

Bridget M. Hutter and Clive J. Jones

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From Government to Governance: External Influences on Business Risk Management

Professor Bridget M. Hutter and Mr. Clive J. Jones¹

Abstract

The influence of external organizations and pressures on business risk management practices has hitherto been examined through the influence of state regulatory regimes on businesses. This literature concentrates on key socio-legal concerns about the influence of the law in social and economic life. We know that the sources of regulation and risk management are diversifying beyond the state. What we do *not* have is much empirically informed research about the range of sources influencing the business world and in particular the weighting of influence exercised by them. In this paper we will explore the understandings regulatory actors have of the different external pressures upon business risk management through an empirical study of the understandings of those in the food retail sector about the management of food safety and food hygiene risks. A broader objective is to throw some further light onto the debate about regulation within and beyond the state.

Key Words: Governance, Risk Management, Regulation, Food safety, Non State Actors

Introduction

One aim of many modern regulatory regimes is to influence the risk management practices of organizations. The objective is to get organizations to prioritise risk management practices high relative to other organizational objectives. Regulation² is part of a structuring process which helps constitute order in economic life (Ayres and Braithwaite, 1992). It aims to shape motives and preferences and penetrate business organizations' objectives and practices (Shearing, 1993).

Research has focused on the way in which state regulatory regimes impact on business organizations. The literature identifies a number of factors which influence the impact of regulatory law on businesses and indicates that state influence through law is a necessary but not sufficient influence upon business risk management (Gunningham and Kagan 2005; Hutter 2001). There is increasing acknowledgement that regulatory space is occupied by the state and a variety of non-state players, and that there is a move to outsource public management functions (Hancher and Moran 1989; Hutter, 2006; Osborne and Gaebler 1992; Scott 2001). This is central to discussions of the move from government to governance.

Concerns about the limits of state activities led in the late 1980s and early 1990s to debates about a crisis in state regulation. This prompted policy discussions which advocated a regulatory mix in which the state harnesses sources of regulation beyond the state (Ayres and Braithwaite, 1992; Gunningham and Grabosky, 1998). This was also seen as a means of empowering different participants in the regulatory process in order to maximize the promotion and achievement of risk management. A series of studies have highlighted the importance of focusing on the interplay of economic,

political and social forces in understanding corporate regulatory factors. Also relevant is their interaction with the internal organization of a business and the views and behaviours of its management and employees.³

This paper addresses a neglected issue in all of these discussions in its consideration of how well these academic discussions resonate with the regulatory knowledge of those subject to regulation. Do they recognize regulation beyond the state? If so, which external influences are in play? How important are they in relation to state regulatory influences? And what is the nature of their influence?

The research we draw on focuses on the ways in which businesses in the food sector in the UK understand and manage food safety and food hygiene risks. Data were collected in two phases from businesses in south-east England and Scotland. The first phase involved consultations with 49 experts related to the food industry.⁴ Discussions, which lasted on average an hour, were broad-ranging and offered a variety of perspectives on the state of food safety and food hygiene in the retail and catering sectors in the UK. The second phase comprised a questionnaire survey which was structured according to business type; notably the food retail and catering sectors and the size of business.⁵ A total of 204 individuals across 31 businesses responded to the survey⁶.

External influences on business risk management: economic and civil

Analytically we can identify two sources of regulation which are autonomous and independent from the state, namely the economic sector and civil society (Hutter, 2006). The economic sphere includes

a broad range of profit motivated organizations and activities embracing, for example, finance and industry. These include industry or trade organizations and companies themselves. There are also important hybrid forms of self-regulation, for example, enforced self-regulation which involves a mix of state and corporate regulatory efforts (Braithwaite 1982; Coglianese and Lazer, 2003). Some market participants sell risk management products and risk management advice, for example, insurance companies and consultancies. Others may exercise influence through their investment or consumer choices.

The term civil society embraces a fairly broad range of actors and organizations. Accordingly the range of sources of regulation in the civil sector is diverse. Perhaps the best-known regulatory sources in this sector are NGOs, a category which itself includes a diverse range of organizations which may operate at the local, national or international levels (Hutter and O'Mahony, 2004). Also important in the civil sector are standards organizations which produce standards about product quality, quality assurance, and risk management (Brunsson & Jacobsson 2000) and professional organizations which have long played a very important regulatory role in regulating entry conditions to the professions and laying down standards of conduct.

