

Small Firms' Awareness and Knowledge of their Legal Environment

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Abstract

Small firms constitute the overwhelming majority of enterprises in the UK and are viewed by government as engines of job and wealth creation. There has been a revival of the small firm sector in the UK in recent years but this has coincided with an increase in the volume and complexity of legislation. Political concerns have been expressed about whether the law places too great a burden on small firms and this is the problem giving rise to the present study. There has, however, been a dearth of academic work on the relationship between small firms and the law. In particular, there has been very little empirical enquiry into small firms' awareness and knowledge of their legal environment. The present study seeks to add to knowledge and understanding in this area.

It adopts a qualitative methodology and draws on semi-structured interviews carried out with twenty-one small firm owner-managers and eight small business stakeholders. It analyses the extent of small firm awareness and knowledge and the factors affecting it. Because of the dearth of academic literature, legal awareness and knowledge is conceptualised as legal expertise and seen as part of the wider subject of small business support. The literature is interpreted as providing an emerging theory of business support and this is adopted as the theoretical framework for the study.

Levels of awareness and knowledge varied widely but acquisition was a low priority unless necessity dictated otherwise. The results do not paint a picture of the small firm 'burdened down' under the weight of regulation. The main theoretical development is the identification of factors affecting awareness and knowledge. These related to the firm, the law and the legal system, and the closeness between the work of the firm and the law. There are also policy implications.

**SMALL FIRMS' AWARENESS AND KNOWLEDGE OF THEIR LEGAL
ENVIRONMENT**

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ABBREVIATIONS

ACAS	Advisory, Conciliation and Arbitration Service
ACCA	Association of Chartered Certified Accountants
BCC	British Chambers of Commerce
BRFT	Better Regulation Task Force
DTI	Department of Trade and Industry
EC	European Commission
ESRC	Economic and Social Research Council
EU	European Union
FPB	Forum of Private Business
FSA	Food Standards Authority
FSB	Federation of Small Businesses
FSSC	Financial Services Skills Council
GEM	Global Entrepreneurship Monitor
HACCP	Hazard Analysis Critical Control Point
HBOS	Halifax Bank of Scotland
HMRC	Her Majesty's Revenue and Customs
HSE	Health and Safety Executive
IERs	Individual Employment Rights
LLP	Limited Liability Partnership
NMW	National Minimum Wage
OECD	Organisation for Economic Co-operation and Development
PAYE	Pay-as-you-earn
PPE	Personal protective equipment
RIA	Regulatory Impact Assessment
RIDDOR	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations
RIU	Regulatory Impact Unit
SBC	Small Business Council
SBRC	Small Business Research Council
SBRT	Small Business Research Trust
SBS	Small Business Service
SFIT	Small Firms Impact Test
SME	Small and medium-sized enterprise
UK	United Kingdom
USA	United States of America
VAT	Value-Added Tax

CHAPTER 1: INTRODUCTION

1.1 THE SUBJECT AREA OF THE THESIS

This thesis reports an investigation into small firms' awareness and knowledge of their legal environment. Central to this inquiry is an exploration of the determinants of legal awareness and knowledge. The thesis also examines the effects of awareness and knowledge on the business.

A review of existing work in the field revealed that there is a significant gap in the literature. Of the work that has been carried out on the subject, much of it has emerged only in recent years and often in the form of government or non-academic reports. Blackburn and Hart (2002: 1) reported that our understanding of small firms' regulatory knowledge and advice-seeking behaviour was 'patchy if not entirely absent'. At the same time, it has been increasingly recognised that regulation can have a disproportionate effect on small business (Boys-Smith 2004). The Small Business Service (SBS) Annual Small Business Survey for 2004/05¹ further described how thirty-one per cent of all businesses thought that 'regulations' acted as an obstacle to achieving business objectives. Thirteen per cent claimed that this was their greatest obstacle.

In light of the increased attention being drawn to the issue of regulation and its adverse impact upon small businesses, particularly by business representative organisations, business lobby groups and policy makers, it seems appropriate to undertake research that attempts to better understand awareness and knowledge of the legal environment in the small firm. The rationale for this is three-fold. Firstly, regulation is presented as a significant concern for the small firm, yet little is actually known about what the small firm knows of its legal environment. Secondly, in detailing what small firms know of their legal environment, consideration can be given to how the small firm manages and responds to it, as well as addressing the issue of regulatory compliance. Thirdly, on the basis that legal awareness can be seen as part of the process of obtaining business support, identifying the determinants of awareness and knowledge may have implications for the support area. The study is intended to contribute to our understanding of the subject particularly in relation to an emerging theory of the determinants of legal awareness and knowledge.

¹ In the SBS Annual Small Business Survey 2004/05, a small business was considered to be any business with zero to 249 employees. The sample was made up of 7,505 businesses, including 6,145 with employees.

1.2 BACKGROUND TO THE RESEARCH

The role and importance of the Small and Medium-sized Enterprise (SME) to the United Kingdom (UK) economy has been the subject of increased attention, particularly in recent decades.² A reason for this upturn has been the belief that a healthy and vigorous SME sector is important to the performance of the economy (Storey, 1994; Deakins, 1996). The importance of the SME to the health of the economy largely came to prominence following the publication of the Bolton Report in 1971. During the period up to 1971, the SME sector was in a state of relative decline as economic development was primarily achieved through mass production in large firms (Bolton Report, 1971). Since this decline of the sector in the 1960s, the small business sector has recovered to account for 99.3 per cent of the business population. The number is now estimated to be more than 1.3 million above the level in 1980, the first year for which comparable figures are available (SBS, 2005). In 2004, the UK had approximately 4.3 million SMEs, including the self-employed. Furthermore, UK business enterprises employed an estimated 22.0 million people; 46.8 per cent in small enterprises and 11.7 per cent in medium-sized enterprises. The estimated combined turnover of these 4.3 million enterprises was £2,400 billion, with small enterprises accounting for 37.0 per cent of this and medium-sized enterprises responsible for 14.3 per cent (SBS, 2005). Small firms, irrespective of how they are defined, constitute the bulk of enterprise in all economies in the world and Curran, Stanworth and Watkins (1986) argue that small businesses are economically important in every free industrial society.

Notwithstanding their economic significance, SMEs have also emerged as key contributors to social inclusion because of their positive role in the renewal of the poorest and most marginalised communities and localities in the UK (SBS, 2003a). This contribution has occurred as a result of the increased income for business owners and employees follow new SME start-ups. Such increased spending power generates extra demand for local services, provides new opportunities and creates the so-called 'virtuous circle' effect (SBS, 2003a). SMEs have accordingly been identified as contributors to three areas with a broad economic remit – innovation and technological change/catch-up; employment, economic growth and wealth creation; and regeneration, reducing income inequalities and increasing social inclusion and opportunities for all (GEM, 2004). Small firms, therefore, have a vital role to play in society both economically and socially.

² For the purposes of this thesis, an SME refers to an enterprise with fewer than 250 employees. A small firm is any enterprise with fewer than 50 employees. The rationale for this and more detailed discussion on this subject can be found in section 1.6.1.

1.3 THE RESEARCH PROBLEM

To date, issues around business start-ups, small business growth, small business insolvency, business financing and small business management have been regarded as the main preoccupations of the SME sector and these areas have consequently been the predominant focus of academic research in the field. However, the past decade in the UK has seen increased attention given to the impact and burden of the legal environment on SMEs. This has been most evident in the seemingly perennial outcry about the burdens that regulations place on business – the British Chambers of Commerce (BCC) reported that the cumulative cost to business in general of government regulations introduced since 1998 amounted to £38.9 billion (2005).

The issue of regulation and its impact on small business has not been a preoccupation solely of business representative bodies. There has also been recognition at central government level in the UK of the burdens that regulations place on business. In 2005 two significant reports were published that presented proposals to reduce business burdens – the Better Regulation Task Force's (BRTF) report: 'Regulation – Less is More' and 'The Hampton Review: Final Report for the Treasury: Reducing Administrative Burdens: Effective Inspection and Enforcement'. The BRTF report on business in general estimated that 30 per cent of the total costs of regulations were of an administrative nature – finding out about regulations, working out what compliance requires, keeping records, and giving information to regulators. It stated that small firms often did not know the regulations that applied to them, and did not make any attempt to find out about them (BRTF, 2005). In painting a picture of the current regulatory landscape, The Hampton Review reported that almost nine hundred regulations had been introduced since 1997; that there were 63 national regulators and 468 local authority regulatory bodies with a combined budget of around £4 billion; that nearly 12,000 officials worked nationally on inspection and enforcement; that a further 5,500 officials worked in the localities; and that at national or local level, over three million inspections were carried out annually (Hampton Review, 2005: 11).

The issue has gained further ascendancy with the recognition that the costs of regulatory burdens affect smaller enterprises more seriously than larger concerns. It has been noted that small firms' costs can be proportionately five times higher than those of large firms (FSB, 2004). A NatWest survey revealed that each month the smallest firms spend on average 8.9 hours per person dealing with regulatory paperwork, compared with 1.2 hours for the largest firms (SBRC/NatWest Survey of Small Businesses, 2003-4: 2). This is a reflection of the fact that an element of all administrative costs associated with regulatory compliance is fixed. Small firms are unable to spread the cost of

compliance as large firms can and they also lack the time, internal resources and expertise to deal with it. This has led to two principal concerns – firstly, the diversion of staff from wealth creation, and secondly, the distraction for the owner-manager in becoming involved in tasks for which they may be ill-suited, ill-trained and ill-committed. The effect of such an impact on smaller enterprises is not just that it creates difficulties in their efforts to create wealth whilst complying with the law, the impact also creates an uneven playing field for competing with larger firms.

The issue of regulation and its adverse effects has subsequently been noted by several organisations with a small business interest (BRTF, 1999, 2000a, 2000b, 2001; Small Business Council 2001, 2002, 2003, 2004; Small Business Service, 2004a). A survey of 18,500 businesses by the Federation of Small Businesses (2002) highlighted that around 80 per cent of small businesses were dissatisfied with either the volume or the complexity of legislation. The Small Business Research Trust Survey (2003a) also found that around 80 per cent of small businesses with 20 or more employees believed that there was too much regulation and paperwork related to employees. In addition, not only were many small businesses dissatisfied with the regulatory environment, a significant minority also believed that there had been an increase in regulation in recent years. A survey by the Small Business Research Trust (2001) found that about a third of respondents perceived that legislation and government regulation were on the increase. More recently, a Halifax Bank of Scotland (HBOS) survey in 2003 found that over two-thirds of small businesses believed that the burden of ‘red tape’ had increased in the previous year. Particular concern has been raised over ‘regulatory creep’ and the disproportionate impact of this on small firms.

Yet notwithstanding the negativity surrounding regulation and its adverse impact on small businesses, it has been argued that regulation has a crucial part to play in modern society by correcting market failures, promoting fairness and ensuring public safety (SBS, 2004). Effective regulation can be seen to confer positive benefits on businesses, employees and customers through its role in helping to boost productivity by promoting competition and improving employee welfare, protecting individuals and vulnerable groups and stimulating innovation and investment. Because of this, the debate tends to be less about deregulation and more about making regulation ‘better’. Economic theory predicts that regulation can stifle enterprise activity by removing incentives and by imposing costs, delays and uncertainties on the business. The costs of complying with legislation can be seen to constrain development by not only increasing relative costs and reducing the ability of small businesses to compete, but it can also divert resources from training, innovation and management in a way that is not common in larger organisations (SBS, 2004). Making regulation

'better' is thought to be a way of minimising these effects. Research studies summarised in *Enterprise in Britain* (HM Treasury, 2002) confirm the rationale for better regulation by highlighting the consequences of market failure caused by unnecessary, overly complex and poorly delivered regulation.

Perversely, in spite of the protests of business and business representative bodies that regulation represents a significant burden to the small firm, internationally the UK is seen as having a comparatively benign regulatory environment for business. The UK ranked lowest in the index compiled by the OECD (2002) to illustrate barriers to entrepreneurship, which took into account factors such as administrative burdens on start-up and the degree to which administrative systems are difficult to understand. Additionally, a study of legislation, taxation and regulation affecting established businesses in the USA and 9 EU countries concluded that the UK provided the most entrepreneurial friendly environment (Anderson/Growth Plus, 2002).

It is clear that there is a business and government concern about the negative effects of regulation upon the performance of small firms and that economic theory provides some philosophical support for this. This concern is given more weight because of the important economic and social roles attributed to small firms. On the other hand, it is also clear that regulation has an important, positive part to play in an advanced, complex society and that any negative effects on small businesses need to be viewed in this context. Moreover, there is also a concern, expressed by, for example, consumer and work pressure groups, and in academia and the socio-legal literature, that small firms are often poor at complying with the law. Concern regarding small firms' lack of compliance has encouraged the design of compliance-friendly regulation supplemented by compliance-oriented monitoring and enforcement of the regulatory system (OECD, 2000; BRTF, 2005). This follows studies by the likes of Genn (1993) and Dawson, Willman, Bamford and Clinton (1988) that have introduced a large firm/small firm dichotomy that characterises small firms as less compliance oriented.

The research problem is that despite all of the above, very little is known about small firms' awareness and knowledge of their legal environment. The current research seeks to contribute to the resolution of this problem. In doing so, it hopes to help inform the debates about the impact of regulation on small firms, the legal information and advice needs of small firms and small firms' compliance with the law.

1.4 OBJECTIVES OF THE STUDY

The aim of the study, therefore, is to explore small firms' awareness and knowledge of the legal environment in which they operate. This broad aim is subsequently broken down into three main research objectives:

1. Explore small firm awareness and knowledge of the legal environment.
2. Identify the determinants of awareness and knowledge of the legal environment.
3. Assess small firms' perceptions of how levels of legal awareness and knowledge affect the business.

1.5 METHODOLOGY

A methodology comprising the use of in-depth, semi-structured interviews with twenty-one small firms and in-depth interviews with eight small firm stakeholders was adopted to meet these objectives. This section provides a brief overview of the details of the interviews and of the theoretical framework used.

1.5.1 Small firm interviews

The semi-structured interview, with a sample of twenty-one small firms, was deemed the optimal strategy for the fieldwork. This was determined on the basis of the nature of the topic under exploration and the sets of questions being posed. It was further reasoned that by developing detailed knowledge about a small number of cases, a rich understanding of the research setting and the processes being enacted would be gained (Morris and Wood, 1991). It was also justified on the assumption that inductive methods offer the potential for generating theory from observation, capturing a snapshot of a situation and illuminating actions and behaviours where little or no research is currently available (Patton, 1990). Additionally, in the few studies that have begun to examine small firms' awareness of their legal environment, much of the work has been based upon large-scale quantitative survey data. In one of the key studies in the subject area, Blackburn and Hart (2003) identified business characteristics, owner characteristics and owner attitudes as factors associated with variation in awareness of employment regulation in small firms. The point was made, however, that further qualitative evidence was required to substantiate such links. A principal reason for using the semi-structured interview, therefore, was that it offered a degree of richness and depth that could provide a means of understanding why persons acted as they did. It provided

an opportunity to understand the meaning and significance they gave to their actions using self-derived descriptions. This was deemed particularly apt for objectives two and three, as these focused on 'why' and 'how' questions. Furthermore, the material required for the study was both detailed and complex and would have been difficult to obtain through an alternative means such as a questionnaire. A sample approaching twenty-one small firms, with nineteen in England and two in the United States (US) was determined primarily by the requirement to test understanding and add to the categories emerging from data analysis, alongside the ability to secure access to small firms. The choice of firms was determined according to size and sector. Size was chosen as a key variable since the literature suggested that larger firms were better able to manage the legal environment (BRTF 1999). Furthermore, Blackburn and Hart (2003) revealed a positive relationship between size of enterprise and awareness of individual employment rights. The focus on small firms, rather than SMEs, in the present study was based on the argument that small firms could be expected to find it particularly difficult to acquire legal awareness and knowledge because of their very small managerial resource. Small firms, and especially micro firms (those with fewer than 10 employees), have also been particularly under-researched in this area. Business sector was also seen as an important determinant of awareness and knowledge in the Blackburn and Hart study. It is recognised that there are limitations to the interview methodology and accordingly these variables were not designed for any kind of hypothesis testing. Rather, they were intended to provide as diverse and multi-faceted a sample as possible in order to gather a feeling for the phenomenon being studied.

1.5.2 Stakeholder interviews

The reason for conducting interviews with bodies that advise, represent, and regulate small firms was to provide a grounded stakeholder account. The aim was to seek out the opinions of sources that retained a degree of interest and influence in relation to small firms and their legal environment. These interviews helped to further illuminate the research area. The term 'stakeholder' in this study is meant to refer to those parties connected to the dynamic of the small firm, who conceivably might have had an understanding, directly or indirectly, of the awareness and knowledge levels of the legal environment in small firms. Eight interviews were held with 'stakeholders': with representatives from the Small Business Service (SBS), the Regulatory Impact Unit (RIU), the Federation of Small Businesses (FSB), the Forum of Private Business (FPB), the Advisory, Conciliation and Arbitration Service (ACAS) and an employment tribunal chairman (who was also the National Director of Training for the employment tribunal judiciary).

1.5.3 Theoretical framework

Although there is little research on legal awareness and knowledge in small firms, the acquisition of such awareness and knowledge can be seen as part of the wider subject of support for small firms. Here there is a developing theory in which such support is associated with size, sector, growth of firm and provider attributes. This theory emerged from the review of the literature and was used to inform the design of the present work and to test its findings. It is described more fully in Chapter 3: Methodology.

1.6 DEFINITIONS OF KEY CONCEPTS

This section provides definitions of the small firm; the legal environment; and awareness and knowledge as interpreted and utilised in the present study. Clarification is required because of the importance of these concepts in the current work.

1.6.1 Small and medium-sized enterprises

At the outset it must be acknowledged that there is no single definition of an SME or small firm and it has been noted that SMEs are easier to describe than to define (Stokes, 2000). Accordingly, small and medium-sized businesses do not conform to any neat parameters and it is the diversity of the sector that makes generalization and definition problematic.

Distinguishing the small firm from the large firm, however, has been seen to be arguably an easier task. This is attributable to the deep-seated differences in practice that are believed to exist between small and large firms. According to Wynarczyk, Watson, Storey, Short and Keasey (1993), there are three key aspects in which small and large firms differ: uncertainty, innovation and evolution. Uncertainty refers to the small customer bases and limited resources that continually afflict the small firm. Innovation as regards new products or services is viewed as a key dynamic in the performance of new business start-ups, whilst evolution concerns the condition of persistent structural and market changes which small firms are expected to go through as they struggle to develop.

It is with defining the small business that the literature has struggled. Goss (1991) has suggested that the willingness to homogenise small firms produces conceptual shortfalls. These homogenisation effects result in inadequacies in the understanding of small business. Goss has identified four principal areas of homogenisation. Firstly, a tendency towards essentialism means that small business as a whole is accredited with established traits such as ‘entrepreneurship’ or

'innovation'. Secondly, homogeneity infers that small businesses share common interests and a mutual viewpoint amongst their owners and workers. Thirdly, the task of defining and conceptualising the small firm is made more difficult, especially in seeking to unravel the small business organisational structure. Fourthly, the supposition of a single small business sector detracts from the exploration of small firms in their wider economic and social context.

These conceptual shortfalls identified by Goss (1991) pose questions as to how best to define the small firm sector, which would thus appear to be heterogeneous in nature. Indeed, the basic assumption that there is such a thing as a 'small business sector' or 'SME sector' has been questioned (Burrows and Curran 1989; Rainnie 1991). An argument against over generalization of the small firm sector has been justified on the basis of the extreme variance in types of business, the extensive range of activities that these businesses engage in and the impression that the managers in question rarely have much in common. Curran and Blackburn (2000) have also dismissed the assumption that because any grouping of businesses employs fewer than 50 or fewer than 250 people it is enough to warrant the economic distinctiveness of 'a sector'.

Evidently, small businesses are present in every area of the economy. They are also formed and managed by people who differ in a multitude of ways including age, gender, ethnicity, education and experience (Curran and Blackburn 2000). This heterogeneity means they face very different markets, use very different skills and types of labour and employ very different organisational structures to achieve a wide variety of personal and business goals. However, whilst accepting the complexities of the concept of the small firm, there is the realisation as evidenced in the literature of a 'small business sector' and there are definitions that arise from there. Typically, SMEs are non-subsidiary, independent firms which employ less than a given number of employees. Bannock (1981) has defined small firms as those that are owner-managed businesses of modest scale. However, this alone is not sufficient for a firm to be classified as 'small'. It is necessary to incorporate factors which can limit the size of a firm.

1.6.1.1 The Bolton Report definition

The most parsimonious of accounts appertaining to SMEs is that used by the Bolton Committee in its 1971 Report on Small Firms. This stated that a small firm is 'an independent business, managed by its owner or part-owners and having a small market share' (Bolton Report, 1971: 5).

The Bolton Report also adopted a number of different stances based on statistical considerations. For instance, it recognised that size as a variable is relevant for sector classification – that is, a firm of a given size could be small in relation to one sector where the market is large and there are many competitors; whereas a firm of similar proportions could be considered large in another sector with fewer players and/or generally smaller firms within it.

The common characteristic that unites all small firms, according to the Bolton Report, was that they are managed by the people who own them. This is the key distinguisher between the independent small firm and a franchise or a subsidiary of a large company. Chesterman (1982), concurred on the problems of definition in stating that neither ‘small businesses’, nor the related phrase ‘small firms’, has a precise or technical meaning and that small businesses or firms are significantly easier to recognise than to define. This notwithstanding, Chesterman (1982) agreed with the multiple definition in the Bolton Report on the basis that it would be hard to deny the label ‘small’ if a firm met the three criteria of independent ownership, small market share and owner-management.

The descriptive characteristics of the Bolton Report definition can be viewed as broadly illustrative rather than exhaustive. The attribute of a small share of the market relates to the fact that the small firm is not large enough to carry significant sway in influence over prices or quantities of goods sold. The feature of personalised management may be taken as exceptionally important. It is indicative of the fact that the owner-manager partakes in all aspects of the management of the business and in all major decision-making processes. The notions of self-sufficiency, self-reliance and autonomy dominate and there is unlikely to be any delegation of authority (Bolton Report, 1971). Independence from outside control is used to eliminate those firms who are either subsidiaries or have a relative degree of authority yet have to refer major decisions to a higher authority. An additional recurring trait seems to be the acute restraints on resources faced by small firms (Storey 1994). This has notable effect in terms of management, manpower and finance.

1.6.1.2 The Department of Trade and Industry definition

Whilst there are various legal and policy definitions of the small business sector, for statistical purposes the Department of Trade and Industry (DTI) defines business size according to the number of employees in the organisation using the following categories:

- Micro firm: 0 – 9 employees
- Small firm: 0 – 49 employees (includes micro)
- Medium-sized firm: 50 – 249 employees.

Section 249 of the Companies Act 1985³ states that a company is ‘small’ or ‘medium-sized’ if it satisfies at least two of the following criteria as detailed in table 1.1 below:

Table 1.1: s.249 Companies Act, 1985

	Small company	Medium company
Turnover	£2.8m	£11.2m
Balance sheet	£1.4m	£5.6m
Employees	50	250

All figures are maxima.

Within UK Government, there are also various legal and regulatory provisions which set parameters for the purposes of exemptions and jurisdiction for small firms. For example, with regard to the regulation of financial services it was formerly not possible for businesses to make a complaint to the ombudsman. However, the Financial Ombudsman Service now states that it can normally deal with complaints from small businesses with an annual turnover of less than £1 million.⁴ The Small Firms Impact Test procedure used by the Cabinet Office (2003) when assessing the potential impact of proposed regulation on small firms also uses its own definition of the size and turnover of a small firm. Accordingly, their definition of a small firm is one with:

- fewer than 50 employees; and
- no more than 25% of the business owned by another enterprise (which is not a small business); and either
- less than £4.44 million annual turnover; or
- Less than £3.18 million annual balance sheet total.

³ The Companies Bill received Royal Assent on 8th November 2006. The Companies Act 2006 repeals and restates almost all of the current Companies Acts, which it will largely replace. The vast majority of provisions in the 2006 Act will come into force by October 2008, with a handful operational in Jan 2007.

⁴ Financial Ombudsman Service general leaflet entitled “Your complaint and the ombudsman” (For a group of companies, this means a group annual turnover of less than £1 million).

With reference to the standard DTI classification, defining business size according to the number of employees in the organisation is advantageous in that it is an approach used widely both in academia and field research. However, the DTI acknowledges there is no single definition because of the wide diversity of businesses and that working definitions are likely to vary depending on a particular project's objectives (DTI 2000). Thus in forming its own statistical definitions, the DTI nevertheless cites the Bolton Committee definition as the best description of the key characteristics of a small firm.

1.6.1.3 The European Commission definition

As a response to the problem of forming a universally accepted definition of an SME, in February 1996 the European Commission (EC) adopted a communication setting out a single definition of SMEs to apply across all Community programmes and proposals from 1 January 1998.⁵ This was replaced by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.⁶ Accordingly, the current European policy definition of the sector is as follows:

Table 1.2: European Commission Definitions

Enterprise category	Headcount	Turnover	Balance sheet total
Medium-sized	<250	< 50 million euros	< 43 million euros
Small	<50	< 10 million euros	< 10 million euros
Micro	<10	< 2 million euros	< 2 million euros

Within this definition, both the employee and the independence criteria must be satisfied and either the turnover or the balance sheet total criteria.

In differentiating between micro, small and medium-sized enterprises, the EC definition has been deemed appropriate as there is in practice a notable shift to formality around the ten or twenty employee mark and it has been argued that it is important to subdivide the SME sector in this way (Storey 1994). Storey has also praised the appropriateness of the EC definition in that it is based on employment, rather than a range of criteria, and accounts for the heterogeneity of the SME sector in distinguishing between micro, small and medium-sized enterprises.

⁵ Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.04.96)

⁶ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422)

1.6.1.4 Defining the small firm for the present study

It is important to realise that small firms are not just scaled-down versions of large organisations. Amongst the features that set them apart from larger firms are: the owner-manager is likely to have a vast influence on the firm; they are less likely to be able to exert much influence on their market; they are usually located in a single market; there is an over-reliance on a few customers; and they are generally not public companies (Burns and Dewhurst 1996). These characteristics emphasise the idea that the SME sector is not homogenous. Each firm is different and has special characteristics.

In the present study, the definition of a small firm according to the number of employees is consistent with the DTI classification and chosen on the basis that along with the EC explanation it is the nearest to a universal definition. It is posited that the study should focus on independent businesses, as it is reasoned that those that are non-independent are likely to rely on a central administration for their legal advice, information, queries and problems and this characteristic of independence is implicitly recognised in the DTI definition. Furthermore, whilst respectful of the quantitative definitions of the SME, it is emphasised that it is the peculiar management environment of the small enterprise that is of the greatest interest in this study, and not any precise threshold level above which a small firm automatically becomes medium-sized or large. As stated above, it is the structures, relationships, and levels of resources of small firms that are of concern.

1.6.2 The legal environment

It is acknowledged that 'legal environment' is an extremely broad and general term, with no accepted definition or exactness. For the purposes of the present study, it is therefore necessary to provide a definition. With general reference, it has been stated that the word 'law' suggests the idea of rules; rules affecting the lives and activities of people (Marsh and Soulsby, 1992). The law can be seen to affect many aspects of lives, and society has developed a complex body of rules to control the activities of its members. Law has therefore broadly been defined as the body of rules of a particular state designed to regulate human conduct within that state (Abbott, Pendlebury and Wardman, 2002). According to Abbott et al. this definition suggests three types of rule:

1. Rules which prohibit certain types of behaviour under threat of penalty.
2. Rules which oblige people to compensate others whom they injure in certain ways.
3. Rules which stipulate what must be done to order certain types of human activity, for example, to form a company.

1.6.2.1 Classification of law – public and private

There are a number of ways in which the law can be classified but perhaps the most important distinction is between public and private law. Public law is concerned with the relationship between the State and its citizens whereas private law is primarily concerned with the rights and duties of individuals towards each other.

Public law comprises several specialist areas including constitutional law, administrative law, and criminal law. It concerns the relationships within government and those between governments and individuals. Laws concerning taxation and the regulation of business are in the public area. Administrative law includes the numerous local and government administrative agencies that make rules relating to a range of activities including licensing, regulation of trades and professions, planning controls and regulatory controls, whilst criminal law pertains to certain kinds of wrongdoing that are considered crimes against the whole community.

In contrast, private law is the law governing the relationships between individuals and involves the various relationships that people have with one another and the rules that determine their legal rights and duties among themselves. The area is concerned with rules and principles pertaining to private ownership and use of property, contracts between individuals, family relationships, and redress by way of compensation for harm inflicted on one person by another. Historically, government involvement in private arrangements has been minimal. Private law has also operated to provide general guidelines and security in private arrangements and interactions in ways that are complementary to morality and custom but that are not necessarily enforceable in a court of law, such as non-contractual promises and agreements within an association of private individuals.

There are many examples of sub-divisions of public and private law. It is acknowledged, however, that both the main division between public and private and the sub-divisions are, to some extent, arbitrary and that they are made primarily for the purposes of convenient exposition. Each field of law tends to overlap with that of its neighbours and no one field can be fully understood in isolation from the rest. For example, the law of employment is a branch of the law of contract, but it is commonly subjected to independent treatment. This fact notwithstanding, the distinction between public law on the one hand and private law on the other is chief in the classification of English law and it has been used to help differentiate between areas of law and to provide a categorisation of the legal environment in the present study. These areas are highlighted in section 1.6.2.5 below.

1.6.2.2 Common law

Legal rules may also be classified according to whether they form part of the common law. Common law, sometimes referred to as Anglo-American law, is the body of customary law based upon individual decisions and embodied in reports of decided cases, which is administered by the common-law courts. The type of legal system now found in the United States and in most of the member states of the Commonwealth has evolved from common law. English law being a common law system reflects the fact that there has been no major codification of the law and judicial precedents are binding as opposed to persuasive. The highest appellate court in the UK is the House of Lords and its decisions are binding on every other court in the hierarchy which is obliged to apply its rulings as the law of the land. Similarly, since joining the European Union (EU), EU law has supremacy over UK law and the decisions of the European Court of Justice bind the UK courts. Although still a prominent feature of English law, especially in the area of contracts and negligence, common law has been overtaken by legislation owing to the strengthening of Parliament and the doctrine of separation of powers, which means judges are only able to innovate in certain very narrowly defined terms.

1.6.2.3 Juridification and statutory control of private arrangements

Alongside a classification of the English legal system that acknowledges public, private and common law, it is also considered important here to recognise both the concept of juridification and the increasing statutory control of private arrangements.

The term juridification has been used to denote the increasing extent of legal regulation of industrial relations. The term is related to two other concepts, 'judicialisation' and 'legalisation', which have been used to mean the proliferation of law and 'the spread of rule guided action or the expectation of lawful conduct, in any setting, private or public' (Blichner and Molander, 2005: 2). Juridification can be seen to comprise many dimensions but three conceptions are particularly relevant. The first is a concept of juridification as the process by which an activity becomes subjected to legal regulation or more detailed legal regulation. The expansion of law is the core element in this definition and includes cases where the law is applied in new areas or instances where an activity that is not legally regulated within a legally regulated area becomes regulated. Law's expansion may also mean legal rules established at a higher level are imposed at a lower level, examples being central government imposing legal norms on local government or the EU imposing legal norms on national government. Blichner and Molander have argued that such juridification has dominated the

development of the welfare state. The development of law at both a national and European level also provides evidence of this.

The second concept of juridification means that conflicts in society are increasingly solved by reference to law. The means of solving conflicts have been distinguished between judicial conflict solving, legal conflict solving and lay conflict solving. Judicial conflict solving consists of legal reasoning involving the judiciary, whilst legal conflict solving also uses legal reasoning but outside the judiciary. Lay conflict solving may include legal reasoning but the expectation is for this to be less stringent and possibly inclusive of what might be considered mistakes, misunderstandings and misinterpretations from a judicial point of view. In this sense, society may be highly juridified even if legal expertise is not always directly involved in conflict solving and the legal reasoning involved is less than perfect. The third dimension of juridification refers to legal framing, which is the increased tendency to understand self and others in light of a common legal order based on the rule of law. Thus individuals will increasingly tend to see themselves as belonging to a community of legal subjects with equal legal rights and duties. Juridification as legal framing sees society as developing a legal culture where individuals lend acceptance to it by acknowledging law as the basic frame of reference.

The concept of juridification bears relevance to the present study in not only underlining an increasing sense of importance attached to regulation and legal frameworks by individuals and society. It also bears significance in terms of an increasing regulatory approach to private law relationships. Most notably, there has been an argument for a regulatory approach in the employment field as opposed to a private law one (Collins, Davies and Rideout, 2000).

1.6.2.4 Sources of the legal environment

Alongside the theory of juridification, in more practical terms the legal environment is thus comprised of two principal sources – regulation and judicial precedent. Within regulation, legislation refers to the enacted law as carried out by the ultimate legislator in England, that being Parliament. Judicial precedent refers to the case law that is regarded as ‘precedent’ which subsequent courts usually follow when they are called upon to determine issues of a similar kind.

To explain the concept of legislation more fully, reference is made to the Organisation for Economic Co-operation and Development (OECD) (1994) which defined ‘regulation’ as:

“ . . . A set of ‘incentives’ established either by the legislature, Government, or public administration that mandates or prohibits actions of citizens and enterprises . . . Regulations are supported by the explicit threat of punishment for non-compliance.”

The OECD (2000) also categorised the major focus of regulations into three areas:

- (a) Employment Regulations covering the hiring and firing of employees, complying with health and safety standards, the provision of facilities (for example, for the disabled), statistical reporting of employment related data, social security and pensions rights and other employee related benefits such as maternity leave and sick leave.
- (b) Environmental Regulations including licensing, permits, planning and environmental impact assessments; complying with regulations governing hazardous substances and materials; process and product quality standards; pollution control and product regulations; environmental reporting and testing; record keeping and the day to day administration requirements related to the environment, environmental levies and taxes.
- (c) Tax Regulations covering business taxes/corporate income tax, sales taxes and other taxes.

Alongside the OECD, the UK Government has broadly defined ‘regulation’ as:

“Any government measure or intervention that seeks to change the behaviour of individuals or groups. It can both give people rights (e.g. equal opportunities), and restrict their behaviour (e.g. compulsory use of seat belts).” (BRTF, 2003)

This definition is particularly appropriate as it allows all measures or interventions undertaken by central and local government bodies which affect business activity including: taxation and financial reporting, employment and health and safety, trading standards and consumer rights, environmental protection, intellectual property, premises and planning rules, and data protection and transport. The UK Government also supports a legal framework of contract and property rights which both enables and constrains business activity. The present study has borrowed from these definitions to identify areas to include within the legal environment.

1.6.2.5 Substantive areas of the legal environment

Given the extensive influence of the law on business organisations, it would have been impractical to examine all aspects of the legal context within which small firms function. Accordingly, key areas of focus can be seen in table 1.3 below.

Table 1.3: Law and the business organisation.

Business Activity	Examples of legal influences
Establishing the organisation	Company laws, partnerships, business structure
Acquiring resources	Planning laws, property laws, contract, agency
Business operations	Employment laws, health and safety laws, contract, agency, torts
Selling output for consumption	Consumer laws, contract, agency, torts

The regulatory framework was divided into topics including business structure, financial issues, health and safety, employment, environmental issues, premises, intellectual property and licences. The rationale for this was twofold. Firstly, these were areas that have been highlighted and separated in guidance material and information prepared by the DTI for helping SMEs to deal with their regulatory requirements. Consequently, these were subject areas where specific information and advice was widely available and promoted. Secondly, they included areas deemed to be of the most important by small firms and ones that were cited most often as impacting on SMEs in a burdensome way including employment legislation, health and safety and company law.

To highlight specific areas of law, a distinction was drawn between public and private law. In turn, public law was divided into criminal law and administrative law. Criminal law consisted of regulation on fraud, trade and consumers, employment and the environment. Administrative law dealt with areas on legal status of firms, planning consents, public licences, accounts and audits and taxation.

Private law was composed of areas pertaining to key business relationships within the private sphere. The key relationships included those with customers, clients, employees, visitors and suppliers.

1.6.2.6 The legal status of the small firm

Section 1 of the Partnership Act 1890 defined 'partnership' as 'the relationship which exists between persons carrying on a business in common with a view to profit'. Partnership under English law grew from the law of contract and principles of agency as developed by the courts. Under English law, separate legal personality is not conferred on a partnership. Partners are collectively called a firm but the firm does not enjoy the separate legal status of a company.

A corporation has been defined as a succession or collection of persons having at law an existence, rights and duties, separate and distinct from those of the persons who are from time to time its members (Keenan 2002: 2). The two principal distinguishing features of a corporation are that it is *a persona* at law and it has perpetual succession. The former means that the corporation is an artificial and not a natural person, whilst the latter means that the corporation's existence is maintained by the constant succession of new persons who replace those who die or are in some other way removed.

The most common form of corporation is the corporation aggregate. A corporation aggregate consists of a number of persons so associated that in law they form a single person, otherwise referred to as a registered company. Corporations aggregate may be further divided by the method of their creation. The Companies Act 1985 refers to three main types of companies; chartered, statutory and registered. Registered companies represent the most common grouping of corporation and such companies are formed under the Companies Act 1985 and are governed by the Act and relevant case law.

Registered companies can in turn be divided into public companies and private companies. A public company is defined as a company limited by shares or by guarantee with a share capital whose memorandum states that the company is a public company. Two persons are required to form a public company which must also have two directors. The name of a public company must end with the words 'public limited company'. Keenan (2002) suggested that it is unusual for a company to incorporate as a public company. He states that it is more common to incorporate as a private company and go public at a later stage, typically when the business has expanded sufficiently to benefit from going to the market so that the public can subscribe for its shares. Consequently, the private company is the other form of registered company and is intended for the smaller business. A private company may be formed by two or more persons and the management requirement is only

one director. Within the private company, there are no restrictions on the right to transfer the shares of the company or on the number of its members.

Currently in the UK, there are an estimated 2.7 million sole proprietors, 520,000 partnerships and 1.08 million companies (DTI 2006). With reference to the change in the number of enterprises over time, the number of companies went up by 61,000 to 1.1 million during 2004. This was the eight successive year that companies increased in number. The number of sole proprietorships changed little with an increase of 22,000 while the number of partnerships went down by 24,000 (DTI 2006). There is also the Limited Liability Partnership (LLP), which is created by registration of an incorporation document with the Registrar of Companies. The law bestows upon the LLP the status of a body corporate, which means that it exists as a separate entity from its members in the same way as a limited company does. The LLP and its assets are primarily liable for the debts and obligations of the firm, and in the ordinary course of business the members will not be personally liable.

1.6.3 Awareness and knowledge

1.6.3.1 The concepts

It is recognised that the concepts of ‘awareness’ and ‘knowledge’ are multi-faceted and ephemeral and that they mean different things to different people. Conceptually, although a great deal has been written about them, very little theoretical or empirical work exists as to how they can be measured in small firms. Furthermore, of the few studies that have attempted to assess awareness and knowledge of the law in small firms, even fewer have attempted to define the concepts of ‘awareness’ and ‘knowledge’. The concepts of ‘awareness’ and ‘knowledge’ adopted in the present study are taken from Meager, Tyers, Perryman, Rick and Willison (2002) in their assessment of individuals’ awareness and knowledge of their employment rights. For the purposes of their study, Meager et al. assumed the following operational definitions:

“**Awareness** occurs when an individual is sufficiently informed about a subject for him/her to be conscious of its existence and its broad subject matter. In this sense, awareness of an employment right or piece of legislation implies that the individual had heard of it, and had some idea of the area of working life to which it relates”.

“**Knowledge** requires a theoretical or practical understanding of a subject. In this sense, knowledge of an employment right or piece of legislation implies that the individual could demonstrate some understanding of the detailed provisions of the legislation” (p.11).

The definitions used by Meager et al. take knowledge to be a more robust concept than awareness. It was held in the Meager study that it would be possible to demonstrate awareness without having any substantive knowledge of a subject, but that this would not be true in reverse. Given that in the study the existence of knowledge presumed awareness, the research instrument ensured that those respondents without awareness did not answer knowledge questions.

In addition, Meager et al. looked at respondents' own assessments of their awareness/knowledge of employment rights, and then gathered assessments based on answers to specific questions about the rights in question. Having evidence on respondents' assessments of their own awareness/knowledge and testable evidence on their actual levels of awareness/knowledge was deemed important for two reasons. First, a comparison of the two would give some opinion about the reliability of individuals' assessment of their own awareness/knowledge levels. Second, individuals' own beliefs about the extent of their awareness/knowledge may also be an influence on behaviour.

The final distinction made by Meager et al. was in reference to the subject of informed awareness. The study categorised increasing levels of awareness using the labels prompted; partly-prompted; and un-prompted awareness. 'Un-prompted' awareness inferred that the respondent could provide an example of an employment right or law without prompting. 'Partly-prompted' awareness occurred when respondents could give other examples of an employment right or law, having been told an initial example. 'Prompted awareness' was where respondents were told specific examples of employment rights and asked if they were aware of these.

1.6.3.2 Assessing awareness and knowledge in the present study

The present study sought to distinguish between respondents' own assessments of whether they were aware of aspects of the legal environment and their assessments of whether they had any detailed knowledge of those aspects. To achieve this, on occasions where respondents discussed self-assessed awareness and self-assessed knowledge, they were asked to describe how informed they felt about the generic legal environment at work in the case of the former and about how much they knew about their specific legal environment at work in the case of the latter.

In regard to actual levels of awareness/knowledge, respondents were asked to provide examples of the legal environment that affected their work. Respondents unable to do so were consequently asked to give examples with the aid of prompting. Where applicable, respondents would then be asked about their awareness of a number of successive aspects of the legal environment with

prompts from the interviewer. The approach chosen here was theoretically justifiable on the grounds that legal awareness and knowledge in small business organizations is essentially a new and emerging academic entity, and therefore lends itself to empirical work both to unravel the nature and dynamic of its evolution and to amass baseline data from which comparative and monitoring studies can be undertaken.

1.7 STRUCTURE OF THE THESIS

The present chapter has sought to clarify the research problem and set out the three key research objectives of the study. It has also defined the key concepts that are central to the present work. The methodology is set out in chapter 3, which examines the philosophical debate relevant to the undertaking of research and sets out in more detail the methods adopted in the present study. Chapters 4-6 provide the results, each chapter dealing with one of the study's objectives. Chapter 7 is the conclusion, which summarises the findings of the present study and sets out its limitations, as well as noting the implications for future research. Prior to dealing with these matters however, it is necessary to conduct a review of the literature to inform the design of the research and provide a basis for examination of the results. This is done in chapter 2.

CHAPTER 2: LITERATURE REVIEW

2.1 INTRODUCTION

This chapter provides a review of the relevant literature and, more specifically, an overview of the regulatory issues pertinent to the field of small business. Literary awareness forms the initial part of the process of research, as ‘knowledge does not exist in a vacuum and work only has value when placed in relation to other peoples’ work’ (Jankowicz, 1995:128-9). An awareness of the current state of knowledge inevitably leads to a fuller understanding of limitations of current research agendas and allows further reflection upon how any proposed research fits within a wider context (Gill and Johnson 1997). In this instance, issues relating to the regulation debate, regulation and compliance costs in small firms, and the impact of regulation on small business performance and business owners’ perceptions of regulation as a business burden were explored.

An initial review of the literature provided a backcloth of the significant issues that have been taken up in small business research including areas such as small business life-cycles, financing and growth. However, limitations of thesis length and a focus on the material most relevant to the research questions meant that not all these areas have been included. Hence a landscape analysis of the effect of the legal environment and regulation on business and an appraisal and examination of previous work looking at SMEs’ awareness and knowledge of the legal environment forms the main substance of this chapter. It is noted that whilst this thesis is concerned with small firms, much of the literature deals with SMEs and doesn’t distinguish small firms from medium-sized enterprises.

2.2 FORM OF ORGANISATION

In assessing awareness and knowledge of the law in the small firm, the type of legal form adopted by the enterprise can be seen as particularly relevant given that this choice determines the applicability of certain areas of law, most notably company, partnership and tax law. This section therefore reviews the choice of legal form available to the small business, and the related issues arising from this as identified in the literature.

In the context of definition, the type of business legal form that is adopted has a bearing on the concept of a small firm. Savage and Bradgate (1993) identified the principal types of business organisation in the United Kingdom as the sole trader, the partnership and the company. The Bolton Report definition of the small firm was not related to any of the legal forms of business enterprise. It was acknowledged that the majority of the small firms it was concerned with were sole

proprietorships or partnerships, and that very few public companies fell within the statistical definition. A partial attempt at a definition in legal terms included all proprietorships, partnerships and private limited companies, although it was stressed that quite a number of private limited companies would be too large to fall within the statistical or economic definitions.

The data from the Bolton Report showed that the majority of small firms to have been unincorporated (60 per cent) at the time of the inquiry. Consequently, the majority of firms fell either into the category of sole-trader or partnership. Savage and Bradgate argued that the sole trader is the simplest and most flexible legal unit within which to carry on business. It consists of one person carrying on business who may engage employees to work for him/her. The sole trader is responsible for the conduct of the business and thus for the debts incurred. Chesterman (1982), referred to the term 'sole proprietorship' as a substitute for 'sole-trader'. He defined the term, in the legal sense, as meaning any unincorporated business in which one person is the owner, whether or not he/she employs other persons as well. It therefore includes all those businesses in the self-employed and proprietorship models which have not adopted the company form.

The distinction between the sole trader, the partnership and the corporate association suggests that each one is likely to differ in its relationship and responsibility to the law. Boyle (1997) has discussed the merits of the alternative legal forms of partnership and private company to the small business. It is recognised that the outstanding conceptual contrast between the partnership and the private company is the corporate personality and limited liability possessed by the latter but not the former. However, Boyle (1997) questioned whether, for a truly small business such as a retail shop or other small-scale provider of services, the apparent advantage of the private company actually amounts to much. The argument proposed is that partnership law has significant attractions in the freedom and flexibility that it gives as a basic form of business organisation. This applies both to ease of initial formation and the low level of externally imposed procedural norms as to how partnership affairs must be conducted. However, the most obvious attraction of the company over the partnership would appear to be the protection afforded to shareholders by limited liability. The recently introduced limited liability partnership is an attempt at providing a hybrid which has the attractions of both partnership and limited liability. It is hypothesised that some small businesses, who have not sought proper professional advice, 'adopt or continue in the partnership form without fully recognising the risks to which they are exposed' (Boyle, 1997: 2). On the other hand, Boyle stated that in many cases the insolvency of the business would prove 'just as disastrous for small business people if they had formed or converted to a limited company and were

directors/shareholders instead of partners' (1997: 2). This assertion is made on the basis that most small businesses are largely funded by overdrafts and other bank lending secured by fixed and floating charges. Furthermore, the directors/shareholders will likely have given personal guarantees and provided collateral security over substantial personal assets. Consequently, the bank would gain as much in such a small corporate insolvency as it would from insolvent partners. Hence, Boyle (1997) makes the proposition that it could largely be a matter of chance as to whether a small business adopts the corporate form or not.

2.2.1 Incorporation or non-incorporation

The choice between remaining unincorporated or becoming incorporated might be regarded as a difficult one for the small firm, as each has its own distinct advantages and disadvantages. Commenting on the dilemma, Chesterman (1982: 58) remarked then:

‘The small firm is thus confronted with two “package deals”, neither of which is wholly attractive. It seems strange and anomalous that it should have to make a choice at all. It would be much more logical for business law to devise a single legal structure, which offered all the advantages to be found in the two packages and none of the disadvantages’.

Freedman (1999) suggested that it is doubtful whether any legal system or structure is ever ‘ideal’. The conventional wisdom is that incorporation is problematic for small firms (Davies, 1997). It appears to impose on the owner-manager the burdens of disclosure and complexities of a structure designed for the circumstances of larger firms where ownership and control are separated. Chesterman argued that the two forms making up the unincorporated package, sole proprietorship and partnership, are both long established within English law and were developed with small-scale businesses in mind. However, when the limited company form became freely available to small and big businesses alike during the mid-nineteenth century, the predominance of sole proprietorships and partnerships was always likely to be challenged. Chesterman commented on the theoretical appropriateness of the partnership form for small businesses. It was reasoned that several elements of an organisational concept of the ‘small firm’ are contained within the scope of a partnership including the involvement of two or more people (but less than 20) as owners, and management by at least one or all of the partners with a simple system of decision making.

This differs from the company form, which is intended for use by business enterprise at all levels of scale and has no immediate structural links with small businesses. Demarcation between ownership and management is presumed in the company form, and this is demonstrated by the roles of

shareholder and director respectively. This structure also lays down highly complex rules for decision-making within the company. However, Chesterman argued that even given these supposed drawbacks, company status is often preferable on practical grounds for a small business. This is because of such factors as limited liability, ownership of property in the company name, perpetual succession and taxation. Consequently, Chesterman pointed to a tension that arose between company law, *'which many small businesses select for practical reasons'*, and partnership law, *'which in important respects is better suited to the regulation of small business.'* (1982:63).

A logical conclusion might appear to be that incorporation is problematic for small firms, yet there are potential advantages to be gained from it. However, Freedman (1999) proposed that remaining unincorporated is also not seen as ideal. Support for this proposition is derived from the fact that the sole trader or partnership has no legal personality in English law and so no perpetual succession. The result of this is that property ownership is more complex and the transfer of an interest is less straightforward than the transfer of company shares. Importantly, the lack of limited liability for sole traders and partnerships leaves all their assets, including the family home, vulnerable to creditors and this may be thought to be a barrier to entrepreneurship. As noted, however, the Limited Liability Partnerships Act 2000 has introduced the new form of limited liability partnership but the newness of this form, the relative lack of awareness of it and the confusion surrounding it mean that it is difficult to assess its impact.

Government figures show that there are 3.7 million businesses in the United Kingdom in total, including sole traders through to public companies (DTI 2001). Over 2.6 million of these are a 'size class zero' business, which means they are sole traders or partners without employees. It follows from these statistics that the majority of businesses are not incorporated. Instead, roughly 66 per cent are sole proprietorships, 16 per cent are partnerships and 18 per cent are companies. This breakdown raises questions as to the needs of small business in terms of legal frameworks. Freedman (1999) identified two possible focuses. The first is the economic focus, which sees the primary objective of the legal business framework as facilitation of growth and efficiency, concentrating on those small businesses which might one day be medium-sized or larger. If this economic focus is adopted, Freedman identified the only issue as 'the degree of regulation necessary to balance this facilitative mission' (p.11). Alternatively, the second focus is not led by economic analysis, but works from the perceived needs of the business community. Consequently, this approach would try to 'provide a framework for the type of business which can be shown

empirically to exist in large numbers, whether or not these businesses are 'efficient' in the sense of being or possessing the potential to become wealth creators' (Freedman, p. 11).

These businesses that show little or no inclination to become a growth business have been termed 'lifestyle businesses'. The smaller such businesses are, the less likely they are to want to expand (Gray, 1992). The argument, as outlined by Freedman, is that the law should not inhibit growth for those whose aim this is, but neither should it be geared only to growth businesses. This argument suggests that the aspirations of the small business owner might not necessarily tie in with the legal form it adopts. Freedman asserted that rather than starting with a definition of the firms which may need assistance with their legal form, it seems more fruitful to ask which firms are experiencing problems.

The classic economic analysis of the corporation sees the reasoning behind the corporate form in terms of efficiency and, in particular, agency, monitoring and transaction costs. It follows that small owner-managed firms do not need much of the organisational structure devised to protect shareholders and to ease the operation of the market. As a result, company law provides for the notion of two corporations, the small or closely held corporation and the public corporation quoted on the stock exchange. It is understood that these two types of business need different treatment. However, Easterbrook and Fischel (1991) admitted that the line between public and close corporations is blurry and that not all firms are cast in one of these two moulds. Yet at present, the situation exists where one legal form is expected to cope with both situations.

The view is often expressed that small businesses are the lifeblood of the economy and must therefore be granted concessions (Storey, 1994). However, Freedman is firm in her opinion that the priorities of business owners should not be placed above those of customers, financiers and employees:

'[T]he aim cannot be simply to provide these small firms with a legal framework which suits them. Legal policy must consider all the parties. Even if our primary aim is to benefit the small business sector, this will hardly thrive if those dealing with small businesses are not properly protected. Moreover, it will often be small businesses which suffer when other small businesses are not properly regulated, so that there is no future for the sector in legislation which confers undue concession on small business owners'. Freedman (1999: 14)

Kahn-Freund's comments on legal forms for small businesses have been well documented. He described the limited company as a capital-raising device wrongly appropriated by small firms (Kahn-Freund, 1944). This is because the limited liability company was designed to deal with separation of ownership and control as a result of the need to raise capital to finance the business. Its use was therefore questionable in a situation where there was no such separation and no need for finance. Freedman reported on a DTI Working Party that was set up to consider the question of small business legal forms in 1993. Research drawn from the study indicated that problematic areas of company law were not regarded as a high priority by small businesses compared to their other problems, such as late payment. Furthermore, Economic and Social Research Council (ESRC) survey data, reported in Freedman and Godwin (1992), showed that small business owners were not particularly interested in the question of legal form. This was a reiteration of the findings presented in the Law Commission report⁷. Instead, it was the problems relating to VAT penalties, late payment of debts and the perceived behaviour of banks which seemed pressing and therefore of concern to the respondents.

There was nothing in the ESRC data to indicate a great willingness for a new legal form. The unincorporated firms responding to the questionnaire were largely satisfied with their legal form, with only five per cent thinking that the disadvantages of incorporation outweighed the advantages. The greatest perceived disadvantage of unincorporated status amongst the unincorporated firms was unlimited liability. Forty-six per cent of the unincorporated firms thought this was a disadvantage, but for most it was not enough to persuade them to incorporate. The advantages they saw with non-incorporated status were partly the simpler accounting requirements (76 per cent) and other similar avoidance of burdens. The biggest single reason for choosing unincorporated status was, however, the desire to retain personal control (83 per cent). Some 22 per cent of the limited company owners considered that the disadvantages of incorporation outweighed the advantages. This was related to their reasons for incorporating: those companies which were dissatisfied with their legal form were more likely to have incorporated for tax reasons than to obtain limited liability or finance. By far the most significant disadvantage of incorporation was said to be the cost of the statutory audit – 72 per cent of the company owners thought this was a disadvantage of incorporation. The ESRC survey indicated that dissatisfaction tended to be with the incorporated rather than the non-incorporated legal form. It was concluded that the disadvantages arising from incorporation 'stemmed largely

⁷ Law Commission, *Company Directors: Regulating Conflicts of Interest and Formulating a Statement of Duties* (Law Commission Consultation Paper, No. 153).

from disclosure and formalities, often said to be required as the “price of limited liability” (Freedman 1999: 25).

Whilst it is evident that size and form are key variables impacting on the governance and dynamic of SMEs, it is equally apparent that the issue of incorporation is central to an exploration of SMEs knowledge and understanding of the Law. The ESRC survey was informative in describing reasons for incorporating. Two-thirds of those incorporating (66.4 per cent) thought they were doing so to obtain limited liability. However, the fact that many businesses were backed on the basis of personal guarantees negated the attainment of limited liability to an extent. The next most mentioned reason in the ESRC survey was prestige and credibility (50.0 per cent of the responses), followed by tax reasons (38.0 per cent). The ESRC data also suggested that firms were sometimes incorporating because they could not buy a partnership ‘off the shelf’ (10.0 per cent of the ESRC incorporated respondents indicated this). Their first port of call for advice on setting up was more often an accountant than a solicitor. Accountants seemed to suggest that a partnership agreement would require a visit to a solicitor, with the added expense and time that this would entail. Thirty-eight per cent of the ESRC partnership respondents said that it was a problem that no standard partnership agreement was available. Overall, the evidence from the ESRC survey suggested that most incorporated firms were content with their legal form but that a small group of incorporated firms were dissatisfied, particularly those who had incorporated for tax reasons.

Consequently as Hicks (1997) has pointed out limited companies have become popular because they are the only available off-the-peg form of business and because they are available at a knock-down price. However, as has been discussed above, companies are not necessarily the most efficient form for small businesses. Therefore, there has been much debate over the merits of introducing a new business form, particularly one that would be of benefit to the small business sector. In a consultative document entitled, ‘A New Form of Incorporation for Small Firms’, Gower (DOT 1981: para. 1.11) wrote:

‘In undertaking a review, the basic rationale of the present law on companies must not be overlooked. The limited company has proved a valuable and simple device for channelling capital from various sources towards productive investment, for encouraging investment by protecting investors from unacceptable risk, for regulating their relationship with each other and for offering to creditors a measure of information about the identity and resources of the undertaking with which they are doing business. Any alternative must be tested against similar objectives’.

Given the rationale proposed by Gower, Hicks argued that it is proper to ask whether it is good regulation to offer to all comers such easy access to limited liability. It is argued that limited liability may be severely abused by the casual business operator and creditors may be put at risk. In particular, Hicks states that:

‘Many small company proprietors do not seem to have the intention or capacity to comply with the extensive regulatory provisions of company law and one wonders whether it is good regulation to encourage such extensive use of the limited company form’ (p.39).

Hicks saw one merit of the United Kingdom limited company form in its flexibility. In theory, this permits incorporators to tailor the vehicle according to their own needs. However, the only viable corporate vehicle is a limited liability form. It is acknowledged that small businesses are heterogeneous and as such their needs differ widely. Small businesses can be entrepreneurial, taking risks and looking for growth, while others can be proprietorial. Indeed, many merely regard themselves as being self-employed, doing a job or selling their labour or expertise. Logically, it would appear that these different businesses may have a need for a different business form. However, at present only a limited liability form is offered. Partnership is not a complete business form and cannot offer a separate legal entity, except through the largely untested limited liability partnership. It is merely a framework of agency and contract law.

The statistics discussed above indicate that only 1.0 per cent of companies are public and of these only small proportions have actually offered their shares on the public markets. Hence, the dominant user of limited liability companies is now the small business. In a study commissioned by the Association of Chartered Certified Accountants (ACCA), Hicks, Drury and Smallcombe (1995) further investigated the reasons why small businesses incorporate. The report suggests that it would be wrong to assume that small business proprietors always have a clearly formulated view of why they chose the business form they did. Frequently, it is not much of an immediate issue. The objective of incorporation was not to raise capital or to create transferable shares. There were no cases of venture capital or other significant outside investment in the 90 companies examined. No company proprietor or business advisor mentioned the ability of offering floating charges as a reason for incorporating. There was nothing to suggest that using the company form improved credit with the banks. Potential tax advantages were a reason for incorporation. The prestige and credibility afforded by incorporation was a significant advantage mentioned by many company proprietors. Having a ready made association agreement and corporate structure available off the peg for a reasonable price was a further advantage.

Limited liability was the advantage most commonly mentioned in an unprompted question asking why they had incorporated. However, it was not regarded as being universally important as only a bare majority of directors mentioned it as an advantage of incorporating a company. Those who had mentioned limited liability as an advantage were then asked how important they thought it was. A majority of them said that although they had mentioned it, it was not very important. When asked about starting up a new business, 60 per cent of directors said that the absence of limited liability would be an irrelevant or a minor consideration. Similarly, sole traders and partners when asked were almost entirely unbothered by the absence of limited liability in running their businesses.

The research confirms that limited liability is the most common of the many reasons for incorporating. However, it is not regarded as being particularly significant by a substantial number of companies and even when said to be important, it may not be conclusive but only one of many reasons for incorporating. In Freedman's survey of small businesses published by the ESRC, she states that:

'63 per cent of companies cited limited liability as a major reason for incorporating. However, half of these companies said they provided personal guarantees to banks and other creditors which would undermine the protection of limited liability'. (Freedman, 1994: 555)

This confirms that a very substantial number of companies do not particularly value limited liability or fail to benefit from it. As Hicks suggested:

'One therefore asks what they get in return for the substantial disclosure obligations and increased legal complexity arising from the company regime. It seems that these firms want a convenient off-the-peg corporate form with credibility but that they do not need all the problems and costs associated with limited liability' (1997: 51).

All the surveys report that small business proprietors do not regard business form as a major issue. Hicks argued that while the typical small business proprietor knows their business well, they do not generally have a broad perspective or understanding of the merits of the various business forms. Hence, small companies may say that corporate compliance is not a problem, but they will then go on to complain about the high level of lawyers' and accountants' fees. However, the reality is that a company is a complex legal regime and consulting professionals is usually a requirement for legal compliance. Furthermore, a supposed advantage of the limited company is its flexibility. Larger businesses which have the expertise to appropriately consult lawyers and the turnover to carry the burden of costs may be in a position to exploit this flexibility. It is less likely that small businesses

may be able to do so. Small business directors or local lawyers are unlikely to have the expertise and this could result in the accumulation of a substantial legal bill. As Hicks observed:

‘[I]t is often assumed that the limited company is an efficient vehicle for small businesses because from day to day the corporate body does not demand attention and technical problems arise only rarely. This may be to some extent because the directors are simply ignoring and failing to comply with continuing regulatory requirements that do exist’ (1997: 53).

The research findings would seem to suggest that not every small business or company wants limited liability or its burdens. However, many want a separate corporate identity. Gower sought to introduce a compromise in his proposal of an ‘incorporated firm’. His proposals were set out in the Department of Trade consultative document on new forms of incorporation for the small firm (DOT, 1981). Gower’s ‘incorporated firm’ was a combination of company and partnership law, which would have some degree of limited liability but more safeguards than in the case of a limited liability company. Gower’s ‘incorporated firm’ would have a simple registration procedure, but there would be no shares. Instead of shares, members would be entitled to a fraction of the firm’s net worth. If the firm were to wind up, each member would be liable to contribute towards the payment of the debts of outside creditors up to a prescribed amount plus an amount equal to withdrawals for the two years preceding the winding up. The end result being that limited liability was cut back but not wholly denied.

Hicks reflected that Gower’s proposal received a lukewarm reception. Gower had acknowledged that making incorporation with full limited liability more difficult was impractical. Consequently, an alternative form of company, that placed the owner open to greater personal liability than the general limited liability company, was unlikely to attract new users. Paragraph 14 of the DOT’s 1981 consultation document proposed a provision giving all members a right to be involved in management, from which any attempt at contracting out would be void. However, this was seen as a barrier to development and growth rather than facilitating change. Hicks recognised that this provision would cause difficulties in the instance of illness of a member or the evolution of the nature of the business. Buy-out provisions were proposed for the case of death or retirement but these required the remaining members to buy out the departing member or unanimously agree to permit his purchaser or legatee to join the management team. The default was to be a winding up. The other significant problem confronting Gower’s proposals was that there was no real desire amongst business owners for change. At the time, business owners were more concerned with the effects of the recession than what they saw as legal detail (Milman and Flanagan, 1983). Gower also

recognised the *'danger of bringing the law into disrepute by the pretence that its rules are being observed when everybody knows that often they are not'* (DOT, 1981: Annex A, para.6).

Despite the lukewarm reception for Gower's proposals and the perceived lack of desire for structural change, there was recognition that the various business forms still required study and possibly modification. This was evidenced through the studies of the DTI Working Party, the ESRC and the ACCA. The Government also responded with a number of reforms, including the introduction of the elective regime and provisions concerning the passing of written resolutions in the Companies Act 1989 and the simplification of accounting requirements and the annual return procedure⁸. In its Green Paper entitled 'Modern Company Law for a Competitive Economy', the Government recognised that the needs of small companies are different from those of larger entities (DTI, 1998). The Green Paper also noted that the UK framework of company law is common to businesses of all sizes and that it might be preferable to differentiate more fundamentally between small and large companies. Essentially, the paper posed the question as to whether it was logical for small, private companies to remain undifferentiated in so many respects from listed public companies.

2.2.2 Company law and the small firm

Sinha (2002) has also questioned the cumbersome nature of the Companies Act 1985 on the small firm. She stated that the provisions of the Act are more suitable for public companies where greater transparency is required owing to the higher level of scrutiny. Instead, the Companies Act imposes what Sinha describes as 'commercially unrealistic' procedures as far as small companies are concerned (p.105). The majority of the regulations imposed by the Act focus on the internal procedures of the firm. Sheikh (2001: 4) states that this focus means that company legislation has been geared largely towards public companies, where the separation of ownership from management is conspicuous.

A further difficulty for small companies is that the provisions which might help to make their life simpler are not conveniently grouped together in a way that would make it easier for someone to ascertain what a small company must do to comply with the law, or how much flexibility it has to arrange its internal governance in the way it finds most convenient (DTI, 2000: para.6.14). For those without legal expertise it is not easy to establish what the law requires. Furthermore, it is these small companies which are least likely to have regular access to legal expertise, or to have the

⁸ Achieved by inserting s.381A into the 1985 Act.

resources to devote to finding their way around the Companies Act. It assumes a separation of ownership and control, putting in place formal mechanisms to ensure that the shareholders can call the directors to account. These arrangements which are suitable for a large public company, with a diverse and probably widely dispersed shareholder base, and complex business relationships, are not ideally suited to the needs of a small private company with a limited number of employees.

Over the years attempts have been made to align the Act more closely with the needs of small private companies and to enable them to dispense with some of the formal procedural requirements. The 'written resolution' procedure enables private companies to take decisions in writing rather than at a formally constituted general meeting.⁹ The 'elective regime' enables them to dispense with certain other requirements, for example allowing them to do away with the requirement to hold an Annual General Meeting or to lay the report and accounts before the general meeting.¹⁰ Although these reforms have gone some way towards meeting the needs of small companies, they do not offer a single coherent legal structure for these companies. Sheikh stated that the Companies Act provisions are largely irrelevant to the needs of private companies. The decision making procedures that currently exist are inappropriate to small private companies where hardly any distinction exists between the board and its members, and usually the same directors will also be the shareholders.

The Company Law Review Steering Group was launched by Margaret Beckett, then Secretary of State for Trade and Industry, in March 1998. It stated that company law fails small companies in two key respects. Firstly, it imposes excessive regulation and secondly, it is not transparent. It is argued that the consequence of both is routine non-compliance through regulatory fatigue or simple confusion (DTI, 2001a: para.2.5). The Companies Act distinguishes between decisions that may be made by the board and those which require authorisation by the members. Decisions, whether by the board or the shareholders, must observe any procedures that are laid down in the 1985 Act or which may be set out in the company's constitution. Where a decision is made by the shareholders, it is carried out or approved through the general meeting. The Act requires specific information to be given to the shareholders by the directors when a resolution is proposed. Where decisions are made by the board, the directors must observe duties designed to ensure that they act in the interests of the members as a whole. Finally, where decisions are unfairly prejudicial to the minority, the Act provides a specific remedy through application to the court for relief.¹¹ In addition, the common law

⁹ Companies Act 1985, s.381A (1).

¹⁰ Companies Act 1985, s.379 A.

¹¹ Companies Act 1985, s.459.

allows individual members to assert personal rights and, in certain circumstances, to assert the rights of the company where they have not been upheld by the directors.

To a certain extent, the Act recognises that the first three of these methods are often inappropriate for private companies. As already discussed, in private companies there will often be little or no distinction between the board and the members. Similarly, members of private companies will often be routinely aware of all the information necessary to assess the state of the company and to make decisions. The Steering Group reports that the formalities of the general meeting are often not observed by private companies, where decisions are made quickly and informally through consensus (DTI, 2001a: para.2.10). In the same way, procedures required by the Act or the constitution are often ignored. Therefore, the review carried out by the Steering Group recommended to DTI Ministers that the current Companies Act should be recast to simplify the statutory requirements for decision-making in private companies and to make a range of other simplifications to the law to assist the running of small companies. The review also proposed to reduce the burden of accounting and audit, and to make legislation on private companies easier to understand (DTI, 2001b).

Company law currently lays down procedures that must be followed for certain types of decision by shareholders at general meetings. The Company Law Review recommended that private companies be offered a number of ways to reduce the formal decision-making methods required by company law. Under its proposals, AGMs, annual laying of accounts and annual re-appointment of auditors would not be necessary unless companies positively opt for them, or shareholders ask for them in any particular year.¹² Added to this, when shareholders unanimously agree a decision, they will be able to do so informally without the need to observe the provisions of the Companies Act or their company's constitution.¹³ The Review also stated that it will be easier for shareholders to take decisions by written resolutions, without the need for a formal meeting, by relaxing the requirement for unanimity.¹⁴ Decisions will also be possible through electronic communications.¹⁵

¹² Companies Act 1985, s.366, s.241 & s.385.

¹³ Companies Act 1985, s.379A.

¹⁴ Companies Act 1985, ss.381A to 381C – General requirement for unanimity for written resolutions should be replaced with requirements that special and ordinary resolutions be approved respectively by 75% and a simple majority of those eligible to vote.

¹⁵ Companies Act 1985, (Electronic Communications) Order 2000.

The Review also put forward other simplifications to the law. Companies will not have to appoint a company secretary¹⁶ and a new model constitution, replacing the old memorandum and articles, will be available for private companies. The new constitution will be simpler and shorter. Furthermore, all company directors will have a statement of their duties set out clearly in the new legislation. The law covering disputes between shareholders will be improved, and access to alternative dispute resolution will be increased to avoid expensive litigation. Finally, the complex provisions prohibiting a company giving any form of financial assistance for the purchase of its own shares will be abolished for private companies, thereby simplifying corporate finance transactions.¹⁷

With regards to accounting and auditing, the Review put forward measures to reduce the burden of financial reporting and audit while improving the usefulness of small company accounts. It recommends that thresholds for companies able to use the small company accounting regime should be increased to the maximum possible under European law.¹⁸ It also proposes that the thresholds for exemption from audit should be raised in the same way.¹⁹ The format and contents of small company accounts should be simplified, but small companies should no longer be able to file uninformative ‘abbreviated’ accounts. Currently, the Review has now reached the stage of a Companies Bill 2006.

2.3 AWARENESS AND KNOWLEDGE OF THE LAW

As has been noted chapter 1, the empirical literature on this subject is surprisingly thin. One of the most significant studies, by Blackburn and Hart (2003), revealed that small firm specific awareness of individual employment rights (IERS) varied between different types of IERS. Highest levels of awareness were shown for the national minimum wage followed by maternity leave. Lowest levels of awareness were in relation to parental leave provisions. The research, based on a telephone survey of 1,071 small employers, suggested there was a positive relationship between size of enterprise and awareness of IERS. Accordingly, in an example given of maternity rights, Blackburn and Hart showed that awareness levels were marginally lower amongst smaller firms in the sample. For more recently introduced rights such as the provisions surrounding parental leave, there was a more marked difference with awareness of this right particularly low amongst micro-employers. The higher awareness and knowledge levels amongst the larger firms were, in part, attributed to such firms having to deal with a wider range of employment issues. Larger firms were also found to

¹⁶ Companies Act 1985, s.283.

¹⁷ Companies Act 1985, ss.151-158.

¹⁸ Companies Act 1985, s.249.

¹⁹ Companies Act 1985, s.249A (1) & (3).

have more likely to have been to an Employment Tribunal, and they employed higher proportions of females and fewer part-time workers. The findings of Blackburn and Hart indicated that 'larger' small firms became au fait with new regulations quicker than the micro-firms. This latter statement again highlights the recurring theme in the Blackburn and Hart study of the relationship between size of enterprise and awareness of IERs. With regard to the newness of legislation, however, Blackburn and Hart found relevance and employer experience to have a greater bearing on awareness levels.

A further significant theme to emerge from the Blackburn and Hart study was that owner-manager knowledge levels of IERs were driven on a need-to-know basis. Consequently, employers in industries with a predominantly hourly paid culture that were historically subject to regulation, such as primary sector and service-based industries, were much more likely to be aware of the legislation than those in sectors where a salary payment culture and less regulation existed.

Other studies that have attempted to assess small firm awareness and knowledge of the law include that of the Financial Services Skills Council (FSSC) (2004), which examined finance sector firms' understanding and awareness of regulation, its impact and related issues including skills and training. The report was based on a questionnaire survey of 101 finance sector SMEs in the East of England, and identified a need for financial services sector businesses to develop further awareness and understanding of regulation. The FSSC study revealed that a minority of firms felt they were well informed and understood the effects of sector-specific regulation. When questioned about their awareness of regulatory impact on business, 63 per cent identified sector-specific regulations, which included general references and specific pieces such as mortgage and insurance regulations. However, only 25 per cent of businesses showed awareness of regulation covering consumer protection. The study also revealed that a number of financial services sector regulations were not mentioned by any of the respondents. This was noted with concern because of the immediate importance of these regulations for the responding firms. In respect of generic regulation, the FSSC study found that only a minority of businesses felt that such regulations had a significant impact on them. Accordingly, 70 per cent of the businesses surveyed felt that the National Minimum Wage had no impact; 49 per cent felt that data protection laws had no impact; and 59 per cent felt that racial and sexual discrimination had no impact. It was reported that a significant number of firms found out about generic regulation through newspapers and websites. Significantly, the FSSC study also addressed the issue of responsibility for awareness and information. Only 16 per cent of the firms in the FSSC study responded with a view as to where responsibility lay for supporting

businesses in understanding regulation. Of those, only half believed responsibility lay with the employer, whilst a third believed it lay with the Financial Services Authority. The FSSC study concluded that the existing training infrastructure, whilst sufficient, could be enhanced to address the lack of awareness and understanding of regulatory obligations and their impact on the sector.

A Small Business Council (SBC) study evaluating government employment regulations and their impact on small business held that there were extremely low levels of awareness of employment regulations amongst small businesses (2004). Employer ignorance of employment regulation was attributed to beliefs held by respondents that regulation was always changing and it was impossible to keep up with these changes, and that regulation was complex and therefore difficult to understand and comply with. The SBC study produced a typology of three key types of employer that emerged:

‘Mutual Respect’: Often in higher skill and higher pay sectors. They tend to have an adult relationship with employees and want to be compliant with regulations but feel they are onerous and changeable.

‘We are family’: Found in any sector, possibly in the smallest businesses. There is a degree of flexibility and ‘give and take’ enjoyed by employers and employees. Regulations are largely perceived as irrelevant, but they want to do their best by staff and hope that they will not be sued.

‘Them and us’: Often found in low skill and low pay sectors with high staff turnover/incidence of casual staff. They distrust and resent employees; feel employees have the upper hand; suspect they will be penalised by employees whether they are compliant or not’ (2004, p.5).

The study found that few employers had high awareness of legislation, but also that deliberate non-compliance seemed to be rare. The ‘We are family’ and ‘Mutual respect’ type firms were categorised as good employers with low awareness of legislation, whilst the ‘Them and us’ firms were placed as ‘bad’ employers with low awareness of legislation.

In terms of specifics for actual knowledge of regulations in the SBC study, of the 104 small business owners and managers that were consulted, two thirds of the questions respondents answered incorrectly than correctly. In terms of the areas of greatest knowledge, just under two thirds were aware of the legal requirement for fair recruitment, with 65 per cent answering correctly that they should take a fair approach in terms of race and gender. 57 per cent were able to answer correctly that the maximum working hours without an opt out under the Working Time Directive is 48 hours, and this was supported by the fact that some employers were aware of the debate about

whether the UK should continue to be allowed to opt out. It was evident in the SBC study that some employment regulations were relatively uncontroversial: businesses knew them and there was compliance. This included the minimum wage and holiday pay for full time workers, and is consistent with the findings of Blackburn and Hart reported earlier which also found highest levels of awareness for the national minimum wage.

There were also a number of common misconceptions – only 16 per cent correctly answered the statutory timeframe for providing written particulars of the contract of employment, with 63 per cent believing that it should be within one week or one month²⁰. Similarly, just under half of the sample did not know the correct qualifying period for unfair dismissal, with 26 per cent believing it to be six months; 11.5 per cent thinking it one month; and 11.5 per cent believing it to be one week²¹. These findings were again consistent with those reported by Evans, Goodman and Hargreaves (1985) who showed that employer awareness of the period of employment during which employees were excluded from eligibility to complain of unfair dismissal to be relatively high. 66 per cent of the sample could accurately recall the exclusion period appropriate to their company size²². The Evans et al. study found that most employers had a broad awareness of the law's requirements and access to more expert sources when required. Significantly, employers' awareness of these changes was strongly related to company size, which again echoes the findings of Blackburn and Hart. Also, awareness of the law was seen to result in a change in behaviour, with two-thirds of the firms that took part in the study taking increased care in dismissal to ensure that the action was lawful.

In context of the SBC study and in respect of the issue of flexible working, 38 per cent thought that employees actually have the right to flexible working²³. Other areas of least knowledge included employees' rights under maternity/paternity legislation and the rights of part-time or contractual staff. The SBC study also revealed deliberate areas of non-compliance, where employers admitted to knowingly breaking the regulations. Examples included some employers actively seeking to circumvent the regulations so that they could get rid of underperforming staff. Correspondingly, this also led employers to cite the inability to dismiss staff easily as a strain on the business. The SBC study also found that in some sectors, traditional 'male' views prevailed and some employers had deeply held beliefs that certain jobs were better suited to men or women. Furthermore, some of the

²⁰ In fact, two months (ERA 1996, s.1).

²¹ In fact, one year (with exceptions) (ERA 1996, s.108 (1)).

²² There is no longer any size effect on exclusion.

²³ In fact, only a right to request it (ERA 1996, s.80 F).

group discussions that were held uncovered an undercurrent of discrimination towards ethnic minorities, as well as some resistance to employing non-English speaking staff. Specifically in respect of employment law and particularly on aspects such as the National Minimum Wage, studies by Gilman, Edwards, Ram and Arrowsmith (2002) and Arrowsmith, Gilman, Edwards and Ram (2003) have also shown that small firms are broadly aware of the existence of employment regulation.

Lewis (2004) has examined the nature of small firms and their contractual relationships. His investigation, which was supplemented by the examination of contractual documents where available, found that there was no evidence of widespread errors of law. It was concluded, however, that small firms were in a weak position to respond adequately to the law. He asserted that even a reasonably competent small firm would find it difficult to make an adequate response to its legal environment. Success in legal matters could therefore be attributed to owner-managers working extended hours, thereby allowing them to partake in 'do-it-yourself legal resourcing' that enabled them to enhance the professional legal expertise that they did obtain. Of particular note was the fact that there was a strong perception by the respondents that employment law was pro-employee and anti-employer.

Another report concentrating on SME awareness of intellectual property rights found that SMEs recognise the importance of intellectual property for their business (Kaltons, 2001). However, it was generally held that SMEs found informal methods of protection generally more effective than formal ones such as patenting. It was also noted that whilst SMEs were aware of the effectiveness of methods such as copyright, they appeared to have a liking for methods based on trust, secrecy and contract. The report revealed that SMEs are more focused on getting their products to the market place as quickly as possible, rather than worry about how to formally protect their creations. The overriding theme to emerge was that whilst SMEs were aware of and understood the basic methods of protection such as copyright, trade marks and patent, they were not overly fixated by them

A US study by Peterson (2001) examined the degree to which small retail and service company managers were familiar with important federal laws, and whether they could accurately differentiate between legal and illegal practices²⁴. Overall, the managers were able to accurately specify the

²⁴ As noted in chapter 1, the US is another common law jurisdiction meaning that the framework of law has some similarities to the UK.

legality of the practices in 65 per cent of the cases. However, the study also revealed that the respondents incorrectly assessed the legality of the following seven practices: negotiating wages individually, ignoring the union; pre-empting potential competition with prices below costs; having directors on the boards of competitors; aiming the marketing effort only at larger customers; telling customers they are getting a price break when this is untrue; using predatory pricing; and agreeing to divide markets with rivals. It was evident that whilst the managers made accurate assessments in 13 instances, their collective response was erroneous in over one-third of the cases, and these mistaken perceptions were in the realm of regulations associated with severe penalties, such as restrictive injunctions, large fines, and even possible imprisonment. The study concluded that small company managers were in need of additional education and training about federal regulation of business practices. The assertion was made that if this was not attained such companies were vulnerable to governmental prosecution and legal actions brought by competitors, customers and other parties.

A more recent study by Fairman and Yapp (2004) assessed compliance with food safety legislation within SMEs. The study found that in relation to hazard analysis, around 42 per cent of proprietors did not understand what 'hazard analysis' meant, what it required them to do, how to implement it in their business or how to evaluate and monitor the steps taken. Furthermore, in relation to the more prescriptive elements of food safety legislation, there was a lack of understanding of both the legislation and of basic food safety principles. In terms of awareness, the study found that one-third of SMEs demonstrated a lack of awareness of food safety problems within their business before they were raised by the environmental health practitioner. This was attributed to an inadequate knowledge of food safety requirements and principles. Crucially, it was also conjectured that over-familiarity with a situation led to non-compliance being overlooked. A factor cited for this included an absence of management systems within SMEs as contributing to this problem in that regular staff meetings and monitoring systems were generally not carried out within premises. With regard to this last point, there does appear to be some contrast with the findings of the present research. Specifically, where firms were operating in 'high risk' or highly technical sectors such as construction, food and audio-visual systems, the present research found that firms were not only very aware of their legal responsibilities, but also insisted on strict adherence to the law via systems they had set in place.

Corneliussen's (2005) study of the impact of regulation in small firms in the biotech industry interestingly concluded that small firms did not have a limited knowledge and comprehension of the

law. However, Corneliussen reported that the informants initially found it difficult to list the regulations controlling their research activities, and also that many were unable to identify or remember the names of the actual regulations or the regulatory authority charged with implementing and enforcing those regulations. Furthermore, an example cited of firms working only with biological agents and/or hazardous chemicals found that the firms did not believe their activities to be regulated at all, failing in particular to recognise the health and safety legislation. Other informants frequently misquoted legislation or the relevant authority. Corneliussen makes parallels between her findings and that of Genn (1993) and Hutter (2001) where businesses had an inability to recall the regulations and regulatory authorities controlling their work. Typical characteristics of such firms were that they were all small, and lacking in specialised safety personnel. There were some instances in the present study where participants misquoted legislation or authorities. More generally, though, firms were unable to cite specific pieces of legislation, and instead referred only to generic areas of law such as ‘company’ or ‘health and safety’. Corneliussen stated that the firms in her study appeared to make little effort to be informed about the regulations controlling their work, and also that firms at the outset perceived the regulations as having minimal impact on their work. Yet further probing did reveal regulation as ‘affecting what people do’.

2.4 SOURCES OF LEGAL ADVICE AND INFORMATION

There has been considerably more work on the role of general business advice, primarily external, for SMEs. The evidence suggests that businesses are seeking external business advice to an increasing extent, having risen from a level of 86 per cent in 1991 to 94 per cent in 2002 (Bennett and Robson, 1999, 2003). Alternatively, there is a view that owner-managers can be reluctant advice-seekers (Curran and Blackburn, 1994).

2.4.1 Sources of business advice

Of the few studies that have specifically examined sources of legal advice and information for small businesses, three in particular warrant mention. Blackburn and Hart’s study of small firm awareness and knowledge of individual employment rights also looked at advice and knowledge seeking activities within the area. The study revealed that the most important sources of advice and information were accountants, solicitors and then Government departments such as the DTI and ACAS. Furthermore, employers were prepared to use more than one source of advice and information, and ACAS was used by a quarter of employers. In contrast, there was a low use of information and advice from employers’ federations, Business Links and Chambers of Commerce. Reliance on different sources was shown to vary somewhat between firms of different size and

sector. The smaller the enterprise the greater the use of accountants, whereas larger employers were as likely to use a trade association. There also appeared to be a higher use of sector-based bodies by enterprises in the primary sector and construction, which was seen to reflect a stronger self-identity and industry subculture in some sectors. The study also found that there was no relationship in use of sources and whether or not firms had to pay for this advice. Additionally, the most popular sources were fee-based. In terms of new forms of advice and information delivery, and in particular websites, these were observed to be of growing importance but not at the expense of more conventional forms of delivery. Hence, the most popular form of delivery was over the telephone and face-to-face. Blackburn and Hart's survey results found high levels of satisfaction with the sources of information and advice used and method of delivery, and led them to conclude that there was little or no evidence of a shortage of supply of advice and information on individual employment rights.

The second noteworthy study is the previously cited SBC (2004) survey of the impact of employment regulations on small business. Included within this study was an analysis of when and where employers seek information about employment law. The study concluded that information seeking behaviour around employment regulations seems to be largely reactive. Consequently, small businesses sought information when issues arose rather than on an ongoing, proactive basis. This would reflect a 'just-in-time' mentality in terms of accessing information and to some extent could be argued as having a dampening effect for the need to apportion resources, both human and capital, to instigating and developing awareness and knowledge management architecture in small firms. The SBC research also identified some 'key' points when information is sought about employment regulations – these were before recruiting staff; before disciplining staff; and when an employee raises an issue, such as maternity leave. A main theme to emerge from the study was that although employers reported that they did not spend time keeping up to date on an ongoing basis, they found that searching for information when they needed it could be confusing and time consuming. The SBC study identified a large range of sources where employers sought information. In terms of their priority, these were ranked accordingly as industry associations; professionals such as accountants and solicitors; business associations; the internet; government departments; ACAS; and trade press. An interesting finding to come out of the study was that whilst employers admitted that they need to improve their knowledge, they also recognised that there were no easy ways to achieve this. Hence it was observed that providing more information direct to businesses would not necessarily address ignorance as businesses admitted that they would be unlikely to read it, given the pressure on their time and the fact that they considered other business issues to be more

important. The study did, however, identify a demand for sector-specific information. This latter finding poses an intriguing question as to how strategies to enable the dissemination of legal information in small firms can be implemented.

The third significant study identified in the area is Lewis's (2003) study into the methods used by small firms to gain access to legal skills, advice and information. With data obtained from interviews with the owners, directors and managers of fifty three firms, the study found small firms used a range of methods to resource their legal needs. Most interestingly, it also concluded that firms rely on self-help as well as professional legal expertise. To expand on this, the study showed that businesses used a wide variety of sources and often consulted more than one source on a particular matter. The use of solicitors' firms was the most prevalent, with twenty-nine out of the fifty-three firms using them on an ad hoc basis, and nineteen making repeated use of a particular firm of solicitors. Both the group of firms who used solicitors on an ad hoc basis, and those that used them repeatedly were also found, though, to rely on support from other professional expertise including trade organisations and insurance companies. This was further compounded by the use of a number of forms of 'self-help' as a means of sourcing legal advice and information. Lewis defined 'self-help' as where the respondent used one or more of the following means: written or electronic material not supplied from other sources; the educational backgrounds of owner-managers; the legal training of managers; and the use of a telephone or e-mail helpline not supplied from other sources. 'Other sources' were solicitors, trade or professional bodies, insurance companies, regulatory bodies and informal sources such as friends or family. The most common formula for legal resourcing was therefore identified as involving the three elements of solicitors' firms, other professional expertise and self-help. Lewis's study is significant in that the proposed concept of 'DIY legal resourcing' in small firms was found to be extensively made up of the use of internal sources. Legal education and training in the small firms was explored because of its relevance to the 'self-help' category. This found that overall eight respondents had completed, or were in the process of completing, a degree or qualification which included some law, and that another eighteen had had exposure to legal education via a qualification other than a law or business degree. In addition, nineteen of the respondents sought legal training for their managers. In terms of small firm satisfaction with legal resources as reported in Lewis's study, 62 per cent stated their legal resourcing was adequate or better but more than a third thought their resourcing was inadequate. It is noted by Lewis that this last point might be a major concern should legal policy require small firms to fulfil the same legal duties as larger firms.

In addition to what is argued here to be three of the most relevant studies of sources of legal advice and information for small businesses, it is contended that the following studies also warrant consideration. In the first, Miller (2001) sought to investigate how small private firms kept abreast of legal issues, given the limited resources such a company has to work with as against a large public corporation. In doing so, Miller developed a model for the proactive management of legal responsibilities in privately owned firms. The model consisted of five phases – identification; strategy; implementation; monitoring; evaluation. The first phase, identification, had at its basis the argument that it is critical for owner-managers to be proactive about legal developments, given that whilst solicitors can inform them about relevant changes, the ultimate accountability resides with the owner-manager. The model proposed by Miller reasoned that the owner-manager or director without in-house legal counsel must make special efforts to keep at least generally informed of major legal developments affecting the business community. It was suggested that avid reading and scanning of business journals and newspapers, coupled with membership of trade associations and industry groups, were two practical steps that could be taken to develop sensitivity to legal developments.

Corneliussen's (2005) study of the impact of regulation on small firms in the biotech industry similarly discussed means by which businesses found about the law. As discussed above, a key conclusion derived from this study was that firms appeared to make little effort to be informed about regulations controlling their research activities. One significant explanation for this, offered by Corneliussen, was that the firms outsourced activities associated with particularly stringent regulations. Corneliussen also found that with specific reference to generic and intellectual property regulations, the impact was again negligible. This was attributable to the fact that the firms sought external expertise to ensure compliance with the regulatory requirements, as opposed to relying on internal competencies. The study found that this external expertise was generally brought into the firm in the form of experienced managing directors and/or board members. In respect of those firms studied based in Scotland, Corneliussen found that the firms received support from Scottish Enterprise and local enterprise companies in establishing the firms and handling the requirements imposed by the generic regulations. The study also reported the use of external professional services, such as solicitors and accountants, by firms to ensure compliance with the regulatory requirements. Referring back to the regulation controlling the firms' research activities, it was also observed that the professional training of employees, generally via university training, had familiarised them with the practices imposed by the regulations.

Yapp and Fairman's (2004) empirical study of the factors affecting compliance with food safety legislation within SMEs in turn raised issues regarding sources of legal advice and information. Although the Yapp and Fairman study is singularly focused on the issue of compliance, and not with awareness and knowledge as in the present study, it is argued that compliance overlaps with awareness and knowledge. Indeed, Yapp and Fairman concluded that both lack of access to information and lack of support were barriers to compliance in the SMEs studied.

Furthermore, Yapp and Fairman reported that many SMEs did not send staff on food hygiene courses because of the cost and high staff turnover. Significantly, those that did not do so perceived training not to be an integral part of the business operation and it was therefore unnecessary, even where it was apparent that staff lacked basic food hygiene skills. Overall, the predominant sources of information on regulation were found to be environmental health practitioners during formal inspections or informal advisory visits. Other information sources used included trade associations, environmental health consultants and the Foods Standards Authority (FSA). Yapp and Fairman conclude that over two-thirds of SMEs had a reactive attitude towards food safety. This ultimately led to SMEs being totally dependent on external agencies to identify and interpret regulations, as well as deciding the way in which firms should comply with them.

A SBS survey (2002) looked at when government legislation caused problems for small firms. It was found that whilst most experienced this problem early in the life of the business, those firms considered non-growth firms had not contemplated before starting what their legal obligations might be. For the growth firms experiencing problems of this type, problems were found to emerge slightly later with an established period of six to twenty-nine months being the norm. It was hypothesised that in such instances, the company grew more quickly than was anticipated and owners were not prepared for the legal requirements of the next stage. It was also concluded that firms need to be aware of legal requirements and that this needs to be an ongoing process and one that is forward looking. What was also significant was that the majority of non-growth firms and approximately forty percent of growth firms had not investigated employment law. It was therefore concluded that given that only twelve of the firms did not have employees, many firms could be storing up problems for the future that they are not anticipating.

2.4.2 Business support

To date little is known about which factors are important for small firms in making use of business advisors for information on their legal environment specifically. More generally though, it is known

that the smaller the firm the less likely it is that external advice will be sought (Bennett and Robson, 1999). Furthermore, it has been stated that most owner-managers of small firms are not particularly driven by a need to improve their skills bases (Stanworth and Gray, 1992). Chell and Baines (2000) found that it was those individuals who were driven by a need to create wealth and accumulate capital who were the most likely to use external sources of advice, although such individuals were in a minority. A significant point is that for many small firm owners, autonomy and independence are more important than growth (Low and Macmillan, 1988).

Gooderham et al. (2004) have argued that business advisory services encapsulate a range of competencies that are critical not only for survival, but also for competitive advantage. The authors (2004: 7) state that:

“[These critical competencies] must either be developed internally and/or they must be accessed through the agency of consultancies engaged in the transfer of best practices across firms.”

Gooderham et al. argue that both of these are problematic for small firms, owing to the uncertainty under which they operate and their lack of resources. Small firms, therefore, have a particular need to obtain business advice from external sources (Birley and Westhead, 1992; Storey, 1994). Research has also indicated that a majority of small firm owner-managers have no professional, management or other formal qualifications (Stanworth and Gray, 1992). It has further been shown that many of the owner-managers of small firms lack financial skills and knowledge of how financial control systems might be used to aid decision-making (Deakins et al., 2001). It is reasonable to suppose, based on the findings of the few studies in the field, that the situation is similar for legal skills and knowledge of the legal environment and system.

Given the problem small firms have in accessing the critical competencies necessary not only for survival, but also for competitive advantage, Jennings and Beaver (1997) have argued that small firm owner-managers require specific, transferable, managerial skills directly related to entrepreneurship and professional management within the operating environment of the business. According to Gibb (1997) a small firm's learning will be located in the context of the external relationships of the firm, and this external context has been shown to include many possible sources including customers, suppliers, lawyers, associations, authorities, bankers and accountants (Bennett and Robson, 1999; Curran et al., 1993; Gibb, 1997). Bennett and Robson (1999) have found that which supplier of advice an owner-manager relies on is largely dependent on the relationship of

trust between the supplier of advice and the owner-manager. It therefore follows that the quality of the personal relationship is critical in these exchanges.

The recognition of the importance of small firms has led public authorities to introduce initiatives aimed at supporting the needs of such businesses. However, Bennett and Robson (1999) found government support agencies to have significantly less impact on small firm clients than private-sector consultants and business associations. Contrastingly, Bennett and Robson (1999) found that although most small firms used several different sources of advice, specialist professionals were the most frequent source of external advice for small firms. Of these, accountants were the most used, with accountants and customers ranked as those external sources of advice that have the greatest impact. Greene et al. (1998) however found that small business owner-managers saw little need for external support and advice. When they did do so, this was because the advice was viewed as necessary in meeting requirements set by the law rather than because it added value to the business.

The literature would suggest that whilst sector is not a significant determinant of the take-up of business support, the size of the firm and the level of trust in the supplier are. Hence Curran and Blackburn (2000) have discussed small firm distrust in advice and information suppliers, with the suggestion that external agencies are viewed as having neither the experience nor the skills to advise small firms about running their business. It is argued by Curran and Blackburn that this response that outside agencies do not understand the business reflects a psychological need for autonomy on the part of the business owner. This would seem to correspond with the earlier discussion on the small business owner's preference for independence.

2.5 DETERMINANTS OF LEGAL AWARENESS AND KNOWLEDGE

A principal finding of research in the small firm business sector is that due to a combination of factors related to their limited size and scope of activity, small firms exhibit a greater propensity to fail than do large firms (Storey 1994). Berryman (1983) concluded that the managerial and personal characteristics of the owners of small firms are important factors influencing failure rates. It is further reported that owner/managers most likely to fail are autocratic and unwilling to take advice from qualified sources, have limited formal education, undertake relatively little reading, and are inflexible to change (Argenti 1976). Goffee and Scase (1980) focused their study on the role of the small business owner/entrepreneur. Their study underlined how a small firm may be significantly affected because of the entrepreneur's personal characteristics, which include leadership attitudes, need of freedom and risk aversion. The relationship between a firm's propensity to fail and the

characteristics of the owner/manager is relevant to the present study as it raises the question of whether there might be a relationship between owner/manager characteristics and a propensity to engage with the legal environment. Consequently, variables such as age, gender, ethnicity or education might have an influence on the willingness or ability of owner/managers to be aware and knowledgeable of, and also to understand and comply with the legal environment.

The literature reveals relatively little work on small firm owner characteristics and how this corresponds with awareness and knowledge of the legal environment and general legal effectiveness of the firm. There has, however been some work on the performance of small firms and owner characteristics (Hall, 1995). The researcher examined how the nature of entrepreneurship, the psychology of owners, the types of owners and the backgrounds of owners might influence the performance of the firm. However, it was acknowledged that attempts at linking the characteristics of owners, in particular those relating to their personality, with the ways that they manage their companies and, hence, levels of performance that they achieve, are highly contentious. It was noted that it is easier to define and carry out empirical research on such personal characteristics as age, education and previous management experience than on personality. However, a significant study of personality-performance relationships has been reported by McClelland (1986). In this study the personality traits were compared of thirty six 'average' and thirty six 'superior' small business owners in India, Malawi and Ecuador. Those that were associated with success were apparently being proactive, achievement orientated and committed. Those not associated with success included self-confidence, persistence, powers of persuasion or their use of influence. It might be argued whether the personality traits of owners of small businesses who have either significant legal experiences or are viewed as 'legally' competent firms have a commonality, and also if they differ from those who struggle with the legal environment. From this, it might then be possible to identify certain personality traits as predictors for organisational legal effectiveness.

In relation to attempts at identifying the psychological factors associated with success, Smith's (1967) authoritative work distinguished between 'craftsmen' and 'opportunists'. Craftsmen were described as having working-class origins and a narrow education. They had successful work records but were unable to identify with senior management in their previous jobs. As owners of the firm, they were paternalistic with employees, they tended to rely on personal relationships and their strategic thinking was rigid. In contrast, the opportunists were middle-class and better educated. They were seen as entrepreneurial and more proactive, and took a wider view of sources of finance and possible feasible strategies. In Filley and Aldag's (1978) study, 'craftsmen' were risk-averse

and aimed for a comfortable living rather than the highest possible level of performance. Another type was the promotion firm, which was designed to exploit some unique competitive advantage. On the other hand administrative firms were more formally organised. They were generally the largest in size and depended less on the personal leadership of the chief executive. In both this study and Smith's, the craftsmen performed least well. Although now somewhat dated, these studies nonetheless do indicate that class origins, educational levels and aspiration goals of firm owners might influence the direction and success of the business. Hornaday (1990) proposed three types of business owners, the craftsman, the promoter and the professional manager. The craftsman was identified as someone who takes great enjoyment from making his product or providing his service. The promoter was primarily concerned with the pursuit of personal wealth. The professional manager was seen as a small business owner focused on building an organisation and establishing controlled growth. As such, there might be scope to infer that the types of owners may have some relationship to awareness, knowledge, and understanding of the legal environment.

With reference to the background of owners, Storey, Watson and Wynarczyk (1989) explored the characteristics of twenty fast growth companies and their owners from the north-east of England. Some of the features of the backgrounds of these successful owners included the fact they were better qualified in terms of school and pre-degree qualifications, they were more likely to have been previously employed in the same sector, and they were more likely to have had management experiences. Once again, the backgrounds of owners may be a variable in organisational legal effectiveness. Similarly interest in the background determinants of small business ownership was explicitly noted in the Bolton Report, which recognised the heterogeneity of the small firm, owner-managed sector:

Of the studies that have explicitly examined the factors affecting legal awareness and knowledge, one of the most prominent and recent is the study of awareness and knowledge of the law in small firms by Blackburn and Hart previously cited in this chapter and elsewhere. The awareness and knowledge levels of small firms in this study have already been dealt with above, but in addition Blackburn and Hart also examined the factors that affected it. Their findings in some respect showed that identifying precise factors of awareness and knowledge was a difficult process. As an example, their survey sought to assess the awareness and knowledge levels of new, relative to older, established legislation on individual employment rights. Their results for this showed no fixed pattern, with awareness and knowledge of some newer pieces of legislation being much higher than some longer-established rights. They found that awareness of the National Minimum Wage (NMW)

was almost universal whereas the right to maternity leave was less well known. The widespread awareness of the NMW was attributed by Blackburn and Hart to the publicity surrounding it, its wide applicability and its relative simplicity. Yet other new employment rights were not at all well known. Blackburn and Hart concluded that smaller firms are less likely to be knowledgeable about employment rights and also that awareness of new legislation takes a longer time to enter the consciousness of the very small employer.

They also concluded that size of enterprise was an important determinant in awareness and knowledge levels. Their results provided an explanation for this in that smaller enterprises were less likely to have dealt with the breadth and depth of individual employment rights simply because they employed fewer people. Additionally, they found that smaller enterprises generally had less resources devoted to personnel matters, and were instead reliant on the owner-manager to address issues on a 'need-to-know' basis. Smaller enterprises were also found to be less likely to have experienced employment disputes or to have been taken to an employment tribunal. The authors found that the latter was shown to raise awareness and knowledge levels significantly. To draw parallels with the findings of the present study, Blackburn and Hart argued that those employers who showed highest levels of awareness of employment rights were those whose enterprises were at risk to the effects of these rights. It was apparent that a size threshold for higher awareness and effects of employment rights occurred at 20 or more workers. The suggestion was that employers with 20 or more employees were more likely to have to engage in a broader range of employment issues and have more resources to remain aware of the latest pieces of legislation.

Interestingly, Blackburn and Hart found only marginal evidence of a more formal management structure in the larger firms. Accordingly, even in those firms employing more than 20 workers the personnel function was still characterised by ad hoc decision making by the employer, and as only a minor part of their role. Whilst the finding was that larger firms were more likely to encounter the breadth and depth of employment rights issues, and that they were more likely to have been involved in an employment dispute or employment tribunal, the raised awareness and knowledge levels were ascribed to necessity rather than any active desire. Blackburn and Hart also emphasised that whilst some employers were ignorant of individual employment rights, did this not necessarily mean they were flouting basic rights for their staff. The example was given of business and professional services, where knowledge levels were low but evidence showed that employers were going beyond the legal minimum. The final point of note in the Blackburn and Hart study is the effect of owner-managers' own notions of natural justice and what they believe workers'

entitlements should be on knowledge levels. The authors conclude that these instinctive notions of the rights of workers influenced the acceptability and understanding of statutory individual employment rights, but that these influences are complex given that they are made up of owner-managers' own employment experiences, together with the structural influences of the particular business sector.

Similarly, Corneliussen's study of the impact of regulation on small firms in the biotech industry concluded that present perceptions of the small firm response to law are rather too simplistic, and the results of her study contrasted with the socio-legal literature's characterisation of small firms as less compliance oriented. Her conclusion that small firms do not have a limited knowledge and comprehension of the law was, in part, founded on her observations of small firms where compliance with risk management procedures and rules were taken as part of normal, everyday life. Corneliussen suggests that within the biotech firms she studied, the regulatory requirements were so well internalized through professional practice that the regulations were automatically complied with. In slight differentiation to the 'work/law closeness' category developed in the present study where awareness, knowledge and duly compliance arose out of necessity, Corneliussen found that the routines, procedures, and precautionary measures prescribed by the regulations were already part of normal, everyday life in the firms. Hence, the firms' risk management systems largely stood alone without legal intervention, and a detailed knowledge of the law was not necessary to achieve compliance. Corneliussen concludes that small firms do not necessarily have low levels of motivation to improve and maintain health and safety standards. It is noted by Corneliussen, however, that it is the nature of the risk which leads to high levels of motivation, and consequently highly motivated, proactive employers may include smaller firms that carry out hazardous processes. It was finally conceded by Corneliussen that the regulatory requirements imposed by the state coincided with the professional practices of the scientists, and so the next step for research would be to ask what happens when state prescribed routines exceed or conflict with those prescribed by the profession.

Yapp and Fairman's (2004) study of the factors affecting food safety compliance within small and medium-sized enterprises is worthy of discussion in this section, as although the subject matter is concerned with compliance and not specifically awareness and knowledge, the two can be seen to be inter-related. Yapp and Fairman found various barriers preventing compliance with food safety legislation, and that it was not uncommon for more than one type of barrier to be acting within each business studied. The first barrier to compliance was lack of knowledge, with 62 per cent of the

proprietors demonstrating a lack of knowledge throughout the compliance decision process. This was supplemented by a general lack of understanding of food safety legislation and food safety principles. Lack of trust was the second barrier to compliance identified in the study, with lack of trust referring to misgivings of the SMEs in both environmental health practitioners and in legislative requirements. Yapp and Fairman found that nearly two-thirds of the SMEs they interviewed disagreed with requirements made by the environmental health practitioner because these were felt to be irrelevant to food hygiene. The study reported a widespread perception that the issues raised by the environmental health practitioners were petty and irrelevant. The inspectorate bodies were seen to act inconsistently, alongside having a 'jobsworth' mentality that obliged them to find something wrong. The third barrier was identified as external factors, where one-fifth of the SMEs in the study identified their inability to find suitable workmen to undertake structural work and maintenance as a reason for non-compliance. Further probing by Yapp and Fairman did reveal, however, that limited resources were spent in locating workmen to undertake any required work, and that the SMEs were lacking in motivation to resolve the non-compliance as they did not perceive it to be important to the food safety of their business. The fourth barrier to compliance was money, with 20 per cent citing this as a consideration in determining their food safety compliance. This indicated a reluctance to invest in structure, equipment and staff training. The fifth barrier was lack of time, with this being seen to take effect in 54 per cent of the SMEs. Yapp and Fairman, however, reported that the SMEs in their study did not see identification and interpretation of regulations as a function of the business with this responsibility belonging to external agencies. Yapp and Fairman argue, therefore, that it is this reactive attitude rather than a lack of time that prevents identification and interpretation of regulation by SMEs.

Lack of awareness was the sixth barrier to compliance identified, with one-third of the SMEs having a lack of awareness of food safety problems within their business. According to Yapp and Fairman, this was attributable to inadequate knowledge of food safety requirements and principles, but also because over-familiarity with a situation led to non-compliance being overlooked. The seventh barrier was lack of motivation, with Yapp and Fairman finding every food SME except one to lack motivation in relation to food safety. Yapp and Fairman found that the level of motivation in dealing with requirements was linked to the level of knowledge and understanding of legislation and food safety principles. It was noted that experienced SMEs were less likely to attend food hygiene courses because they felt that food hygiene was 'common sense'. The final barrier to compliance was a lack of formal management systems. It was discovered that only 16% of the

SMEs had effective management systems in place, such as employing a general manager to deal with food safety issues, or holding regular staff meetings.

2.6 THE EFFECT OF AWARENESS AND KNOWLEDGE

Blackburn and Hart found that as knowledge of individual employment rights increased, so did employer criticism of the regulations. The study also concluded that employer's motivations to raise knowledge levels would influence their views on the effects of IERs. Of note in the Blackburn and Hart study was the significant variation on the perceived effects of IERs according to business sector and size of enterprise. The study reported a difference in the effects between those small firms employing over 20 people and those of less than 20, suggesting a general threshold effect at which IERs became a more important issue for employers to have to understand and address. Other effects that IERs were found to have on the enterprises included an increased administrative workload and the amount of legal advice they had to seek. Some employers also stated that IERs had resulted in a negative employment effect. Where employers were able to cite positive effects of IERs for their business in the Blackburn and Hart study, these centred on the provision of guidelines and clarification in the employer/employment relationship.

Edwards et al. (2004) sought to investigate why employment legislation appeared not to damage small firms. The rationale and argument for the study being that the proposition that regulatory burdens bear especially heavily on small firms was too easily stated, and that there were few research studies that found concrete effects. Although the study was not an explicit investigation of how awareness and knowledge of regulation affects the business, the study was an attempt to identify the effects of the law on practice. Three factors shaping the effects of the law were identified; these were the nature of different laws, the mediating effect of competitive conditions, and the context of relationships inside small firms. In their analysis of the effects of IERs, Edwards et al. (2004) found that older laws had been absorbed into practice more fully than newer ones. Furthermore, universal requirements, as under the NMW, were more likely to have effects than were laws that were activated only in specific circumstances, such as maternity leave.

In discussing the effects of IERs, a recent assessment found that:

“The impact of the legislation on employers has not been to weaken their control over hiring and firing (indeed it has served to legitimate it) but, rather, has tended to foster improvements in managerial efficiency in the handling of job terminations, and the

development of 'good employment practice' or more professional personnel policies." (Dickens and Hall, (2003) pp.136-7)

Employers, therefore, were required to be more considered in how they behaved by this reasoning, however, Edwards et al. (2004) found that such affinities between law and practice were much less likely in small firms. Instead Edwards et al. found that the effects of law on the behaviour of the firm could be direct, indirect or of an affinity form. The effect on the operation of the firm could also be via the extra administrative costs of dealing with legislation, via the labour costs of dealing with administration or via the decision-making that may be affected if firms were restricted in their freedom. The latter, though, could also lead to positive effects if firms were led to improve their business procedures. The study found that complaints about regulation often turned on the possible effects rather than what happened in practice. Thus it was argued that whilst the claimed effects of employment laws were often exaggerated, it was also true that the managers saw the world partly in terms of general trends and what might happen to their own businesses. In terms of direct and indirect effects of the law, Edwards et al. (2004) found that long-established laws, such as maternity leave, had become largely routine and taken for granted.

2.7 CONCLUSIONS – AN EMERGING THEORY OF BUSINESS SUPPORT

This chapter has attempted to review the literature relevant to the focus of the present study. It began by discussing the types of legal form available to small firms and the adequacy of these types based on the nature of small firms. It then progressed to examine previous studies of small firm awareness and knowledge, the determinants of awareness and knowledge, and the effects of awareness and knowledge. It is argued here that the coverage in this chapter reflects the paucity of literature in the area.

The chapter also examined studies investigating the sources of legal advice and information to small firms. This proved useful in identifying an emerging theory of business support that seeks to explain why firms take up advice and information. This emerging theory is used as the analytical framework in the present study and is dealt with more fully in the following chapter in section 3.4, along with general methodological considerations and how the design of the present study was influenced by the literature.

CHAPTER 3: METHODOLOGY

3.1 INTRODUCTION

The main approach to date in studies of SMEs has been survey-based using quantitative analysis. Because of this, understanding of owner-managers' awareness and knowledge of their legal environment, and the determinants of these is limited. Typically, small-business owners are portrayed as reacting on a day-to-day basis to the demands of their product or service market, with limited knowledge of the legal environment. However, laws apply to many different operational aspects of enterprise and it follows that there is much value to be gained from furthering knowledge of small firm understanding of the legal environment, and in doing so seeking to advance appreciation of how the small firm manages and responds to its legal environment.

This chapter, therefore, explains and justifies the methodological decisions taken in the present work. Choice of method in this case is philosophically based and intrinsically dependant on the questions posed. Easton (1995) has stated the importance of the researcher being aware of the ontological and epistemological standpoint they are adopting and so the first half of this chapter presents an exploration of the philosophical assumptions that guide and shape methodological choices. The focus of the chapter then shifts to creating outlines of the participants that took part in the study, with the background characteristics and organisational details clearly marked out as appropriate. The choice of participants was determined after careful contemplation of key objectives with size the predominant factor, and sector and legal type forming the other key considerations. Details relating to the research process and the way in which the data was analysed are also provided.

3.2 GENERAL METHODOLOGICAL CONSIDERATIONS

Methodological considerations for studies of this kind need to address two important issues. The first relates to appropriateness, in the context of the data to be gathered. The second is that of the potential of the method for generating new evidence to build on the body of existing knowledge. Related to these two important issues is the debate between hard and soft approaches, i.e. the quantitative, 'positivist school' research on the one hand and that of the qualitative 'interpretative, phenomenological, ethno-methodological and constructivist' on the other. This debate has been well documented already (Van Maanen 1983). Typically the former is typified by systematic observation and scientific experimentation to discover facts and develop predictable laws (Cohen

and Manion 1985, Rose et al 1995, Polit and Hungler 1997), whilst the latter looks to describe and analyse human behaviour from the point of view of those being studied (Bryman, 1988).

3.2.1 Research paradigms

The selection of an appropriate methodology, therefore, requires an understanding of the philosophical assumptions that guide and shape such methodological choices. Indeed Guba and Lincoln (1994) state that:

“Paradigm issues are crucial; no inquirer, we maintain, ought to go about the business of inquiry without being clear about just what paradigm informs and guides his or her approach” (p.116).

Additionally, there are those who argue that qualitative and quantitative research methods are best seen as deriving from fundamentally different paradigms (Smith, 1985). The term ‘paradigm’ was largely popularised in the social sciences by Kuhn. Although it was acknowledged that the term could be understood in a variety of different ways, Kuhn (1970) proposed a general definition that referred to:

“The entire constellation of beliefs, values, techniques, and so on shared by the members of a given community” (p.175).

In turn, Guba and Lincoln defined a paradigm as:

“The basic belief system or world view that guides the investigator, not only in choices of method but in ontologically and epistemologically fundamental ways” (105).

Chalmers (1999) characterised a paradigm as a framework of beliefs and as a standard which defines legitimate work within the science to which it applies, and has suggested several characteristics of a paradigm largely related to the science domain, although they can be seen to apply to the concept of a paradigm in general. They include defining a paradigm as being composed of explicitly stated laws and theoretical assumptions, and as standard ways of applying the fundamental laws to a variety of types of situations. Morgan and Smircich (1980) also contend that:

“The choice and adequacy of a method embodies a variety of assumptions regarding the nature of knowledge and the methods through which that knowledge can be obtained, as

well as a set of root assumptions about the nature of the phenomena to be investigated” (p.491).

The focus here can be seen to centre upon the philosophical assumptions that underpin research enquiries. In particular, issues to the fore concern the nature of social reality, how it should be studied and the question of what is to count as warrantable knowledge. The question then follows as to whether there are different ways of gathering ‘acceptable knowledge’ or is there one ‘right way’ to go about this process? Within social science, there are contrasting paradigms made up of opposing views about the nature of social reality and about what is acceptable knowledge concerning that reality. This has led to the distinction between quantitative and qualitative research, objective and subjective views, and nomothetic and ideographic approaches. Bryman (1989) proposes that the fundamental issue behind this confrontation is to do with the nature of one’s subject matter. Consequently, the quantitative and qualitative research divide he recognises is founded upon disagreement over the applicability of a natural science model to the study of society. Bryman (1989) states:

“Whereas quantitative research is viewed as suffused with a commitment to the natural sciences, qualitative research is depicted as embracing a different epistemological position that entails a rejection of the scientific method by virtue of an espousal of the notion that people are fundamentally different from the objects which constitute the natural scientist’s subject-matter” (pp. 248-249).

Four sets of assumptions related to ontology, epistemology, human nature and methodology have been used by Burrell and Morgan (1979) in developing their four-paradigm model of social theory. They contend that all social theorists can be located within the context of this framework and that the four paradigms are mutually exclusive in that they are based on alternative views of social reality. Burrell and Morgan’s influential version of the four competing paradigms in the social sciences is made up of functionalist; interpretive; critical theory and post-modern. Two of these paradigms, functionalist and interpretive, correspond most closely to the objective and subjective, or hard and soft, views of social science research mentioned above. The functionalist paradigm developed from nineteenth century sociological positivism, in which biological and mechanical analogies were adapted to the study of human and organisational behaviour. Functionalists assume that existing systems and structures are legitimate and desirable because they have endured. They seek to understand how these systems and structures operate through methods derived from the natural sciences. The functionalist focus is on how structures define or cause human behaviour and

not on how people may create meaning. With reference to the functionalist paradigm, Burrell and Morgan (1979) state that:

“It is preoccupied with the construction of scientific tests and the use of quantitative techniques for the analysis of data. Surveys, questionnaires, personality tests and standardised research instruments of all kinds are prominent among the tools which comprise nomothetic methodology” (pp.6-7).

The interpretive paradigm is grounded in nineteenth century German idealism and ‘*verstehen*’. Interpretivists assume that meaning is socially constructed through people. Hence, the focus is not on uncovering reality, but on generating understandings based on the subjective interpretations of people. The interpretive paradigm is about how people experience and interpret their realities. Burrell and Morgan also stress that since each of these two approaches constitutes a paradigm, they are not compatible or reconcilable. Instead, the recognition that they are paradigms signifies that they reflect “mutually exclusive ways of viewing the world” (Burrell and Morgan, 1979, p.398).

The development of the social sciences has, therefore, been marked by debate about the nature of the social world and the methodologies which are appropriate for its study. This debate, in recent years, has centred upon the relative merits of qualitative and quantitative methods and the appropriate relationship between them. However, this discussion has been faced with the problem that there is a singular lack of consensus about the fundamental tenets of either tradition. Amongst advocates of qualitative methods, there are profound differences of opinion about the nature of scientific enterprise, the extent to which social research can or should aspire to be scientific, the ways in which the social world can be studied and the criteria which should be applied to the products of such study. If, as Smith (1975) has suggested, “The goal of science is to be able to generalise findings to diverse populations and times” (p.88), a great deal hinges upon the methods and approaches adopted by the researcher or scientist. Not surprisingly approaches and methods vary, much more so in social science and behavioural research. Distinctions mentioned above such as pure and applied, hard and soft, objective and subjective, and quantitative versus qualitative are particularly noteworthy. Another is that of ideographic versus nomothetic. Underpinning all of these are questions about their worth in scientific value. Specifically, are some more scientific than others?

3.2.2 Differing methods in social science research

The distinction has long been made between the purpose and value of ideographic and nomothetic study. The anthropologist Naroll (1968) wrote that an ideographic study is meant one whose purpose is to describe a particular sequence of events (Blalock and Blalock, 1968, p.237). In contrast, the purpose of a nomothetic study according to Naroll is to discern a repetitive pattern which reflects a general characteristic of society or culture. Naroll (1968) reinforces these distinctions by arguing that ideographic generalisations hold good about only the specific cultures compared. But nomothetic generalisations explicitly or implicitly treat the cultures studied as samples from a larger universe and hold good for the entire universe studied (Blalock and Blalock, 1968, p.236). It is possible to infer from Naroll's reflections that the focus of nomothetic inquiry is to develop a collection of true statements that are time-free and context-free. This would seem to contrast with the focus of ideographic inquiry, which is to develop working hypotheses that are more or less time and context bound.

Allport (1937) was another to popularise the terms ideographic and nomothetic. He first introduced the terms to represent two perspectives and methodologies for doing research in psychology. He borrowed the terms from the neo-Kantian philosopher Windelband and defined them as follows:

“The nomothetic approach . . . seeks only general laws and employs only those procedures admitted by the exact sciences. The ideographic sciences . . . endeavour to understand some particular event in nature or in society” (p.22).

Similarly, Burns (2000) has distinguished between the scientific empirical tradition, and the naturalistic phenomenological approach in social science research. The scientific approach to research emphasises systematic protocols and techniques incorporating hypothesis testing and quantitative techniques for the analysis of data. These research methods are employed in an attempt to establish general laws or principles. Burns (2000) states that such a scientific approach is often termed nomothetic and assumes social reality is objective and external to the individual. The naturalistic approach to research is based on a belief that one can only understand the social world by obtaining first-hand knowledge of the subject being investigated. This method emphasises the analysis of subjective accounts of situations. Such a focus on the individual case rather than general law-making is termed an ideographic approach. As Burns (2000) remarks:

“Each of these two perspectives on the study of human behaviour has profound implications for the way in which research is conducted” (p.3).

It would appear then that there are several distinctions which are commonly made in social science research. Research methods have variously been classified as objective versus subjective, as being concerned with the discovery of general laws (nomothetic) rather than with the uniqueness of each particular situation (idiographic), as aimed at prediction and control rather than at explanation and understanding, as taking an outsider (etic) rather than an insider (emic) perspective, and as quantitative rather than qualitative. These differences have prompted debate over whether the scientific approach is better than the naturalistic approach or vice versa.

3.2.3 The extent to which research methods are scientific

In an attempt to analyse the 'scientificness' of different research methods, Bengtsson et al (1997) reported on the disparity between European and North American research. They suggested that European research frequently represents the ideographic paradigm in that it is based on a process oriented case study approach that emphasises qualitative, multi-aspect and in-depth studies, often covering a longer period of time. According to their findings, the aim of ideographic researchers is to provide rich descriptions and to make theoretical generalisations. This is in contrast with the nomothetic approach that emphasises quantitative analysis of a few aspects across large samples in order to test hypotheses and make statistical generalisations. It was proposed that while European studies run the risk of being regarded as weird and 'unscientific' by North Americans, many Europeans feel that North American research leans too much towards rigorous but uninteresting statistical exercises (Bengtsson et al., 1997, p.473).

Luthans and Davis (1982) have also noted a singular preoccupation with the nomothetic approach in organisational behaviour research. The distinction between the subjectivist and the objectivist approaches to science, and what Evered and Louis (1981) label 'inquiry from the inside' and 'inquiry from the outside' is also evident. Luthans and Davis (1982) state that:

“There is a notable absence of what could be labelled as ideographic research reported in the organisational behaviour literature. In the field's rush for scientific respectability, the traditional case study design generally has been degraded and excluded for not being scientific enough” (p.380).

Furthermore, Evered and Louis (1981) have observed that:

“The ideographic/nomothetic dichotomy has been dysfunctional for the development of the social sciences; because it carries the presumption that only nomothetic research can yield general laws” (p.391).

Luthans and Davis (1982) reject this dichotomy. Instead, they argue that both nomothesis and ideography have a place and can contribute to our knowledge of organisational behaviour, and presumably behaviour in the social sciences. In support of this stance, it is reported that when Allport (1937) made the original distinction he tried to point out that the two approaches were ‘overlapping and contributing to one another’ and that ‘a complete study of the individual will embrace both approaches’ (p.22).

However, it is suggested that quantitative methodologies have dominated research in social science research in an attempt to try and follow the widely accepted criteria for internal and external validity (Luthans and Davis, 1982). Hence, sophisticated inferential statistics are used to analyse the data, test hypotheses, and draw conclusions. This dominant form of research is almost a pure nomothetic approach. In this highly popular approach, individual behaviour is averaged, environmental conditions are controlled and standardised as much as possible, and the person-environment interaction generally is ignored. In addition, it is proposed that the ‘true nomothetic’ stance would employ a method of selective examination of many subjects under the theoretic assumption that individuals are more similar than different (Marceil, 1977). This ‘sameness’ theoretic or ‘average is beautiful’ assumption of nomothesis can be traced back to the Belgian astronomer Adolphe Quetelet (Luthans and Davis, 1982). He asserted that human traits followed a normal curve, and that nature strove to produce the ‘average’ person but failed for various reasons, resulting in errors or variations that grouped around the average. As Hersen and Barlow (1976) note:

“If nature were ‘striving’ to produce the average man, but failed due to various accidents, then the average, in this view, was obviously the ideal. Where nature failed, however, man could pick up the pieces, account for the errors, and estimate the average man through statistical techniques” (p.5).

Luthans and Davis (1982) give justification to the popular appeal of the averaging approach because it assumes that variability or error can be accounted for or averaged out in a group. However, the drawback in this logic is the proposition that there is no such thing as an average individual.

As an alternative to the ‘sameness’ assumption, the personality theorist Mischel has moved away from concentrating on abstract general variables in situation-free environments to examining person-situation interactions in naturalistic settings. Mischel (1973) states that the emphasis should shift from attempting to compare and generalise about what different individuals are like to an

assessment of what they do behaviourally and cognitively. This should be coupled with a change from describing situation-free people with broad trait objectives to analysing the specific interactions between conditions and the cognitions and behaviours of interest. As Luthans and Davis (1982) emphasise, with the first point Mischel is questioning the sameness theoretic assumption taken by the nomothetic approach, and with the second point he questions the standardised, situation-free assumption made when using nomothetic designs and methods. Consequently, this movement questions the validity of the nomothetic approach on the basis that people do not operate in a highly controlled, standardised environment. On the contrary, people and situations vary and the behaviour of a particular person in a particular situation is dependent on both of these factors.

Bengtsson et al. (1997) acknowledge that nomothetic studies have the advantage of providing rigorous and statistically generalisable cross-sectional analysis of patterns across large samples. However, they also tend to limit the number of studied aspects to a few at one point in time. In contrast, ideographic studies have the advantage of providing practically relevant, in-depth analysis of complex organisational processes both in time and in its context. Furthermore, the ideographic perspective can especially contribute by providing new and unexpected insights and by building new theories and concepts (Daft, 1995). These kinds of contributions are often based on an in-depth understanding generated by time consuming studies of complex processes over a longer period of time. It is further argued that a dominance of nomothetic snap shot studies may lead to a lack of novelty and fresh ideas and to overemphasising the testing of already established theories and perspectives (Deetz, 1995).

3.2.4 The generalisability of different research methods

The question of generalisability of research is pertinent as it raises concerns as to whether findings are 'scientific' or not and also to the applicability of the results. The experimental tradition emphasises replicability of results, as is apparent in Krathwohl's (1985) statement:

“The heart of external validity is replicability. Would the results be reproducible in those target instances to which one intends to generalise – the population, situation, time, treatment form or format, measures, study designs and procedures?” (p.123).

This quantitative perspective is in contrast to the qualitative or subjective view, where the research is very much influenced by the researcher's individual attributes and perspectives. Within qualitative research, very often the aim is not to produce a standardised set of results that any other

researcher in the same situation or studying the same issues would have produced. However, Campbell and Stanley have been reported as stating that the ‘one-shot case study’, which is one way of describing qualitative research, has ‘such a total absence of control as to be of almost no scientific value’ (Schofield, 1993, p.204). This assertion has led qualitative researchers to recognise the importance of dealing with the issue of generalisability.

The classical view of external validity, i.e. the idea of sampling from a larger population of sites in order to generalise to the larger population, is unfeasible in most situations of qualitative research. Consequently, work on generalisability by qualitative researchers has dealt with developing a concept of generalisability that is useful and appropriate for qualitative work (Schofield, 1993). Schofield discusses the idea of replacing the concept of generalisability with that of ‘fittingness’. It is suggested that for qualitative researchers’ generalisability is best thought of as a matter of the ‘fit’ between the situation studied and others to which one might be interested in applying the concepts and conclusions of that study. Stake (1978) also starts out by agreeing with many critics of qualitative methods that one cannot confidently generalise from a single case to a target population of which that case is a member, since single members often poorly represent whole populations. However, he then goes on to argue that it is possible to use a process he calls ‘naturalistic generalisation’ to take the findings from one study and apply them to understanding another similar situation. He argues that through experience, individuals come to be able to use both explicit comparisons between situations and tacit knowledge of those same situations to form useful naturalistic generalisation.

3.2.5 The ‘dualism’ between nomothesis and ideography

Butler (1997) has since reported on the ‘dualism’ between ideographic case study and nomothetic comparative research methods. He describes the ideographic approach as ‘emphasising investigation of the particular’, and the nomothetic comparative method as taking ‘the development of generalised laws as its core logic of action’ (Butler, 1997, p.927). He distinguishes between ‘stories’ and ‘scientific experiments’ and argues that the effectiveness of either method in demonstrating the truth is related to processes and experiences. Butler (1997) suggests that the essential difference between experiments and stories is that:

“There is an accepted codified path of activities with defined and accepted procedures, with the scientific experiment providing a relatively homogenous set of codes, in contrast to case studies which rely upon heterogeneous codes as to what constitutes a good story” (p.928).

If, as Butler argues, social inquiry is seen to incorporate story-telling and experimentation, it would seem to follow that both nomothetic and ideographic methods are valid approaches. Social inquiry could therefore be seen as being comprised of two building-blocks. The first has its foundations in the arts tradition focusing on literary discourse and historical analysis. The second originates in the natural sciences with the emphasis upon observation, experimentation and systematic theory-building (Butler, 1997).

This 'dualism' concept has also been acknowledged by Williams (2000). Williams draws upon the work of Weber in suggesting that nomothetic and ideographic approaches should not be seen as a scientific versus non-scientific issue. Alternatively, they are both forms of scientific enquiry. The nomothetic is associated with 'abstract generalisable law like statements', whereas the ideographic looks at the 'science of a concrete reality, of specific instances' (Williams, 2000, p.221). If it is accepted that social science has both a nomothetic and ideographic aspect, then it follows that each approach has scientific validity. Consequently, the decision over which approach to use is likely to rest on the aims of the researcher and subject-matter to be studied, although one might infer that the more complete study would be likely to encapsulate both approaches. Accordingly, the ideographic versus nomothetic issue ought therefore to be problem-oriented and not a question of whether one is more 'scientific' than the other.

Indeed, Allport (1937) defined science in very broad terms: "It prescribes no method; it sets no limits; it signifies simply knowledge" (p.23). Allport (1962) has proceeded to put the case for ideographic methods in stating:

"Why should we not start with individual behaviour as a source of hunches and then seek our generalisation but finally come back to the individual not for the mechanical application of laws but for a fuller and more accurate assessment than we are now able to give? I suggest that the reason our present assessments are now so often feeble and sometimes even ridiculous is because we do not take this final step. We stop with our wobbly laws of generalising and seldom confront them with the concrete person" (p.407).

It should also be recognised that in the origins of the terms 'ideographic' and 'nomothetic', the scientific tag was not exclusively taken by the nomothetic approach. Windelband was concerned with the distinction between approaches that emphasise natural events (*naturwissenschaftliche*) and those that focus on the development of ideas within the study of history (*geisteswissenschaftliche*). Knowledge related to the natural sciences or 'die naturwissenschaften' is nomothetic. Knowledge related to the mind or 'die geisteswissenschaften' is ideographic. As Lamiell (1998) recognises,

there can be scientific thought or acquired knowledge about ‘what always is’, and there can also be scientific thought and hence acquired knowledge of ‘what once was’ (p.27).

It would appear then that there are a number of well established arguments on both sides. Equally though, there is a growing body of support which highlights the value of both approaches as a case for strengthening the plurality argument. It may be more meaningful to highlight the value of both approaches in contributing to scientific knowledge. Some approaches and methods may be more suited to certain kinds of situations or phenomena. In the behavioural and social sciences for instance, as Weick has observed, human behaviour is essentially “messy” and attempts to standardise, control and then measure may impose other variables and factors that introduce other sets of outcomes which are far more complex than the phenomenon at hand (Lindzey and Aronson, 1968). Ideographic and nomothetic methods therefore have much potential at contributing to scientific evidence with the contention in the present study that each is as scientific as the other.

3.2.6 The relationship between qualitative and quantitative methods

The discussion above has acknowledged that on the one hand, there are those who argue that qualitative and quantitative research are based on two opposing and incommensurable paradigms. On the other hand, there are those who argue that while both qualitative and quantitative research face significant problems in studying the social world, the choice between qualitative and quantitative methods for investigating this world should be made on instrumental rather than philosophical grounds. The discussion then went on to suggest the argument that the logic underlying qualitative and quantitative research is fundamentally different, with qualitative research adopting an inductive logic in comparison with the deductive procedures of quantitative research is not unavoidably accurate and also unnecessary. It is therefore suggested that there are no concrete grounds for accepting that qualitative and quantitative research are either necessarily or indeed actually characterised by dichotomous philosophical assumptions. It is thus more profitable to recognise the complementarity of the two methods, and for the researcher to establish which approach is likely to answer the question at hand in the most effective and efficient manner.

Indeed Hammersley and Atkinson (1995) have argued that before the 1940s, qualitative and quantitative methods were used side by side, and that it was only with the rise of logical positivism that qualitative research began to be conceptualized as an alternative paradigm. Hence, the argument to eschew any attempt at a hierarchy of methods has been put forcefully:

“It is with [the] assertion that a given method of collecting data – any method – has an inherent superiority over others by virtue of its special qualities and divorced from the nature of the problem studied, that I take sharp issue. The alternative view . . . is that different kinds of information about man and society are gathered most fully and economically in different ways, and the problem under investigation properly dictates the methods of investigation” (Trow, 1969, 322).

Similarly, Silverman suggested:

“There are no principled grounds to be either qualitative or quantitative in approach. It all depends on what you are trying to do” (1997, p.14).

Qualitative and quantitative research are consequently seen as much more heterogeneous than the dichotomizing approach allows, so that qualitative research adopts the assumptions and practices that are attributed to quantitative research and vice versa. Atkinson (1979) argues that where there are differences in the practices of qualitative and quantitative researchers, these are better seen as representing different emphases.

3.2.7 Philosophical considerations in the present study

It is important for researchers, however, to be clear about the philosophical assumptions that they are making, whether the work is qualitative, quantitative or a mixed-mode approach. Hammersley (1992) has argued that:

“There is no escape from philosophical assumptions for researchers. Whether we like it or not, and whether we are aware of them or not, we cannot avoid such assumptions” (p.43).

Philosophy plays an integral part in all social situations, and it is imperative that a set of values and beliefs is carried across to the research process. It has been argued elsewhere, although disputed here, that there is a fundamental ontological separation between qualitative and quantitative research, such that the former is inextricably grounded in scientific idealist assumptions, while the latter research is based upon scientific realism. Williams and May (1996) defined realism as the belief that “the world has an existence independent of our perception of it” (p.81).

In particular, realists hold that the entities described by theories, whether in the natural or the social sciences, really do exist (Bhaskar, 1975; 1979). The claims made by theories are either true or false, and the object of science is to establish the truth about how the world operates. In contrast, scientific idealism can be summarized as the view that the external world consists merely of

representations and is a creation of the mind (Williams and May, 1996). Rather than assuming that there is one reality, which the investigator must seek to track down, idealists hold that there are multiple realities.

The position adopted in the present study is one of subtle realism as developed by Hammersley (1992). In this position, the investigator concedes that it is impossible to have certainty about any knowledge claims, and that there is no way in which the researcher can escape the social world in order to study it (Hammersley and Atkinson 1995). Instead, the objective is the search for knowledge about which one can be reasonably confident. Subtle realism maintains that phenomena exist independently of the investigator's claims about them and that the investigator's claims may be more or less accurate. Hammersley (1992) states that as phenomena exist independently of the investigator, any claim which the investigator makes about reality does not, in itself, change the nature of those phenomena in such a way as to make the claim either true or false. Importantly, subtle realists see the aim of social research representing reality, rather than reproducing it. Hence for the subtle realist, any given reality can be represented from a range of different perspectives. This approach accepts that representations of reality are always representations from a particular point of view and that it is futile to search for a 'body of data uncontaminated by the researcher' (Hammersley and Atkinson 1995, p.16). It consequently allows for the possibility of multiple, non-competing, valid descriptions and explanations of the same phenomenon.

Subtle realism, in this way, offers a middle position between realism and idealism incorporating elements of both:

“This subtle realism retains from naïve realism the idea that research investigates independent, knowable phenomena. But it breaks with it in denying that we have direct access to those phenomena, in accepting that we must always rely on cultural assumptions, and in denying that our aim is to reproduce social phenomena in some way that is uniquely appropriate to them. Obversely, subtle realism shares with scepticism and relativism a recognition that all knowledge is based on assumptions and purposes and is a human construction, but it rejects these positions' abandonment of the regulative ideal of independent and knowable phenomena. Perhaps most important of all, subtle realism is distinct from both naïve realism and relativism in its rejection of the notion that knowledge must be defined as beliefs whose validity is known with certainty (Hammersley 1992: 52).

It is argued here, subsequently, that it is more profitable to recognize the complementary benefits of qualitative and quantitative methods and that this subtle form of realism is equally appropriate for qualitative and quantitative research. This allows for the acknowledgement of the particular

strengths of the qualitative method including its capacity for studying socially meaningful behaviour, holistically, and in context. Qualitative methods, in particular, are suited to answering 'how does this come to happen?' questions rather than 'how many?', 'how much?' or 'how often' questions. Of particular relevance to the present study, qualitative research is particularly useful in providing a rigorous descriptive base upon which subsequent explanatory research can be based. It is in addition useful in the exploratory stages of a research subject where they can help to clarify the research question, aid conceptualization and generate hypotheses for later research.

3.3 RESEARCH STRATEGY

Arranging research approaches hierarchically is a common trap missing the vital point that research approaches do not need to be viewed as either better or worse than one another. Each will be best at doing different things, according to the nature of the research topic, the wealth of literature surrounding it and the researcher's individual philosophical perspective. Ultimately, it is the topic of research that will determine whether you are able to define a theoretical framework or whether in the absence of knowledge you want to generate theory.

3.3.1 Initial research design considerations

It is acknowledged that there are an infinite number of possible permutations that together can constitute the make up of a research design. As the preceding parts of this chapter have indicated, however, the character of a project can help narrow the choices. The explorative nature of the topic focused on within the present research initially led to the conclusion that a case study approach based on a small number of firms would be the optimal strategy. A primary reason for this conclusion was that case studies can be very effective when investigating complex processes (Yin, 1994). Additionally, a case study design would allow for the incorporation of not only the input of small firm owner-managers, but also those of employees, customers and other key stakeholders.

A case study research design was, therefore, the initial strategy proposed for the present research. The rationale behind this decision was the idea that such an approach would allow for a more holistic account of small firm awareness and knowledge of the legal environment, where the experiences of several key parties could be included in the analysis. Furthermore, the proposed period of data collection within this strategy was for a time-scale of several months, whereby observation of firms acquiring legal awareness and knowledge, and firms engaging with their legal environment could be conducted. Because of the expense and the problems of producing large amounts of data linked to such in-depth case studies, an initial sample size of five was posited.

Within this sample of five small firms, it was proposed that there would be a minimum of three visits over a timeframe of several months, to include interviews with owner-managers, employees and stakeholders directly linked to the small firm participant.

As the study entered the fieldwork stage, however, it became apparent that the initial case study strategy might not be feasible, particularly given the strict time-limits given to doctoral research. More specifically, as the process of compiling a sampling frame and negotiating access began, it became clear that obtaining such a high level of contact over a prolonged period of time would be extremely difficult. Initial approaches to firms asking them to take part in the study were met with responses that consistently cited the time-constraints and pressures on small firm owner-managers, which meant they were relatively unsympathetic to requests for more of their time. Other business owners expressed scepticism about the relevance of academic research as a reason for their unwillingness to take part in any study. Consequently, it became clear that the extreme difficulty in securing access to small firms meant that an alternative strategy would have to be implemented in order for the study to be viable.

3.3.2 Actual research design choices

The eventual strategy taken in this study involved the use of semi-structured interviews, which were non-standardised. Consequently, a list of themes and questions to be covered was used for each interview. As is typical of the use of semi-structured interviews, some questions were either included or omitted depending on the organisational context of each participant – a copy of the interview schedule used for the present study can be found in appendix 3, page 195.

In the context of the research aim and objectives, as well as practical considerations concerning the problem of gaining access to small businesses, it was reasoned that the situation here most favoured the use of semi-structured interviews. Arguably given the purpose of the research and the exploratory and explanatory elements of small firm awareness and knowledge of the law, and the determinants of it, it was decided that this could be ideally explored and understood using this approach. Interviews are frequently used to access interpretations and to discover what people think about the world they live in, how they evaluate their experiences within it and why they behave as they do. Particularly important in the choice of research strategy was the literature review, which revealed few pieces of work in the field. Of the few studies that did exist and that had explicitly looked at the determinants of awareness and knowledge, the point was made that qualitative research was required to substantiate these links.

3.4 RESEARCH DESIGN

3.4.1 Main findings from the literature

The existing evidence from the small business literature also heavily influenced the design of the research. The prevailing wisdom derived from the few academic studies in the field, and from a number of publications produced by small business representative/interest groups and government-related bodies, was that small businesses have a low awareness of regulation, especially of employment regulation. Yet detailed evidence of small firms' awareness and knowledge of their legal environment was, and is, still lacking. The present study, therefore, aimed to provide a detailed description of small firm awareness and knowledge of the legal environment, and not just of a specific area of regulation. The make-up of the legal environment was defined by the classification of law in the English legal system, the areas of law which suppliers of legal advice and information most commonly provided for, and the areas of law identified by small businesses themselves as having the greatest impact on the firm. It was also developed to include areas of law that had some generic applicability to the running of a small business. Overall, this incorporated several areas, the most prominent including:

- Taxation and financial reporting
- Employment
- Health and safety
- Trading standards and consumer rights
- Intellectual property
- Data protection
- Environmental protection.

A search of the literature also revealed that of the studies that had examined small firm understanding of regulation, few made reference as to what was meant by the terms 'awareness' and 'knowledge' and as to what distinguished the two. Accordingly, in utilising the operational definitions of awareness and knowledge as first coined by Meager et al. (2002), the results could be analysed simply yet effectively in keeping with levels of understanding. The two were thus defined as:

Awareness occurs when an individual is sufficiently informed about a subject for him/her to be conscious of its existence and its broad subject matter.

Knowledge requires a theoretical or practical understanding of a subject.

The awareness and knowledge typology and the distinct legal framework ensured that the results in relation to the awareness and knowledge objective could be classified according to level of understanding and type of regulation. A broad classification of the legal framework and the most notable areas of law to come under each distinction are detailed in section 1.6.2.5.

3.4.2 Theoretical framework for the present study

Given the lack of theory relating to small firms and awareness and knowledge of their legal environment, it was necessary to search for a suitable theoretical framework with which to analyse the results of the present study. Specifically, there is an emerging ‘business-support theory’ from the small business literature that explains why small firms take-up advice and support. This emerging concept thus provides a theoretical framework for analysing legal awareness and knowledge on the foundation that legal expertise can be seen as part of the process of obtaining business support. The business-support theory, as distilled from the literature, suggests that the take-up of advice and support, and thereby awareness and knowledge, might be influenced by several key factors.

Blackburn and Hart (2003) found that there were important size and sector variations in respect of the use of sources of advice and information. Their study showed that as firms became larger it appeared that they were more likely to engage with more formal providers and those from membership groups. Bennett and Robson (2000) similarly found that size of firm, rate of growth and innovation appeared to be the main variables influencing the likelihood of firms seeking external advice, both from different sources and from different fields. In a previous study, Bennett and Robson (1999) concluded that firm size is often an important factor influencing the extent to which external advice is sought, with significant differences occurring between the smallest classes. Similarly, they stated that the type of advice field in which advice is sought, and the age, ownership, employment growth, production structure and level of exporting of the business are each also important factors likely to lead to differences in levels of external advice sought. Storey (1994) has in turn highlighted that although SMEs have a greater need for external assistance, they also have a greater reluctance to do so, particularly among owner-managed businesses. Clark (1995) has also suggested that personal relationships and exchanges are factors that influence the take-up of business support, and emphasised the high human asset specific-ness of the business service supply process. Given that this process depends chiefly on knowledge-based technical skills that are

exchanged with the client, Clark identified the contractual structures that bind the buyer and seller, and the regulation, self-regulation and reputation/brand of the information supplier as important factors in how an advisor is chosen.

According to Bennett and Robson (1999), assessment of the variation in sources of advice by firm type showed that differences were significant for almost all categories except sector. Differences in size of firm was found to be the most important variable, with a tendency for there to be significantly higher external sourcing with increasing size of firm for the use of solicitors, customers, suppliers, consultants, sector associations, and enterprise agencies. Whilst the use of a business friend or relative was higher for smaller firms, customers, suppliers, sector associations and Business Link were about 50% more likely to be used as an external source by larger firms. Bennett and Robson (1999) also found that growth firms, which were measured in terms of employment numbers, generally had the highest use of most external sources, with the opposite being true for declining firms. However, business chambers and Business Link were recorded as having the highest level of use among the slower growth firms.

This informed the design of the present study in terms of the questions asked with focus given to external and internal sources of advice and information, private and public-sector sources, the mode and delivery of information, the level and intensity of interaction between buyer and seller and the influence of size and sector on support take-up.

In relation to the effects of awareness and knowledge of the law, the literature had already identified a need for researchers to develop work that could inform on how regulation generates changes in owner-manager behaviour and wider effects, good or bad (Small Business Research Centre (SBRC), Kingston University 2005). In focusing directly and only on the effects of awareness and knowledge, as opposed to the effects of the legal environment, it was reasoned that it would be possible to isolate the impact of regulation from the many other factors shaping business performance such as competitive pressures arising from product and labour markets and a general perception of the effects of regulation. More specifically, this could be seen to be going beyond simply asking small firm owner-managers whether regulation is a constraint or a 'burden' on their business, and instead to focus on the direct effects. The literature had stressed the need to examine the interaction between regulation and other factors in specific business settings in determining particular outcomes (Blackburn and Hart 2004). Accordingly, the decision to focus on awareness and knowledge, and the effects of awareness and knowledge was a response to this, as well as an

initiative to further our understanding of how small firms manage their legal environment and its impact.

3.5 RESEARCH PARTICIPANTS

The aim of the present study was to include small firms from sectors that were diverse in nature. The method was to interview the owner-manager on one occasion, during which the nature of the business was established and awareness and knowledge of the legal environment identified. Table 3.1 provides information on the small firm participants according to legal form, size and activity (Further information on the study participants is located in appendix 2, page 192).

Table 3.1 Small firm participants

Case	Business status	No. of employees	Business activity
P1	Ltd	1	Business consultancy
P2	Ltd	6	Management consultancy
P3	Sole-trader	2	Ice-cream manufacturer
P4	Ltd	14	Candle-makers
P5	Sole-trader	1	Business consultancy
P6	Ltd	10	Building contractors
P7	Sole-trader	3	Botanical garden
P8	Sole-trader	1	Homeopathy
P9	Sole-trader	23	Winery
P10	Ltd	12	Advertising & design
P11	Ltd	40	Chocolate-makers and retailer
P12	Ltd	2	Property developer
P13	Sole-trader	2	Health & safety advice
P14	Ltd	2	Garden furniture manufacturer & retailer
P15	Ltd	44	Print and design
P16	Ltd	4	Corporate investigator
P17	Ltd	3	Manufacturer & distributor of education resources
P18	Ltd	12	Precision engineers
P19	Ltd	15	Audio visual sales / hire
P20	Partnership	7	Consultant architects
P21	Ltd	35	Management consultancy

The stakeholders chosen to take part in the research consisted of those bodies connected to the dynamic of the small firm, but more specifically those that had an interest in the inter-related subjects of law and the small firm. To describe in more detail each of the stakeholders that took part in the present study, the Advisory, Conciliation, & Arbitration Service (ACAS) can be traced back to over a hundred years ago when the government set up a voluntary conciliation and arbitration service in 1896. The modern organisation as it is in its present form was established in 1974, and in 1976 ACAS became a statutory body under the terms of the Employment Protection Act 1975 (s.1). ACAS is a publicly funded body, and governed by a council made up of leading figures from business, unions, independent sectors and academics. It is made up of approximately 900 staff based in 11 regional centres throughout England, Scotland and Wales. The main remit of the organisation is to improve working life through better employment relations, and it works with employers and employees in providing up-to-date information, independent advice and training.

The Regulatory Impact Unit (RIU) is based at the centre of Government in the Cabinet Office. Its role is to work with other government departments, agencies and regulators to help ensure that regulations are fair and effective. Central to the role of the RIU is the recognition that whilst regulations are needed to protect people at work, consumers and the environment, it is also important to ensure that they do not impose unnecessary burdens on business or stifle growth. Accordingly, much of the Unit's work involves removing unnecessary, outmoded or over-burdensome legislation and improving the assessment, drawing up and enforcement of regulation, taking particular account of the needs of small businesses.

The Small Business Service (SBS) is an agency of the Department of Trade and Industry, and is charged with making the UK the best place in the world to start and grow a business. Two of its key aims are to champion enterprise, and help businesses start and develop as their capabilities grow and to make sure that the government support services are accessible, relevant and of high quality.

The Forum of Private Business (FPB) is a lobbying organisation representing SMEs. Established in 1977, it aims to create a better political and economic environment for business. It currently represents approximately 25,000 businesses that in turn employ a total of over 600,000 people. A key function of membership to the organisation is access to the FPB information service, which provides information particularly on employment legislation, health and safety and regulations.

3.6 DATA COLLECTION

An important factor when preparing for the data collection phase was a pilot study. In this instance an interview with an owner-manager of a small publishing firm aided the development of specific lines of inquiry. In part this provided some conceptual clarification of the research design, the selection of the pilot interview was influenced by issues of access and the geographical location of the respondent. From this initial point of focus, the research design relied upon a series of non-standardised, semi structured interviews, as the exploratory and explanatory elements of the study would be best explored and understood using this approach. Additionally, they provided opportunity for the researcher to 'probe' answers, so responses could be explained or built upon.

It is also argued that participants also prefer to be interviewed rather than fill in a questionnaire (Healey 1991), as importantly, face-to-face contact with the participants provides the opportunity for the researcher to give assurance about the anonymity of the research. Indeed, it in the case of potentially sensitive and confidential data, participants may have been reluctant to provide such information had they not been in dialogue and actually met the researcher in person. Also it is also arguable whether participants would have been willing to provide lengthy written explanatory answers because of time constraints. It is however, acknowledged that interviewing is a time-consuming process. Evidently, where participants receive a request to participate in a research project, they will clearly consider how much of their time they may be willing, or able, to devote to such an activity. To manage this problem, the likely time required of each participant was highlighted clearly in any initial letter, email or conversation. All of the interviews also took place close to the participants' place of work, to ensure complete convenience for the contributor.

It was necessary to provide an outline of what was required from the participant at the onset of the process, clarifying timescales for research and confidentiality. Full respect was given to the decision of intended participants not to take part in the research, and there was no attempt to try and coerce parties to take part in the research. All intended participants were contacted within working hours and all participants were able to determine, within reason, when they would participate in the data collection process. The right of the participants not to answer any question was also respected, and both anonymity and confidentiality were explicitly agreed between researcher and participant. Informed consent was obtained from all participants, as expressed through a verbal agreement at the point of data collection.

Concern has been expressed for qualitative data collection about the rigour and naming of sampling selection (Curtis et al 2000). This study clearly necessitates that the sample population should have experience of the study subject and that participants selected needed to be able to reflect and discuss their experiences clearly and be willing to share them. Selecting cases is an important part of building theory, defining the set of entities from which the sample is drawn and defines the limits for generalising findings. However, sampling of cases from the chosen population is unusual in this process of research, as cases are selected for theoretical not statistical reasons (Glaser and Strauss 1967), with the aim being to choose cases that are likely to replicate or extend emergent theory. This is in direct contrast to the traditional experimental approach which relies heavily upon statistical sampling, where a random sample is drawn from the population to obtain statistical evidence of the distribution of variables.

An initial sample frame was constructed from a list of businesses obtained from the local authority economic developmental unit, which categorised firms according to sector, legal status and number of employees. Information on who owns the business was also provided, whilst further investigation of the list led to the discovery of whether any business was a branch or a subsidiary of a larger enterprise and the length of time the business had been in operation. This sampling frame allowed for the selection of participants that fitted the rationale underlying the research project. Hence, the sample was able to demonstrate variation in sector, legal form, size and length of time in business. The sample was thus representative of a number of key themes that had emerged as potentially significant in other related studies, particularly the fact that firms could be seen to come from markedly different sectors that had differing emphases on the law and that exposed the owner-managers to different sorts of legal risk.

A further key issue in sample selection is the optimal number of participants. Typically, qualitative inquiry normally relies on the use of relatively small samples with an in-depth focus. In this instance 30 detailed interviews were conducted, including the pilot-study. To this extent, the sample size was also determined by the requirement to test understanding and add to the categories emerging from data analysis so that 'purposive' sampling was also used in identifying cases of interest. In this way good examples for study can be recognised, along with 'good interview subjects' (Patton 1990:182).

Data was recorded by note taking and tape recording the conversation where permissible and the majority of the interviews were conducted on a one-to-one basis, where the interviewer and

participant met 'face to face'. Advantages of utilising tape recording, is that the interview is captured totally, apart from body language. To record changes in body language it is suggested that field notes are taken during the interviews (Hycner 1985). Recording equipment made this possible, for even if respondents spoke rapidly, taped interviews allow freedom for the interviewer to take notes. The typical interviews lasted approximately one hour.

The aim of this approach was to facilitate the telling of different individual interpretations without limiting the response. Research conclusions formed in this way may allow the most interpretive understanding of in-depth situations, but are open to the possibility of observer bias. As we are part of the social world we are studying 'we cannot detach ourselves from it, or for that matter avoid relying on our common sense, knowledge, and life experiences when we try to interpret it' (Delbridge and Kirkpatrick 1994:43). Although this bias cannot be eliminated, a process of using informant verification can avoid some misinterpretation. As a form of triangulation, data can be rigorously triangulated with information obtained from other sources.

Data collection obtained in an observational form through a number of semi structured interviews was by no means exclusive, methods and avenues of data collection varied greatly, ranging from information obtained from large scale small business surveys to documentation indicative of legal procedure and protocol within each of the organisations. Theory building researchers typically combine multiple data methods, as triangulation made possible by multiple data collection methods provides stronger substantiation of hypotheses (Eisenhardt 1989). The key focus of analysis of the kind adopted here is that of making accurate interpretation, and a multitude of sources can only add to the reliability of this understanding.

3.7 DATA ANALYSIS

A feature of the research was the frequent overlap of data analysis and data collection. Question and answer cycles entailed examining an interview and then modifying it on the basis of subsequent findings. A constant comparative method of data analysis was carried out based on the principle of concurrent data collection, analysis, and interpretation, to strengthen theory generation (Chenitz & Swanson 1986). In qualitative research these processes are akin to a 'grounded theory' approach (Glaser and Strauss 1967). Within this framework, when a theme or pattern is detected, the researcher moves into verification mode in an attempt to confirm or qualify the finding (Huberman and Miles 1985). Continual revision and analysis throughout the life span of the study has distinct advantages, as errors in the field can always be rectified and adjusted the second time round.

Analysing data is at the heart of the process of building theory from qualitative research. Undoubtedly it is the most challenging and least codified part of the process. 'One cannot ordinarily follow how a researcher got from 3600 pages of field notes to the final conclusions, sprinkled with vivid quotes though they may be' (Miles and Huberman 1984:16), and it has often been highlighted that the volume of data can pose difficulties for even the most experienced researcher. For this study the problems are clearly recognised as even with the help of specialist equipment each interview took between eight and ten hours to transcribe. The transcriptions were carried out by the researcher and were listened to several times following each interview, to ensure accuracy of the interpretation. A further aspect of this process was that the researcher had a further opportunity to hear the tape in entirety and become acquainted with the data in depth. This opportunity assisted 'closeness to data' (Richards 1998) and although the process was time consuming, it was essential. Each transcript was written in a script form that would be able to show the conversations that emerged throughout each interview.

Within this analysis come two different levels of understanding. Initially, it is possible to understand what is occurring and allow the researcher to account for the phenomena observed, making 'complicated things understandable by reducing them to their component parts' (Bernard 1988). Explanation or questioning why something occurs is the second level of understanding and is generally a case of making a description intelligible. Explanations are always condition and context dependant; these are features that are not solely limited to qualitative studies (Kaplan 1964). The notions utilised by the researcher to explain the patterning of reasoning are products of many levels of interpretation (Van Maaen 1988) and qualitative researchers need to be aware of this fact as they are constructing theory that they will consciously or subconsciously influence in the data collection and interpretation phases.

Data analysis enabled the researcher to inductively develop concepts and categories, including the 'testing' of developing categories on further appropriate research subjects. This is a continual process throughout the research collection and analysis phases and it uses the same principles as the 'grounded theory approach' (Glaser 1978), building up theory inductively. Shifting from cycles of inductive collection, to deductive cycles of testing and verification, leads to the consequent decisions about what data is to be collected next. Gradually, these data assemblies become more conclusive as naturalistic researchers subscribe to this basic analytical cycle (Huberman and Miles 1985).

From this process of analytical revision comes a process of coding the data into a set of conceptual units. By creating categories, each with a conceptual label and allocating the same label to similar units of data in a process of open coding, comparisons of differences and similarities can be made. From this constant comparison, concepts begin to group into categories as connections are made and further questions of the data are explored for their properties and dimensions. Rigour was observed within the analysis as the developing findings were constantly tested against new information until saturation was reached. Categorisation in this way indicates significant themes upon which research questions are broadly focused, whereas the second stage in this procedure refers to the process for looking for relationships between the categories of data. At this stage the process becomes analytical, rather than merely descriptive, development occurs through the process of theoretical sensitivity, in the progression from open coding to axial coding, as the detail of the categories becomes more explicit. A stage called selective coding follows (Strauss and Corbin 1990) in an attempt to identify the principal theme of the study, a core category is selected only after each category has been explored. This core category relates to all other categories and is the central phenomenon of the study. It is essential that personal interpretation is avoided as much as possible at this stage, care was taken during this study not to arbitrarily cluster phrases together; for this reason, the original tapes and transcripts were listened to again and field notes were studied if context was in doubt.

These coding procedures ensure an analytical framework is followed in order to minimise assumption and bias whilst ‘maintaining a balance among the attributes of creativity, rigour, persistence, and above all, theoretical sensitivity’ (Strauss and Corbin 1990). The transcriptions were read and re-read many times during all stages in order to be reflective and true to the data. Cases which confirm emergent relationships may enhance confidence in the validity of the relationships, but more importantly disconfirmation can provide a platform to extend emergent ideas. Throughout this process of theory building it is essential to examine literature that confirms or conflicts with emergent concepts. Discussing similar findings is important because it ties new theory to similar phenomena, providing stronger internal validity and generalisability. Juxtaposed against this is the possibility that conflicting literature will present an opportunity to force the researchers into a more frame breaking mode of thinking than what otherwise could have been achieved (Miles and Huberman 1984).

3.8 VALIDITY

Validity in qualitative research has been the subject of much discussion in the research literature (Lincoln and Guba 1985, Beck 1994, Jasper 1994, Rose et al 1995, Streubert and Carpenter 1995, Walters 1995). Simply put, validity is about whether the research instrument tests what it sets out to do, and as to whether the data collection and its interpretation are accurate. The decision to write in a narrative style was made to assist in providing an illustration to the stages of the research and therefore an audit trail. Audit of the research process and development of categories was further enhanced through the use of verbatim text from participants. For qualitative researchers, inferring that a specific event led to another one provides a constant dilemma of whether all possibilities have been considered and whether deductions are sound. Specific tactics for achieving internal validity are difficult to identify, but matching patterns was one way of addressing this problem. As regards the issue of external validity and generalisability, recourse is made to the concept of 'fittingness' cited earlier in this chapter which argues that for qualitative researchers generalisability is best thought of as a matter of 'fit' between the situation studied and others to which one might apply the same concepts and conclusions.

3.9 RELIABILITY

Reliability can be understood as: can the research be repeated by a different researcher and obtain the same results or is it subject to researcher bias (Hycner 1985)? It has been stated that a concern with the use of non-standardised interviews is in regard to the issue of reliability (Robson, 1993). However, it has been argued that the issue in qualitative research is not whether another researcher would give the same interpretations of data but whether the findings of an enquiry are worth paying attention to, depending on whether they truly reflect the essence of the phenomena as experienced by the participant of the study (Baker et al 1992). Furthermore, it is argued that the findings from non-standardised interviews are not necessarily intended to be repeatable since they reflect reality at the time they were collected, in a situation which may be subject to change (Marshall and Rossman, 1999). Hycner (1985) suggests that giving examples of the participant's original dialogue throughout the presentation of the findings adds reliability by permitting the reader of the research to see for themselves how the findings have emerged from the participants' experience. This suggestion has been followed. Reliability was also enhanced in the interview process by the researcher personally conducting all the interviews.

In a further attempt to establish credibility, and to minimize any bias, participants were supplied with relevant information with regard to the interview themes and topic before any face-to-face

meeting. This was aimed at enabling the participants to consider the issues to be discussed, and also to allow them the opportunity to gather supporting documentation where appropriate. Participants were also offered the opportunity to see a more detailed synopsis of the research, and their role within this, as well as the chance to speak to the researcher should they have any concerns either regarding the subject of the interview, confidentiality or the genuineness of the researcher – however, none of the participants chose to follow up on this. Consideration was also given to the appropriateness of the researcher's appearance at the interview.

3.10 ETHICAL ISSUES

In terms of the conduct of the researcher, due consideration was given to the code of ethics and guidelines enforced by the University of Leeds. In respect of some of the key ethical issues for this research, no pressure was applied on intended participants to grant access. Full respect was given to the decision of intended participants not to take part in the research, and there was no attempt to try and coerce parties to take part in the research. All intended participants were contacted at 'sociable' times (i.e. normal working hours) and all participants were able to determine, within reason, when they would participate in the data collection process. The right of the participants not to answer any question was also respected, and both anonymity and confidentiality were explicitly agreed between researcher and participant. Informed consent was obtained from all participants, as expressed through a verbal agreement at the point of data collection.

3.11 CONCLUSION

Methodology must provide much more than a practical narrative account. It is essential that the process of research is carefully planned, documented and underpinned by clear philosophical perspectives. Meeting these criteria creates credibility within the research process enabling emergent theory to be placed comprehensively within the wider sphere of management research. An exploratory and explanatory semi-structured interview approach provides the most appropriate way of addressing the questions posed in this research. More explicitly, understanding of small firm awareness and knowledge of the legal environment and how they manage their legal responsibilities is currently unexplored. In the case of the current state of understanding, small firms are currently characterised as having extremely low levels of awareness and knowledge, with an inability to operate effectively in an environment with many conflicting demands on their time and few incentives for them to find out about relevant legislation (SBC 2004). From a theoretical perspective, we also know little of the determinants of legal awareness and knowledge in small

firms. The following three chapters chart this situation of uncertainty, exploring awareness and knowledge in the small firm and the factors driving it.

CHAPTER 4: SMALL FIRMS' AWARENESS AND KNOWLEDGE OF THEIR LEGAL ENVIRONMENT

4.1 INTRODUCTION

The results reported and analysed here have been obtained from data generated by interviews with small firms and small firm stakeholders. The legal framework and its components, as noted in section 1.6.2.5, provided a framework of analysis for the present chapter. Guidelines for ensuring validity and reliability (Stiles, 1987; Saunders, Lewis and Thornhill, 2000) were adhered to in the present study. They included coherence of interpretation i.e. systematic clarification of what is said and recorded (written), and consensus seeking between researcher and academic supervisor on the coding of the evidence. Throughout the results chapters, the research participants are referred to by 'P', e.g. [P1], and the stakeholders 'S', e.g. [S1] – details of both the participants and stakeholders can be found in section 3.6.5, pages.

As described in section 1.3, the issue of law and regulation in regard to small businesses has been well documented (BRTF, 1999, 2000, 2001; SBS 2004). Typically, the law is seen as having an adverse affect upon small businesses, with such businesses suffering disproportionately more than larger ones. Business representative groups and policy-makers frequently cite regulation as a major 'obstacle' for small businesses (FSB, 2004; Boys Smith, 2004) and the pervading view amongst small businesses themselves also appears to be that law and regulation is a significant barrier that affects the ease with which they are able to 'get on with the things we're meant to be doing' [P21]. The following reaction by one small business is illustrative of a wider response:

“As a person who is trying to run a small SME, experience proves that it would be impossible for me to even try to address the law and red-tape that could affect my business and, to be honest, if there was a serious issue facing me I would close the business at a drop of a hat . . . the returns in regard to risk, ongoing concern, lack of government support, low esteem for our manufacturing base, etc. are just not worth the effort”. [P18]

Although this might exemplify the thoughts of many small businesses when asked to initially confront the issue of their business and the law, it does not provide any assessment of actual awareness and knowledge of law within the firm. The view could be based on sound awareness and knowledge of the law and genuine experience or on little or no awareness and knowledge and a perception informed largely by the well-publicised debate or other factors. It has been suggested that, 'The majority of businesses do not go out of their way to flout the law; it is more that they do not know what they are supposed to do' (BRFT, 2002, p.5). However, it is difficult to find much

work within the SME evidence base to support or refute such a claim, hence a need to develop a much clearer understanding of the nature of small firm awareness and knowledge of the law, and to try to identify the determinants of it.

The results relating to determinants are set out in chapter 5. In the present chapter, the focus is upon the level of awareness and knowledge of the legal framework on the part of either the owner-manager or managing director. What do small firms know about the law as it affects their businesses? In order to answer this key question it is appropriate to begin with why firms choose their legal mode of existence, i.e. why they came into being as they did?

4.2 ON BECOMING AND BEING A SMALL FIRM: CHOICE OF LEGAL FORM

Businesses, as has been discussed earlier, are bound by certain formal, statutory and other legal requirements. The individual participants of the study work within different sectors and operate at different levels, and because of this their activities are to some extent regulated by different legal provisions. However, the participants, like all firms, are regulated by what have been termed ‘generic regulations’ (Corneliuseen, 2005). These are areas as mapped out in the legal framework discussed earlier in section 1.6.2.4 on page , and include regulations covering business and financial aspects such as registering as a business with Her Majesty’s Revenue and Customs (HMRC), filing accounts and annual returns, registering for VAT, and National Insurance and income/profits tax. ‘Generic regulations’ also include employment, premises, health and safety, and environmental considerations. At the outset, however, a choice has to be made as to whether a business becomes a sole trader, a partnership, a limited company or any of the variants thereof. As outlined within the law, each form of existence carries certain conditions and to a lesser or greater extent these conditions determine the operational requirements of the business. In the context of this specific study, it is reasoned that some awareness and knowledge of the law will necessarily be contingent upon the legal status of the firm.

4.2.1 Level of awareness and knowledge of the legal forms

Not surprisingly, owners and directors cultivated pre-conceived notions as to the type of legal form they should adopt at the outset. There was a general, widespread awareness of the different types of legal status, which was often supported by knowledge of specific legalities; however, there was also indifference towards the issue with little appreciation of the implication of choosing one business form above another. In the extreme, when asked as to the legal status of the business, one response was:

“I assume I [am] a sole-trader. I don’t know the official terminology. But when, you know, I register in Yellow Pages and they ask me my business name – I just go by my own name, I just say *****”. [P8]

Beyond an awareness of the different types of legal form and the ability to cite what they were, the sense that individuals lacked knowledge of the legal forms, and inadvertently ‘fell’ into one status or the other was apparent in two businesses that had both subsequently changed from being sole-traders to becoming limited companies. One business, which had been limited for the entire twenty-seven years of its existence, explained that the managing director of the business chose the limited form “*because we didn’t know any better*” and stated that given the choice again “*we wouldn’t do it now*” [P16]. More often than not however, the choice of legal form was influenced by advice from key sources such as banks, solicitors or accountants. For instance:

“We obviously spoke to our solicitor and our accountant on advice on the best thing to do, and they said from more of a liability point of view be a limited company. And also, it looks, it does look better to the investor. It gives you more credibility – they can check up your background, your history, everything else, all the checks they can do on a limited company. So that’s why, yeah, that’s why”. [P12]

4.2.2 Corporate status

Overwhelmingly, firms that had opted for limited status were able to cite “*limited liability and separate legal personality*” [P16] as the effects of this, and this was the common explanation for deciding upon this business form. Others justified it as the “*best balance between tax, governance and liability*” [P4] and demonstrated awareness of not only limit liability but also the separation of ownership and management that corporate status made possible. Of the twenty-one small firms that participated in the study, fourteen were limited companies although four of these had originally started out as sole-traders. The types of firms opting for limited status came from a wide range of industries and services including manufacturing, construction, publishing, consultancy and other services and there was no indication that the limited form was restricted to certain areas of commerce. It was evident that advice received at the outset generally pointed to and recommended that businesses adopt postures which would make them more risk adverse:

“The reason why we went limited is that we saw it as less risky to ourselves, as opposed to being a sole-trader. So therefore, whilst we knew what we wanted to do in terms of running a business – the implications [of choosing one business form over another] we weren’t really that aware of. But, it was strongly recommended that we went limited – so, therefore, our house to some degree is safe if in the event something went wrong with the business. And in short, that is it – it’s as simple as that” [P17].

However, whilst businesses were able to demonstrate an understanding of the concept of limited liability, supposedly reducing the risk conferred onto the parties, the reality was that this most identifiable aspect was not necessarily seen to have a practical effect. For example, one firm:

“ . . . started off as a partnership between my father-in-law and my mother-in-law, and we went limited to limit our liability” [P6].

When questioned as to the effect of this change or what would happen if this limited liability had to be relied upon the realisation was:

“In the end it doesn’t make much difference because the company has the support of the bank, and the bank has collateral from my wife and me; part of our assets so . . .” [P6].

A comprehension that “There [is] the perception of a limited company as a protected company, but of course that isn’t true” [P10] was explicitly recognised by seven out of the fourteen limited companies. This being the case, the rationale in opting for limited status was attributable to it conferring other benefits, as perceived by the owner-managers. Accordingly, it was reasoned that:

“I guess it was forward thinking in case I did want to grow – and its all set-up for that really” [P1].

When probed further as to why the limited status would be more conducive to the growth of the business the response was more tax motivated than a derivative of limited company condition. Instead, more prevailing was the effect of company status on the image of the business:

“I think it’s a perception thing as well; that you know the business gives you credibility. I’m also VAT registered – all my clients are VAT registered – so it makes sense really for me to become registered as well” [P1].

It was reasoned that “*people [customers and business partners] feel safe with limited status*” [P16] and that being limited was “*more professional*” [P10] This perceived upshot of the limited company was a motive for changing legal status for two firms with one justification being:

“It is a limited company, but only, we only went limited two months ago. So, originally started off as a sole-trader . . . Why change? Well, because it looks more professional really . . .” [P14].

In the few instances where businesses were able to demonstrate other understanding of provisions concerning limited company status, these focused on a property investment firm citing the ability of investors to check-up on the company background and history and a food manufacturer arguing the limited form was the best means of distributing equity in the business.

4.2.3 Sole-proprietor and partnership status

In contrast to those who had opted for the limited form, the six businesses that decided on the alternative status of a sole proprietorship did so on the basis of the degree of risk in their own business and an awareness of the lesser formality and reduced administrative burden associated with the sole trader. For example:

“Well, I don’t see any point in having a limited company – it’s an expense you know you don’t want. I mean I didn’t have any, I didn’t see myself as having any risk and needing to limit my liability. . .” [P5].

All of the businesses who chose this form were sufficiently informed about the subject to be conscious of the fact that being a sole trader was the quickest and easiest way to set-up in business, and involved less of the form-filling required with starting and running a limited company. There was also clear, demonstrable knowledge of the process of setting-up as a sole trader and that its simple process and notification requirements facilitated easy start-up. Alternative legal forms were dismissed because of their complexity. It was also apparent that sole-trader status appealed to individuals with self-acknowledged limited ambition²⁵ and to those who wished to retain a ‘free spirit’ [P7] in business:

“I suppose the independence. The fact that I like to be independent . . . I don’t think it particularly crossed my mind that I would do anything other than just set-up on my own, in the first instance anyway, and just see how it went” [P8].

In the adoption of a partnership, there was awareness and knowledge that this form enabled the parties to share profits, management burdens and risks. The participants understood the need to draw up an agreement which had the benefit of setting out how the partnership would be run and how the proceeds would be split, with the further acknowledgement that this would help to prevent disputes in the future as they had the legal partnership agreement to rely on:

²⁵ Indicative of so-called ‘life-style businesses’ that do not grow to any size, and are content with providing the owner-manager with an acceptable income and comfortable life-style.

“You know it’s like everything else nowadays – like those pre-nuptial marriage agreements now – because when it does happen it gets all nasty because no one’s set anything up” [P5].

4.2.4 Conclusions – choice of legal form

For those who had opted for the limited company status, the aspect of the law of business organisations of which they were most aware was limited liability and there was demonstrable knowledge as to what this legal concept meant. What might be considered some of the other most important design elements, such as the fiduciary duties that apply to members of the business or its managers, and the availability of a model constitution were rarely mentioned. However, the majority of the firms understood that the “*Companies Act*” [P16] offered them the shield of limited liability, although very few made reference to the actual act or “*company law*” [P11]. The basis for making the decision to be a limited company was rooted in an understanding of the limitations of limited liability but in trying to gain a clearer understanding of this perceived benefit, or if firms had ever had to rely on it, it emerged that:

“No, no – I don’t think so. No, we’ve never had to use it, but it’s just there as a sort of background – safety-net” [P15].

It appeared that firms weren’t readily able to explain what this ‘safety-net’ would protect them from. Only one of the participants acknowledged that the limited liability facilitated the separation of ownership and control, although this may be explained by the irrelevance of the issue. Fundamentally, the majority of the closely-held companies²⁶ comprehended that the effect of limited liability may be restricted as they had to give personal guarantees in respect of their firms’ obligations anyway. Those firms who had chosen to operate as a sole trader were aware that this option was the most ‘straight forward’ [P9] way to set-up in business and that it entailed less responsibility under public administration law. The one partnership was a firm of architects, whilst one sole-trader had set-up a partnership as a response to a particular product it was developing. For businesses that operated as sole traders the choice appeared to be governed more by personal values than by specific legal knowledge. One business thus admitted:

“[I’ve] no idea about the legal forms. I mean I suppose the only person I relied on was just myself really. . . I’m quite an independently minded person so I wanted to sort of do it off my own back. But I didn’t officially talk to anybody about it. In college we got some guidance about setting-up in practice but it was more things like, you know, what sort of premises you would want, about phone calls and answering machines, all that sort of thing”. [P8]

²⁶ Defined as a company that has a small group of controlling shareholders.

4.3 PUBLIC LAW – AWARENESS AND KNOWLEDGE

Going beyond legal form to wider responsibilities under public law, there was consciousness of broad subject-matter but this was not always matched with a deeper understanding. Thus, an approach about what areas of law the business had to deal with was met with the following response:

“This is one of those questions that a small business person wouldn’t even understand. They don’t think in terms of law. They think in terms of customers, revenue and overhead” [P4].

Later on, however, the firm was able to cite “*complying with health and safety, governance and tax law*” as their major duties. Conversely, the same question posed to another firm resulted in the answer:

“Compliance with the law of the land. That isn’t meant to be flippant, but the prime purpose of a director is to comply with the law of the land” [P16].

The emergent picture was of a general awareness of some of the key issues within all the firms, but with a substantial difference between those with the highest awareness and knowledge and those with the lowest. Regulations concerning accounting procedures, taxation, health and safety and employment were the most recognised.

4.3.1 Accounts, audits and taxation

There was recognition amongst the businesses of the extra administrative costs associated with the legal formalities and procedures that flow from being a limited company. Hence, being a limited company involved submitting annual accounts to Companies House. Detailed and in-depth knowledge of such law, however, was minimal because, in the main, matters to do with public administrative law and particularly accounts, audits and taxation, were ‘passed on’ to agents of the firm such as accountants or solicitors:

“Well, I use an accountant for the accounts, for the VAT returns and for my PAYE – it’s the same accountant I use for them all. I think at the moment having someone like an accountant to deal with all that side of things is useful because I can deal with my core work rather than that. But, it’s something that I could possibly handle in the next year or so” [P1].

It followed that the pattern in terms of accounting and taxation regulations – which tended to be perceived as particularly stringent and important – was that these activities would be outsourced

and, in effect, the legal obligation ‘passed on’²⁷. Those companies that operated as sole traders also adopted a similar approach with regard to sorting out their own personal tax and National Insurance. It was evident that the firms were suitably informed about accounting and taxation regulations to be conscious of both their existence and their broad subject matter – i.e. they had some idea of the necessity and requirement – but the firms ensured compliance with the regulatory requirements through the use of external professional services, such as solicitors and accountants.

In the majority of cases, awareness and knowledge of this area was limited and this was recognised by participants. This limited awareness and knowledge could be seen to be the product of three factors; firstly, individuals recognised their own lack of expertise in the area; secondly, the individuals had little desire to become involved in these areas and thirdly, contracting out activities such as accounting meant that a high level of awareness and knowledge was not necessarily required:

“Well, I’ve got my own accountant – who’s a friend. Again, because I’m very ignorant, as I said, about business matters, I thought I probably ought to get some advice from somebody that did know a little bit about it”. [P8]

“Things like that are why you have people like accountants for . . . Me spending time on things like that is wasting my time. I’m not saying they’re not important – they are and that’s why I have the proper people in place who deals with them and that can let me get on with the real business”. [P14]

As was indicative of many responses, here the business had ‘awareness’ of the law in terms of being conscious of its existence and broad subject-matter but it did not concern itself directly with its applications. Given the service/product focus emphasised amongst the participants, it is doubtful whether detailed knowledge would have been practicable or economical to acquire. The outsourcing of these activities meant that although as a limited company a firm’s “*books and accounts are available to all and sundry . . . and we’re actually quite proud of it*” [P17], the lack of in-house expertise and the use of cost-benefit analysis to gauge whether or not the firm should have this meant that:

“Yeah – I think in some respects we fly by the seat of our pants which is not clever at all; but it’s just the way we are. And I think if we had more people that would build up our overhead – we would be much more professional here, but it wouldn’t affect the perception

²⁷ In fact, professional advisers will be liable in negligence and contract for the effects of faulty advice, although a business retains ultimate responsibility for filing its accounts or paying its taxes.

of ***** in the big bad world. But, the implications would be on profit margin; revenue” [P17].

There were one or two examples of detailed knowledge that went beyond a general awareness, specifically in regards to the requirement for auditing of accounts of an SME and there was also an understanding of the fact registration for VAT is compulsory for most businesses that supply goods and services amounting to more than the registration threshold²⁸. Overall, the majority of the businesses were aware of the general financial requirements of the law. Very few of the respondents, however, volunteered the titles of relevant legislation or matters as to its substance. Typically:

“Anything to do with accounts, basically, is dealt with by our accountants, and they deal now with things like carrying forward losses, forming companies, all sorts of things” [P11].

It seems evident that most participants understood the responsibility placed on them by the law. Yet, the majority were unable to give very detailed or substantive replies about the nature of this responsibility:

“I’m aware that there are things like, as I understand it, things like reporting on to Companies House on the financial state of the business as a going concern and giving those kinds of financial reports and being, sort of acting in a reasonable manner. You know, although I couldn’t actually name all the particular acts of legislation, I’m aware that obviously being a company director does carry a lot of responsibilities” [P15].

4.3.2 Health and safety

4.3.2.1 Broad awareness

Most of the businesses, across legal forms, were broadly aware of their responsibility to ensure the safety of staff, premises, equipment and the working environment, although few gave specific mention to the Health and Safety at Work Act 1974 or the Management of Health and Safety at Work Regulations 1999²⁹, which could be considered two of the key pieces of legislation. In reference to the Health and Safety at Work Act 1974, which could be argued as the basis of British health and safety law, the duties of the employer are qualified in the Act by the principle of

²⁸ All businesses must register for VAT if their turnover of taxable goods and/or services is above a given threshold, which is currently £58,000. The threshold was increased by £2,000 to its present ceiling by Order (SI 2004/775).

²⁹ The Management of Health and Safety at Work Regulations, 1999, Statutory Instrument 1999, No. 3242.

reasonable practicability³⁰. Consequently, an employer does not have to take measures to avoid or reduce the risk if they are technically impossible or if the time, trouble or cost of the measures would be disproportionate to the risk. However, several of the participants' understanding of what the law required had a tendency to focus on the use of a "*common sense*" [P9] approach, as opposed to any mention of 'reasonably practicable'. It is difficult to assess whether these two concepts are conceptually similar, given the absence of a universal definition of 'common sense' and the subjectivity of it. Arguably though, the principle of reasonable practicability would appear to imply a greater recourse to action given that lack of measures is only accepted on grounds of technical impossibility or if it is disproportionate to the risk.

The 'common sense' approach appeared to reflect that although participants were well aware of their duty to manage health and safety, any understanding beyond this general duty was often lax. This was not applicable to all of the participants as there were a number of exceptions where firms' understanding was far more detailed and who seemingly went so far as to apply the principles of health and safety to every work activity. These particular businesses operated in the building, construction, food and technical consultant sectors where the incorporation of health and safety into everyday work-life appeared to reflect a far more formal attitude towards the area. Most notably:

“And I hate people now saying to me, ‘health and safety – it’s common sense isn’t it’. Well it isn’t – it’s a law” [P13].

It appeared that the businesses were sufficiently informed about health and safety law for them to be conscious of its existence, even though few were able to cite any specific legislation. Businesses for which health and safety law, in their opinion, wasn't a major consideration were still aware of the law and able to give reasonable explanation as to why it wasn't affecting them so:

“I don't think anything like health and safety applies because I don't employ anyone, but it would do then – very definitely. And I don't have visitors to home so there's no third party issue like that. I was actually offered somebody – by the council I think – they offered to send somebody to come out and do an assessment of the work space and area – you know things like making sure the chair was the right height and everything” [P1].

Whilst participants were aware of the existence of health and safety law, in a number of cases they were unable to go beyond this to give any examples of the requirements the law imposes. This was

³⁰ See, for example, s.2(1) '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.'

often matched with an uncertainty as regards the measures they should carry out to ensure compliance with the legislation:

“Well I know, I don’t know what’s involved, but I know there’s a certain health and safety aspect and I know there’s something to do with accessibility for disabled people, but exactly what the regulations are, what the laws are, I don’t know. I suppose I have had a disabled person coming to see me and they got in alright. I mean I think I’m very junior in this field, you know” [P8].

“In terms of other legal issues – you might want to think about health and safety. Now, I’ve got that up there (Health and Safety Law poster) but I haven’t filled it in. So, who’s responsible for what? . . . In the event of anything happening to, let’s say for example, **** - if **** wasn’t our son and something fell on his head in the warehouse then we would have an issue. He is in a position where he could say – ‘Well it wasn’t secure and it’s not safe’” [P17].

The latter participant here had complied with the Health and Safety Information for Employees Regulations 1989³¹, which requires employers to display a poster telling employees what they need to know about health and safety. However, this compliance was inadvertent rather than any means of deliberate action arising from knowledge of the regulations. Indeed the poster was more “*for show*” [P17] as opposed to anything else, and was obtained via the post from a source unbeknown to the owner-manager, as well as being unsolicited.

There was also evidence of firms ‘cribbing’ [P13] information to use in their own health and safety policies. Such activity was only applicable to one firm in the present study but was widely alleged, by some participants, to be commonplace elsewhere, particularly in the building and technical consultant sectors. Where ‘cribbing’ was evident, little effort was made to adapt the policy to the context of the firm and it played no substantial role in the running of the firm. Three businesses appeared unaware of the main requirement on an employer to carry out a risk assessment.³² When questioned on whether any such assessment had taken place, a typical response was:

“No, we haven’t. It’s only really me and **** here and you can see that; I wouldn’t say there’s anything we need to worry about. I mean the work we do – it’s all office based so, no; we haven’t done too much looking at health and safety” [P12].

³¹ Statutory Instrument 1989, No.682. Regulation 4 (1) states that an employer shall, in relation to each of his employees, ensure that the approved poster is kept displayed in a reasonable condition at a place which is reasonably accessible to the employee while he is at work, and in such a position as to be easily seen and read by that employee; or to give the employee the approved leaflet.

³² Management of Health and Safety at Work Regulations, 1999, Statutory Instrument 1999, No.3242. Regulation 3(1).

4.3.2.2 Detailed knowledge

Other businesses were much more knowledgeable about health and safety law. Consequently, some firms had a “*written health and safety policy*” [P16] that documented the responsibilities of personnel and the organisation and arrangements for health and safety in the work place:

“We have a health and safety policy which we’re required to do by law as you know³³. And part of the guys’ contracts is that they are to comply with our health and safety policy” [P6].

In the firms where employees numbered ten or above, someone was either appointed to manage health and safety and to implement the arrangements, or designated to take a greater responsibility for it. Where there was someone other than the director or owner-manager appointed to manage health and safety, the participants were still able to demonstrate a reasonable level of knowledge of the practicalities:

“Well, I mean basically you have to, as I understand it once again, responsibility for the health and well-being of all the employees and visitors – anyone who comes into the building and therefore; well what we do is we have health and safety visits around the building but via internal people with reports. We have things like fire-drills every week, or fire alarms going off every week. And we have tests on the system. Things like that really. As I say, I’m not; - there’s also the Disability Discrimination Act which I’m aware of has come out” [P15].

When asked to elaborate further on how consideration for disability had an affect on health and safety, the participant was able to cite the relatively recent requirement to make reasonable adjustments to any physical barriers that make access to premises difficult for disabled people. The managing-directors were all aware of their legal responsibility for health and safety in their respective organisations. This was complemented by the fact that ignorance would not be a defence to liability:

“You know, it’s the old story that you don’t know what you don’t know but ultimately it’s your neck that’s on the block”. [P20]

Nine firms, all limited companies, had a health and safety policy and displayed notices around their premises and included information with their employee contracts to reflect this. Risk assessments were also regularly carried out although this sometimes flagged up issues of uncertainty that were not necessarily addressed immediately.

³³ Documented in Health and Safety at Work Act 1974, section 2 (3).

There was recognition too of the need to provide appropriate health and safety training and information for employees in work time. There was also acknowledgement in the appropriate cases of the requirement to provide free personal protective equipment (PPE) which is specific to the hazard, in accordance with the Personal Protective Equipment at Work Regulations 1992³⁴:

“And we provide all the guys with PPE, which we expect and again its £200 a man and when it wears out we replace it” [P6].

Being aware of health and safety law was, in the opinion of some, a necessity. The awareness and practical understanding that arose out of this necessity meant that firms were drawing up and implementing written safe systems of work for any high risk procedures in which their employees were involved. Typically, these written systems were used to ensure that complex activity or those where there were a number of people responsible for operating the system were carried out safely:

“If it’s not safe, we don’t do it. So when we’re on site, what we actually do is a generic risk assessment but tailored to the situation – and that’s done for every job. The typical, generic risk assessment where we actually go through absolutely everything, so it covers everything in terms of hazards etc. So identifying hazards, who’s going to be involved, assess the control measures to suit – it’s dated, signed; it takes time and effort, however again it shows the customer that we’re serious about what we’re doing”. [P19]

Where firms adopted strict health and safety measures born from good awareness and knowledge of the law, this could be seen to confer benefits on the business as well as being a reflection of the personal values of the owner-manager:

“My attitude is you’ve got to work safely and we have a tradition as a business – we want to work within the law. If I’ve got to work outside the law to run a business, then we’ve all got a major problem. No, it’s got to be done sensibly and our insurance policy premiums haven’t increased dramatically like some peoples’ are because we have an extremely good health and safety record. The last time we had a RIDDOR event must have been three years ago when someone cut themselves. And we’ve never had a serious incident” [P6].

Also evident here was awareness and knowledge of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), which requires employers to notify certain

³⁴ The Personal Protective Equipment at Work Regulations 1992, Statutory Instrument 1992, No.2966. Regulation 4(1) states that every employer shall ensure that suitable personal protective equipment is provided to his employees who may be exposed to a risk to their health or safety while at work.

occupational injuries, diseases and dangerous events³⁵. For other firms, in the same way that compliance with accounting and taxation regulations was achieved through the ‘passing on’ of the legal responsibility to experts, similarly with health and safety law a number of the businesses made use of inspectorate bodies as a means of finding out about, and meeting their legal responsibilities:

“I mean again, we’ve had the Health and Safety in the factory on a fairly regular basis and into each shop. We approached them and we have an annual report. With them we find it – because they can shut you down overnight because we’re a food business – we find it easier on us to get them in before they want to come after us. We’ve found them very good – we’ve never had a single issue. We’ve always dealt with anything, and they’ve been very good” [P11].

Others also initiated contact with the inspectorate body as a means to ensuring legal compliance and of identifying legal issues:

“We called them basically saying we were a new start-up and we would like you to come and have a look and make sure we are doing the right things and they did. They came here, and say they said what was fine and then gave us advice as to what we needed to do to make sure we were up to speed with the rest of what we had to do. We’ve had lots of interaction with Health and Safety – we had to” [P3].

None of the firms discussed whether registering with health and safety authorities was a requirement for their business, but many took it upon themselves to initiate contact and almost all of those were able to accurately cite the correct name of the Health and Safety Executive (HSE).

In regard to health and safety law, some firms adopted other measures as a means of both finding out about the law and to ensure a minimum standard of performance. Hence, firms explained that being registered on business quality programmes such as ISO9000 necessitated due diligence in respect of health and safety law. Other firms initiated membership of industry-specific bodies that provided legal guidance despite an underlying sense of injustice that other businesses had no such priority:

“We’re trying to get registered with CHAS, which is Construction Health and Safety because that’s a nationally agreed standard. But we know a lot of other companies are not” [P6].

³⁵ The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, Statutory Instrument 1995, No.3163. Regulation 3 requires the employer to notify the relevant enforcing authority of injuries and dangerous occurrences.

There was recognition of environmental health concerns, where applicable, and that rules must be complied with. Whilst compliance was at the outset seen as an inconvenience to the business, once the procedures had become internalised within the firm, this perception was less evident:

“We’ve only been going for four months but we’ve got a file this thick of all the records we’ve had to keep. And it’s a record I have to keep, every time I prepare an ice-cream. So, if I’m in there every day, everyday I have to keep records of what I’ve done and make sure that what I’ve done is correct and in keeping with the regulations. But, I think it’s the initial stages that are very difficult – to get round to realising what you have to do. Initially, you think about it and you think ‘God, I’ve got to do all of this and it’s so difficult’, and it is but once you accept it – and that’s the most difficult part – many people think that when you go into business that you’re not going to be bossed around – but once you accept the fact that; No - you could be bossed around by certain procedures and regulatory bodies and you get on with it, then it becomes a routine and you don’t even notice”. [P3]

There was also the overriding acknowledgement that non-compliance could mean an end to the business.

4.3.3 Product safety

Certain businesses were in specialised sectors such as food. In this instance the participants were sufficiently informed about the law to be conscious that food businesses have to meet a range of requirements relating to aspects such as the design of their premises, the way staff handled food and the temperature at which food should be kept. It was recognised that the immediate priority was: “*Well first getting our approval, because as ice-cream manufacturers you need a licence so that was the first thing we had to do*” [P3] and that there were regulatory requirements that followed on from that. Similarly, another food business was aware of hygiene rules to go alongside the other main areas of law that affected the business:

“And then on top of that – they’re the main issues obviously, but then on top of that we’ve got food hygiene regulations, which are all statutory requirements” [P11].

Such businesses were, unsurprisingly, able to show a detailed understanding of the law:

“The environmental health is all to do with the way we cook our ice-cream . . . I mean there isn’t a set procedure on the recipe for ice-cream, but there is a set procedure on the cooking of it. So for example, ice cream needs to be cooked at a temperature above 79.9 degrees for 15 seconds. And therefore, you need to keep records and to show that we have done that.

It's under what they call the Dairy Hygiene Regulations, 1995³⁶, so there are regulations that we need to adhere to" [P3].

It was evident in the practices that businesses had adopted that they were fully aware of the regulations, specifically in terms of the actions that they had to take as a result. Typical practices included the recording of premises being cleaned through to more stringent recordings such as noting the percentage of sanitizer used. Both the firms who dealt with food products used relatively technical language when discussing such matters with reference, for example, to Hazard Analysis Critical Control Point (HACCP), Control of Substances Hazardous to Health and mention of the Environmental Health Department. Others were less certain about the regulatory requirements in respect of their products. One manufacturing firm recalled:

"An issue we've just recently had – and again, I really don't know what the outcome might be – is that we have a product (Drawing board). And you see whilst these are carded inserts that slot into this frame, we also have a metal insert that can slot into this and can be removed. Now, that actually is quite heavy. Well, we had a letter from a school which was a bit scary - saying that a little kid has almost had his finger chopped off. You see, what they were doing is – there were two kids with this frame. One pulled the metal thing up and the other little lad had his finger at the bottom of the frame. He let go of this metal thing and it came down like a guillotine. So he had to have his nail removed in hospital – fluid drained off it, and so on and so forth. So, basically they're saying to us – there's a letter, and it's gone off to **** County Council because that's part of where they operate, - and it's saying 'I should be interested to know what action you will be taking as a result of this case. I look forward to your response. I must also inform you that I have already sent accident report forms to our local education authority in accordance with the procedures laid down by **** Schools'. Of course, when I received that I went, 'Oh my God – what am I going to do?' . . . am I responsible or is it the school?" [P17].

The General Product Safety Regulations 2005³⁷ place a general duty on suppliers of consumer products to supply products that are safe in normal or reasonably foreseeable use. In addition the European Sectoral Product Safety Directives set essential safety requirements which some categories of products, such as toys, must meet. The firm was unaware of where it stood in regard to the law and the managing director freely admitted:

"So, you know, it's not that clever – I really should be up to speed with health and safety law and regulations" [P17].

³⁶ The Dairy Products (Hygiene) Regulations, 1995, Statutory Instrument 1995, No.1086 (Now amended by the Food Hygiene (England) Regulations 2006, SI No.14, which came into effect January 2006.

³⁷ The General Product Safety Regulations, 2005, Statutory Instrument 2005, No.1803. Regulation 5.

More generally, the trend was for awareness and knowledge of and compliance with product safety regulation where this was a prerequisite for doing business with other parties. However, specific knowledge in one or two instances seemed to show a reality of uncertainty and less than ideal awareness and knowledge:

“In terms of our products, I believe that the paint that we use is sprayed on and is safe. But the rest of our products, we don’t have any CE certification or EU standards applied to them. I don’t think they need it . . . However, I can understand that with the paint on it and the lead content – there has to be some sort of regulation on that. But, I don’t know if the manufacturer has that. You see, that’s another thing I need to know. Say if a child poisoned themselves and became ill, just because, I don’t know – kids eat things; doesn’t matter what it is. We could be implicated on that. Indeed – I’m going to write that down so that I follow it up”. [P17]

4.3.4 Trading regulations and data protection

Awareness and knowledge of legislation concerning correctly selling and describing goods and services was less apparent. When asked to discuss the key areas of law that affect their business, few gave any mention to either this general area of law or specific trading regulations such as the Trade Descriptions Act 1968 (as amended), the Enterprise Act 2002, Sales of Goods Act 1979 (as amended), the Sale and Supply of Goods Act 1994 or the Consumer Protection Act, 1987. Where there was awareness of trading regulation, this tended to be a more general account, although there was awareness of the relevant enforcement body:

“We have, you know, food labelling issues and also certification issues which is not strictly legal, but which we have to comply with the rules” [P11].

In one instance, awareness of trading regulations was met with indifference and the participant wilfully flouted the regulations:

“We’ve got a little plot, right, just next to the garden with a plant in it, and inside that plant because of the way we do things there’ll be seedlings of a couple of other plants. So someone who buys that will basically get like four plants. Now, according to the law . . . that’s illegal . . . There’s nothing wrong – I mean it’s a law that’s stupid so with laws that are stupid you say ‘Yes, I’ll do it’ and then you don’t” [P7].

The businesses that had the greatest awareness of trading regulations were both in the food sector and for them this area of law consisted of:

“Well, fairly obvious things like making sure our labelling is all correct and ensuring that we meet all the necessary hygiene standards. The main people we’ve dealt with have been the Environmental Health and Trading Standards authorities . . . and the Trading Standards was to make sure we labelled our product correctly and adhere to all the sorts of regulations that go with labelling and selling on a product [P3].

The business was able to demonstrate some understanding of a detailed provision of trading regulations and, as was evident with both financial and health and safety regulation, ensured compliance through working together with these parties with expert knowledge. Although there was recognition of the importance of complying with trading regulations, it was apparent that these participants who dealt regularly with the environmental health and trading standard bodies expressed some dissatisfaction with the treatment they received. This dissatisfaction arose from the feeling that these businesses had become unfair targets of law enforcement agencies and victimised in the extent that they were made to comply with the regulation. The two food businesses did, however, recognise that approaching the Trading Standards office had facilitated awareness and knowledge, and consequently compliance with the regulations and recognition of a duty to its customers. One specialised business, operating in the marketing sector, was aware that there was legislation for businesses that advertise and that as a business involved in composing and producing advertising the regulations applied to them. There was no mention of any specific legislation by the business, but instead the explanation that the length of time the business had been going had ensured familiarity with the regulations and any uncertainty that might exist could be dealt with through approval from regulatory bodies:

“We’re regulated by the Institute of Practitioners in Advertising . . . whilst we know the guidelines as in what we are and what we’re not allowed to say, if we’re unclear there are bodies that we can submit to for copy-clearance . . . And of course there’s the Advertising Standards Agency – and they’re the people that anybody would complain to, so you can always run it past them first . . . but to be honest with you because we’ve been doing what we’ve been doing for twenty-five years now we know most of the regulations – it’s only if we’re ever slightly concerned that we’d actually use them” [P10].

The participant was aware of the existence of legislation governing advertising and its broad subject matter although the informant did misquote the name of the authority, the correct title being the Advertising Standards Authority. Only two firms cited the Data Protection Act, 1998 as a law that impacts upon the business, with one of these also referring to “*privacy laws*” [P16] as a significant area of law affecting them. In the one instance, there was a practical understanding of the general provisions of the legislation:

“I guess there’s the Data Protection Act, with the recent regulations about the telephone preference service and the mailing preference service and the fax preference service . . . its come out from the middle of the year that corporates are now afforded the same privacy as individuals so before telemarketing any company, you’ve got to check their name against the register. So, I guess that potentially has had an impact when I’m advising clients” [P1].

However, the Act only had limited applicability, as was recognised by the business itself, “*But, I don’t have too much in the way of personal information myself*” [P1]. For the other firm, there was sufficient knowledge of the legislation to understand potential limitations of the Act:

“For instance, if I can make £50,000 by breaching the Data Protection Act and the worst consequence that is likely to happen because of that breach is a rap across the knuckles, then I will breach it” [P16].

For the latter firm, the Data Protection Act³⁸ impacted upon the business on a daily basis. The firm described its general approach to finding out about and complying with the law as “*proactive*”, as is evident in their approach to dealing with this particular Act:

“The Data Protection Act did not become effective until 1st March 2000. As a company we complied with it from 16th July 1998 at 2.15pm when the Queen signed the Data Protection Bill. When we were advising our clients on it, we were saying that it is better to get it as part of your mindset than wait until the day it becomes law and then be constantly breaching it through ignorance and lack of practice” [P16].

4.3.5 Insurance

Almost uniformly, those firms with employees were aware of the requirement to take out insurance against claims from employees for accidents or sickness they suffer as a result of working. For these firms, they had taken out Employer’s Liability Insurance although it was not always evident that the certificate was displayed in accordance with health and safety law, and more specifically the Employer’s Liability (Compulsory Insurance) Act 1969. However, awareness and knowledge of the fact that certain liabilities to your employees must be insured against by law did not preclude some businesses from being less than fully aware of their legal liabilities. In some instances, it seemed apparent that businesses saw insurance as indemnifying themselves from any legal liability regardless of the situation. This was the case even if they were unable to clarify how the insurance would protect them:

³⁸ The Data Protection Act 1998, Chapter 29.

“We do have employer and public liability insurance – and that’s what I would probably have to call on with this **** Schools issue - so that’s over to the insurance. I guess it is a safety net. We feel quite comfortable with that. For some reason we did it only recently, but we now know how vital it is” [P17].

Others were aware of public liability, product liability and professional indemnity insurance although there was no obligation to insure the business against the effects of any harm it may cause to customers or the public. However, this did demonstrate some businesses to be conscious of the possibility of legal action from customers or the public. One firm sought out the insurance company to help them:

“I mean what we do is we invite the insurance company along so they can actually advise us rather than us say to them, well, you know this is what we’ve got. We feel it’s much better to invite them along so they can do a reconnaissance and tell us what they want and we can fulfil their criteria. It’s much easier that way, and they’ve been very helpful – really helpful” [P14].

There was also the suggestion that firms had fallen into having insurance with little knowledge as to how it defined their liabilities:

“I’ve got an insurance policy although I don’t know much about it. But it does, it does, as part of the package it comes with insurance” [P8].

Whilst some businesses acknowledged that they were duty-bound to have employer’s liability insurance, the fact that some businesses with employees had only fairly recently taken up the insurance is indicative that this was not always the case. Furthermore, no firms mentioned the fact that firms have to take out insurance cover of at least £5 million against any liability for damages arising out of their negligence³⁹. There was, however, recognition in one instance that having insurance would only offer so much protection along with a general awareness of a duty to visitors and members of the public, albeit alongside some uncertainty in regard to cautioning guests and visitors that enter the premises:

“I mean I still have liability insurance it’s just that if it was for an enormous amount . . . I mean I need to have some disclaimers – it’s kind of up there but it’s not in clear language” [P7].

³⁹ The Employers’ Liability (Compulsory Insurance) Regulations, 1998, Statutory Instrument 1998, No.2573. Regulation 3 sets the limit of amount of compulsory insurance at £5 million.

The apparent willingness of businesses to rely so heavily on their insurance might potentially in part be explained by the widespread perception of insurers as ‘policemen’:

“I’ve seen two or three companies, even small companies where it’s high risk – insurance company have brought auditors in and they’ve audited the place and I’ve actually seen written evidence where they’ve said, ‘we are not covering that part of your company, particular section or whatever until you’ve got risk assessments done or you’ve done safe systems at work for it’. So I think the insurance companies are going to kind of police it to a certain extent” [P13].

4.4 PRIVATE LAW

Shifting the focus of awareness and knowledge to areas of private law, it is acknowledged that some areas of employment regulation fall under the public law category and there is a view that all of employment law should be viewed as regulation and should therefore not be left to private law. However, its basis is as a private contractual relationship and is therefore dealt with under the area of private law here. The primary areas of employment regulation coming under public law, other than that dealt with under the Management of Health and Safety at Work Regulations 1999, to which the participants gave most mention were the National Minimum Wage Regulations 1999⁴⁰ and the Working Time Regulations 1998. The tendency here was for the businesses to be sufficiently informed about the subject to be conscious of its existence and its broad subject matter, as well as having a practical understanding of the regulations.

4.4.1 Employment

4.4.1.1 National Minimum Wage

With regard to the National Minimum Wage, firms were able to say when prompted that “*all of our employees are earning above the minimum wage*” [P11]. Firms were able to correctly cite the current National Minimum Wage level “*£4.85 for adults*” [P9]⁴¹, although not all were able to do so even when they were aware of the legislation:

“I don’t even know what the minimum wage is but I’m almost certain I’m paying him way above that, so I don’t – that’s not really an issue. But both the lawyers would have, you know, picked up on anything like that if I’d missed out something” [P14].

⁴⁰ SI 1999/584 - These regulations are issued under the National Minimum Wage Act 1998.

⁴¹ The main rate for workers aged 22 and over was raised to £5.35 an hour on October 1 2006 – National Minimum Wage Regulations (amendment) SI 2006/2001.

In the latter instance, the emerging practice of the use of experts to either facilitate awareness and knowledge of the law or, more simply, as a means of ensuring compliance with regulatory requirements is apparent as with other areas of the law. Overall, firms were conscious of the existence of regulation setting hourly rates below which pay must not be allowed to fall:

“Now, I know that in terms of wages, they’re not the best wages, but we’re an easy going company. I mean we’re not talking minimum wage here, nothing like that” [P19].

4.4.1.2 Working Time Regulations

As regards to the Working Time Regulations 1998⁴², those firms that mentioned it appeared to have a good practical understanding of the provisions of the legislation, particularly the fact that all employees have a statutory right to a maximum average working week of forty eight hours⁴³, unless they have a precise agreement, firms seemed well aware of this:

“No one’s working anywhere near forty eight hours – apart from maybe me and **** (both directors) and even that is reluctantly” [P11].

Others also had awareness of the Working Time Regulations, and in particular of the provisions concerning rest breaks at work:

“And the other thing is giving people breaks. Because the European legislation we’re giving people, because of the Working Hours Directive is it; people have a break in the morning and afternoon – 10 minutes a break, so we’ve implemented that for everybody as well in anticipation of changes to the law and things. But as I say, my knowledge of these things is sort of general rather than very, very detailed” [P15].

Although the participant professes to only a general awareness of the law, he was able to demonstrate an understanding of a detailed provision concerning workers entitlement to a minimum 20-minute rest break in each shift lasting over six hours⁴⁴. There was also some recognition of the statutory right to make a request for flexible working⁴⁵ through the adoption of such practices:

⁴² The Working Time Regulations, 1998, Statutory Instrument 1998, No.1833.

⁴³ The Working Time Regulations, 1998, Regulation 4(1) states a worker’s time, including overtime, shall not exceed an average of 48 hours for each seven days.

⁴⁴ Regulation 12 of the Working Time Regulations 1998 states that where an adult worker’s daily working time is more than six hours; he is entitled to a rest break of not less than 20 minutes uninterrupted.

⁴⁵ Employment Act 2002, Chapter 22. Section 47 introduces a statutory right for workers to request contract variation by inserting a new section 80F in the ERA 1996.

“I mean I’ve just employed a mature lady, who works flexi-time because one person’s working a 2-day week, so this other person is working 3 days a week. I mean we’re all for employing people that are return-to-workers or whatever and maintain the flexibility of our company as well, as long as they know that that person is there Mondays and Tuesdays that’s fine and it brings more experience to the company” [P10].

When firms were asked what areas of law affected them most as a business, employment law was frequently cited as a key matter. Although specific pieces of legislation – most notably the Employment Rights Act 1996, the Employment Relations Act 1999 and the Employment Act 2002 – were not in themselves quoted, “*employment law*” [P11] was taken to be a main consideration for those firms with employees.

4.4.1.3 Employment status

Once again within this area, there was a significant variation in terms of the businesses’ awareness and knowledge, and in the measures they had in place to reflect such understanding of the law. At the outset, there appeared to be some uncertainty in certain businesses as to what actually constitutes an employee. This could be seen to have severe implications, given that many of the statutory rights featured in legislation such as the Employment Rights Act 1996 are mostly available only to employees, and the examples here suggest there being some ambiguity as to the status of certain workers. For instance, one business stated:

“We’ve been going since ’95 but I only have one employee – but I have a lot of people who work for me that are self-employed” [P14].

The distinction between an employee and non-employee is that an employee is a person who works under a contract of employment⁴⁶. A genuinely self-employed person is a person who is in business on his or her own account, and is engaged by a client or customer under a contract for services. When the above business was further questioned as to this arrangement, the response was given that:

“They also work for other people as well so I’m not just their sole employer” [P14].

The participant seemed unaware that the fact that these people worked for others might not necessarily preclude her from being seen as an employer of them as well, whilst also evidently admitting that she was an ‘employer’ of these people. The role these ‘self-employed’ people

⁴⁶ The Employment Rights Act 1996, Chapter 18. Section 230 (1) defines an employee as an individual who has entered into or works under a contract of employment.

fulfilled was that of “*three different PAs*” for the managing-director, which might further lead one to question whether they were engaged in business on their own accounts. However, there was only one person within the business who was governed by a contract of employment. Another business also appeared to be potentially confusing the issue of employee and non-employee:

“Now **** – who is working out there at the moment – is self-employed and has worked for us for maybe three years – sort of 5 hours a day or whatever” [P17].

It did not necessarily seem apparent as to how this person was engaged in business on their own account, and the managing director also appeared uncertain as to what duties they owed that person should she qualify as being self-employed:

“Now if anything happened to **** out in the warehouse – I don’t know if we would have health and safety issues because she is self-employed” [P17].

At the one end where firms seemed not to be fully aware as to the difference between an employee and non-employee, one firm was able to demonstrate both awareness and a practical understanding of the difference, given that the issue of whether a person is actually an employee or self-employed was affecting the business to its detriment:

“In terms of hiring, there is a major issue with self-employment at present. The law is a complete ass that isn’t being enforced and needs to be sorted out, quickly. And I say that – it isn’t going to happen and it’s been like it for a long time. There is bogus self-employment – I’m not sure if you’ve come across that? But basically what happens is that guys go – are nominally self-employed – and go along to an employer and offer themselves for work. The guy takes them on and pays them a self-employed rate; i.e. no holiday pay, no National Insurance, but the guy’s no more self-employed than I am, because he’s relying solely on that guy’s employment. He’s not taking a risk, he’s not pricing work – he’s being paid on an hourly rate. Now, we are competing against these people with our directly employed people who are paying National Insurance, who have holiday pay, sick pay – all the other benefits that we are obliged to give people we’ve got in employment. But we’re competing against those people – and it’s entirely wrong. These people if they’re taken on by a company should be treated as directly employed” [P6].

The participant understood the distinction between an employee and a worker who is not an employee. Workers who are not employees are nonetheless entitled to be paid the appropriate national minimum wage and enjoy the protection (including the right to a minimum four weeks’ paid annual holiday) afforded to all workers by the Working Time Regulations 1998.

4.4.1.4 Discrimination law

Surprisingly, very few of the businesses who were employers mentioned anything in relation to equal opportunities or the fact that equality in employment is required by both United Kingdom (UK) and European law⁴⁷. The fact that UK employment law currently recognises sex, race, disability, religion and sexual orientation as types of unlawful discrimination was barely picked up on, with only one assertion by an employer indicating consciousness of its broad existence:

“I mean things like discrimination law – we do a lot of recruitment for the **** . . . we know what the legislation is on discrimination” [P10].

One firm who presently had no employees but was considering employing staff in the near future did give mention to this issue though:

“Well obviously when you’re taking someone on you have to; you have to make sure about discrimination – things like sexual and racial discrimination” [P12].

When prompted on the issue of discrimination, all of the participants did respond positively in claiming they were aware of the subject and its applicability under law. ‘Sex’ and ‘race’ were the most commonly recognised.

4.4.1.5 Written statements under ERA Part I and contracts of employment

It was clear that businesses with employees were aware of the entitlement of employees to receive a written statement setting out the main particulars of their employment. Consequently:

“All employees have a copy of their contract and that has all the fundamentals in it – basics like job description, pay, working hours, holiday; things like that. I mean, I know that we’ve borrowed heavily from Peninsula and what they advise on employee contracts – I’m fairly certain we’re not in breach of anything there, because they spell it out for you, what you need to have and put in there” [P10].

“And also when you do take them on, getting the terms of their employment down in a contract – written down and everything” [P12].

⁴⁷ The Sex Discrimination Act 1975, Chapter 65; the Race Discrimination Act 1975; the Disability Discrimination Act 1995, Chapter 50; the Race Relations Act 1976 (Chapter 74) and the Employment Equality (Sexual Orientation) Regulations 2003/1661. Also Employment Equality (Religion or Belief) Regs. 2003/1660 and Employment Equality (Age) Regs. 2006/1031.

Another firm also had employment contracts for all workers, which had been sourced from an external company:

“Oh yes – every one of them, which has been checked through. We actually do use an external company to sort out the contracts as well. This is – I’ve forgotten the name of them now – IRPC. These guys, they’re part of Croner’s and they offer a range of other services as well including legal help-lines and that sort of thing” [P19].

The significance of the employment contract and ensuring each party had clarity on the terms within the contract was on one level very much apparent:

“Yeah, absolutely – physically gone with them; so sit down and actually gone through the contract with my employee so he’s aware exactly what the terms are and everything. I actually got a solicitor to have a look through it at well . . . we went through the terms of his contract together, so we’re both happy about the terms and everything. So yeah we discussed holiday and obviously pay and working hours” [P14].

One business was able to demonstrate a good depth of knowledge as it explained the presence of restrictive covenants in some of its contracts, which typically seek to restrict the conduct of senior employees post-termination:

“We have a generic contract but it is modified slightly – I mean some of the key staff for example have restrictive covenants in there; in their employment contracts which you could probably just about uphold but some of them you wouldn’t get away with some of the more less-key staff” [P11].⁴⁸

However, some firms seemed less stringent in ensuring that employees received a written statement of employment particulars within the first two months, albeit that they were aware that employees had to have a written contract of employment:

“Yes, well once again the employee contracts are being updated at the moment in-line with legislation but they do have – in fact we implemented a system that they have written contracts. Not, not everybody did have one going back a few years but we’ve kind of put that in retrospectively really” [P15].

⁴⁸ Restrictions on employment and setting up in business are prima facie unlawful as being in restraint of trade but can be lawful if they protect a legitimate business interest, for example a trade secret, and are no more restrictive than is absolutely necessary.

Another did not have contracts for all its employees, “*Yes, most of them – the new ones haven’t, but most of them*” [P6]. One participant recounted his experience of going into a SME to work where there was an absence of written contracts:

“I actually brought in someone with me as well who was au fait with employment law, and they wanted us to look at their employment and health and safety law. So we went in and started talking figures and then they felt that they didn’t need to do it. They’ve got a workforce of twenty-five, twenty-six people and they’ve only got five or six contracts – employment contracts. They’ve got nothing on health and safety written at all, nothing” [P13].

4.4.1.6 Other areas of employment law

Awareness and knowledge of employment law beyond the above areas was limited. In a few instances, some businesses were aware of individual employment rights, or changes that had take place such as:

“For example, one of things we’ve done is retirement age – what was it – 65 I think, you know, all that kind of thing. I mean we’ve had discussions – like we’ve changed the policy on; well two things that we’ve done, one of them is confirm that 65 is the retirement age because before that it might have been a bit younger than that so we’ve moved that in line” [P15].

Others stated that:

“We’ve got our own sick pay scheme so we don’t have to worry about the statutory one; we’ve got our own pension scheme which is open to everyone” [P11]

“Stakeholder pensions – there was a lot of hoo-hah about it at the time” [P19].

There was awareness that businesses with five or more employees are required to give access to a stakeholder pension scheme⁴⁹ to those employees who are entitled to join it. However, awareness on the part of the employer was not necessarily reciprocated by the employee and therefore the law was questioned by the business:

“A lot of time’s wasted on stakeholder pensions and that sort of thing, which nobody picked up on and it took us about three days to get that sorted out. It cost me an arm and a leg, yet nobody wants to get involved. So – what’s it good for? It’s a real waste of time. When legislation comes in, which I consider to be important then we’ll act on it immediately, but typically we’ll wait until the last possible moment” [P19].

⁴⁹ Welfare Reform and Pensions Act 1999.

There was a brief acknowledgement of the issue of maternity leave⁵⁰, although this was only a general awareness as the managing director delegated responsibility for such issues elsewhere:

“I think we’ve had also discussions, we had somebody that’s been on maternity so we’ve had to look at maternity rules and things like that in terms of payment and length of time they’re allowed off and all those kind of things – which I think has changed in the past couple of years” [P15].

On specifics like holidays and employee entitlement to time off, whilst there was an overall awareness, such issues tended to be dealt with much more informally:

“We ask people to work hard, but if there is an issue where somebody needs some time off – they get time off. If it’s time which they haven’t actually got booked because they’ve used all their holiday up, well if it’s a domestic issue or justifiable then yeah – that’s it . . . Issues of time off, breaks – if people want to take a short afternoon – it’s too much hassle to try and work out a quarter of a day’s holiday and take that out of someone’s holiday allowance, so people just take it and it’s even across the board” [P19].

Only one business made reference to the issue of redundancies, and it was apparent in that discussion that in regards to a transfer of an undertaking, the business was knowledgeable of the fact that employees terms and conditions are preserved when a business or an undertaking transfers to a new employer, and that there must be a legitimate business reason for making such redundancies:

“I mean the redundancies we made, they were all because we had to make changes to the workforce because of the new structure – we were doing things in a different way if you like. So as far as I’m aware that was an ok reason for making those redundancies, and I think, what we did, we did fairly. And those that were kept – they’re on pretty much the same contracts as they were” [P10].

4.4.1.7 Disputes

Disputes with staff tended to be the exception to the rule, with very few of the participants claiming to have had any such experiences. Hence, one business claimed:

“Yeah – employment law is another issue – but again it doesn’t really affect us that much. Now, our staff turnover ratio is zero. We don’t have a staff turnover ratio because once people are here, they stay here. Which means that we must be doing something ok” [P19].

⁵⁰ Employment Rights Act 1996 ss. 71 & 73 and the Maternity and Parental Leave etc. Regulations 1999, Statutory Instrument 1999, No.3312.

There was therefore less concern regarding grievances and dismissals, with only one business able to demonstrate some awareness and knowledge of regulations governing such incidents:

“Well; there are times when I’d like more flexibility in being able to hire and fire . . . it used to be to get rid of someone is a verbal warning, a written warning, then you’re out. Now it’s a verbal, two written warnings, then you’re out. And it, for a company like ours – if someone is not up to scratch, I do not want to be spending three or four visits, or three or four interviews and whatever with representatives to get rid of someone. If they’re not up to scratch – they’ve had a verbal warning, and they’ve had a written warning then out. Two strikes and you’re out is perfectly ok. This three strikes and you’re out thing is crazy. It just gets; so someone who’s working unsafely can be on-site for a longer period of time than they should be because I’d have fired them. But now, of course, with the legislation if you fire someone, you finish up with a £50,000 maximum tribunal” [P6].

The business was aware of the existence of statutory disciplinary procedures, and that failure to adhere to these correctly would result in a penalty although the statutory procedures require that, as a minimum an employer contemplating dismissal must follow a three-step procedure which involves a statement of writing of what it is the employee is alleged to have done; a meeting to discuss the situation; and the right of appeal. However, legal advice had had the effect of making the business especially aware of the dangers of not following the procedures.

4.4.2 Contracts with clients, customers and suppliers

4.4.2.1 Importance of contracts

The concept of the contract as something fundamental to the law regulating commercial activity was not necessarily reinforced on the basis of the contractual dealings described by the businesses here. In regard to the two areas of contract law – contract terms and breach of contract – where one might expect businesses to have not only awareness and knowledge but also an interest, any details that were given were mostly vague. Typically, the businesses did not regard contracts as particularly important. In the extreme, one business who predominantly sold its product on the premise of one-off sales stated:

“No – I mean, its – we have a product that doesn’t necessarily need a contract at all. The arrangement is – you buy our ice-cream, we provide it. Our responsibilities are off as soon as you get hold of it” [P3].

Another was equally dismissive of the role of contracts, even when they were in place:

“Quite frankly, contracts aren’t worth the paper they’re written on in my view. They’re there just to; at least they give a guide, a framework if you like within which we’re all

working. But when; they're there as a tool when things go wrong. Now if things don't go wrong, it's no problem at all. When they do go wrong and you get a client that doesn't pay, or you have an architect that's inefficient then the contract should protect you. In fact, our experience is the contract is ambiguous. And when you start to test what it actually means, it doesn't necessarily support you as normally it should do. In the end, as you know, you've got to go; you have to rely on English law and English courts" [P6].

4.4.2.2 Contract terms

In reference to the nature of the contract that businesses favoured and more specifically to the terms of the contract, those being either express or implied, the firms seemed to have a poor awareness. There was no mention whatsoever of the implied terms in the Sale of Goods Act 1979, c.54 or its parts such as section 14(2) which requires goods to be of 'satisfactory quality'. Consequently, it was not uncommon for businesses to be entirely unaware of what their terms and conditions actually were, or if indeed they did actually exist:

"In terms of contracts with clients, what it is is we just produce an order and accompanying letter. We have something saying 'subject to our terms and conditions' printed on that. But again, we don't have anything in writing which actually states our terms and conditions. I'm sure we did produce something that said terms and conditions available on request. But if someone actually asked me for it though – we don't have it. We have an invoice which says payment within 30 days and that is basically it" [P17].

Several businesses reported to have sets of terms and conditions relating to the legal rights of the contracting parties, the obligations of the respective parties and relevant penalty clauses, however, it later emerged that businesses chose not to rely on these contractual rights when in dispute with customers as they preferred to resolve disputes using 'non-legal' methods. Firms also seemed happy to 'crib' terms and conditions from whatever sources they had access to for use in their own contracts, without necessarily being able to expand as to what these terms referred to. Firms seemed to adopt a 'pick and mix' approach to drawing up their contracts, making use of other sources where they could:

"Well I think they are standard ones we pulled out from somewhere, but we've obviously adapted them to ourselves. I mean we didn't include clauses – that wouldn't apply to us but we've changed things like when we expect payment" [P3].

Firms therefore seemed to be uncertain as regards the contracts they used in business. Terms and conditions were frequently copied or on occasion discarded:

“Well, I do a proposal – it has very little in the way of terms and conditions. That is something that would’ve been useful – if you were aware of some help available to drawing up some basic terms and conditions. I think that would’ve been – would be helpful. I considered looking at terms and conditions available with the Institute of Management Consultants and people like that but I haven’t done that yet. So, no it’s a very – I’m working on a fairly informal basis really. I mean I charge clients on an hourly rate or sometimes fixed rate, in some instances” [P1].

Firms appeared to favour a much more informal approach, rather than having any strict reliance on a contract:

“You can’t have a contract down which states that you’ll have a certain period of performance – if they need it now, they need it now. That’s how we operate, and we’re only as good as our last hire, or our last transaction. If we’re good enough, people just keep on coming back to us. If we’re bad, then they’ll just walk away from us and go somewhere else . . . But typically, it is basically a quote is supplied and that’s how it works” [P19].

Firms also seemed reliant on industry practices as a means of establishing contractual reliance:

“Yes, yes we have terms and conditions, yeah . . . Well, I think they’re ones we got from somewhere – standard ones that you’d use within printing, you know, payment and that kind of thing” [P15], and

“Whenever we do work for a new client, the first quote always goes out with our terms and conditions. They’re based on our industry standard ones” [P10].

Another business revealed:

“Most of the contracts are a standard JCT – Joint Contracts Tribunal which has evolved over many, many years. So that’s the main contract we have with our clients. We have – it’s called a DSCWA which we send out to all our sub-contractors, which stands for Domestic Sub-Contract, and in that Domestic Sub-Contract are all the terms of employment. And every sub-contractor gets one of those. And these are industry standard contracts that comply with the law” [P6].

4.4.2.3 Disputes over late payment

Although firms seemed to not rely too heavily on contracts, they were well aware of their legal rights enough to resolve disputes with clients:

“I mean an example is, we had when we first started we were dealing with **** – I mean don’t mention this name particularly but we were dealing with a ‘big London store’ – and they were just appallingly bad payers. And at the time the business was starting and they owed us quite a lot of money and they should have paid us. So instead of resorting to any legal issue, a much more pragmatic issue that I was advised to do is that I just phoned the

guy up that we were dealing with and said ‘Look you either pay us by tomorrow or I’m coming up there to the shop and pulling everything off the shelf’. And he didn’t believe me. So I knocked on the door the next morning. I went to his office and said I’m in the shop, I’m going to go down to the shop floor and take everything off the shelf unless you give me the money now – and he gave me a cheque there and then. And that was a pragmatic resolution – it was a half a day to up to this particular store and deal with it, and if we’d gone to lawyers you know we’d have had to wait, and it would have just cost us money and time and you know” [P11].

Although these firms proclaimed their methods to be a ‘non-legal’ means of resolving the dispute with their client, it would appear that their actions might indeed have been allowed on the basis that legal ownership rested with them until the goods were paid for, and demonstrative of a Romalpa Clause where sellers can protect their business against buyers that do not pay by incorporating a Retention of Title clause in their terms and conditions of sale⁵¹.

There was some awareness of late payment legislation⁵², although none of the firms had actually made use of it:

“Yes, now once again on late payment, there is this thing you can charge interest – I mean what we do, again once again we take a practical approach that we obviously chase people up for money and then we have on occasion or one occasion, or we do, no, occasionally we use a debt collection agency that charges us a fee, and that seems to work well with those people who will stubbornly refuse” [P15].

The overriding importance for the businesses appeared to be an emphasis on money rather than any value in contracts:

“Yes, well, I don’t think we stake too much in legal and contracts as much as . . . I don’t think they’re as important as money” [P3].

4.4.3 Intellectual property

Relatively little mention was made of intellectual property law by any of the participants, although it could be seen to be relevant to six of the participants. Of the three participants that did refer to the area, one referred to how the firm now asked its clients to provide proof of copyright in work it printed for them, whilst the other two participants were aware of this area of law and its capacity to protect aspects of the business via trademarks and patents but had neglected to pursue matters any further because of cost, time and uncertainty.

⁵¹ Aluminium Industrie BV v Romalpa Aluminium Ltd [1976] 1 WLR 676.

⁵² The Late Payment of Commercial Debts (Interest) Act 1998, Chapter 20.

4.5 STAKEHOLDER PERCEPTIONS OF SMALL BUSINESS AWARENESS AND KNOWLEDGE OF THE LAW

Whereas attention has so far been directed to the ‘insider’ view of actual awareness and knowledge of the law as recalled by owner-managers and managing directors in the small business, the ‘stakeholder’ perception of small business awareness and knowledge of the law is now presented. As justification for this, it is argued that these are major bodies that, in the traditional sense of the word, have a ‘stake’ in small business and the legal environment. This varies from bodies that both shape and inform the law such as the Small Business Service (SBS), operating within the Department of Trade and Industry (DTI), and the Regulatory Impact Unit (RIU), to small business representative bodies that offer not only legal support services but a wider platform for small business views and concerns on the law, to advisory bodies like the Advisory, Conciliation and Arbitration Service (ACAS) and to bodies like Employment Tribunals who are able to witness at first-hand small business awareness and knowledge, and compliance, with the law.

It is acknowledged, however, that these stakeholders, particularly the FSB, FPB and ACAS derive paid-for business for themselves from the small business sector and might be inclined to over-emphasise the problem. However, it is deemed of interest to find out how the ‘outsiders’ perceive the legal environment of the small business, and the levels of awareness and knowledge that exist. Firstly, this allows for a tentative comparison with the ‘insider’ perspective of the key issues in the area. Secondly, the study benefits from gaining a greater understanding as to how these key bodies perceive levels of awareness and knowledge of the law within small businesses, and how, more generally, the legal environment is seen as impacting on small firms, as well as how the external parties to the firm work to create awareness and knowledge of the law in small businesses. This represents, as a whole, a dimension which is important to any critical assessment of the potential efficacy and efficiency of the law as it pertains to small businesses, and allows for a more rounded assessment of the key issues concerning small businesses awareness and knowledge of their legal environment.

In sharing their perceptions with the researcher, the stakeholders predominantly appeared to follow the ‘official line’, yet they spoke with concern and marked frankness towards what they perceived as key issues surrounding the subject of small businesses and the law, and how regulation might best be served to meet the needs of small firms. In addition, there were personal reflections based upon individual’s experiences of either knowing small businesses or their experiences as a professional working with small firms. It is considered important to acknowledge that all the

stakeholder respondents were ‘informed subjects’ – they were aware of the purpose of the research and they had all determined their own frames of reference – this seemingly did not prevent them from being comfortable or free enough to use emotive language whilst discussing how they felt about issues dealt with in the thesis.

Given the ‘outsider’ status of the stakeholders, their assessments and perceptions of awareness and knowledge of the law in small firms were expected to be largely anecdotal, and therefore they lacked in comparison with the reality as ‘lived and breathed’ by the insiders. However, whilst the stakeholders were forthcoming in acknowledging this and subsequently were reticent to make any statements relied upon as fact, their views are of interest, not least because they are anchored in experiences, encounters and relations with a substantial number of small businesses. Hence, for one small business representative body, the perception of awareness and knowledge of the law in small firms was a negative one:

“How many SMEs know what they have to do [in respect of the law]? I’d say few based on our experience . . . The majority of SMEs operate illegally; playing the ‘numbers game’ . . . it’s true that for many ignorance is bliss and the priority is the viability of the business” [S8].

Another assessment of awareness and knowledge by one stakeholder suggested that:

“[I] would say generally knowledge of legislation is fairly low . . . we do an event called ‘Employing People’, which is a little bit of everything, from cradle to grave, so from recruitment, induction of staff, through contract and written statements, family rights, discipline and grievance handling, through to absence and termination of contract. And I find that pretty much the level of knowledge is very low”. [S1]

This was then substantiated with the evidence that “64% of companies [that had working relationships with the stakeholder] have no procedures at all – disciplinary procedures” [S1], and that small businesses were at times knowingly ignorant of the law. The idea emerges again of small businesses only engaging with the law when they have a legal problem to solve, and also that awareness and knowledge of the law can be subject to roguish interpretation by employees thereby leading to incorrect assumptions by employers:

“Businesses aren’t attracted to an event unless they’re in trouble. So unless they have had an employment tribunal case brought against them in the past, or there is one bubbling up, or they’ve gone through recent disciplinary hearings - they’re not going to be bothered. And I know loads of people, my friends actually own small businesses – builders and things like

that – and I tell them the fact that the law’s changed and they’re not bothered at all. They haven’t got disciplinary procedures – they’ll just sack them . . . And that’s, you know, you talk to any plumber or bricklayer – that’s common territory for them – that’s the way the business world works . . . Nothing about it [knowledge of the law], unless all of a sudden there’s an impact” [S1].

Against this seeming backdrop of small firms having low levels of awareness and knowledge of their legal environment, the policy context and agenda as driven by the government is for awareness and knowledge of the law to be seen as an outcome of the process of ensuring and implementing ‘better regulation’:

“But my sense is that the impact at the end of the day on business awareness should actually come through the output, which is the better regulation. So what we’ve got with the tools and the framework of the RIA is a process, and if departments properly follow that process then the outcome should be more likely to deliver the objective and deliver it in a way that is more in tune with the business. So in that respect I think obviously government wants to learn, want businesses to know that it’s, that it is aware of the effect of regulation and it wants better regulation and it wants to develop regulation in a way that’s going to reduce burdens” [S2].

Yet, the truth for the small business according to one stakeholder was that be it better regulation or not, the reality for firms was that interaction with the law rarely went beyond any surface-deep level:

“And from events that I’ve run and been on, people will know things like minimum hours, numbers of holidays – they will know the law’s headline message but they won’t know any sort of depth. I mean there is a general awareness of statutory rights – like minimum hours, if I said what are the minimum hours most people would say its 48 hours. But then you try and go down one level and that will stump most people . . . I mean people will see headlines but not the depth behind it” [S1].

Further, it was apparent that there were instances where the naivety and complete absence of awareness and knowledge of the law in the small business was exposed. This appeared to be another manifestation of the ‘realities’ of running and operating a small business, where the resources of the firm, or lack of, meant that certain areas of the business could only be dealt with superficially:

“Poor [knowledge] . . . approximately forty per cent of all cases in employment tribunals that are heard have one or other parties who aren’t represented. It’s not – most people assume that that’s the claimant. It isn’t. And commonly or not uncommonly respondents are self-represented and they tend to be self-represented as small or medium sized businesses rather than large businesses . . . And if you get into the realms of European law,

discrimination or those technical areas, they'll naturally struggle – as would claimants. And they'd struggle just as much as claimants . . . Because we have these peculiarities of concepts that lawyers understand, specialist employment lawyers but not necessarily the small businessmen – what does a builder want to know the difference between a worker, or why a worker might not be a worker if he's running his own business and providing a service – so they get caught. And they'll often turn up here with a holiday pay claim and we'll say 'these people are workers, they're entitled'. So we not uncommonly have this problem where it is just pure ignorance. Not ignorance because the people are unintelligent – it's not their area. So there is a problem, it's a major factor" [S5].

4.6 ANALYSIS OF AWARENESS AND KNOWLEDGE

In analysing the results presented above, it is expedient to reiterate the distinction used in the present study between 'awareness' and 'knowledge', one which draws from the operational definitions adopted by Meager (2002) who asserted that knowledge is a more robust concept than awareness as indicated in:

“**Awareness** occurs when an individual is sufficiently informed about a subject for him/her to be conscious of its existence and its broad subject matter.”

“**Knowledge** requires a theoretical or practical understanding of a subject.” (p.11)

In other words, the concept of awareness implies that an individual had heard of a piece of legislation or regulation and had some idea of the area of business to which it relates. Knowledge means that an individual could demonstrate some understanding of a detailed provision of legislation or regulation.

4.6.1 General levels of awareness and knowledge

The results obtained in the present study suggest that the respondents had awareness of 'generic' regulations that impact on all businesses. All of the firms in the present study were sufficiently informed about the legal environment for them to be conscious of the existence of a number, and sometimes several, areas of law relevant to their business. It was rare for the firms in the present study to cite specific laws or regulation. Instead, reference was made to large encompassing areas such as company law, health and safety law, employment law, contract law and their broad subject matter. The participants were, however, not confident about their knowledge of their legal environment. A summary of the areas of awareness and knowledge identified by the participants is presented in table 1 of Appendix 1 at page 190.

A lack of demonstrable knowledge and a lack of confidence in their knowledge was often the result of the absence of an in-house legal function and because legal issues were dealt with on an ad hoc basis. Perhaps more importantly, the out-sourcing of legal matters to solicitors and accountants was widely practised. As a consequence, few firms perceived themselves as engaging regularly with their legal environment. It was evident that, even in the context of their relationships with other businesses and customers, firms seldom viewed this in terms of a legal relationship. This was less prevalent in the employer-employee association, however, where strict adherence to the law was intended via written contracts and consultation with solicitors. On the one hand, firms talked of being largely respectful of their legal environment and the inevitable role of law in running a business. On the other, firms eschewed legal rhetoric and were disinclined to involve the law in their business or make use of legal remedies. Firms typically engaged with the law only when it was negating the operation of the business, or an aspect of it, and where no 'pragmatic' solution could be found.

Contrary to the literature suggesting regulation as a significant burden to the small firm, none of the participants in the present study reported the law as representing a serious impediment to the business. This could be the result of the low levels of detailed knowledge and the few incidents of firms having to resort to legal problem-solving. Whilst the law was, on occasion, regarded as troublesome and diverted resources away from preferred avenues, poor awareness and knowledge did not appear to preclude firms from achieving success. Awareness of the legal environment was deemed to be important but knowledge beyond this less so. Owner-managers were keen not to compromise the main thrust of their businesses and thus engaged others to deal with the detail wherever possible.

The results suggest a relationship between size of business and knowledge levels but there were a number of intervening factors, which were also influential. It was clear that certain businesses had to come to terms with certain regulations on far more occasions than others. Most obviously, those firms with employees were forced to engage with employment law far more than those without. But this was also subject to a number of other intervening factors. Most notably, the composition of the workforce could be seen to affect awareness and knowledge where, for instance, the employment of family and friends saw a more informal and lax approach to finding out about the law. Sector also influenced the areas of law with which firms came into contact. Operating on a need-to-know basis appeared to be one of the most significant determinants of awareness and knowledge.

4.6.2 Areas of awareness and knowledge

The heterogeneous nature of the participants, their activities and small firms generally pointed towards the fact that there would be variance in awareness and knowledge levels. This proved to be so but the incorporation of generic regulations that were applicable to all parties, to a lesser or greater extent, meant that there was a degree of commonality with regards the areas of law discussed with each firm. In terms of the areas of law where there was awareness and knowledge, the most recognised areas were company law, accounting and taxation regulation, health and safety law, and employment law.

A major theme in the present study was the awareness of the participants, irrespective of legal form, of regulation governing the submission of accounts and taxation returns. Awareness of this area of regulation was a reflection of the importance of accountants and solicitors to the participants. All of the firms, bar two, made explicit reference to the relationships they had with their accountant and solicitor and the reliance they had on these external parties to carry out such acts and to provide information on the law as it might affect the respective firm.

Awareness of health and safety law was linked partly to sector, as certain enterprises were more likely to have to deal with the breadth and depth of health and safety and environmental health regulation because of the area in which they operated. Notable examples were the firms operating in the construction sector, food production and technical consultation. These firms were also the ones that came into regular contact with regulatory enforcement bodies and this was an important determinant of awareness and knowledge. Awareness of employment law was greater in the larger enterprises simply because they employed more people. Where employees were not friends or family of the owner-manager, the relationship was more formal and the threat, both explicit and implicit, of action being taken against the firm by an employee prompted understanding. Awareness, though, was still often gained on an ad hoc basis – hence awareness of maternity law only arose because of an employee's impending pregnancy.

The smaller firms had less resources devoted to legal matters and relied even more on the owner-manager to address issues on a 'fire-fighting' basis. All of the firms stressed their interest in the product/service and this would explain low levels of awareness and knowledge. As such, it was those participants at risk to the law that had the highest levels of awareness.

The relationship between size of enterprise and awareness and knowledge of the law in the Blackburn and Hart (2002) study was generally replicated in the results in the present study, where those firms employing a greater number of people had higher awareness and knowledge of the legal environment generally, and also more specifically of employment law. This pattern was strongly for awareness and knowledge of the law to be a product of the closeness between the law and the day-to-day activity of the firm. In other words, the respondents addressed the legal environment in relation to their business when they had to do so.

The present study replicated a finding of the SBC (2004) study in that small firms perceived larger businesses as having both the staffing resources and personnel specialists to cope more easily with the regulations. The SBC study found that small businesses have a low awareness of employment regulations and see complying with them as a very low priority. Accordingly, the SBC study identified three different employee relationship models which were intrinsically linked to how employers perceived regulations and how compliant employers actually were. The types were ‘mutual respect’, ‘we are family’ and ‘them and us’:

‘Mutual Respect’: Often in higher skill and higher pay sectors. They tend to have an adult relationship with employees and want to be compliant with regulations but feel they are onerous and changeable.

‘We are family’: Found in any sector, possibly in the smallest businesses. There is a degree of flexibility and ‘give and take’ enjoyed by employers and employees. Regulations are largely perceived as irrelevant, but they want to do their best by staff and hope that they will not be sued.

‘Them and us’: Often found in low skill and low pay sectors with high staff turnover/incidence of casual staff. They distrust and resent employees; feel employees have the upper hand; suspect they will be penalised by employees whether they are compliant or not’ (2004, p.5).

The SBC study found that few employers had high awareness of legislation, but also that deliberate non-compliance seemed to be rare. The ‘We are family’ and ‘Mutual respect’ type firms were categorised as good employers with low awareness of legislation, whilst the ‘Them and us’ firms were placed as ‘bad’ employers with low awareness of legislation. In the context of the SBC study, the present research found that few employers had high awareness and detailed knowledge of their legal environment, but equally that deliberate non-compliance was rare.

The typology proposed by the SBC study represents a positive step in attempting to categorise small firms according to their levels of awareness and knowledge of regulation. It is, however, not without limitations with the most prominent being that the employee relationship model is developed solely from how employers see themselves. There is therefore no input from employees that might corroborate employer self-assessments of themselves as 'good' employers, or evidence that might substantiate further the employer-employee relationship as defined in the SBC model. Given that the data from the present study also draws only from interviews with the owner-manager of the small firm, it is correspondingly argued that it is not necessarily plausible to analyse the findings in the context of an employer-employee typology. To the extent, however, that both the present study and the SBC enquiry draw from discussion with owner-managers and with such comparison made tentatively, the findings from the present study revealed elements of all three of the types proposed by the SBC study. Particularly apparent in the present study were examples of 'mutual respect' and 'we are family' firms, with strong themes emergent in the present study that firms wanted to be compliant with regulations, but still felt that they were onerous and changeable in the case of 'mutual respect', and that firms operated with a degree of flexibility and worked on the basis of 'give and take' on both sides, and that employers wanted to do the best by their staff in the case of 'we are family'.

In terms of the general legal environment, Lewis (2003) found it to have an adverse effect on the small business, due to the effect on the use of management time but also because it increased their fear of legal liability and made them over-cautious. Drawing parallels with the present study, the perception that employment legislation favours employees is noted. In addition, the findings of the present study also suggest an effect on the use of management time if the law is to be fully understood and complied with. A dichotomy existed in that all firms at the outset did not consider the legal environment to be a pressing concern but those firms that had experienced litigation, for example, subsequently saw their own working environment as increasingly 'legalistic' in the sense that they were keen to adopt precautionary and protective measures. Yet the present study also demonstrated that firms were aware of formal methods of protection based on law, yet often opted for informal methods instead, particularly in areas based on contract law.

There were some instances in the present study where participants misquoted legislation or authorities. More generally, though, firms were unable to cite specific pieces of legislation, and instead referred only to generic areas of law such as 'company' or 'health and safety'. Corneliussen (2006) stated that the firms in her study appeared to make little effort to be informed about the

regulations controlling their work, and also that firms initially perceived the regulations as having minimal impact on their work. Yet further probing did reveal regulation as 'affecting what people do'. There is some consistency in the findings of the present research in that many of the firms saw the legal environment as having a negligible impact on the business. However, a number of firms in the present study did make substantial effort to be informed about the law affecting their work where necessary. This was particularly relevant in areas such as health and safety and employment law, manifested through a broad awareness of generic regulations. Corneliusson asserted that small firms may approach the regulatory ideal where the routines, procedures, and precautionary measures prescribed by regulations permeate the organisation. Accordingly, her explanation for why firms were often unable to identify, either correctly or at all, which regulations and regulatory authorities controlled their activities was that the firms often found the regulations reasonable and appreciated the necessity of the precautionary measures imposed. The findings in the present research similarly suggested that firms appreciated the necessity of the law in certain areas, however, there were strong sentiments on behalf of some firms that regulation was at times too prescriptive, and in relation to employment law, too heavily weighted in favour of the employee.

4.6.3 Implications of the results

The FSSC (2004) study concluded that the existing training infrastructure for SMEs in the financial sector, whilst sufficient, could be enhanced to address the lack of awareness and understanding of regulatory obligations and their impact on the sector. Relating the findings of the present study to those of the FSSC investigation, there is evidence to suggest a corresponding lack of awareness in some instances, and a need for more assistance to help firms be aware of and understand sector-specific and generic regulation. A number of respondents in the present research openly admitted to not being well informed about or having a proper understanding of regulation relevant to them. The present study suggests a need for further, and arguably more in-depth, research into awareness and knowledge of the law in small firms. There follows from this a number of related issues that justify the need for further investigation. In particular, these include assessments of the impact of generic regulation, and not just employment regulation, on small firms and therefore the relationship between awareness and knowledge of regulation and the impact of it on the business. The results of the present study found that even in instances where awareness and knowledge levels were high, the impact of regulation was perceived as relatively low by the owner-manager. Some explanation can be found for this in the present study, as it was argued by the respondents that the law ranked as a low priority in the context of other factors such as the product/service or competition. There is, however, a need to build upon this and to explore in greater detail whether the impact is limited due

to deliberate and/or ignorant non-compliance or whether it is simply a factor of lack of detailed awareness and knowledge. The other issue raised within this section is the responsibility for awareness and understanding of regulation, and the question of where this responsibility lies. Whilst this issue was not explicitly dealt with in the present study, it was apparent from the findings that firms were particularly reliant on enforcement/inspectorate bodies, as well as traditional sources such as accountants and solicitors, to make them aware of regulation.

Yapp and Fairman (2004) noted that the SMEs in their study relied upon external agencies to advise them of the legislation relevant to their business and interpret its requirements for them. These findings would suggest that further investigation is needed into the small firm response to self-regulatory and prescriptive law⁵³. Furthermore, it raises the question of research into legal training and education for small firms in respect of both sector-specific and generic regulation. The latter point was particularly emphasised by various stakeholders, who cited the lack of such training and education, most notably in the pre-start up phase as a factor of poor awareness and knowledge.

Corneliussen (2005) has concluded that the extent to which regulation is consciously thought about and understood by the regulated is unclear. What is apparent is that the levels of awareness found in the present research were similar to what the existing literature might lead us to expect. Accordingly, awareness and broad consciousness of generic regulation such as company law, employment law and health and safety law was largely widespread. Detailed knowledge, however, was often lacking, the major exception being where such knowledge was needed for the day-to-day running of the business. It is important to acknowledge that awareness and knowledge, more generally, could be seen to be poor in a number of firms and that this had consequential effects on firms being compliant with regulation. It is therefore argued that the number of studies that have been carried out in the field of small firm awareness and knowledge of the law is still limited and much more investigation needs to be carried out. A limitation of the present study is that whilst the research allowed for an extensive discussion of the subject, this still only offered a 'snap-shot' picture at one point in time. Previous studies have also been limited in this respect, and it is suggested that in-depth investigation over a prolonged period of time would give a much fuller assessment of awareness and knowledge of the law within the small firm and, more crucially, a better appraisal of how small firms interact with their legal environment. The point has also been

⁵³ Prescriptive law is often used interchangeably with classic regulation and is where a law is passed to tell people what to do or not to do. Self-regulation is the means by which members of a profession, trade or commercial activity are bound by a mutually agreed set of rules which govern their relationship with the citizen, client or customer.

raised earlier in this chapter that previous investigation of awareness and knowledge in small firms has overwhelmingly focused on questioning the owner-manager. Whilst it is understood here why this would be so, it is contended that involvement of small firm employees also might be of benefit in terms of validating the statements and claims of employers, as well as aiding the development of an employer-employee relationship model in the context of the law. It is also argued that further work needs to be done assessing generic regulation, and not just employment regulation which has tended to be the focus of many of the studies.

CHAPTER 5: FACTORS AFFECTING SMALL FIRMS' AWARENESS AND KNOWLEDGE OF THEIR LEGAL ENVIRONMENT

5.1 INTRODUCTION

Understanding of small firms' awareness and knowledge of their legal environment is minimal despite extensive publicity about the impact of regulation on firms. Consequently, knowledge of the determinants of small firm awareness is largely unexplained. This chapter, therefore, will report on findings that seek to identify determinants of small firms' awareness and knowledge of their legal environment on the basis of evidence from the present study. Given the assumption made at the outset that small firm awareness and knowledge of the legal environment is likely to vary from business to business, this chapter will report on the factors that appear to be associated with such variation.

The analysis of the data in regard to determinants of small firm awareness and knowledge of the legal environment suggested three significant and multi-dimensional causal factors. The emerging pattern from the data was that in respect of the dependent variable of level of awareness and knowledge in the small firm, there were three key independent categories of variable as follows.

1. The resources and characteristics of the firm.
2. The law and the legal system.
3. The closeness between work activity and the need for legal awareness and knowledge.

5.2 THE RESOURCES AND CHARACTERISTICS OF THE FIRM

The data analysis revealed that a recurring theme in the results was the significance of time and money as a determinant of awareness and knowledge of the law. Size of firm⁵⁴ and business sector appeared to be less important, although as reported in chapter 4, certain businesses operating in sectors such as food and construction appeared to have greater awareness and knowledge because of this. However, it is argued that this was related to another factor – awareness and knowledge raised out of necessity – which is referred to under the heading of closeness between work activity and legal compliance later on in this chapter.

⁵⁴ Size of firm here relates to differences within the small firm category – i.e. those firms with fewer than 50 employees.

5.2.1 Time

It emerged from discussion with the participants that with regard to being aware and knowledgeable about the law:

“[The] reality in a business like this is that I haven’t got time to find out about what I should know. You just have to deal with these things as and when they come along”. [P17]

This view was indicative of a more widespread sentiment amongst the majority of the small businesses that revealed an inclination to focus on the here and now. Accordingly, businesses adopting a ‘here and now’ approach seldom were aware of law other than when they were prompted into action on a need-to-know basis. Yet even where the levels of awareness and knowledge were at their lowest, there was still recognition that the law was an important business consideration. However, again a lack of time meant that due consideration was only given to it on a just-in-time basis as exemplified in:

“Well, I say it’s important but you know what I mean – it’s not something that I have the time to think about the whole time if you know what I mean”. [P9]

It was notable that a lack of time prohibited the acquisition of greater awareness and knowledge. This was particularly evident in the smaller firms, where the managerial resource was even more stretched. The limited resources of the small firm and the specific demands on the time of the owner-manager meant that time devoted to the law ranked as a lesser priority:

“Well, well I think obviously we have to operate in the kind of legal framework . . . in fact, in many respects my attitude to the law is that you have to operate within the framework and have the knowledge, have some knowledge . . . But I also find personally, because I’m very busy particularly in the sales and marketing side driving the various departments, frankly I just haven’t got the time really to, for example, research all this and keep up-to-date with this . . .” [P15].

The issue of time underpinned the ‘pragmatic’ ethos that businesses appeared to favour. Reluctance to initiate legal proceedings was frequently attributed to time consideration. Previous experience of the time taken-up by such action pointed towards resolution outside of the legal environment:

“A lot of these things really come down to common sense – and I think one thing I’ve learnt in business is that it’s far better to get any dispute resolved by common sense, rather than going into law because then one it becomes a bit expensive, and the second thing is that it takes a lot of time” [P3].

The pragmatic ethos that pervaded meant that resolving business disputes through regulation and lawyers was a “waste of time” [P11]. The more rational choice for the businesses was clearly to adopt approaches that resolved conflict with the minimal disruption possible to the core running of the business. In terms of prioritisation, firms were not prepared to compromise the essential element of what they set out to do:

“In order to have sufficient awareness and knowledge, you need to have someone in here full-time. If I was to devote say a day a week to just law, then the main thrust of the business gets compromised” [P17].

The amount of time needed to understand and then comply with the law often left businesses indifferent to it and suggestive of the idea that small firms didn’t have the infrastructure for dealing with their legal environment:

“A big company can handle it all, but for me it would take two weeks to read each law and understand it”. [P9]

Whilst some did concede that in an ideal world they would have the time for such a task, others were disagreed. The opinion was that dedicating time to this would not be feasible and would be beyond the self-defined remit of the person in control of, and leading, the business:

“[I] don’t have time to deal with all of that. And that’s not what I’m here for – it’s not my role to deal with those sorts of things . . .” [P14]

Time as a determinant of awareness and knowledge operated on several levels: the scarcity of the managerial resource meant limited time was afforded to legal matters; a common sense approach to solving problems was a way of restricting time spent on the law; and the need-to-know method of acquiring awareness and knowledge functioned likewise. In addition, firms passed on legal matters to external specialists to free up their own time. This approach, however, could possibly backfire when areas of law did come to affect the day-to-day running of the business as firms would have to spend time ‘fire-fighting’ because of the lack of preventive work. Time, therefore, went hand-in-hand with the prevailing concern that the small firms ‘know that they don’t know it all’ [P20]:

“We have been lucky and to that extent it hasn’t really, it hasn’t been that much of a problem. I think what it really is, is the amount of time that it takes to deal with it, and knowing that you don’t know it all - so if something does come-up that you don’t know about, you’re caught off guard and spending all your time trying to catch up and deal with it. That’s why it can be worrying because you are limited into how much you know and how much time you can spend on it”. [P10]

5.2.2 Money

Closely related to time as a determinant of awareness and knowledge was money. In the most crudest of terms, one firm stated that money was always a major factor in acquiring awareness and knowledge of the law because, “Expense reduces profit” [P4]. Unsurprisingly, firms were reluctant to spend money to facilitate awareness and knowledge of the law unless absolutely necessary, although one firm did respond that, “No, we try and clarify issues without resorting to spending money but this would not be a prohibitor” [P2]. Nevertheless, the profitability of the firm was uppermost in the thoughts of the owner-managers and directors and any impact on this bottom line warranted serious deliberation. The most obvious impact for the small businesses was that they did not have the financial resources – vis-à-vis those of large firms – to have someone specifically to deal with the law:

“I mean pound-for-pound small businesses employ more people in the UK than the corporates, but the corporates can afford to have whole dedicated departments to deal with all this regulation and red-tape”. [P10]

Even where firms undertook a rudimentary cost-benefit analysis and were able to see a potential positive return for their expenditure, there was a reluctance to do so. Such reluctance might be attributed to the fact that the benefit in such cases would typically equate to compliance with the law, a benefit not potentially perceived as great given the small business focus on the bottom line. Responses reinforced the sense of these small businesses being somewhat dismissive of the law as it affected their business. If there was no impact on the ‘here and now’ world that they predominantly lived in no action tended to follow:

“Now, I’m convinced, however, I still don’t spend any and maybe we should – that spending, say, £500 on some sort of consultation with a health and safety expert is money well spent. However, you don’t do it because you think, well I’ve got to sell a £1000 worth of kit – so it’s got to be incremental business to fund the £500. Well, our business is better than that, but we still don’t do it” [P17].

Only six out of the twenty-one firms had had some kind of interaction with enforcement/inspectorate bodies and three had actually been called on at their premises. Consequently, where the likelihood of being visited or ‘found out’ was slight, firms had the attitude that:

“But it’s like this minimum result, minimum work, minimum costs, you know what I mean” [P13].

Participants reflected on occasions where they had entered into legal proceedings against clients. Of significance was the overwhelming response of all those that had had such experience that they would not use the law to resolve a dispute again, if at all possible. This was because of unwillingness to make the inevitable financial outlay that would be entailed and a preference for pragmatic solutions that could be seen to have had effective results:

“Besides, my expertise is management and running a business – I’m not a bloody lawyer and I don’t want to be paying fat chunks of money. So, I, I remember one; we had a major dispute with a client who owed us £100,000. I couldn’t afford to roll-over on that one so we finished up by going through adjudication and all the rest of it. And in the end of it, he rang me at nine o’clock one night and he said ‘lets just try and meet and sort this’. So I went and met in a pub car-park. By twelve o’clock that night we’d agreed it and we settled it, and I walked away with a cheque. And the adjudication cost us forty thousand quid. Now if I, in hindsight, I’d have settled for his reduced bid and not had to go through adjudication, not having paid a fat-cat forty grand. So, you learn”. [P6]

Firms seemed hesitant to make a financial outlay for areas of law to do with intellectual property. It would appear that whilst there was a broad awareness of the subject matter to be conscious of the area of law and realisation that spending money would protect their rights in respect of that area of law, they were not prepared to do so because of the cost:

“But you know going down a lot of intellectual property routes is very expensive”. [P11]

“I went and had a meeting about **** Ltd, **** Group to get patent protection on our logo. And again, just to protect that was going to be £4500. Now, I wish I’d done it, but I didn’t . . . because at the moment we’re sort of fairly vulnerable”. [P17]

Examples of businesses that had proactively spent money to facilitate awareness and knowledge were few. Where it did occur, firms were concerned that other businesses were not so aware and knowledgeable of the law, and that consequently they would not be implementing similar procedures. In these instances, awareness and knowledge could be seen to be resulting in a financial disadvantage:

“We closed the company down for a day to put everyone through health and safety training – so that cost us the wages, it cost us loss of production. Now that, that health and safety training day probably cost the business £5,000; now we’re only a small company – that comes straight off the bottom line. And we provide all the guys with PPE, which we expect and again its £200 a man and when it wears out we replace it . . . But that carries a massive cost, which if it’s carried by all our competitors, then we’re all doing the same thing but I know for certain that it’s not. And therefore, that in itself creates an uncompetitive scenario when we’re trying to comply with legislation”. [P6]

5.2.3 Experience

The businesses' experience of legal matters, and the accumulated 'legal experience' that they were able to gather internally was also another factor in awareness and knowledge of the law. The most obvious aspect was simply the length of time a business had been in operation:

"I mean one's kept up to speed by the virtue of the fact that you've been in business – so you're aware of things". [P5]

Some businesses were prepared to cite their relative inexperience as having an effect. The most obvious manifestation was that having only been in business for a relatively short period of time and/or having no previous experience of 'running a business', they were still in the process of familiarising themselves with the formalities involved. This was recognised as a difficult process, with some owner-managers finding it difficult to balance the 'real' work of the business alongside these other considerations:

"I mean I think I'm very junior in this field, you know . . . and I feel I've sort of come back to the bottom of the ladder, and I'm just starting and feeling my way". [P8]

"I mean when we started what we were doing we didn't, we really didn't think about the law too much". [P12]

Even when firms had been in existence for a considerable length of time, there was recognition that significant gaps still existed in the firm's awareness and knowledge of the law. For the participants, the nature of such comments had to be set against a backcloth of what were viewed as the realities and priorities for a small business:

"Most small business owners have limited management and business experience. They're usually in business because they have strong expertise with a product or service. The business typically evolves and grows around this core product/service expertise. Knowledge of most subjects outside of the core product/service is learned through a need to solve a particular problem . . . Small business managers watch every penny and typically only spend money to win business or solve problems. The law would fall into the problem-solving category" [P4].

Again the recurring themes of businesses typically dealing with the law on an ad hoc basis and of a reluctance to engage with subject-matter outside of the core function of the business unless it can be seen to be having a direct effect are strongly present. Experience and length of time in business are, therefore, a factor: a longer period in business tends to lead to greater experience of 'legal problem-solving'.

Experiences of firms engaging in litigation were minimal. There were only two cases of disputes going to law with employees. Generally, firms reported that: “Touch wood, I’ve never been to; I haven’t been to an industrial tribunal⁵⁵ or had any actions taken against the company” [P15]. Again, this could largely be attributed to a reluctance to instigate legal proceedings because of a willingness to take a ‘pragmatic’ approach to resolving disputes:

“Oh yeah, very much so, I mean things going wrong and disagreements are part of our industry. But no, I believe very much in straightforward, plain-talking communication. And if something happens and goes wrong, the first thing is get out there and sort it, the second thing is keep communication clear and civil . . . But yeah, communication is without question the way to resolve everything”. [P6]

“[We] solve potentially legal issues by straightforward talking and relying on our sense of honour” [P19].

Businesses that had been in existence of a substantial period were dismissive of regulation or legal avenues that might be available to them and solved problems without resort to the law. One business, having traded for twenty-one years, stated:

“The government here wants to reinvent the wheel in terms of the law but what they don’t seem to realise is that its all been done before. We’ve got standard terms but we don’t ever enforce them. We don’t ever bother with Late Payment”. [P9]

There was, though, the idea that employees have become much more aware and knowledgeable of their legal rights and entitlements, with the result being that employers were forced to do likewise:

“I mean I think employees themselves are aware of their rights and whatever, more so these days. Again, I mean when we were doing the merger, some employees were very aware of the transfer of their rights as employees from one company to the other – transferable pensions etc, etc. They’re very clued-up. Which isn’t a bad thing – I mean don’t get me wrong, I’m not against fair employment rights, but it’s just that when it becomes tough, you can’t make tough decisions very easily”. [P10]

The use of external professional services also affected businesses’ experience businesses of their legal environment. The use of professionals such as accountants and solicitors was high, particularly in relation to areas such as financial regulation, company law and employment contracts. To this extent, businesses benefited from expert advice as the responsibility for dealing

⁵⁵ The correct term is now ‘employment tribunal’. They were called industrial tribunals until the introduction of the Employment Rights (Dispute Resolution) Act 1998, s.1 changed their name.

with the law was ‘contracted out’ to external parties. It ensured that the firm could concentrate on the core function of the business.

5.2.4 Interest and motivation

The interests and motivations of the firm could sometimes be seen to be impacting on their awareness and knowledge of the law. Specifically, there appeared to be those small businesses which appeared to be much more proactive and motivated in the process and could consequently be seen to have a far greater interest in finding out about the law. In some circumstances, this greater interest could also be attributed to the fact that these businesses found the regulations reasonable and appreciated the necessity of the measures being imposed. There was also mention of a ‘moral’ duty and of the ‘onus’ on a manager-owner/director to be aware of the law. A key issue appeared to be whether businesses were interested in and motivated to find out about an area that they perceived to be largely outside the scope of the running of the day-to-day function of the business. The response from one firm was that most small firms would not be:

“I would have thought that most of them just see it as a bureaucratic burden, but then most of them without my knowledge of the law would see anything outside their core business as being a total nuisance” [P16].

This perception would seem to have some foundation in those businesses that appeared to have minimal engagement with their legal side and instead demonstrated an overwhelming focus on the core functions of the firm. Subsequently, they freely admitted to not possessing great awareness and knowledge of the law. A focus on the business’s core function led firms to cite neither an interest in the area nor an aptitude to deal with such matters:

“I mean I don’t have the time, interest or aptitude, if I’m honest, to find out about all the laws that are going to affect me and exactly what it is I need to do – I just don’t”. [P14]

Achieving high levels of awareness and knowledge was also seen to be irreconcilable with certain choices of the owner-manager. This was a reflection of ‘business lifestyle’ and work-life balance:

“That could be a weakness because if we could be bothered to be up to speed on it and took it all in, that could be a benefit for us. But we don’t do it – we just don’t do it . . . There are other things to do. We could wrap ourselves in our business 24 hours a day. Well, quality of life is actually quite important. And, to the detriment of the business and things that could be good for us, we don’t do it or make effort to find out about it” [P17].

Some businesses claimed to have little interest in the law, and this was attributed to the fact that it was perceived as a 'waste of time' [P9]. In this respect, the businesses were more than happy to adopt an ad hoc approach to dealing with the law and, in fact, viewed this approach as the norm for a small business. Consequently, proactive awareness and knowledge of the law was not strictly necessary, as a reactive response based on the use of solicitors on a need-to-know basis was the preferred way of working:

"I don't think many people do know their liabilities or legal duties until the first thing happens. I mean I think that's absolutely normal because if you started spending all your time looking at the what ifs you're never gonna get what you need to do done, enjoy the day and you're looking at something that may never happen – it's a waste of time. And if you're a small business-owner, doing what you're actually meant to be doing takes all your time." [P7].

In stark contrast to the tone of the responses above, a few businesses appeared to be both highly motivated by, and interested in, the law. Most interestingly in such instances, awareness and knowledge of the law was not always seen as an outcome of either legal experiences the business may have had or following engagement with enforcement or inspectorate bodies, but as a continual process. This appeared to be a reflection of the underlying onus on the managing director to be aware of legal issues. Hence, it was evident in some firms that the law was both respected and taken seriously. The owner-managers therefore appeared far positive in their attitude to the rule of law. This was evidenced in the attitude they tried to distil in their business, and their own testimony regarding their motivation towards the subject:

"I'm highly motivated but then I find the law a very interesting and powerful subject. The effect this has is that I am not prepared to take the short-cuts that my competitors take, which they perceive to give them a competitive advantage. As a result of this attitude I have lost a great deal of business over the years" [P16].

Overall, however, interest in the law generally appeared less of a concern. The primary interest, not surprisingly, was with the 'business' and the effect of this was an ad hoc level of awareness and knowledge and a fire-fighting response to legal issues as and when they happened:

"Most small businesses view law as a distraction and hassle, except for that law which directly governs safety and quality relative to employee safety, materials and products. The law as it pertains to most other areas of the business is viewed as an expense and bureaucratic" [P4].

5.2.5 Sources of advice and information

5.2.5.1 The take-up of legal support

The willingness of the firm to use sources of advice and information, and the availability of such sources, was also an important determinant of awareness and knowledge. The data from the present study suggested that, in respect of legal matters, firms were not necessarily reluctant advice seekers. The use of external sources, therefore, was not infrequent and was also fairly wide-ranging with a mixture of private-sector and public-sector suppliers employed, but with the emphasis firmly on the private-sector. The most commonly called-upon sources were accountants and solicitors, with trade associations and specialist advisory organisations that required annual subscription fees, such as Croners and Peninsula, also proving popular. The use of peers and other businesses as a source of legal information, however, was less prevalent. Take-up of public-sector sources typically stemmed from interaction with government agencies, whilst use of Business Links, Training and Enterprise Councils, and Enterprise Agencies was not reported at all.

5.2.5.2 Determinants of take-up

Findings from the present study showed the most popular sources of legal advice to be fee-based. Contrary to the feeling shown towards government-based support, levels of dissatisfaction with accountants and solicitors were low and this could be explained by the fact that firms reported that these two sources helped resolve their enquiries. Firms were dismissive of government advice and support but this could be explained by the fact that not much was known about these.

Size of firm did not appear to preclude firms from seeking legal information from external sources, although it was apparent that it was the larger firms that made use of trade associations and specialist providers. Reliance upon solicitors and accountants was particularly evident where firms were in their start-up phase and this seemed to encourage strong relationships between the firm and solicitor/accountant. Overall, the two key determining factors influencing the decision to take up business support appeared to be cost and time. Yet this notwithstanding, where the take-up of legal advice and support was necessary to enable firms to resolve a problem, firms would act accordingly. However, firms overwhelmingly tended to take up advice and support on an ad hoc basis as a reflection of their ad hoc approach to awareness and knowledge. There was very little evidence of firms trying to pre-empt legal issues by seeking out advice and information, although there was some evidence of solicitors and accountants trying to pre-empt legal issues for their clients by making them aware of regulation that may start becoming relevant to them. In this respect, sources of legal advice were a key determinant of awareness and knowledge.

5.3 THE LAW AND THE LEGAL SYSTEM

The law and the legal system emerged as important in regard to the law itself and also the involvement and activity of law enforcers. These two are dealt with separately in this section.

5.3.1 The law

In reference to the law, factors regarding its simplicity/complexity and its perceived importance were key considerations of awareness and knowledge. There was a strong sense that many felt the law to be too convoluted and shrouded in ambiguity as exemplified in:

“And there are too many grey areas with the law that it gets to the point where it becomes just too complicated. I don’t think the guys that make the law understand how small businesses work in this country.” [P9]

The law’s perceived complexity appeared to validate some firms’ decisions not to engage with it, but others felt compelled to understand its breadth of application. One firm outlined a three-pronged approach in its attitude to the law. The approach emphasised a duty to not only be aware and knowledgeable of the law for the sake of complying with regulation, but also the impact awareness and knowledge, or lack of it, can have on the firm obtaining business and the moral implications that also arise, most directly with regard to employees and clients:

“You’ve got a legal requirement which is for HSE and people like that. You’ve got contractual requirements which might mean that you don’t get the job if you don’t have health and safety in place. And you’ve got moral issues and moral requirements – and quite honestly, those three, those three go together. Without one or the other, you’re just not getting it right. You’ve got to get all three of those issues right” [P13].

Particularly in regard to areas of law such as health and safety, or individual employment rights, businesses felt that these were ‘legitimate’ and ‘worthy’ areas of legislation and were therefore not against them. When this was the case, an acceptance of the necessity and benefit of such law could clearly be seen as a driver for awareness and knowledge of the regulation within a business. Firms also indirectly acknowledged a moral duty towards their staff and clients to be aware of particular areas of law. Hence:

“Now, as I say, I’ve got no problem with health and safety, I think it’s very important – I mean we’re a family-owned business, my wife and I are the sole directors – and we do not want our employees to come to work to get hurt, right” [P6].

Another firm stated that whilst it felt legislation for small businesses could be made far simpler and straightforward to implement, a lot of the so called ‘red-tape’ was necessary and they accepted this:

“In the grand scheme of things, I would have said most red-tape – I mean food labelling regulations, they’re a pain but they’re necessary. I mean employment law is a hassle, but it’s necessary . . . It could be made simpler; it could be made more straightforward; it could be made less expensive but it’s necessary”. [P11]

5.3.2 Inspections by law enforcers

The involvement and activity of law enforcers emerged as a significant factor in small firm awareness and knowledge of the law. In several cases, awareness and knowledge of the law appeared to be dependent on how much inspection was being carried out by such bodies; the esteem with which these inspectorate bodies were held by the businesses; and the willingness of the businesses to engage with such bodies. On the main issue of involvement and activity of law enforcers, awareness and knowledge of the law was achieved not only through routine inspections that these bodies carried out but also through the small businesses initiating contact and inviting enforcement and inspectorate bodies to check on compliance and to instruct them where non-compliant. Those businesses that had had no involvement with law enforcement bodies cited the lack of such contact as a reason for not necessarily being as aware and knowledgeable as they might be. Hence, one firm in rationalising their self-admitted lack of awareness and knowledge on health and safety law stated: “We haven’t been visited by any Health or Safety Executive” [P17].

Others had had involvement with law enforcement officers and this had facilitated awareness and knowledge of the law, albeit if only to corroborate the actions already implemented by the business and where there were few instructions to act upon:

“For example, we do have or we have had visits from the Inland Revenue here – checking on our records; and Customs and Excise isn’t it for VAT – we’ve had them. We’ve also had the factories inspector here; they’ve been round – Health and Safety Executive. So we’ve had visits from the authorities, if you like . . . I don’t think so, I don’t think anything particularly out of order – it was just a tightening up of one or two things basically, but it wasn’t anything particularly serious in that sense I don’t think, or anything untoward” [P15].

Bodies such as HM Revenue and Customs appeared to be seen as strict enforcers of the law and businesses appeared willing to follow the instructions they issued on the basis that not doing so would ‘cause so much aggro’ [P21]:

“Again, the customs and excise we’ve dealt with. They’ve been to the factory – they have a job to do. They’re fairly miserable, fairly matter of fact people, but of all the people you deal with, you know they’re the people you don’t want to get on the wrong side of, so we’ve always had VAT issues and we’ve always had no problems at all”. [P11]

Whilst businesses were not afraid to express frustration and annoyance with bodies such as HM Revenue and Customs, the involvement and interaction they had with such bodies would suggest that they understood the seriousness of not complying with regulations and they were certainly not prepared to risk doing so. Hence there was a willingness to co-operate with the enforcement body:

“With Inland Revenue claims and Customs and Excise – they’re causing us no end of frustration. And they; we’re actually having a VAT inspection in a month’s time and; well because of the nature of our business, because it’s a hire business – it’s assumed that we do an awful lot of cash work, and we have to prove that we don’t. And as the facts stand, we very rarely have cash transactions – we always go for invoicing. We’re not intelligent enough to be able to fool the Inland Revenue or the VAT man, so there’s no point in trying so we try to keep things as straightforward as possible”. [P19]

5.3.2.1 Advice

An unusual aspect was the willingness of some businesses to actively seek out law enforcement bodies and invite them into the business to assess the situation. The idea appeared to be that this would be the best method by which to ensure compliance with the law, and avoid being left vulnerable:

“I mean we’ve had people round to come and tell us what we need to do – that’s the way we did it so they could tell us there and then what we should do; so, no confusion, and we’re not wasting time and missing issues that need to be tackled”. [P14]

The willingness of businesses to become involved with the relevant law enforcement officers was the product of two key factors. Firstly, the bodies made the business aware and knowledgeable of any applicable law and instructed them on the measures needed to ensure compliance with it. Secondly, the businesses accepted the necessity of such law and as such were more receptive to furthering their awareness and knowledge:

“We called them basically saying we were a new start-up and we would like you to come and have a look and make sure we are doing the right things and they did. They came here, and say they said what was fine and then gave us advice as to what we needed to do to make sure we were up to speed with the rest of what we had to do. We’ve had lots of interaction with Health and Safety – we had to. That was the most important when we first started in order to get ourselves set-up. There was a lot of co-operation and work between the two of us. And it was both – while it was legal, I think we were very, very receptive and

we approached them rather than waiting from them to approach us . . . Well, fairly obvious things like making sure our labelling is all correct and ensuring that we meet all the necessary hygiene standards. The main people we've dealt with have been the environmental health and trading standards authorities" [P3].

However, not all the businesses were necessarily that willing to engage with law enforcement bodies. In part, this could be attributed to the perception amongst some that:

"Enforcement bodies are going to pick off the easiest to prosecute because they're measured by their success" [P16].

Consequently, some businesses that had approached law enforcers stated that they now regretted doing so because they felt unfairly treated and were made to comply with the law more than others:

"So, if you go to them as a company and ask for advice, then they come to you and give advice but they do go through everything with a fine tooth-comb and they then see you as an easy target. An easy company in terms of complying with what they ask you to do – which we do, I mean if they ask us to do something then we'll do it. Whereas, I mean for example, they don't want to work weekends so they never go out to markets, they never come out to the high-street here on weekends and find all the illegal traders selling really dodgy children's products and I think they're very keen on taking the easy route". [P11]

5.3.2.2 Lack of contact with enforcement agencies

Some businesses had very little involvement and activity with law enforcement bodies and this could be seen to have an impact on their awareness and knowledge of the law. There was no one to assess their legal compliance or raise issues of law about which they might or might not be aware. In some cases, the lack of involvement and activity was not solely the business not approaching enforcement bodies, but also that the law enforcers lacked the resources to be able to perform inspections as they might wish:

"The fact is the H & SE, the HSE inspectors are too few on the ground and they only seem to get involved when there's a fatality. We haven't seen HSE inspector on our sites now for probably 8 years plus, that sort of order. So, we impose the standards that we think are appropriate" [P6].

Another firm reported that they hadn't received any visit from the HSE, although there was a realisation that the nature of the work being carried out meant that health and safety was a priority. Their work involved the installation of electrical audio and visual equipment and frequently required structural preparation to buildings and sites:

“No, not at all. No we haven’t. In terms of something like health and safety – they’re actually quite lax. However, because of the nature of what we do, we have to be absolutely hot on what our engineers are like on site”. [P19]

The experience of a health and safety consultant also suggested that inspections in this area by law enforcers were not necessarily a routine occurrence. Accordingly, firms would not necessarily have the need for awareness and knowledge of the law, as this would be likely to be exposed only if a severe accident took place:

“And unless you start getting accidents and illnesses reported on, then the HSE might have a look into, or local council might do a drop-in visit – their inspectors, local authority – but that’s about it. I mean, provided they kind of keep their nose clean and get on with it, and they don’t have any serious or on-going accidents and illnesses, I suppose they get away with it . . .” [P13].

For some businesses operating in the service and even the manufacturing sectors, there was minimal engagement with law enforcers. Those firms had lower levels of awareness and knowledge as well as admitting to being not very well informed. The lack of any meaningful engagement with law enforcers seemed to reinforce the notion in some businesses that the law, in reality, fell outside the main scope of the business, as not having awareness and knowledge of the law had not precluded the business from being a success. There was, however, the worry for the business of ‘knowing that they don’t know it’ [P18]:

“But then, we’ve been in business for how many years and we haven’t had to know about them. No one’s been to check up on us. I don’t think we are policed at all. We’ve been up 10 years and we’ve not had one visit. We’ve had a VAT inspection, but in terms of other things we’ve had nothing. Is it a secure business? The only visit we had was when we insured the building – and that was public liability and personal liability issues, and that was purely from an insurance point of view to see how much the premiums would be” [P17].

5.4 THE CLOSENESS BETWEEN WORK ACTIVITY AND THE NEED FOR LEGAL AWARENESS AND KNOWLEDGE

The closeness of the link between the day-to-day operation of the firm and the need for legal awareness and knowledge also emerged as a key factor in awareness and knowledge of the law – the essence of which goes back to the ‘legal problem-solving’ idea discussed earlier in section 5.2.3. In short, awareness and knowledge of the law was acquired if a business had a problem or there was something obstructing their work. If the problem necessitated legal problem solving, awareness and knowledge was quickly sought.

5.4.1 Contractual requirements

In general, higher levels of awareness and knowledge were necessary for firms to obtain contracts for work. One notable example is the situation of one firm who sub-contracted work to another firm. The client purchasing the product insisted that the product carry a CE marking⁵⁶. The CE marking applies to products regulated by certain European health, safety and environmental protection legislation. Consequently, in order to ensure the contract with their client, the firm solved the problem through acquiring awareness and knowledge of CE certification and testing, and also by imposing the same requirements on the sub-contractor. It is illustrative of the idea that when firms required awareness and knowledge of the law to carry out the ‘day-to-day’ function of their business, they invariably acquired it. The evidence from the participants suggested that they were not engaging with legal problem-solving on a regular basis, however. Engagement with the law was only a standard occurrence where the closeness between work activity and legal matters was most prominent and awareness and knowledge a prerequisite of doing business:

“Because of the very nature of what we do, we need to be totally aware of the legislation affecting our industry”. [P16]

Getting work was often only achieved through legal compliance, and this was frequently instigated at the insistence of clients:

“If you want to work for some of the big boys, we have to achieve their requirements. And that costs us money as well, in terms of training and the support and all the rest of it. But it’s a necessary evil” [P19].

There was also the argument that in certain situations legal compliance was done not out of consideration for the law but solely as a means of securing work:

“If you’re sub-contracting in construction, you won’t get the contract if your health and safety’s not up to scratch, so you’re going to do it for that reason . . .” [P13].

5.4.2 Resolving disputes

Where businesses were forced to solve problems and this necessitated a reliance on the law or regulation, awareness duly followed. What is further apparent is that when problems that were having an impact on and threatening the day-to-day running of the businesses needed to be solved,

⁵⁶ The CE Marking is a conformity marking consisting of the letters “CE”. The CE Marking applies to products regulated by certain European health, safety and environmental protection legislation. CE is an abbreviation for ‘Conformite Europeenne’.

businesses were prepared to at least threaten to invoke the law. This legal problem-solving can also be seen to have an impact on subsequent business experience:

“For example, there was a copyright dispute which we were – we were sort of blamed by one side, in fact it was because these two people had fallen out about who owned the copyright and then they were blaming us, so we were kind of piggy in the middle, and these two guys had a major falling out and they were suing each other, or threatening to sue each other and solicitor letters were coming to us, you know, all this sort of stuff. . . . And I think as a result of this particular dispute we actually amended it so that the person presenting us with the work has to sort of certify that they hold the copyright and it will indemnify us against any disputes, you know”. [P15]

Awareness and knowledge, however, was not necessary if it had little application or relevance to the day-to-day operation of the firm. In terms of resolving disputes, the priority for the business was to do so without resorting to acquiring awareness of the law. To this end, businesses were overwhelmingly focused with the day-to-day operation of the firm:

“[We] very rarely spend time learning anything new outside of the core service/product expertise of the business” [P4].

5.4.3 Licensing and operational requirements

However, where the law was seen to have an impact on the ‘hurly burly’ of day-to-day businesses, awareness and knowledge of the law, and more relevantly compliance with it, duly followed. This was particularly so in instances where the business was reliant on obtaining a licence to operate, or where insurance cover was dependent on meeting legal obligations:

“Erm, well first getting our approval, because as ice-cream manufacturers you need a licence so that was the first thing we had to do. It took about – I don’t know, certainly about three months to get the approval, and even now that we did get the approval we still have to answer – we have to keep records – we have to keep everything” [P3].

“I’ve seen two or three companies, even small companies, where it’s high risk – the insurance company has brought auditors in and they’ve audited the place and I’ve actually seen written evidence where they’ve said, ‘we are not covering that part of your company, particular section or whatever until you’ve got risk assessments done or you’ve done safe systems of work for it’” [P13].

Where not being aware of and complying with regulation was prohibitive to the business, firms were unsurprisingly quick to rectify this. Again, conditions of conforming to regulatory standards were imposed by others as a precursor and necessity to doing business:

“I mean there’s always going; there’s always going to be sort of changes in regulation as well, like for instance the furniture now – the wood we use, we have to use properly sourced wood – we can’t just use any old wood. So, the timber regulations – if we’re doing shows, or selling our design we have to use specially certified timber”. [P14]

5.4.4 Internalisation of the regulatory regime

What was further apparent was that when the day-to-day operation of the firm and legal compliance were very closely linked, the regulatory requirements became ‘internalized’ in the firms through normal practice and the regulations were automatically complied with. In effect:

“If non-compliance gets onerous then compliance takes place” [P4].

For some businesses, particularly those that dealt with food or where health and safety was of paramount concern, the routines, procedures and precautionary measures prescribed by the regulations became part of normal, everyday life and the ‘hurly burly’ of the day-to-day operation. These firms operated under self-regulatory regimes and it appeared that this type of regulation encouraged awareness and knowledge:

“Yes, well you know things like labelling – it’s automatic. If you’re going to make a product you need to label it, so we knew about all that . . . But after then, sort of everything falls into place, and you get into a routine and its fine really”. [P3]

These routines were also forced upon sub-contractors or working partners where applicable:

“Oh yes, absolutely. As soon as they go on site, as soon as anybody goes on site, they have a site induction. Part of our site induction is, ‘do you know what you’re doing?’ And if the answer is ‘no’, they don’t start. We expect them to come on site with their specifications, with their drawings, with their PPE and with a knowledge of any method statements or high risk activities that they’re undertaking. And we’ve got this CHAS system I referred to earlier – there is something like a 40 point tick-box that every new person that goes onto one of our sites goes through. And that site induction covers that sort of thing – so all of the health and safety law”. [P6]

Where legal compliance had become part of the day-to-day operation, there was an acceptance of this although this was cautioned by the fact that it represented a significant burden for the business and some of the requirements were possibly too demanding:

“That’s a bit too much, you know. Those sorts of things do annoy me and they waste my time. The HACCP – Hazard Analysis Critical Control Point – is something that all dairy

people – ice-cream and cheese makers have to adhere to. It's really basically a plan of your entire operation. For a small manufacturer like us, it's a substantial workload" [P3].

5.4.5 Level of risk associated with work

What emerged from the data was that the level of risk inherent in the operation of the firm was a factor in awareness and knowledge of the law. This factor appeared to be related to the two key issues of whether the business had employees and how susceptible the firm felt towards being prosecuted or a party to litigation. In respect of the former, it appeared that firms were unwilling to take risks when dealing with employment law, although this was less so when the number of employees was relatively small where a company culture of employer-employee familiarity and friendship discouraged strict awareness, knowledge, and compliance with regulation. Hence, there was the perception that only having a minimal number of employees made redundant certain areas of law, although these could not be expanded on:

“Well, we're fortunate in a way in that we've only got 1 employee, so that sort of helps with the minimum – what is it now 5 or 6 employees?” [P14].

Additionally, strict compliance with regulation was eschewed in favour of more informal approaches:

“Things like flexible working – there is an understanding, there's a basic understanding. We're a team, we operate as part of a team and that's the most important thing. If you can't operate as a team you may as well all pack up and go home”. [P19]

More generally though, firms seemed reluctant to take risks when dealing with employment law as it was recognised that doing so would be to the long-term detriment of the business. Hence, awareness, knowledge and compliance were deemed to be essential:

“Someone that's caused enormous damage to our business, and I want to get rid of him, but I'm taking legal advice and the legal advice is one foot out of place and you expose yourself to a massive claim. And this guy has made several; a major mistake which has cost the company literally tens of thousands of pounds which we can't afford, and I want to get rid of him and I'm struggling to do that”. [P6]

Firms seemed intent on complying strictly with disciplinary procedures on the assumption that not doing so would leave them open to action and that this was not a risk they were prepared to take. Similarly, where health and safety law was a key consideration for the business as it impacted on

the operation of the firm, firms seemed intent on having the necessary awareness and knowledge with the ultimate goal of ensuring they were compliant:

“I think we’re pretty, well I know we’re very hot on health and safety and every aspect of ‘What if’ scenario and especially at shows and things like that we have to be very aware of the ‘What if’ – you know, what happens if this falls down and all the rest of it” [P14].

“Because what we have found is that some organisations aren’t really that fussed about health and safety – just get the job done; that’s all that matters and if it’s a bit risky then so what. But we don’t work that way” [P19].

There was also the idea that litigation was ‘rife’ [P13] in society and that this might be starting to take effect in the business world. This suggested a greater propensity to exposure to risk for the businesses. It was argued that as this compensation culture developed the greater the impact of the law on the business and the greater the need for awareness and knowledge of it:

“I mean I think probably the more like America we get the more impact it will have. That’s when it will happen” [P14].

“I mean I think it can be quite tough – I mean I think we are riding on the back of legislation mania and there’s always somebody out there saying ‘you know you should have a go at somebody for so and so and so and so’”. [P10]

Some firms were of the mind that all ‘law of the land’ had to be complied with regardless of the business risk and that this was something not to be compromised:

“Some of them [laws] I think are stupid, but it is not a case of disagreeing with them. They are there and it is the law of the land that you have to comply, or face the consequences” [P16].

Others were more inclined to see it as a matter of judgement for the business that could be gauged on how close the risk was to the day-to-day operation of the firm:

“If you take a fairly pragmatic view on these things then decide what you are and aren’t going to do and how close you want to sail the wind. I’m not suggesting you want to break the law, but I am suggesting that there are things which you might have to comply with strictly but you can quite legitimately get away with. And I’m virtually convinced that every business does that”. [P11]

Yet even where the risk was assessed as being high, firms were still reluctant to engage with the law until they ultimately needed to:

“We’re sat here looking at machines and packing and a whole host of other issues that seem to be more important – now, until anything happens then the health and safety bit and other things are not important – which is a huge weakness I know. But you don’t know until it happens do you” [P17].

“I mean you can sail pretty close to the wind or you can just go through and deal with them. You can just go through and do it . . . I think skirmishes that come with the law can happen out of the blue – there’s no rhyme or reason. It’s not like you’re doing anything wrong – it’s just wrong time, wrong place, wrong day, wrong customer walking in or whatever” [P7].

Ultimately, there was an acknowledgement from some firms that they were running a risk in regard to the law, but that this was insignificant in comparison to the true priority of the business:

“There is a definite divide between knowing the risks and being ignorant. A lot of companies get by through ignorance and by not encountering their problems . . . Survival will always be service/product driven. Undoubtedly, regulation can be a problem and a hindrance but it is nothing like the problem you’ll have if you don’t have a good service/product” [P20].

5.5 ANALYSIS: A THEORY OF THE DETERMINANTS OF AWARENESS AND KNOWLEDGE

There is little in the small firm literature that has sought to explain the factors affecting awareness and knowledge of the legal environment. To address this knowledge gap, the present study identified the following categories of variables as having an effect on awareness and knowledge of the law – the resources and characteristics of the firm; the law and the legal system; and the closeness between work activity and the need for legal awareness and knowledge. It is submitted that this provides the basis for a theory of the determinants of awareness and knowledge. The resources and characteristics of the firm related specifically to five sub-variables – time; cost to the firm; business experience of the law and legal matters; interest and motivation vis-à-vis the law; and the sources of advice and information to the firm. The law and the legal system were primarily focused on the involvement and activity of law enforcers and their contact, or lack of, with firms and the advice and information that was provided during exchanges. The work/law closeness factor concerned the issue of awareness and knowledge deriving from firms having to respond to legal matters affecting the core running of the business. This arose where they needed awareness and knowledge to secure contracts for the work, to obtain licences, to resolve operational problems or because of a high-risk operating environment. A summary table of the key determinants of awareness and knowledge is presented in table 2 of Appendix 1 at page 191.

5.5.1 Resources and characteristics of the firm

Resources and characteristics of the firm as a category of variable determining awareness and knowledge raised a number of issues. The sub-variables of time and money could be seen to strongly relate to small firms making a calculation as to the benefits of detailed awareness and knowledge. The experiences of the firms as individuals and as a collective demonstrated that there had been few instances of detrimental outcomes that had arisen from ignorance of the law. On this basis, time and money could be justifiably allocated to areas where the return to the firm, especially economic, was greater. The few occasions where firms had resorted to litigation to resolve disputes had also impacted on the time and money they were subsequently prepared to spend on their legal environment. Firms attached greater value to resolving disputes ‘pragmatically’ as opposed to ‘going down the legal route’. Firms equated the pragmatic route with being ultimately more time and cost effective, and there were a number of examples to support this view.

Whilst a number of firms voiced concern over their ‘here and now’ approach to acquiring awareness and knowledge, and the potential negative effect this might have long-term, the evidence

suggested that firms were in fact able to exist on such a day-to-day basis. Dealing with awareness and knowledge in an ad hoc manner did not appear to be prohibiting those that did so from competing in the market place. Apportioning time and finance to general awareness and knowledge of the legal environment was not necessary, as compliance with core regulation such as law governing accounts and taxation could be achieved without it. This occurred principally through by engaging external specialists such as accountants to fulfil the duty of the firm. Firms acknowledged the law's importance and the impression was not that they were merely just paying lip-service to it or trying to gain some form of social acceptability. The evidence showed that firms adhered to the law when the tie between work activity and compliance was close. Equally, firms did not want to fall foul of bodies such HM Revenue and Customs or get caught out in areas such as employment law.

The economies of scale applicable to smaller firms also explained the limited time and financial resources they were able to attribute to their legal environment. Firms spoke of how ideally they would like to have the time and money to develop greater awareness and knowledge, but it was sometimes difficult for firms to rationalise the benefit when they had had no previous need to and/or they had not been approached by regulatory enforcement or inspectorate bodies. For example, there were cases of firms deciding against spending money on carrying out health and safety risk assessments which would have complied with health and safety law and identified the liabilities of the small firm. Potentially, carrying out such an assessment might have protected the owner-manager from prosecution in the event of an accident. Yet the decision was made not to go ahead which would seem to exemplify the here and now ethos.

The pragmatic stance of the businesses appeared to be a relatively rational position to take. The threat of litigation as a bargaining ploy in legal problem solving was rare. Instead, threats to withhold services or to repossess products were seen to be more effective. Firms were reluctant to invest time and money on legal advice and information due to uncertainty over the degree of protection offered and the financial benefit to be obtained. This appears to reflect the fact that firms were frequently unable to qualify the gain that awareness, knowledge and compliance with the law might bring, but found it easier to qualify the cost that might be associated with it. The repeated reference by firms to their 'bottom line', however, would suggest that their views and actions would differ if the detriment was overly costly. In the sense that some firms saw the law as a 'waste of time', this could be strongly linked to a concept of likely use and ties in with the concept of closeness of a work activity to the need for awareness and knowledge. The firms' experiences did

not indicate a substantial benefit in being prepared so a reactive, ad hoc approach was conceivably 'legitimate'. Ultimately, the uncertain nature of legal problems facing small firms led some of them to take risks.

5.5.2 Involvement and activity of law enforcers

The role of regulatory and enforcement bodies in the process of determining awareness and knowledge in the small firm was notable. The importance, however, was generally limited to those businesses that could be deemed high risk. In the present study, these were firms operating in food production, technical consultancy and the building sector. Other firms to benefit from this included a furniture shop and printing firm. Firms were either visited due to the nature of their occupation or due to the fact that they invited a visit. The effect, as reported by the firms, was that they were made aware of areas of law relevant to their business activity and instructed on how to achieve the necessary compliance.

Some firms alluded to the absence of any contact as grounds for not being as aware and knowledgeable as perhaps they should have been. In the instance of one construction firm, this was despite great effort to involve the HSE in their work to make sure that they were working to an appropriate standard. In this case, the alleged lack of resources that was attributed to the inspectorate body meant that the firm had little option but to implement its own standards. Other firms similarly pointed to little or no contact with enforcement or advisory bodies but in this situation chose not to initiate contact. These firms were typically involved in office-based work that they themselves assessed as low risk and these judgements appeared to have some validity. Elsewhere, the reasons behind not initiating contact were less clear. In the example of one firm that manufactured sports and learning equipment, the decision not to involve inspectorate bodies appeared to be a combination of not wanting to upset the status quo and the fact that the company admitted to 'flying by the seat of its pants' when it came to the law. Again, the uncertain nature of the legal problem as well as the probabilistic nature of problems occurring appeared to influence the decision to acquire awareness and knowledge. To this extent, the commonsense approach that found favour in many of the small businesses also seemed to apportion greater emphasis to non-events than events. Only high risk firms had involvement with the enforcement bodies and this was mainly because of necessity. These firms felt victimised on occasion and raised the question of whether it was a level playing field for all concerned.

An ulterior motive behind the decision to become involved and active with law enforcers was that it appeared to be a strategy for firms to provide them with a defence or an ‘insurance’ in the case of action being taken against them. In these instances, firms were prepared to act proactively so that law enforcers wouldn’t be able to ‘come after them’.

5.5.3 Closeness between work activity and the need for awareness and knowledge

Businesses acquired awareness and knowledge, and implemented the necessary action, if there was a problem that was obstructing their main work activity or an aspect of it. The evidence suggested that this sort of awareness and knowledge stayed specific to the problem and did not link to anything more general. This was because businesses focused on their core product/service and only dealt with subjects outside of this core to solve a particular problem. Problem-solving also had to be done with the least disruption possible to the ‘core’.

Whilst theoretically businesses had a choice whether or not to solve a problem, this choice was mediated by two key factors. Firstly, not doing so in instances would preclude business taking place and often this was a detriment that a firm could not suffer. Secondly, awareness, knowledge and compliance were a necessary prelude to working with large customers that had benefits in terms of generating large revenue and enhancing the reputation of the firm.

The level of risk as a factor in firms acquiring awareness and knowledge has some conceptual similarity with the notion that firms acquired awareness and knowledge to ‘insure’ themselves against possible action. Firms were certainly less prepared to take risks regarding employment law and this appeared to be because where the employer-employee relationship was largely formal firms were wary of being caught out. Three businesses reported disputes with employees and all complained of the difficulty of removing the person concerned despite the businesses’ argument that the facts pointed towards the employees being in the wrong. Professional advice also countered against straying away from the law and firms were fearful of significant financial loss.

The reasons for compliance overwhelmingly focused on a fear of the consequences of not doing so in terms of risk of legal action, financial loss or business failure. A lack of awareness and knowledge was perceived as a weakness by some businesses but they were unable to quantify to what extent it was a weakness. The crucial determining factor, therefore, appeared to be the inherent level of risk in the business and the balancing of that risk against potential detriments. Where firms

perceived the level of risk as low and/or assessed the chances of being found out as minimal, they were prepared to 'sail close to the wind'.

5.5.4 Determinants of awareness and knowledge identified in the literature

A review of the small firm literature revealed that there was a paucity of reliable evidence on owner-managers' awareness and understanding of their legal environment. Only recently have there been attempts to address this issue. Despite this upturn, however, there is still very little with which to compare and contrast the emerging theory of the determinants of awareness and knowledge generated in the present study.

Blackburn and Hart (2002), in assessing owner-managers' awareness and knowledge of individual employment rights, found that relevance and employer experience appeared to be influential on awareness levels. A strong theme in their results was a positive relationship between size of enterprise and awareness of individual employment rights, with the broad indication being that awareness increased with employers of over ten employees. Blackburn and Hart identified business sector and labour force composition as other important factors. Significantly, the authors stated that awareness appeared to be raised out of necessity. The findings of the Blackburn and Hart study share many similarities with the present study, particularly in the fact that levels of awareness of regulation were driven on a need-to-know basis. The present study indicated that the larger small firms were more likely to have dealt with a wider range of employment rights, such as maternity leave, and this is consistent with Blackburn and Hart's findings.

Blackburn and Hart found that the larger the business, the greater the likelihood that individual employment right legislation had been the cause of a legal dispute with an employee. They reported that firms employing 20-49 persons were almost three times as likely to have had an industrial dispute compared with firms employing less than ten employees. Blackburn and Hart inferred that the higher levels of involvement in litigation were raising the awareness and knowledge levels of those firms. In the present study, only three firms had been party to litigation against an employee. All three employed over ten persons and displayed a broader knowledge of employment law and disciplinary and dismissal procedures. Where Blackburn and Hart found size, sector and employers experiences to be important determinants of awareness and knowledge levels, the overriding theme appeared to be acquiring awareness on a need-to-know basis. The present study indicates that the variable of 'work/law closeness' is important and this does appear to be backed up by Blackburn and Hart's survey. Hence, awareness and knowledge are found when issues and problems arise in

the day-to-day running of the firm that require a solution rooted in the law. Indirectly, this could be seen to relate to size as, for example, firms in the Blackburn and Hart study who did not employ either staff on low wages, or had a workforce made-up of a high proportion of males would be less likely to have had to deal with the NMW or maternity rights. It is reasoned that the 'work/law closeness' factor proved significant as, in the present study, firms were tested on generic regulations as opposed to just employment legislation. Thus, awareness of employment legislation could be seen to be more closely linked with size of enterprise as measured in terms of employees.

The SBC's (2004) evaluation of employment regulations and their impact on small business found employers to possess extremely low levels of awareness. This was attributed to the difficult environment they operated in and the many conflicting demands on their time. Again these findings correspond with some of the key determinants identified in the present study. The issue of time was prominent and the difficult environment might be akin to participants in the present study reiterating the need to focus on their core product/service. The SBC study reported that small businesses saw compliance with employment regulation as a low priority. This contrasts with the findings of the present study where firms were eager to protect themselves against action being taken by employees as they saw it as a potential area of high-risk.

The SBC analysis reported some small businesses assessing themselves as good employers who treated employees fairly. They cited their flexibility and generosity as evidence of this. The findings of the present study highlighted some 'informal' handling of matters of law by small firms, and also partial evidence of the 'social' norms that appeared to influence the owner-managers' understanding of 'legal fairness'. Firms responding to the law informally have been reported elsewhere by Edwards et al. (2004), who stated how small firms responded informally to employment legislation. In relation to time off from work, there was evidence in the present study of the adoption of informal processes as opposed to a strict adherence to regulation. Owner-managers pointed to knowing their workers personally and to a shared understanding of not only what was reasonable, but also to the needs of individuals within the firm as explanation. In the present research, the effect of social norms were evidenced, in one respect, by owner-manager responses that cited a moral and ethical duty on themselves to look after their employees, and this could be seen in instances to prompt firms to implement measures beyond the minimum standards required by the law. These moral and ethical duties of the owner-manager appeared to be a derivative of personal and social influences rather than from an intimate understanding of the law. The SBC study referred to how

businesses felt they were more generous to their employees than legislation might dictate and that this was because they saw themselves as 'family businesses' that operated on a give and take basis.

Corneliussen (2005) assessed the impact of regulation on small firms in the bio-tech industry and found awareness and knowledge to be affected by several factors. Firms were poor at identifying regulation that affected their business and this was partly ascribed to the fact that they lacked specialised personnel to deal with such matters. She also cited the outsourcing of activities associated with particularly stringent regulations by the firms as a reason for low awareness levels and why the firms perceived the impact of regulation as minimal. These activities were outsourced because the firms saw themselves as lacking the internal competence to carry them out and such practice was widespread in the present study. Corneliussen notes the particular use of external professional services, such as solicitors and accountants, to ensure compliance with regulatory requirements, which again was prevalent amongst the participants in the present study. Corneliussen also suggests that the regulatory requirements were so well internalised in the firms through professional practice that the regulations were automatically complied with. Given the background of her participants, most of who held doctorate degrees and had undergone university training, there was widespread familiarity with carrying-out experiments and handling research solutions and waste. This training mimicked the practices imposed by the regulations. In the present study, there was a sense that firms had internalised practices that were prescribed by regulation, but this usually followed interaction with an inspectorate body that had issued instruction and advice. Over time, the firms then accepted and tolerated the practices to the point where they became the norm. Corneliussen reported firms as having high levels of motivation to improve and maintain health and safety standards. She suggested this was because biotech firms were dependent on public confidence and support in their technology. In the present study, those firms that had a higher level of motivation to comply with health and safety regulation were similarly those where the link between the law and work activity was closest, and where certain standards were required to do business.

Within the present study, it was also apparent that self-regulation was a factor of awareness and knowledge. Consequently, where the regulatory regime had moved away from traditional command and control to forms of self-regulation, this appeared to impact on awareness and knowledge and led to internalisation of the law. Most evidently, the regulation of health, safety, food safety and environment risks increasingly uses self-regulation approaches, where businesses are required to

assess, control and monitor the risks they create. These self-regulatory requirements are then enforced alongside more prescriptive command and control law by enforcement agencies. The firms in the present study that operated in sectors where environmental health risks were prominent were found to have higher levels of awareness.

It was apparent in some firms that low levels of awareness and knowledge of their legal environment could be linked to their low level of motivation in accessing advice and information on the law. This, in turn, could also be seen to be a factor of a reactive attitude to responding to the law, and a general dislike of the 'law' itself. Overall, awareness and knowledge of the law was considered a lesser priority by the respondents, with the focus on 'survival' first and foremost. Very few of the firms viewed awareness and knowledge of the law as a continual, evaluative process of the business operation. Instead, the approach to awareness and knowledge was largely reactive and contingent on the factors of resources and characteristics of the firm; the role of inspectorates'; and the closeness between the work activity and the need for legal awareness and knowledge.

CHAPTER 6: THE EFFECTS OF AWARENESS AND KNOWLEDGE

6.1 INTRODUCTION

Chapter 4 discussed the nature and extent of small firm awareness and knowledge of the law and chapter 5 the determinants of that awareness and knowledge. This chapter is concerned with the effects of levels of awareness and knowledge. The effects identified are compliance, avoidance of heavily regulated areas, reluctance to act on legal rights, effects on owner-manager attitudes and changes in legal status. Results relating to these are now reported and analysed.

6.2 COMPLIANCE WITH THE LAW

Dealing with the need for awareness and knowledge of their legal environment was one thing that the participants shared equally. The effects of awareness and knowledge, however, varied between firms. The most common effect of awareness and knowledge was compliance with the law. Despite their occasional frustration in trying to understand and implement regulation, it was often necessary for the firms to be familiar with the laws that applied to them, particularly where it was important to comply because the law affected the day-to-day operation of the firm. The present study showed compliance with legislation controlling business structure, financial issues, health and the environment, employment terms and conditions, premises and licensing to be of the greatest concern.

It was particularly notable that in firms operating in the food industry and in areas where health and safety law had taken on an increasingly prominent role, such as construction, awareness and knowledge had an impact on the compliance culture within the business. Specifically, firms were receptive to legislation-led modernisation that dictated certain practices and routines. For instance, both firms that dealt with food substances accepted practices required to meet hygiene standards, although it should be noted that both these firms received support from enforcement bodies that helped them implement the relevant regulations. Moreover, both were relatively new firms that conceivably did not have to overcome the need to alter traditional practices, routines and/or established culture. Arguably, compliance could be seen as rational responses given that the alternative might well have been to cease trading.

Awareness and knowledge commonly led to a need to comply with the law amongst the participants. There was also a sense that firms which had contact with inspectorate and enforcement bodies were driven by a desire to keep such agencies happy. This appeared to be so as to ensure

minimal contact with the enforcing agency and so as not to compromise the day-to-day operation of the firm. It is important to note, however, that the overwhelming majority of the firms in the present study ‘complied’ in terms of carrying out whatever action was needed to resolve a particular problem and nothing more. Compliance was rarely seen as a continual, evaluative process of the business operation and only one firm, operating in the security industry, spoke of it in such terms. Even in firms where the levels of awareness were more proficient, compliance did not appear to be an on-going process but rather a process of completing work specified by enforcement agencies during a formal inspection. Although awareness and knowledge had the effect of allowing firms to solve particular problems, with compliance often the route to achieving this, the firms still had a reactive attitude in dealing with and conforming to their legal environment.

It was evident that a number of firms relied upon enforcement agencies to advise them of non-compliant areas within their business and it was these exchanges that raised the level of awareness and knowledge in the business. For the two firms operating in the food sector, one effect of this awareness and knowledge was the adoption of management systems that monitored food safety requirements. For example, one firm cited a feature relating to temperature control, the correct monitoring of this and the undertaking of hazard analysis as part of a systematic plan implemented in the business. Awareness and knowledge led to these firms introducing written documentation and incorporating a checklist of issues into their hazard analysis plan. Similar practices relating to health and safety were evident in a construction firm and a technical consultancy firm.

On the other hand, an effect of low levels of awareness and knowledge appeared to be that firms were uncertain as to whether or not they complied with regulation or even met the minimum standards. This led to concern for the owner-manager:

“I’m really not up to speed as I should be – that’s something I’d have to admit to, which isn’t very clever at all, is it?” [P17].

Firms that had such an approach also tended to see the responsibility of monitoring compliance as falling to enforcement agencies and this discouraged them from dealing with compliance in a programmed and proactive way. Compliance was limited except where the core product/service was likely to be compromised. Where firms were unaware of the legal requirements and were unable to judge their compliance with the law, they often satisfied themselves by citing compliance according to their own conceptions of ‘common sense’ [P15].

It was also apparent that there were occasions where awareness and knowledge had no effect in terms of compliance. In the example below, compliance had not occurred because of a combination of uncertainty and pragmatic and financial factors, but an inference could also be drawn as to the likelihood of the firm being held accountable for its non-compliance: the participant had never experienced a visit from any inspection or enforcement body:

“Something that I haven’t quite got my head round yet is the disability laws . . . You, yourself came up the stairs. Now what would I have to do? Would I have to get a lift or what? Now that is a major, major investment, so that is just something I need to keep my eye on”. [P10]

6.2.1 Compliance for self-protection

Whilst an effect of awareness and knowledge was compliance with the law, the overriding reason appeared to be based on motives of self-protection. Awareness and knowledge motivated firms to protect themselves, as it appeared that the firms linked non-compliance with harm. There was also an indication that firms were particularly conscious of employment law, health and safety law and litigation culture more generally. The negative outcomes that might arise from falling foul of these encouraged firms to act out of self-protection.

To reiterate, the data largely suggest that where firms were aware and knowledgeable of the law that directly affected the daily operation of the firm, measures were taken to ensure compliance with it. In a substantial number of cases, either external events or parties caused awareness and knowledge, and it was this prompt to legal understanding that had the effect of producing compliance. For example, awareness and knowledge caused by the action of a customer and subsequent recognition of the legal obligations arising from this, led to one firm consulting a solicitor to clarify liability and try to ensure legal self-protection:

“Of course, when I received that I went, ‘oh my God, what am I going to do!’ Anyway, [I] sent a letter back – having consulted my solicitor”. [P17]

Firms were keen to avoid litigation or even the prospect of it. Events related to awareness of litigation could be seen as the driving force for firms acting to resolve disputes and ultimately to protect themselves:

“For example, I suppose the worst case we were faced with was this nasty copyright issue which ended in civil action – in fact we were never taken to court but it was all a case of, you know, I had to resolve this”. [P15]

Where one firm had reason to doubt operational aspects of the business, acquired awareness and knowledge had the effect of allowing it to make itself 'safe':

"We'd written up a safety policy, a health and safety statement, a charter – we'd done all these things and he issued them out with every contract that he took on. With every contract and every quote that he did, he sent the charter and the statement and everything, and the policy explaining it all. All his employees read the policy. And he lost a guy overboard and they [HSE] came onto him and said we'd like to see your safety policy and all this. Which he provided and gave them, and they turned round and said well yeah they're fine, they're in order. It's not a problem with them . . . he was safe" [P13].

The self-protection motive was common. Where awareness and knowledge of particular areas and issues of law was caused by external interaction, this led firms to adapt and change their business practices to resolve the problem and protect themselves from being vulnerable to this same problem again. Firms also saw compliance as a means of reducing their chances of having to enter into litigation or 'going down the legal route' to resolve business disputes. Its prevalence might be attributed to the fact that the self-protection motive operated not only in terms of a legal cost but also in terms of a loss of business revenue if firms were not compliant to the satisfaction of other businesses which were their customers or clients.

6.2.2 Moral and ethical reasoning

However, whilst compliance with the law was often motivated by a desire for self-protection, it could also be seen to be determined by other factors. In some cases there was a sense that firms wanted to be fair and moral in their business dealings:

"It's about having a value system – you need to have a value system and an ethical background to starting a business of your own. You need to know what is right and wrong and know how to protect the individuals that work for you". [P9]

There were examples suggesting a link between morality and legal awareness and knowledge. Exposure to legal problems as well as having to deal with the wide range of subject areas which forms the legal environment encouraged ethically-motivated action. In particular, awareness of employment rights tended to go in tandem with expressions of a moral duty towards employees:

"I think it [the legal environment] is underlying everything we do. I wouldn't say that every single day I think 'Gosh – how is the law affecting us?', but certainly when we are doing things, we are very conscious of what is or is not within the law. Its part of the company ethos that we do not lie, cheat, or steal either, which would bring us into conflict with the

law. But it's also about the treatment of our own workforce and the way in which we deal with other companies and clients" [P21].

6.2.3 Increased administrative workload

Awareness and knowledge tended to have an effect on the administrative workload of the participants. Put simply, owner-managers were dealing with those matters that were unavoidable as a result of an operation of the firm coming into conflict with the legal environment and this often necessitated a rise in administration. In many cases, particularly in the micro firms, it was the owner-manager who dealt with these matters and the immediate impact was an increase in their workload. For firms with larger numbers of employees and a greater managerial resource, the workload was shared more evenly and/or the workforce composition was altered to allow someone to specifically deal with such matters. Cost was also a factor in terms of firms seeking to minimise the administrative workload:

"It would be very nice to have one's own lawyer on the company payroll, but none of the companies that I've started could afford that. Having this would be too much of a burden and a luxury. Therefore, it throws the onus back on the [existing workforce] in the company". [P21]

Given the participants' focus on the core product/service of the firm, this effect was felt more where the day-to-day involvement of owner-managers in the running of their business left little spare time for additional activities. Firms perceived that there was less time for undertaking their core business as a result of administering legislation. Compliance with law meant there was an effect in terms of implementing new practices and keeping up to date with the recording of such practices, most evident in firms where risk analysis and hazard analysis were commonplace.

6.2.4 Increased likelihood of seeking out legal information

The amount of legal advice sought appeared to relate to awareness and knowledge in two ways. Firstly, poor levels of awareness and knowledge meant that firms referred to alternative sources that offered a level of expertise as regards general business advice. Secondly, firms with awareness and knowledge often sought out additional legal information to resolve problems. Particularly when businesses were in the start-up phase and perceived their awareness and knowledge to be poor, both accountants and solicitors were used for legal advice, guidance and to carry out tasks of a legal nature. For example:

“We obviously spoke to our solicitor and our accountant on advice on the best thing to do, and they said from more of a liability point of view be a limited company. . . Everything has to be wrapped up more, but obviously there being only two of us we try not to spend too much time on the accounting side or on the legal side – that’s why we like to say this needs to be done to our accountant or solicitor and they’ll go and do it – very much so”. [P12]

It was apparent that as awareness, knowledge and understanding of regulatory requirements grew within the firm, firms were prepared to bring activities in-house and there was less of a need to seek out legal information:

“[We’re] doing more of the preparation work in-house, so the accountants are just doing the random checking and checking that the figures are correct – which is what I want”. [P6]

Conversely, where the knowledge base was low, firms appeared to find particular comfort in the expert advice and information that professionals such as accountants were able to offer, and in the knowledge that important areas of law that they were aware of were being handled by experts:

“I thought it was quite good that I have an accountant . . . he deals with all my tax returns and makes sure everything is recorded properly, so my income and what I have to pay to the government, so I don’t have to worry about it” [P8].

Notably, increased awareness of employment law and individual employment rights also led to increased use of experts. This tendency appeared to be due to recognition that employment law required certain strict procedures to be followed and that potential conflict between employer and employee could have severe consequences for the business. Even when awareness and knowledge levels were high, firms that perceived a situation to be high-risk used external, professional sources for advice and information on employment law. This appeared strongly related to self-protection motives:

“Once again, where we have to be careful, we had a situation recently where we had a member of staff who was off on long-term sick and that was dragging on and on and on and he wasn’t tending in sick-notes. In the end we actually reached what was called a compromise agreement with this person that, you know, that they signed that they were not going to take us to any kind of industrial tribunal but that there was a pay-off for them. And that was done; once again we used a specialist legal advice in that case – just to make sure that we didn’t get caught out”. [P15]

6.3 AVOIDANCE OF HEAVILY REGULATED ACTIVITIES

Awareness and knowledge of the law was sometimes used as a means of firms avoiding heavily regulated activities. Hence, one firm abandoned the use of pesticides due to environmental and safety concerns but also to avoid the regulation and form-filling using such products would place on the firm:

“I don’t use any pesticides I made a decision about that . . . So I got around that one. In order to use pesticides of any kind which most nurseries do, you’re obliged to go and get a licence; have all sorts of space-man things around and I’m not interested in any of that . . . so my way of dealing with my business is I find out what the regulation is and see what I can do to do without it . . .” [P7].

Another suggested that whilst the firm would always stay inside the law, it had to consider ways that would allow it to manage its way around restrictions:

“Well, I suppose to put it this way – we never work outside the law. So, yes – if there’s a legal structure and a legal ruling then we would work within that. But in terms of wanting to do business opportunities . . . if you know what the restrictions are then it’s my job as a leader of this business to steer our way round the restrictions and make sure that we’re working legally but also promoting the business in the way we want to do.” [P6]

Awareness and knowledge of employment law could be seen to have an ‘avoidance’ effect in some of the businesses. The most notable effects were a reluctance to actually take on new employees as a means of expanding the business; restricting employment to family members and friends; and contracting out services instead of contracting employment. One firm’s scepticism of employment law led them to suggest that they might be reluctant to take on employees in the future:

“I think when we start to employ people then it might start affecting us. I mean generally, as a business you would want to take care of your employees. But you don’t need to baby sit others. You don’t need to tell them how to carry that pan, or how much is right for them to lift. I mean these are things that we do so we know what you can do and what you can’t – things like that are common sense. I would say for us that employment law is a deterrent for us – as it is we might not employ as many people as we could” [P3].

6.4 RELUCTANCE TO ACT ON LEGAL RIGHTS AS A MEANS OF SELF-PROTECTION

It was apparent that firms’ awareness and knowledge of the law did not make them more inclined to invoke their legal rights. It was evident that firms were aware that if others were not acting appropriately or a dispute arose between two parties, the legal framework provided means to resolve the conflict. However, they were reluctant to enter into litigation and would only be

prepared to do so if the threat of it had not provided an adequate response, or the actions of other parties forced it to protect itself:

“But I mean, we’re not reluctant to go down the legal route – in fact we have done it . . . because I was receiving solicitors’ letters myself, you know, threatening dire consequences, so I thought well we’ve got to take action”. [P15]

There was also evidence to suggest that where firms were uncertain of their legal rights and standing, there might be a restrictive effect in terms of how they carried out their business and how prepared they were to divulge information:

“Would you have a chance to fight any breach of that agreement, you know that sort of thing? I mean it might be holding me back a little bit if I come up with an idea you know; I don’t know. I might not be as free with discussing the idea as I might be if I knew where I stood”. [P1]

Uncertainty and insufficient awareness to allow them to make sound judgements about either their legal position or their liability sometimes constrained firms. It affected whether they engaged in business with others and whether they resorted to the law to protect their interests. Affirming again the theme of self-protection, firms did take steps to look after themselves:

“I mean if you give some advice and someone goes and does something or does something different or don’t execute it in quite the way you advise them to do, you can’t be responsible. So that disclaimer obviously has to go about”. [P5]

Nevertheless, although firms may have been reluctant to act upon their legal rights, awareness and knowledge of these rights meant that firms were able to threaten potential action and sometimes this was all that was required:

“I think it’s fair to say that we as a company haven’t resorted to the law at all, or to pursue any issues. I think on one or two occasions we’ve had to threaten various manoeuvre [and that has been enough]”. [P11]

Others were less motivated to engage with the law beyond a certain point:

“I mean most people realise that if you’re starting to talk about litigation, you’re talking about tens of thousands of pounds and you don’t go into that lightly because you know that the law is so ambiguous that you might think you have a cast-iron case, then you get thrown out on a technicality. It just, it just isn’t worth the grief”. [P6]

6.5 EFFECT ON OWNER-MANAGER ATTITUDES, CONCERNS AND BELIEFS

It was apparent that differing levels of awareness and knowledge of the law could be seen to relate to more general owner-manager attitudes, concerns and beliefs regarding their business and proper business conduct. More specifically, those firms with a higher level of awareness and knowledge of the law appeared to be those where the owner-managers attributed greater importance to the law. Higher levels of awareness and knowledge also reflected a relationship between the owner-manager's consideration of the moral duties of the firm and the role of the law in upholding these. Furthermore, both awareness and a lack of awareness of the law could be seen reveal a general concern for the owner-manager. It is recognised that causality here could be in both or either direction on the basis that awareness and knowledge could encourage these attitudes but that these attitudes could also encourage awareness and knowledge.

6.5.1 Importance attached to the law

One firm's detailed awareness and knowledge of the law reflected the importance it attached to it and the seriousness with which it was taken within the firm. In addressing the issue of his role, the managing director stated that:

“There are 3,700 plus statutes currently on the statute book. There are over 250 clauses in the various Companies Acts that remove liability from a director of a limited company. There are 600 plus statutes and growing that remove limited liability from directors of limited companies . . . I would therefore suggest that the answer is very important” [P16].

Likewise, awareness and knowledge of the law affecting the business appeared to encourage a desire to find out more about relevant law as a means of protecting the firm against legal liability:

“It is perfectly conceivable that we could do something which might be unlawful and we might genuinely not be aware of this. However, where possible, it is absolutely crucial and essential that we are aware of the law otherwise there is nothing to stop us being sued, irrespective of our size”. [P20]

Awareness and knowledge, however, could be seen to lead to negative effects in terms of how the law was regarded. Frustration was expressed over the ‘grey areas’ [P18] that existed in UK law so that some firms felt there was always scope for ambiguity over what was right and wrong. There was also a view that the legal system in the UK was too prescriptive:

“The government has this idea that the state is more important than the individual . . . and it tells people what's good for them and what's not”. [P9]

“I mean some of the stuff we have to do is a necessity, but not all . . . I agree in principle with it but sometimes I think they should perhaps treat businesses like adults” [P3].

6.5.2 Guidance in decision-making

It was apparent that some firms believed awareness and knowledge helped facilitate decision-making and that the legal environment provided boundaries and a structure to enable this. There was the admission that whilst the firm did not see the law as directly benefiting the business, awareness and knowledge of the legal environment did provide the firm with guidance as to how to behave:

“Not exactly benefits, but regulation at least provides a framework within which the business can operate . . . for our organisation regulation merely strengthens the internal operations rather than having any impact on external activity”. [P2]

“It’s very important – not just from a moral and ethical point of view, but because if you’re in the wrong, particularly in view of the current changes in employment law, it could break us very quickly financially speaking . . . there has to be a framework” [P21].

6.5.3 Adoption of good practice

Awareness of risk assessment approaches involving the identification and control of hazards within the business led to the carrying out of hazard and risk analysis in several of the firms. These were mostly firms where there was an emphasis on self-regulatory requirements such as in the food and building industries. The survey data suggested that prior to contact with inspectorate or enforcement agencies, the participants had a lack of expertise and knowledge in how to undertake such assessments and, therefore, may have failed to take action if awareness levels had not been raised. In relation to awareness and knowledge of hazard analysis, the effect was that firms understood what it meant, what it required them to do, how to implement it in their business and how to monitor and evaluate the steps taken. In this instance, compliance was more than just the completion of a one-off action as on-going practices were integrated and then carried out as part of the standard business operation. It should also be noted that these firms understood the principles behind food safety legislation and recognised the need for regulation.

There was also evidence to suggest that awareness and knowledge encouraged firms to adopt the use of management frameworks and toolkits that had an effect on organisational practice. Three firms, the smallest of which had seven employees and the largest of which had twelve employees, cited the use of ISO 9000:

“[This] touches upon the ISO 9000 programme . . . it’s a benchmarking device to ensure that we are in compliance with quality guidelines”. [P20]

However, other firms were reluctant to change their practices with cost seemingly a major consideration:

“[They] wanted us to look at their employment and health and safety law. So we went in and started talking figures and then they felt that they didn’t need to do it. They’ve got a workforce of twenty-five, twenty-six people and they’ve only got five or six contracts – employment contracts. They’ve got nothing on health and safety, [nothing] written at all, nothing . . .” [P13].

6.5.4 Effect on organisational culture

There were examples of the effect of awareness and knowledge of the law on the culture of the company. This resulted in new ways of working and an acceptance of legal responsibilities:

“I mean I think it comes down to the word culture – that’s really what all this is about, about developing a culture within the company, within the small or medium company, just developing a culture of health and safety . . . And if you get someone that’s really into it, then they’ll motivate all the rest to improve, you know, they’ll get everybody going on it and start to develop this culture”. [P13].

However, one firm acting as a consultant suggested that even with awareness and knowledge of the law, some small firms found their old way of life hard to give up:

“I mean they know things like they can’t do like discrimination because things like that are well publicised, but you know, old practices die hard. They still sort of say – ‘well why can’t we?’” [P5].

This sense that firms were conscious of the threat that their lack of awareness and knowledge posed, and the concern that resulted from this, also meant that firms would gladly welcome the reassurance and guidance that an inspector or advisor might be able to provide:

“I mean we will do whatever we can to comply with any legislation – I mean we do what we can to comply but it would actually be nice if I could actually really count on some kind of advice – some kind of regulatory advisor visiting companies and doing an legal audit for them for instance” [P10].

One firm's awareness of the law, counter-balanced with the realities of running a commercial enterprise and a perception of society generally being more litigious, meant that it acted with caution in respect of the legal rights of others:

“But I think as an employer in a commercial environment that can be quite difficult because commercial pressures can be quite severe and you know. I would hope that once again common sense would come in, but I'm concerned that we have, what you might call a slightly more compensation culture, you know. And I would say generally that has made us more cautious, I think, more careful . . . not that we want to ride roughshod over anybody's rights but it's just purely from a business angle, you know”. [P15]

6.6 CHANGING LEGAL STATUS

Another way in which awareness and knowledge of the law affected the business was the decision of some firms to change their legal status. Typically this involved businesses that had originally started out as sole-traders becoming limited companies. This decision appeared to be made as a result of awareness and knowledge of the law accumulated by the owner-manager in the course of running the business, or on the basis of awareness and knowledge derived from seeking advice and information from professional bodies such as accountants or solicitors. It was also based on the recognition that limited liability status afforded more protection to the owner-managers, although earlier (pp 00-00) it was discussed how firms were less limited than it might have first seemed:

“The reason why we went limited is that we saw it as less risky to ourselves, as opposed to being a sole-trader. So therefore, whilst we knew what we wanted to do in terms of running a business – the implications we weren't really that aware of. But, it was strongly recommended that we went limited – so therefore, our house to some degree is safe if in the event something went wrong with the business. And in short, that is it – it is as simple as that” [P17].

Of significance also was the perceived professional appearance that the limited liability status bestowed on the business:

“As I say, being limited looks more professional doesn't it – it's about appearances really. Nothings changed in the way we run the business – what we do, what we sell, how we sell things, the shows we do, there's no difference from when we were not limited to now that we are limited company. But, being limited makes you look more professional – peoples' perceptions, what people, other businesses think of you as a limited company to what they think of you as a sole-trader it's, it's a lot different. It's not that difficult to do and well, it show's you're a serious business” [P14].

For others, the perceived vulnerability of their previous legal status meant that changing to limited liability status gave them the desired protection, in at least one case by 'exploiting the system':

“Mainly because we weren’t confident enough in operating as a sole-trader; we wanted the extra protection which that limited liability offered us. So realistically, we changed purely as a safety net for ourselves. Well, the ostensible idea is that if one company goes down, we jump ship onto the other one. And that, that was probably the most important thing as far as we were concerned. We had that added security for ourselves” [P19].

6.7 ANALYSIS

The results reveal that the effects of awareness and knowledge were not widespread and that the range of effects across the participants was modest. Low levels of awareness and knowledge appeared to underpin the lack of prioritisation that was placed upon proactively dealing with the legal environment. On the other hand, where there was awareness and knowledge, compliance could be seen to be the main effect. It seems that compliance was not something that the small firms chose to do, it was accepted that compliance is what they had to do. The choices and options, therefore, related to how to comply.

Tangible effects on the firms’ business performance were difficult to identify and assess. There was testimony provided by the firms themselves that low levels of awareness and knowledge had not prevented good business performance. In these instances, firms reported continued growth in sales, although the researcher did not have access to written material that might corroborate this. There was no evidence to suggest an effect on employment size as the tendency was for this to stay the same over time. However, one firm had experienced rapid employment growth whilst another cited employment legislation as a possible deterrent to expanding the business.

The fact that effects of awareness and knowledge were not widespread appears, on reflection, to be surprising given the amount of coverage that has surrounded the impact of regulation on small firms. Whilst there is scarcely anything in the literature dealing directly with the effects of awareness and knowledge of the law, there is substantially more on the effects and impacts of regulation. Such studies by Blackburn and Hart (2002), the Better Regulation Task Force (2000) and Harris (2000) have shown a rise in administration and a rise in the amount of legal advice to be the most immediate effects. This tallies with what was found in the present study. It is, however, important to recognise the distinction between the effects of awareness and knowledge and the effects of regulation.

The effects of regulation have been much more widely documented with government-funded research especially prominent. (See the discussion on pp 00-00). Government responses to this

work have resulted in the introduction of tools such as Regulatory Impact Assessments. These tools have been primarily focused on identifying the objective of a piece of regulation, assessing the risk of the problem that the regulation has been designed to combat and examining the costs and benefits associated with it. Within this remit, the emphasis has been on Small Firms Impact Tests and other forms of impact assessment as a means of quantifying the burden. Small business representative groups have dismissed such assessments as ineffective because they fail to understand the 'small business ethos' and disenfranchise micro and small firms (FPB, 2005). The value of existing research work has also been criticised by officials within government on the basis that it doesn't "get to the bottom of what impact, what sort of burden if you like, there really is" [S27].

This difficulty in actually teasing out the effect of regulation in the small firm and ascertaining to what extent it is a burden in some respect can be answered by the present study. Not only did firms struggle to identify areas of their legal environment that affected them, they also demonstrated that regulation was not affecting them. In the present study, the burden could be seen to be minimal, other than when the managerial and firm resources were stretched to resolve legal problems. Accordingly, the effect of awareness and knowledge was disproportionate where the added administrative workload had to be dealt with on top of the owner-managers' usual working hours. Understandably, firms expressed concern about a possible negative effect caused by having to spend time on areas they perceived as outside the core function of the business. Evidence from the present study, however, suggested that the owner-managers did spend the majority of their time on the product/service and favoured dealing with legal issues reactively. Hence, the effects appeared to be limited.

There was some evidence to suggest that awareness and knowledge of employment regulation had the effect of making firms more cautious in taking on employees and adhering to employment law. Arguably, this was a positive effect in terms of ensuring persons were accorded their individual employment rights although the response of the firms was to lament the difficulty in dismissing unwanted individuals and to argue that the balance now lay in favour of the employee. The apprehensiveness of the firms gave way to their desire to protect themselves. This self-protection motive was an important theme to emerge from studying the effects of awareness and knowledge.

Overall, the results suggest that as awareness and knowledge levels of the legal environment are raised, the firms are more likely to have views on the effects of regulation. Although the effects are not broad, there may be some deep effects in specific instances. Arguably, where the informal

coping strategies become less effective, the effects become more strongly felt and changes are required.

CHAPTER 7: CONCLUSIONS

7.1 INTRODUCTION

It has been argued that there is a need for appropriate, good quality regulation, properly and fairly enforced, to improve economic performance and quality of life. Indeed, the response of the UK government is that:

“We cannot protect the environment, reduce accidents, tackle discrimination or promote a competitive, efficient economy without an appropriate framework of regulation and the necessary commitment and resources to enforce it”. (BRTF, 2005: 11)

Regulation, therefore, is seen as pivotal in providing individuals, businesses and society with necessary protection and in safeguarding their rights. Of late, however, there has been widespread concern about the regulatory burden on businesses and in particular on small firms. The FSB (2004) estimated small firms’ regulatory costs to be proportionately five times higher than those of large firms⁵⁷. Furthermore, small businesses and their representative bodies have repeatedly spoken of the difficulties they face in keeping up to date with new rules and understanding what they need to do to avoid non-compliance.

This concern over regulation is set against a backcloth in recent years that has seen the growth of small businesses and their contribution to the economy acknowledged in the academic literature and popular press. Subsequently, a well-developed body of research has grown in the area of small business and entrepreneurship. Yet the study of small firms, their legal environment and the issues that arise from this has not received much consideration. Beyond studies that have examined the administrative costs of complying with regulation, there is little that has looked at the legal issues affecting small firms or how such firms respond to the law. More pointedly, there is minimal evidence relating to small firms’ awareness and knowledge of their legal environment.

Semi-structured interviews with twenty-one small firms and eight stakeholders were carried out to uncover a more detailed picture of this environment. The enquiry addressed the nature and extent of awareness and knowledge, its determinants and its effects. This chapter provides an overview of the findings and considers their implications for theory and policy. It concludes by discussing the limitations of the present study and the need for further research.

⁵⁷ It quotes the OECD report ‘Business views of Red Tape’ (2001) and cites similar studies. Small firms are defined in this report as those with fewer than 20 employees, large firms with 50 – 500.

7.2 AWARENESS AND KNOWLEDGE AND ITS EFFECTS

7.2.1 Awareness and knowledge

The paucity of existing evidence about small firms' awareness and knowledge of their legal environment made it difficult to form prior expectations as to the levels of awareness and knowledge amongst the participants. Reports in the popular press and anecdotal evidence elsewhere suggested that small firms had extremely low levels of awareness of the law, although there was not much empirical evidence to substantiate such claims.

The findings from the present study suggest that small firms do not necessarily have extremely low levels of awareness of their legal environment. The data indicated that most were aware of and understood the basics of areas of law such as financial reporting, tax and National Insurance, health and safety, environment, employment, licensing and intellectual property. These are areas of law that the UK government has identified as primary concerns for small business through its information and advisory support for new start-ups as well as its provisions for existing firms. Awareness of trading regulations, however, was less prominent and whilst there was understanding of the use of terms and conditions of sale in contracts, less significance was attributed to contract law.

Although awareness of the legal environment was not necessarily poor, knowledge and practical understanding was often lacking. The unsurprising focus of the owner-manager on the core product/service outweighed the need for assimilating and acting upon large volumes of information. To this extent, the owner-managers took on a 'bounded rationality' approach in that they recognised their limited cognitive ability. In this case, the limited cognitive resources of the owner-managers led to 'shortcuts' being taken in how much information they chose to take in and to the selection of the subjects they deemed most relevant.

To draw from economic theory, Shackle (1958), in focusing on the fundamental characteristics of human consciousness and their implications for human choice, doubted the assumption that people know everything relevant to their choices. He stated:

“The very nature of human consciousness, of human experience of life, depends . . . upon the necessity of living one moment at a time”. (1958: 24)

In many ways and despite protestation by some participants to the contrary, Shackle's statement represented the reality for small firms' awareness and knowledge of the law. Overwhelmingly, the firms lived in the 'here and now' and awareness and knowledge was acquired reactively.

Firms with greater experience and larger numbers of employees benefited from a greater breadth and depth of awareness and understanding by virtue of 'having been in business for longer' and by being better equipped to devote more staffing resource to dealing with the legal environment. Greater business experience generally pointed to a greater likelihood of having come into contact with and dealt with a larger variety of legal issues and problems.

In terms of small firms' regulatory know-how, there were some findings that might be viewed as surprising. In particular, there was evidence to suggest small firms were willing to satisfy voluntary codes of practice and be part of quality assurance schemes aimed at increasing awareness and knowledge and assisting compliance with regulatory requirements. Additionally, from an enforcement perspective, small firms were not all elusive and inaccessible in light of previous evidence from the emerging theory of business support that has suggested small firms are reluctant to seek external support and have a mindset that drives them to 'go it alone'. There were notable examples of firms liaising with enforcement bodies during which awareness was raised and knowledge transfer took place and correct practices could be learnt.

Firms recognised that awareness and knowledge of their legal environment was important and the majority of respondents saw their legal environment as reasonable, although there was concern as to whether it was applied fairly to all businesses.

7.2.2 The effects of awareness and knowledge

The effects of awareness and knowledge were limited in both their depth and breadth of application. The explanation for this may be because the legal environment could not be seen to have a substantial impact on the firms, especially in the context of other factors such as the core product/service, competition and marketing. The firms themselves generally did not perceive their legal environment as having a major effect. Of the effects that were identified, perhaps the most significant was compliance. Accordingly, awareness and knowledge typically prompted by an external event, led to compliance with regulation and often changes in the firm's practices. Firms also used their awareness and knowledge as a means of avoiding heavily regulated areas. This reflected a desire to simplify business operation and practice wherever possible and to steer clear of

regulation that might distract them from the core activities of the enterprise. In terms of other notable effects, awareness and knowledge did not encourage firms to enter into legal action as a means of protecting their rights. If the threat of action did not suffice then firms did reluctantly use the law to resolve disputes but the preference was for pragmatic approaches. There also appeared to be a relationship between awareness and owner-manager attitudes with the effects operating in either or both direction. Hence awareness and knowledge of the law could be seen to have an effect on owner-manager attitudes and owner-manager attitudes could also be the driver for awareness and knowledge.

7.3 A THEORY OF THE DETERMINANTS OF AWARENESS AND KNOWLEDGE

Analysis of the findings has led to the generation of a theory of the determinants of legal awareness and knowledge in small firms. The theory consists of three independent categories of variable: resources and characteristics of the firm; the law and the legal system; and the closeness between work activity and the need for legal awareness and knowledge.

Within resources and characteristics of the firm, the key sub-variables identified were time, money, experience, interest and motivation, and sources of advice and information. These five sub-variables could be seen as barriers to acquiring awareness and knowledge in the firms. The decision to raise awareness and enhance knowledge seemed often to be taken when it was consistent with the owner-manager's pre-occupation with survival and the core product/service. The second variable, involvement and activity of law enforcement bodies, refers to the crucial role played by such bodies in raising awareness and increasing knowledge amongst the participants. The third variable relates to awareness and knowledge occurring when the closeness between work activity and the law necessitates it or the risk of ignorance is perceived as too high. Overall, it appeared that the most important factors affecting awareness and knowledge related to the following characteristics. The firms generally lacked resources and this was exacerbated by disproportionate compliance costs and a shortage of capital. The lack of infrastructure in the firms also made them more disposed to be lacking in legal awareness and expertise. Many were ignorant of their legal environment, solutions to their legal problems, or their legal obligations and this was often related to limited infrastructure. A lack of exposure to their legal environment and legal problems also affected awareness and knowledge in firms. This lack of exposure operated principally in two ways. Firstly, firms did not appear to regularly come into contact with legal issues and their exposure increased only moderately according to their length of time in business or the increase in the number of employees in the organisation. Secondly, it was rare for firms to have dealings with law enforcement bodies.

The lack of frequent inspection could be seen to allow businesses to slip through the regulatory net and to be unfamiliar with compliance initiatives and strategies. Finally, there was on the whole a lack of receptivity to legal issues. The firms very rarely incorporated legal considerations into their business decisions and they were often not persuaded about the potential economic or business benefits of doing so.

Addressing the issue of legal problem-solving, the data suggest that problem-solving occurred through the owner-manager constructing a simplified model of the situation based on past experience and selective views of the situation. This facilitated decision-making in the firm by structuring and simplifying problems, and when developing solutions to problems the participants tended to rely upon tried and proven methods. Accordingly, non-compliance issues led to firms adhering to the law whilst disputes that arose were settled using non-legal means wherever possible.

In many ways, awareness and knowledge of the legal environment appeared to be determined by pre-existing norms, habit and intuition rather than by conscious deliberation, other than when the firm had a problem to solve. There was evidence to suggest firms relied on routine, precedent and what they perceived as the 'conventional wisdom' and that this affected their decision to raise their awareness and acquire knowledge. Firms were not necessarily worried about complying with regulation per se; rather they wanted to ensure that they protected themselves from financial loss or legal action. Vulnerability to these outcomes was the stimulus for action. Where awareness and knowledge levels were low, the response to compliance was to take common-sense steps to address obvious risks and legal obligations. However, what firms perceived as obvious risks were not necessarily the same as those defined by the law. It is not unlikely, therefore, that firms were unaware of many of their legal obligations and might only learn of them when something went wrong or there was a complaint.

However, the present study suggests that firms were often able to exist, cope and even prosper with limited awareness and knowledge of their legal environment. There were a number of reasons as to why this was so. The principal reasons include the fact that overwhelmingly their activities did not come to the attention of law enforcers. Firms operating in high-risk sectors such as food were the only ones to have regular contact except for one case where an inspectorate body had been invited by a firm to visit its premises. Some considered it the responsibility of law enforcers to ensure compliance, so firms relied upon not having been visited as an excuse for ignorance or non-compliance. Where firms did not come to the attention of enforcers, there was an underlying

sentiment that they must be low-risk and the closeness between work activity and the law was less clear to see.

Firms also had relatively little need for knowledge and practical understanding because they outsourced particularly demanding activities that formed part of their legal duties. Hence the widespread practice of using accountants to deal with accounting and tax regulation. Informal practices also negated the impact of the legal environment. Where employees were friends or relatives, or an affiliation had built up between employer and employee over a period of time, the relationship tended to be an informal one that was based on a mutual understanding of needs and requirements rather than a strict adherence to individual employment rights. Firms also preferred to resolve problems and disputes using non-legal methods that focused on straight talking, common sense and pragmatism.

The findings from the present study suggest that small firms were often too small to expect them to have substantial awareness and knowledge of the law. The idea here is that small firms do not have the infrastructure and, perhaps by their very nature, are unable to have the infrastructure to deal adequately with the law. Unlike a larger scale of operation, the remit and concern of the firms was narrowly defined and preoccupied with the core product/service and survival. Lack of infrastructure is particularly relevant to the process of proactively acquiring awareness and knowledge. Responsibility for finding out about regulation, for management and for record keeping normally falls to the owner-manager for whom it can be a significant and unwanted distraction. The complexity and opportunity cost involved in finding out about and complying with many areas of regulation means that it is often overlooked. Additionally, those small firms that do comply often see themselves as being at a competitive disadvantage. It is clear that businesses have a limited capacity to absorb new information and that time, cost and the clarity and accessibility of regulation influence the decision to further awareness and understanding. The present study suggests that the law was often more of a nuisance than a burden.

7.4 THE RESEARCH PROBLEM

A key objective of lawmakers in recent times has been to minimise the burden of regulation on small businesses given that such enterprises make up the backbone of the economy. Concern about the impact of regulation has been paramount in light of statistics that suggest fifty-six per cent of SMEs believe regulation to be an obstacle to the success of their business (SBS 2003). This fear about regulation and its impact on the small firm is the problem underlying the need for the present

study but does not appear to be substantially borne out by the findings. In attempting to assess awareness and knowledge as a means of gauging how small firms manage their legal responsibilities and cope with the ‘burden of red-tape’, the evidence suggests that firms are able to manage by operating on a need-to-know basis. Informality and pragmatism rule wherever they are workable. It was notable that there was a disproportionate burden on the smallest firms as it was usually the owner-manager who had to find time to understand and comply with regulation, and this was seen as detracting from the real job of managing and growing the business. To overcome this effect, they tended to deal with issues reactively and pragmatically as well as relying on a network of advisors, primarily accountants and solicitors, but with little use of government-provided services.

7.5 IMPLICATIONS FOR THEORY

7.5.1 The emerging theory of business support

It became apparent from reading the small firm literature that there is a substantial body of research seeking to explain the extent and form of take-up of small business advice and information. Although very little of this research relates specifically to legal advice and information – this is reviewed in chapter 2 – it was nevertheless clear that there is an emerging theory in this area and that this theory could provide a useful framework for the current research. This is because the development of legal awareness and the acquisition of knowledge can be seen as part of the process of business support. The theory – set out in chapter 3 – was used, therefore, to inform the design of the research particularly as regards the variables that might be associated with legal awareness and knowledge.

The aim of this section is to determine whether the theory appears to be supported by the evidence from the present study and to consider what modification of the theory, if any, is needed in the light of this evidence. The theory is briefly restated prior to addressing these matters.

7.5.2 Restatement of the theory

The emerging theory of business support appears to suggest four types of variable that might be associated with the take-up of business support by small firms. A review of the literature that addresses this area is presented in chapter 2, section 2.4.

7.5.2.1 Structural factors relating to small firms

The literature has pinpointed a considerable number of structural factors including the size of the firm, the sector in which it operates, its rates of growth, age, and innovativeness and production structure. Engagement with export markets, the taking on of employees, the degree of profitability and form of ownership have also been highlighted. It seems clear that some of the factors identified may be masking others, particularly the availability of time and money needed to obtain business support.

7.5.2.2 The characteristics of small firm owners

In particular, the literature has drawn attention to the independent spirit found among proprietors of small businesses and a mistrust of government. A prominent reason used to explain why the owner-managers of small firms are reluctant to take up business support is that they believe support providers do not understand their business. The extreme reluctance to accept external advice has been attributed to the psychology of small business owners in that they show traits of very strong commitment to autonomy and independence.

7.5.2.3 Supply factors

There also appear to be factors associated with the supply of business support. Here, attention has been drawn to small firms' preference for personal contact and the tailoring of the supply of the service to the needs of the individual small firm. Other factors discovered are the perceived quality of the support and the reputation of the supplier. Whether the supplier is in the private sector or a government agency also appears to be relevant. Equally, the amount of publicity and marketing a support service receives affects the speed with which awareness grows within the small business community.

7.5.2.4 Advice and information factors

These factors are seen as stemming from the nature of the advice or information sought. They would include the broad area of concern – for example, legal information – and whether the advice or information is needed to solve a particular problem. The argument would be that if the information was needed to solve a problem there would be more likelihood of it being obtained because small firms are thought to operate on a need-to-know basis.

7.5.3 Whether the present research tends to support the theory

The results from the present research were reported in chapters 4-6. Here the analysis focuses on a comparison of those results with the theory restated above. It considers whether the present results, and not just those relating directly to advice and information, tend to support the theory. That is, did take-up of legal advice and information tend to be associated with the factors that the theory suggests? Secondly, was the theory useful in explaining legal awareness and knowledge?

The essence of the emerging business support theory has been a predominant focus on the take up of advice about methods for managing finance and human resources, raising quality standards and growth strategies. In terms of whether the take up of legal advice and information was associated with the same factors, findings from the present study suggest that small firm owner-managers used legal advice from a fairly limited range of suppliers, but were not reluctant to do so if it helped the business to cope with and solve problems. The decision to take up legal advice, however, was always balanced against the impact on the profits, turnover and costs of the firm. High satisfaction levels were associated with accountants and solicitors, who were the most frequently referred to sources. This could be ascribed to the fact that these information providers often helped solve specific problems so the advice given was targeted and its outcome could be assessed by the owner-managers.

Whilst the participants were not reluctant to seek out external legal advice, they commonly did so only when they had a problem to solve. There was a notable lack of awareness of government and public-funded sources that were available and a disinclination to use such sources. Typically, this was because of scepticism about its value and the time and effort required synthesising the relevant information and work out its applicability. There were some small variations in willingness or propensity to take up support according to size of firm. Smaller firms that lacked internal expertise tended to externalise more, particularly with regard to areas of law such as financial reporting and employment. There was also a sense that larger firms were better equipped to make the best use of business support because they had a stronger development of internal staff regulatory know-how which enabled their support requirements to be better framed and managed. The nature of the advice or information sought was significant in that certain areas of law tended to encourage the take up of advice and information, including areas such as accounting, taxation, employment and land law. A final important variable to emerge from the present study was the nature of the interaction between small firm and legal advice provider. Where the interaction is high and the

relationship able to develop closeness, the usage and satisfaction appears to be greater. Firms also cited face-to-face interaction or site visits as their preferred mode of receiving legal advice.

In terms of the theory's usefulness in explaining legal awareness and knowledge, there are parallels to be drawn between the emerging theory of business support and the theory of determinants of awareness and knowledge established in the present study. Most obviously, the characteristics and resources of the firm were predominant in explaining legal awareness and knowledge.

7.5.4 Whether business support theory needs modification

The results show that take-up of legal advice and information tended to be broadly associated with factors similar to those associated with business support more generally. In addition, the theory was partly able to explain legal awareness and knowledge. It seems that the theory might have a universal application to business support.

7.6 IMPLICATIONS FOR POLICY

On possible implications for policy, it appears evident that professionals and government departments assisting small businesses have an understanding of the types of legal issue that are immediately relevant to small businesses. This statement is made on the basis that the participants showed awareness of nearly all of the areas of law that the UK government has made provision for in respect of small firms and their legal environment. However, it is important to recognise that the small business sector is not homogenous and that different sectors and categories of business face varying legal issues. In terms of helping both existing and newly-formed small businesses identify the relevant legal issues and to locate more appropriate business services, the present study raises questions as to the educational and training needs of owner-managers. Interviews with stakeholders also identified the issue of small business/entrepreneurship education and the merits of some form of start-up requirement containing a legal component to help familiarise businesses with their legal issues. The feasibility and applicability of such an approach might warrant consideration in the future.

7.7 LIMITATIONS OF THE PRESENT STUDY

The qualitative approach used in this thesis proved especially useful in unpacking complexities of the subject area and arguably produced much more detailed information than statistical analysis would have been able to provide. Qualitative methods in this instance were particularly suitable in uncovering the determinants of awareness and knowledge and the dynamics of this complex

situation. The method also provided scope for the researcher to compare and contrast findings leading to the formulation of a grounded theory. Detractors may argue that qualitative methods are difficult to generalise from because of their inherent subjectivity and because they are based on subjective data. It must be noted, however, that generalisability was not the key aim of this study but rather to illuminate an under-researched area and to generate theory that could be more widely tested. The analysis in the present study is especially important as it represents one of the few that looks, in detail, into the awareness and knowledge of the legal environment in small firms and the determinants of it. However, the present study is limited to capturing awareness and knowledge at one point in time, is small in scale and does not provide, or seek to provide, formally generalisable results. There is a need for further research.

7.8 THE NEED FOR FURTHER RESEARCH

The dearth of academic work in the field points towards further work on small firm awareness and knowledge. This would serve not only to corroborate the findings of the present study and to help form an established body of work in the area, but also to reveal nuances and issues perhaps not revealed in the present research. Firstly, there is a need to assess awareness and knowledge over a more prolonged period of time so as to understand how awareness and knowledge is actually acquired and used in real-life situations and settings. Such an approach might benefit from incorporating employee perspectives of small firms and their legal environment. There is, arguably, also value in researching employee awareness and knowledge as well as employee compliance within the small firm. Secondly, there is a need for the theory of legal awareness and knowledge which has been formulated in the present enquiry to be tested and refined in a larger study.

Longitudinal study might also help identify the processes by which small firms assess legal risks and the approaches adopted. Data from the present study suggest that legislation and regulation, whilst important, largely play a small part in small firms' day-to-day operations and become more prominent as firms form an approach to risk management. These approaches to legal risk typically focus on self-protection, cost-benefit to the firm and minimising the burden and impositions on the business. Further research is necessary to conceptualise the processes and methods involved.

The case for regulation has been well argued by both academics and government but the present study suggests that the legal environment might be much less important or influential for small firms than previously thought. These findings suggest a need for research into whether small firms with greater awareness and knowledge benefit more than those with lower levels of awareness and

knowledge. This benefit might be assessed in terms of profitability, reputation or susceptibility to legal action. This would answer the question as to whether higher awareness and knowledge produces greater returns and whether such returns can be quantified. Thus the argument for regulation and reasons to comply could be painted clearly for small firms.

7.9 SMALL FIRMS AND THEIR RESPONSE TO THE LEGAL ENVIRONMENT

What, in conclusion, can reasonably be expected of small firms in their response to their legal environment? The idea that small firms can operate and act with sound awareness and knowledge of their legal environment is perhaps doubtful. Moreover, arguably it would not be rational even if it were possible. In a decision-making analogy that is applied here to small firm awareness and knowledge:

“One must indeed look before one leaps, in so far as the looking is not unreasonably time-consuming and otherwise expensive; but there are innumerable bridges one cannot afford to cross, unless one happens to come to them”. (Tversky and Kahneman, 1981: 458).

Being aware and knowledgeable, therefore, is not always possible. Consequently, small firms make decisions in terms of their awareness and knowledge that are not necessarily ‘perfectly rational’ but ones that best suit their needs and preferences at that time. However, in the sense that rationality is dependent upon context, these firms’ actions could be seen to be reasonable.

This analogy of awareness and knowledge is not the basis for an argument for reducing the legal duties of small firms but is an argument for better support. The present study offers a strong argument for providing legal information and education to small firm owner-managers, tailored to their specific needs. Such support might also help modify attitudes and behaviour towards the legal environment. It is acknowledged here that achieving such change is not without difficulty. To this end, it is clear from the findings here that much depends upon how legal information and support is presented and packaged, and upon who delivers it. Crucial issues to the success of any such support initiatives would be the ability to clarify how awareness, knowledge and compliance could also be good for small businesses and their ‘bottom line’. Legal information and support needs to be both transmitted and received, and the indication is that this is most likely to be achieved where there is face-to-face dissemination of information from trusted sources. Finally, ways to facilitate self-inspection and self-audit might prove advantageous as a means of informing and educating small firms on their legal duties.

Where firms did acquire awareness and knowledge, it was sometimes because it made positive business sense in that it helped them obtain work and retain and avoid disputes with employees. For others, however, the acquisition of awareness and knowledge was a defensive way of containing risk and warding off unwanted attention. Invariably in these cases, awareness and knowledge was not a source of competitive advantage but a means of preventing regulation becoming a source of competitive disadvantage.

More generally, the theory developed in the present work would predict that small firms are unlikely to have high levels of legal awareness and knowledge. They do not have and cannot have the infrastructure of the larger firms and generally will increase their awareness and knowledge of the law only if it is a precondition for the effective day-to-day running of the business. The challenge for those formulating and implementing the law is to provide effective support and enforcement in the light of this.

APPENDIX 1: SMALL FIRM AWARENESS AND KNOWLEDGE OF THEIR LEGAL ENVIRONMENT

Table 1: Participant Awareness of the Legal Environment

	Key areas identified by participants
PUBLIC LAW	<p>A. Legal Form – limited liability; separate legal personality of corporate status; separation of ownership and control.</p> <p>B. Accounting & Company Reporting – VAT; PAYE; NICs; company law; account auditing.</p> <p>C. Health & Safety – Health & Safety at Work Act, 1974; Management of Health & Safety at Work Regulations, 1999; principle of reasonable practicability; Health & Safety Information for Employees Regulations, 1989; Disability Discrimination Act; risk assessments.</p> <p>D. Product safety – Licensing and trading requirements; food hygiene regulations; European sectoral product safety directives; product labelling.</p> <p>E. Environmental regulation – Waste management; control of substances hazardous to health.</p> <p>F. Data protection/privacy regulation.</p> <p>G. Insurance – Employer’s Liability Insurance; public liability; product liability; professional indemnity.</p>
PRIVATE LAW	<p>A. Employment law – National Minimum Wage; Working Time Regulations; Employment Rights Act, 1996; discrimination law; written statements of contract of employment; individual employment rights; dispute resolution.</p> <p>B. Contract law – contractual terms and conditions; late payment.</p> <p>C. Intellectual property – trade marks; copyright; patents.</p>

Table 2: Determinants of Awareness and Knowledge

Key Determinant	1. Resources and characteristics of the firm	2. Law and the legal system	3. Work/Law closeness
Sub-variables of key determinant	A. Time. B. Money C. Experience D. Interest & motivation E. Sources of advice & information.	A. Simplicity/complexity of law. B. Perceived importance of law. C. Law enforcement inspections. D. Advice from regulatory bodies.	A. Requirement to meet contractual demands. B. Resolving business disputes. C. Fulfilling licensing and operational requirements. D. Internalisation of regulatory tasks. E. Management of risk.

APPENDIX 2: LIST OF INTERVIEWEES**Small Firms**

Small Firm Participant	Business Sector	Legal Status	Length of Time in Business	Gender of Owner-Manager
1	Consultancy	Ltd	3 years	Female
2	Management Consultancy	Ltd	11 years	Male
3	Ice-cream manufacturer	Sole trader	4 months	Female
4	Candle manufacturers	Ltd	1 year	Male
5	Consultancy	Sole trader	10 years	Male
6	Building contractors	Ltd	35 years	Male
7	Botanical Garden	Sole trader	10 years	Female
8	Homeopathy	Sole trader	2 years	Female
9	Winery	Sole trader	20 years	Male
10	Advertising	Ltd	11 years	Male
11	Chocolate manufacturers	Ltd	4 years	Male
12	Property developers	Ltd	18 months	Male
13	Health and Safety consultant	Sole trader	1 year	Male
14	Garden furniture manufacturer	Ltd	10 years	Female
15	Printers	Ltd	22 years	Male
16	Corporate investigator	Ltd	27 years	Male
17	Educational resources manufacturer	Ltd	8 years	Male

18	Engineers	Ltd	9 years	Male
19	Audio visual engineers	Ltd	18 years	Male
20	Architects	Partnership	13 years	Male
21	Consultancy	Ltd	5 years	Male

Small Firm Stakeholders

Stakeholder participant	Organisation	Job Description	Gender
1	Advisory, Conciliation & Arbitration Service (ACAS)	Head of small-firm training	Male
2	Scrutiny Team at the Regulatory Impact Unit (RIU)	Consultant	Female
3	Business Regulation Team at the Regulatory Impact Unit (RIU)	Consultant	Male
4	Small Business Service (SBS)	Director of Business Support	Male
5		Employment Tribunal Chairman	Male
6	Small Business Service	Director of Enterprise Policy	Female
7	Federation of Small Businesses (FSB)	Spokesman	Male
8	Forum for Private Business (FPB)	Head of Policy	Male

APPENDIX 3: INTERVIEW SCHEDULE

1. What is the nature of your business and what you do?
2. How long have you been running as a business?
3. How many employees do you have?
4. What is the legal form of the business?
5. Why did you opt for the legal form that you did?
6. What do you consider to be the main responsibilities of running your business?
7. How regularly do you, as a business, deal with legal-related matters? Why?
8. How would you assess your own knowledge of the areas of law applicable to your business?
9. Can you identify some of the key laws and/or areas of law that affect the running of your business?
10. In relation to this area of law that affects your business, what are the actions you have to take to ensure that you are compliant?
11. Who is responsible for ensuring that the business adheres to the legal requirements that you've identified?
12. What training or learning activities can you identify, for you or your staff, that help you become aware of the legal requirements of running your business?
13. Where, if anywhere, do you get information and advice on your legal environment?
14. Which source do you see as a key provider of advice and information in relation to acquiring awareness and knowledge of the law? Why?

15. What is your preferred method for obtaining advice and information on the law? Why?
16. When and why do you engage with the law within your business?
17. What factors influence your decision to acquire awareness and knowledge?
18. What strategies do you have for managing your legal responsibilities and dealing with your legal environment?
19. Has awareness and knowledge of your legal responsibilities (or lack of it), directly or indirectly, impacted on your business? How?
20. How does your legal environment, and awareness of it, affect the running of your business?

APPENDIX 4: SAMPLE INTERVIEW TRANSCRIPT

Interviewer: I guess maybe if I could just start by getting you to give me a brief explanation about what you actually do, so looking at things such as how long you've been in business and what's your core focus?

Participant: Sure. Well, we are predominantly an education business. We're manufacturers and distributors of curriculum resources to, well in the main, primary schools – we do have secondary in there – and the subjects that we would tend to focus on are numeracy, literacy, science. We were established in 1997, which was November 1997 and really we have two businesses; the education business is ***** Learning and then we have the sports business which is *****. However, although the two are distinct companies they come under one for the purposes of the website, hence the website name is ***** . . . the main focus or the main thrust of the business is really on the education side. It's at least 95 per cent of our business. As I say, this involves principally supplying equipment to schools. We've also just added audio equipment for the classroom. We also do audio equipment; so that's for hearing-impaired children. That's a system that we install within classrooms, and we have an installation company within North ***** that do that for us. And also something for teachers that have voice strain – they can deliver the lesson without shouting. So they basically have a little bell mike and a body pack, and then there's these speakers that are installed around them. So, that both helps them delivering the lesson and it also helps the hearing-impaired children, cos they don't have to go up to the front, and the teacher can walk around and everyone hears it the same. Plus, we do something for deaf children – and all this is really targeting special needs – which is a portable loop system. So that covers the audio stuff. A key thing for us now is refillable water bottles at children desks for re-hydration. It's not a legal requirement for schools – but indeed I've got something somewhere posted on the BBC website from Milliband who was actually promoting – and of course it came from the States and the whole obesity issue – so whilst in schools currently there's like the coke machine; there saying well really we don't want kids to drink coke. So that will have an impact on coke as a brand/business. So, I think they would ideally – and the choice is up to the school – to get rid of these fizzy drink and chocolate machines and just have water. So, they're encouraging it, however it's not mandatory. But they – the schools – actually see it as a very good idea, and some of the feedback we've had from head-teachers, and particular with special needs children, is that they notice a difference particularly in some of the guys who lack in concentration, a difference in behaviour just purely from having water at their

desk. And of course the nice thing about it is that there are no interruptions in the lesson. So, that's good for our business.

Interviewer: Ok; in terms of running the business then, what's your main involvement in that; what do you mainly have to deal with and are you the person mainly responsible for making decisions?

Participant: Well, the company is owned by my wife and I jointly. This applies to both the education and sports business. My role is varied. Whilst I'm a director, if you said a director of what, I would say a sales and marketing director. So I'm responsible for sales totally and certainly the marketing. But then I also get involved in everything, as indeed does my wife. So for instance, I'm sat here today doing invoicing, then pulling off delivery notes and then later on I will be doing some packing in the warehouse. Normally though, I spend most of my time out selling ***** as a business . . . In terms of making decisions, I wouldn't say there's much structure to it, no not really. