and what steps should be taken to address this?
19) The Sentencing Council (2016) guidelines acknowledge the existence of 'very large organisations' and states it may be necessary to move outside the suggested fine limit. However, this is yet to occur. Why do you think this is the case?

Unit Fines

Unit fines are fines that are directly proportional to the offender's income, such as a unit fine of 5% of the offender's annual income.
20) Some argue that fines for organisations would be more effective by expressing them as a proportion of the organisation's total revenue (similar to individual fines). Do you agree with this?
Probe: Why/why not?
21) In your opinion where would you set the minimum rate and where would you set the highest rate of unit fines (expressed as a proportion of revenue)?
Probe: In your opinion, do you think unit fines of 5% to 30% would be effective for achieving retribution and deterrence?

Equity fines

Rather than subtracting from the running costs of a company, one option might be to re-allocate ownership of the company's shares to the state. Equity fines would correspond to a percentage of the company's shares and the equity fine should equal the necessary monetary fine to achieve the aims of punishment.
22) Do you think this penalty would be effective for achieving retribution and deterrence? Why/why not?
Probe: What might be the advantages and disadvantages of this type of penalty?

Publicity orders

A publicity order requires the convicted organisation to publicise the fact of its conviction of the offence, the particulars of the offence, the amount of any fine imposed, and the terms of any remedial order.
23) To what extent are publicity orders (i.e. stigmatic shaming) effective at punishing and deterring organisational safety criminals?
Probe: Why might they not be effective?
24) In conjunction with publicity orders, do you think it would be effective to place a ban on company advertisements for the duration of the publicity order?

Custodial sentences

25) To what extent is imprisonment an effective penalty for individual safety criminals? Whether this is for retributive reasons of doing justice, or incapacitative reasons of preventing further crime.

26) The utility of incapacitation by imprisonment has been criticised on the premise that individual safety criminals are unlikely to intentionally harm another individual, and therefore, incapacitation by means of imprisonment is unnecessary since there are other methods of incapacitation that remain connected to the community, such as disqualification orders (see below). Do you agree or disagree with this statement, and why?

Disqualification orders

Disqualification orders prevent individuals, typically directors, from directing or otherwise controlling a company's affairs for a maximum of 15 years.

27) In your experience, are disqualification orders an effective penalty for achieving the incapacitation of individual safety criminals?

Probe: Why might they not be effective?

Community sentences

Community sentences combine punishment with activities carried out for the community, such as waste removal.

28) To what extent do community sentences achieve the four theories of punishment for safety criminals?

The following questions pose some possible changes to how community sentences are currently delivered and I would like to hear your opinion on these possible changes.

29) Should community sentences be adapted to include incapacitative elements? Such as requiring individuals to fulfil their community sentence full time during work hours.

30) If the above is implemented, should steps be taken to ensure that the individual is prevented from maintaining their occupation outside of work hours?

Probe: Perhaps this should take the form of a disqualification order?

31) What are the strengths and weaknesses to using incapacitative community sentences for individual safety criminals?

32) Should community sentences be adapted to emphasise their rehabilitative elements? This may include the rehabilitation of individuals by teaching them safer workplace health and safety practices; or rehabilitation of the environment by requiring the individual (typically a director) to develop environmental clean-up schemes or any other program that benefits the community, like lending the individual's services to the management of a charity.

Probe: Why/why not?

33) What are the disadvantages to incorporating a higher level of restitutive elements to community sentences?

Remedial order

Remedial orders require organisational offenders to remedy the causes of the offence.

34) Are remedial orders effective at rehabilitating organisational practices?

Probe: Why/why not?

The academic literature suggests the incorporation of license revocations to remedial orders for offenders that fail to abide by the remedial order. Offenders would be prevented from operating until the conditions of the remedial order are met.

35) To what extent do you think this would be beneficial and why?

Concluding comments

36) Why do you think that some penalties, including disqualification orders, publicity orders, and community sentences are used so infrequently? (there are 10 recorded cases of disqualification orders being used for health and safety offences from 1986 to 2005; of the 21 corporate convictions from 2008 to 2017 only 6 of these involved a publicity order).

37) Should safety crime penalties be aimed at individuals or organisations?

38) Why do you think we have not been so effective in punishing safety crime?

39) Finally, is there anything else you would like to see introduced or changed?

Appendix 5

Example of the study invitation

University of BRISTOL
School for Policy Studies
8 Priory Road
Bristol BS8 1TZ
Tel: +44 (0)117 954 6755
Fax: +44 (0)117 954 6756
bristol.ac.uk/sps

25th February 2020

Dear

I am a Social Policy PhD student at the University of Bristol funded by the Economic and Social Research Council, and I am writing to invite you or a member of your organisation to take part in an interview concerning current policy practices on the punishment of workplace health and safety offences in Britain. I am contacting your organisation because of the prominent role you play in providing a modern courts and justice system.

The interview, lasting approximately 30 minutes, will discuss the use and effectiveness of current and alternative penalties for punishing health and safety offences, and to what extent these penalties are influenced by the theories of criminal punishment. With help from your organisation and others, my aim is to produce evidence based research by combining academic and practitioner opinion, and to contribute to academic and policy knowledge on the most effective penalties for deterring and preventing workplace harm.

Members of your organisation may not be familiar with health and safety offence policy, however, no specialised knowledge is required to participate in the interview. I am interested in collecting the views and opinions of a range of public and private stakeholders. Your organisation's inclusion in this study will provide valuable insights on how you or your organisation feels these offences should be viewed and punished.

I have previously contacted the x email address and phone number, but these attempts have not been successful. If your organisation is interested in participating, please can you suggest the contact details of someone who would be happy to take part. I will then send them the interview guide which contains a list of the questions I would like to discuss in advance. I have also attached a participant information sheet which contains more detail on the study. This letter has been sent to x in the hope of receiving a response in case you are unavailable.

Thank you for your time in reading this letter and invitation and I am looking forward to hearing from you.

Yours sincerely,

Angus Ryan
Social Policy PhD student
University of Bristol
E: ar15943@bristol.ac.uk