These organizations may influence regulation and business risk management in a variety of ways. The distinction drawn by Hood et al (2001) between the context and content of regulation is helpful here. The context of regulation refers to 'the backdrop of regulation' and the content to 'regulatory objectives, the way regulatory responsibilities are organized, and operating styles' (2001: 28). In the case of businesses one might use similar distinctions to identify those having a background and indirect influence from those who have a much more direct influence on business risk management

practices. NGOs, for example, may be both part of the context and content of regulation; they may exert normative background pressure or in some cases they may be formally incorporated in business risk management and corporate social responsibility initiatives.

Let us now turn our attention to how these issues work out in practice in one particular area of risk management, namely that of food safety and food hygiene.

Management of food safety and food hygiene risks

This management is designed to minimise the risk of food borne illnesses and we should be in no doubt that the risks here are considerable. In 2000 over 5 million people in the UK and 76 million in the US suffered food poisoning (Adak et al, 2002). A proportion of these were admitted to hospital and a small number died. It is thought that the trends in food borne disease and death are improving and undoubtedly risk management within the food industry is crucial to this (Adak et al, 2002).

In this section of the paper we present data from the research with respect to the regulated's knowledge of external influences upon food safety and food hygiene practices in the food retail sector in the UK. Throughout this section we will highlight any significant variations between respondents, we are in no way suggesting in this paper that there are homogenous views in this sector, far from it, the variations are important.

State regulators

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

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

The FSA is a policy making body with responsibility for guidelines, standards and codes of practice. It does have an enforcement arm, the Meat Hygiene Service (MHS) whose activities are independent of and parallel to those of EHOs and as such are outside the boundaries of this research. Each of the home nations of the UK, except England, has a devolved branch of the FSA. The FSA inspects and audits the environmental health departments of local authorities.

The FSA was borne out of a crisis in food regulation in 1980s and 1990s. A series of food controversies, including BSE, e-coli and salmonella, shook confidence in the system of food regulation in Britain. A number of problems were held responsible, among them fragmented and conflicting responsibilities for food safety in Britain. This led the government to follow the recommendations of the James Report (1997) and establish a non-ministerial department to undertake responsibilities previously held by multiple government departments and to oversee local authority enforcement. A key objective was to restore consumer confidence in the safety of food. During the course of this research there was no evidence that the crises of the 1980s and 1990s were material to the thinking of our experts or the managers we surveyed: none referred to these crises. While there were differences in opinion concerning the state of food safety and food hygiene in Britain today no one indicated that they considered it in a state of crisis.

Those we met in the first phase of the research differed widely in their views about how much would be known about the state-based regulatory systems set up in the late 1990s. Some considered state regulatory arrangements to remain confusing and they expected that we would encounter a great deal of uncertainty in business especially amongst micro, small and medium-sized enterprises (SMEs), particularly about the role of the FSA.⁷ It is notable that it was only in the first phase that any particular note was made of the influence of the European Union. Possibly the EU did not feature in the second phase as EU legislation tends to be incorporated into national legislative regimes.

In the second phase of the research managers of food businesses were asked about a range of matters, for example, their understandings of food safety and food hygiene risks, their sources of

information about these risks, business controls to manage risks and, the subject of this paper, external influences on their risk management sources. These included a very general question about the extent to which their consideration of food safety and food hygiene risks is influenced by sources external to the business. Table 1 details the aggregate responses we received. In the rest of the paper we will consider these alongside the other interview and survey data we collected.

The survey found that state regulatory agencies were, alongside consumers, the most important external influence on food businesses and of these, EHOs were held to have the most influence (see Table 1). The strength of the influence is revealed in the constancy of the findings across different groups: 68% of managers and 67% of micro and small business managers claim EHOs are a strong influence when they are considering food safety and food hygiene risks with only 2% of managers and no micro or small business managers claiming EHOs are of no influence.

Insert Table 1 here.

Respondents were able to give detailed answers about EHOs. The point of contact in each business varied. In many businesses managers were not present during an EHO visit and in large organizations the visit was often 'handled' by a specialist from head office or a more senior manager. This is not the case with micro and small businesses where the manager has direct and personal contact with the EHO. This may in part explain the additional finding that micro and small businesses tended to claim better quality relationships with EHOs than most medium and large size businesses.⁸ This said one of the surprising findings of the survey is that with one exception (1 out of 15 respondents) none of the micro

size catering businesses proactively sought advice from EHOs. This is especially surprising as EHOs emerged as an important source of information for other food businesses. Two-thirds of the businesses we surveyed actively seek advice from the EHO. Inspection appears to be an important educative channel and it may be that micro businesses find these visits especially helpful – thus the perception that they have a good relationship – yet they may simultaneously lack the confidence to actively ask EHOs for advice in the way larger businesses do.

We also questioned respondents about TSOs. They are clearly of influence (62%) on our food businesses but not as strong an influence as EHOs (91%). Knowledge about TSOs was patchier than was evident in the case of EHOs. For example when asked about TSOs 52% of micro and small businesses indicated a response of 'Not applicable' or 'Don't know' compared to 10% who did not or could not respond on the subject of EHOs. Little patterning was evident according to the size of business or whether the business was a retail or catering business. TSOs received almost no spontaneous mention elsewhere in the survey where they were mentioned by less than 2% of respondents. This would suggest that an awareness exists of trading standards matters but managers, directors and owners have had little experience of direct contact with a TSO⁹.

Food Standards Agency

During the first phase of research the role of the FSA was, as one might expect from this group of experts, well known but there was a great deal of uncertainty about how well known the FSA would be within the food industry. Yet in our second phase survey the FSA was ranked as the third most important external influence on food retail

and catering businesses. This ranking did vary between businesses. Those with a detailed knowledge of the FSA tended to be at the highest levels within businesses, that is within 'head office' specialist functions and similarly specialist functions within trade associations.

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

Non-state regulators

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

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

Consumers

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

Most managers in the sample sense a general public awareness of food safety and food hygiene risks. This is well illustrated by Table 2 below which shows how managers responded to a question about their understandings of consumer concerns. In two companies 100% of managers thought that consumers rated food safety and food hygiene issues as 'Very important'. Overall 'Price' (value for money) was cited as the second highest concern of consumers. A senior risk manager from a large branded licensed catering chain commented that his business had 'over complied on GM regulations due to consumer demand'.

Insert Table 2 here.

The media

The media is often considered one of the most influential opinion formers but in this research their comparative strength of influence was not widely recognized. During the period of study it was known that some businesses in the sample had first-hand experience of direct media attention. But specific details were difficult to obtain through the survey. Respondents were more prepared to discuss the more *diffuse effects of the media* where the influence is more generic: either the food industry or a food product becomes the

subject of media attention and all businesses are influenced. A small group of individual managers across the sampled businesses criticized the media for creating 'food scares'. Another group of managers was clearly (possibly unwittingly) 'part' of the food scare in that they would cite risk matters, of often complex and disputed risk, which were receiving extensive press coverage at the time of study.¹⁰ There was also concern that adverse publicity for any part of the industry had a contaminating effect on others:

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

Insurance companies

Insurance companies are thought by some commentators to have a potentially important regulatory role (Ericson et al. 2003). Yet very few of those we interviewed and surveyed in our research regarded insurance companies as a significant influence on their management of food safety and food hygiene.

Our experts thought it unlikely that insurance companies would figure prominently as an influence on food safety and hygiene standards but there was a suspicion amongst these experts that their influence may be increasing. A degree of scepticism about the ability of insurance companies to play a credible role in the food sector was also expressed, comments ranging from a view that insurance companies are not very good at quantifying risk, with others being especially concerned about moral hazard problems – 'Insurance is the enemy of the good as it is designed to average out loss resulting

in the good not being rewarded and the bad not being punished' (interview respondent).

Some 60% of managers of micro/small businesses compared to 50% of medium and large companies¹¹ claimed to have insurance cover for food hygiene and food safety incidents. Conversely, micro and small business managers (30%) view insurance companies as much less influential than did managers of medium and large businesses (50%). 20% of all managers received information on food hygiene and food safety from their insurance company but only one business (a micro/small business) reported ever having been inspected by an insurance company.

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

Lawyers

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

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

Pressure groups/NGOs

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

Phase 1 data revealed very different views of NGOs. A senior risk manager from a licensed catering chain commented that the Better Regulation Task Force and Food Standards Agency 'even out the influence of the National Consumer Council (NCC) and other (pro-consumer) lobbyists'. A contrasting comment came from a director of

a large food retailer who mentioned that as part of developing their Corporate Social Responsibility scheme they were working with a team of academics and consumer-friendly NGOs.

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

Private consultancy firms

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

In our research views about consultancy firms were mixed. Two large private consultancies specialising in the food industry were widely known and highly regarded for their provision of a range of technical, business, scientific, regulatory and legal services relating to risk. These were mentioned by senior policy makers and directors in phases 1 and 2 as providing research, policy and operations support to many businesses in the sector. However, knowledge of these two

consultancies was dependent upon level of seniority in the staff hierarchy, not a single manager mentioned consultancy, only those at directorial level.

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

Not all consultancies were viewed positively and some received a great deal of criticism from all of the sectors represented. They were seen to be exploiting the confusion of micro firms and SMEs relating to HACCP¹² – ‘consultants are making a killing out of HACCP, just pulling stuff off the net and then selling it’ (interview respondent). But there was more than moral indignation, some expressed concern that there is ‘over-implementation of risk management practices due to the advice of commercial consultants’. This very much chimes with evidence that consultancy firms may be a source of what has come to be referred to as regulatory creep (BRTF 2004).

Trade associations

Trade associations are a prominent form of economic self-regulation where businesses voluntarily join schemes involved in establishing and maintaining codes of practice (Gunningham 1995; Rees 1997). They may thus play an important risk management role for their

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

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

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

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

Some participants were very supportive of *self-regulatory schemes* such as the Red Tractor launched in the UK in June 2000 by Assured Food Standards which was created by the National Farmers Union (NFU) with government backing (Meat and Livestock Commission). Other participants preferred greater clarity about whether or not there is a regulatory requirement upon them or not i.e. a legal requirement to comply. There was a view that if schemes such as these are to have any chance of success then strong enforcement is necessary.

Several references were made by managers to what we believe are in-house schemes or proprietary standards which do not appear to have been created by trade associations or state regulators. Such schemes and standards have either been developed internally within

businesses or have been introduced with the assistance of paid external technical or business consultants. These schemes and standards were referred to in passing by several of the managers using an acronym: all of whom worked for the large businesses in the sample. Adherence to these schemes and standards appeared to be mandatory for those working within the business. Large supermarkets and caterers are another potential source of regulation, not just with respect to their own branches but also with respect to the supply chain. There was a very definitive view amongst some of our respondents that in the case of large national companies and franchises, corporate risk management systems for food safety and food hygiene take precedence over all others, the state included.¹⁴

Discussion

Two strong messages can be drawn from the research: first that state regulation remains a key influence on business risk management practices; second that respondents readily understood that there are other non-state external influences on their risk management practices.

Managers' knowledge of EHOs, the local authority regulators, was most widespread and most sophisticated. This is not entirely surprising as they are in most contact with the industry at floor level and their remit directly relates to the food safety and food hygiene risks we asked about. TSOs do not work directly to this remit but the survey responses do not seem to have such a nuanced reason for their ignorance – the indications are that they have less knowledge of trading standards. Knowledge of the nationally-based FSA is high at senior management and policy levels of large businesses but less so at junior management level. Overall, however, knowledge of the FSA amongst businesses was much higher than our expert group anticipated it would be.

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

Turning to influences beyond the state, the influence of the media was deemed to be well below the influence of consumers and state officials. The other main sources of civil power, NGOs, surprisingly, were not well understood as an influence despite their role in opposing GM foods and promoting organic produce. Campaigns on these issues were running at the time of the research so we had expected a greater knowledge of NGOs and their regulatory role. Another surprise is the fairly low influence attributed to lawyers. Given the prominent debate about the compensation culture we were surprised that respondents rarely mentioned the possibility of compensation claims or civil actions. Likewise insurance companies also appeared to have a much less influential role than attributed by some commentators.

Consultancy firms appeared to have influence and, in fact, the potential for substantial influence in some areas of the industry. The nature of this influence is controversial and an important topic in its own right. Trade associations are also potentially important especially as an area of industry self-regulation, but their influence is obviously

confined to their membership and the food industry is one where there are significant numbers of businesses which do not fall within the remit of these associations.

So consumers and EHOs were deemed to exercise a direct influence over food safety and food hygiene risk management practices; private consultancy firms and trade associations sometimes had a direct influence, depending on the size of the business; the media and NGOs were more indirect background influences; and lawyers and insurance companies played a negligible role, with the latter even being described as a negative influence. Let's consider now how these findings compare with other studies.

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

The literature on the impact of state regulators reveals a variable impact. The overwhelming majority of railway employees interviewed in Hutter's 2001 study thought that the state regulator was very important in bringing about higher standards of health and

safety in the industry. Likewise Gunningham, Kagan and Thornton (2003) conclude that regulation is key in shaping corporate behaviour. This contrasts with earlier studies by Gricar (1983) and Clay (1984) on OSHA (Occupational Safety and Health Administration) inspectors in the United States. Most studies argue for the necessity of maintaining some kind of outside policing of business risk management primarily to ensure that risk management objectives are established and maintained on a firm's agenda and to establish 'credible enforcement' (Gray and Scholz 1991; Gunningham and Grabosky 1998; Hutter 2001).

The influence of non-state actors on business risk management is not well researched and much of the work that does exist is speculative. There is some work in the environmental field about the potential importance of consumer preferences in influencing corporate environmental policies. Grabosky (1994), for example, argues that preferential buying or consumer boycotts may have the capacity to influence business environmental behaviour more than state regulation. But there is no corresponding research in the area of food safety and food hygiene. A study in the UK found consumers regard food safety as highly important but that they have few concerns about it as they generally agree that standards in the UK are very high (IGD 1998).

There is work on the increasing importance of trade and industry organizations and the international standards organizations (Cashore, et al. 2004; Eisner 2004; Ronit and Schneider 1999). Private standards such as those promulgated by trade associations are increasingly important in the global food system. Fulponi (2006) argues that such standards have become an important governance tool for major retailers and also that they are increasingly more stringent than those of government. Their importance in the food

chain is regarded as especially important (Henson and Hooker 2001). Likewise Holleran et al. (1999) see the potential incentives for food businesses to adopt these standards. These include satisfying customer requirements and helping to meet legislative demands. Trade associations may play an important role in making and communicating standards. Research in the environmental field suggests that they have a significant regulatory influence over environmental performance, particularly in a co-ordinating capacity (Bailey and Rupp 2004).

The role of broader social concerns in influencing business has been discussed. The notion of the 'social licence to operate' (Gunningham, Kagan and Thornton 2003) is possibly most forceful here. An important component in 'the social licence to operate' is the role of civil society and non-governmental organizations (Gunningham, Kagan and Thornton. 2003). These groups undertake an important monitoring role and their views, alongside those of the local community, are an important influence on business practices. Gunningham, Kagan and Thornton (2003: 153-4) also found less evidence than anticipated regarding the influence of NGO activity over pulp manufacturers, although they did accord local community activists an important role in influencing corporate behaviour.

NGOs often gain their influence through their use of the media and here they are deemed to have had some success, a prominent example being the Nestlé baby milk case when negative media campaigning led to consumer boycotts of its products (Hutter and O'Mahony 2004). Generally, the role of the media as a regulatory force is deliberated as a theoretical possibility rather than empirical actuality. Fisse and Braithwaite (1983) discussed how corporate deviance might be controlled by the use of adverse publicity since it targeted the desire of businesses to protect their reputations. Mason

and Mason (1992) also examined the mass media as a means of enhancing taxpayer compliance, arguing that this may be a means of persuasion for moral compliance and the promotion of civic virtue. The media plays an important informational role which can influence demand for products such as food (Baron 2005; Swinnen et al. 2005). Some regard this as a positive influence. Lang and Hallman (2005) for example, refer to the media as 'a watchdog of the public interest'. Others regard the media as a source of social amplification (Kunreuther 2002; Pidgeon et al. 2003) although there is disagreement about how serious this is. Frewer et al (2002) argue that the effects of such amplification of food incidents may be short-lived and may move according to changing levels of media reporting. Wakefield and Elliott (2003) found that newspapers though a major source of environmental information were also inconsistent and unreliable and thus were not trusted by the public, especially by those with access to other information networks.

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

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

Variability

An important objective of the research was to map out variability between businesses. Our findings do reflect the literature where the size of a business is main criterion explaining variability; this is identified, for example, as a key indicator of regulatory capacity. Our discussions with experts in the food sector revealed that many of them believed risk to be strongly related to size, with effort proportionate to the size of the business. Some reflected upon the ability of small businesses to manage risks – ‘Smaller businesses expect inspectors to manage risks for them’. This said there was vocal minority who argued that such statements should not be too sweeping and examples of large companies suffering serious and high profile risk management problems were cited.

Like other studies our SMEs generally had lower levels of knowledge of regulatory laws and state regulatory systems (BRTF 1999; Fairman & Yapp, 2004; FSA 2001; Gunningham, 2002; Henson and Heasman 1998; Vickers et al. 2005). They also appeared to rely on state regulatory systems for education and advice. One reason for SME reliance on state systems is that many small businesses have less contact with non-state sources which provide information and advice. They are not members of trade or business associations which may provide updates or even training on food safety and food hygiene matters nor do they use consultancies (Fairman and Yapp 2004; Genn 1993). This of course contrasts with large businesses which have greater regulatory capacity of their own and more likely to belong to associations, employ consultancies and take out insurance cover. Indeed in the case of large retailers and caterers they may even become a source of regulation for other parts of the food chain as they impose standards which are sometimes in excess of state regulatory requirements.

A second factor which may be relevant in any variability between businesses is business type. The food industry comprises two main areas, namely, hospitality (catering) and retail. It is estimated that there are approximately 102,537 grocery retail outlets providing 1,184,000 jobs in the UK (DEFRA 2005) and 262,948 caterers (hotels, cafés and restaurants) providing 1,394,000 jobs (DEFRA 2005; BRTF 2000). The large majority are small businesses (Fairman and Yapp, 2004).

Many of those we spoke to in the research drew a clear distinction between the retailing and hospitality sectors. Retailing was seen to be concerned with distributing rather than manufacturing products. The hospitality sector was identified as 'the biggest challenge' partly

because of the high turnover of staff, the handling of cooked and uncooked food together and changing menus being a source of new risks. A further risk factor associated with the hospitality sector is that:

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

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

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

Conclusion

These research data indicate that the move from government to governance is understood by those in business to the extent that they are well aware that there are multiple external influences on their internal risk management practices. These influences organize to shape the motives and preferences of business and thus affect their internal workings. The exception would be one of the most potent of the influences discerned in this research namely consumers. There are examples of consumers organizing, for

example, in campaigns for organic or fair trade produce, against GM foods or against particular firms but generally food safety and food hygiene are not the subject of such campaigns. Our sample was referring to the crucial importance of maintaining business reputations and their belief that maintaining high food safety and food hygiene standards is crucial to this. Whether or not this is an accurate perception is irrelevant. The important fact here is that this is what our managers believed and acted upon. Food retailing and hospitality are fiercely competitive sectors: consumers have a good choice of retail and hospitality outlets and can easily switch their preferences. Product differentiation is key to the industry and millions of pounds are spent on this each year.

Strictly speaking consumers exercising their preferences en masse and without organization, would fall outside of most definitions of regulation, although the finding does indicate the power that organized consumer action could have. What this influence does add weight to the contention that social, economic and state influences all serve to influence the internal workings of business. It also suggests that there are domain effects to be considered. Gunningham, Kagan and Thornton (2003: 137ff) accord environmental controls a key role in increasing performance world-wide and in the case of the paper and pulp industry argues that this has led to convergence across different jurisdictions. Our research focused on the UK only so cannot comment on the contention of international convergence. But we can say that there is not evidence of convergence within the UK. Variations did appear according to the size of the business, its type and where it was located. These differences may suggest that the domain effect is significant and worth exploring. This suggestion is strengthened by the contrasting findings for the importance of NGOs and activists, who were found to be more influential by Gunningham, Kagan and Thornton than in this research on food.

Clearly the interaction between the state, economy and civil society is complex and may be greater than the effect of the sum parts. These influences do also seem to work differentially according to the social structure of the business. In the case we have discussed there are few formal 'joined up' connections between the state and non-state systems. There are, however, some ways in which regulatory actors do acknowledge and indirectly co-opt other regulatory players. Notable here are EHOs, some of whom 'name and shame' those with poor food safety and food hygiene practices; publicly rate or certificate premises with high standards; or certificate individuals who have been trained in food safety and food hygiene. Such information plays to other potential regulatory forces and directly to consumers. The complexities and dynamics involved are well illustrated by this case. The state, represented by EHOs, produces information which may be deployed by the media, consumers and other groups; thus they potentially influence the social reputational standing of a business; and thus influence its commercial/economic position.

We should not automatically assume that all external forces have a positive influence on risk management practices. Certainly, consultancies have been implicated in regulatory creep. Likewise the influence of insurance companies can be problematic and deserves greater scrutiny. The background influences are variable according to topicality and size of business. The ways in which factors play out and interact are not well understood. The academic literature does suggest that each of the background influences has the potential to be a direct influence but as yet we need a great deal more evidence of this and how it might be realized and the conditions under which each influence is likely to be helpful.

We do know that businesses are subject to a complexity of pressures on their risk management practices. Some are external to their organization and others are within their organizational boundaries. Indeed different pressures may be in tension. The nature of these interactions is not well understood and the next step is to explore this further. This paper draws on research undertaken with the food industry. Our next step is to compare this with another risk regulation domain to better understand how the various external influences on business risk management might work across different areas.

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

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

Table 2: The range of perception importance to consumers by managers when considering a range of food attributes commonly

related to risk based on the statistical mean of all questionnaires (completed) by managers.

Consumer concerns	Managers understandings of relative importance of consumer concerns	Importance index (Mean values of questionnaires)
Food safety and hygiene	Most important 	1.1
Price (value for money)		1.65
Labelling & product description		2.2
BSE		2.35
Food additives		2.4

GM (Genetic Modification) / Use of pesticides to grow food		2.55 / 2.55
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¹ Bridget Hutter is Professor of Risk Regulation and Director of the ESRC Centre for Risk and Regulation at the LSE and Clive Jones is Research Assistant and Project Manager, CARR. We would like to thank the anonymous referees for their very helpful comments, Attila Szanto for his excellent research help and the Michael Peacock Trust for their generous sponsorship of this study.

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

³ Gunningham, Kagan and Thornton (2003) use the concepts of governmental, social and economic 'licences to operate' as ways of understanding variations in environmental performance amongst businesses. See also Braithwaite and Drahos 2000; Hutter 2001; Parker 2002.

⁴ This included meetings with 8 central government policy-makers; 25 regulators from central and local government; 8 Trade associations representatives; 11 retail and producer business leaders; and 4 representatives from consumer groups.

⁵ Company size definitions: Large firm: over 250 employees; medium firm: 50 - 249 employees; small firm: 10 - 49 employees; micro-firm (including sole trader): 0 - 9 employees. Source: European Commission (1996) and DTI (2006). The food retail/grocery sector was segmented into supermarket, convenience store and specialist retailer. The catering/hospitality sector was segmented into restaurant, take-away and contract catering.

⁶ 7 large companies and 22 SMEs participated in the research. 1 person per SME was interviewed and on average 7 per large company.

⁷ The research did not take for granted that state legislation is familiar to everyone working in this industry. Rather it problematized this issue aiming to discover the extent of knowledge about different regulatory systems (state and non-state).

⁸ Not a single business in the entire sample claimed to have a bad relationship with an EHO.

⁹ Business managers working in Greater London would not have contact with a dedicated TSO; here the tasks of EHO and TSO are combined.

¹⁰ Chief among these were GMO in the food chain, BSE, epidemics and 'chemicals'. In the latter stages of data collection this referred to banned contamination by dyes from the Sudan family of red/brown food colorants which were found in several manufacturers of branded and supermarket private label products.
<http://www.food.gov.uk/safereating/sudani/sudanitimeline> FSA 2005

¹¹ Some 33% of directors/senior managers responded with 'don't know'.

¹² HACCP (Hazard Analysis Critical Control Point) is an internationally recognized and recommended system of food safety management focusing on identifying the 'critical points' in food safety problems (or 'hazards') and taking pre-emptive measures.
<http://www.food.gov.uk/foodindustry/hygiene/>

¹³ This is one of a series of standards now referred to as the 'BRC Global Standard – Food'.

' http://www.brc.org.uk/standards/about_food.htm 2006

¹⁴ The impact of these standards on other parts of the food supply chain was not within the remit of this study but it should be noted that the regulatory powers of supermarkets over producers is a point of some controversy in Britain.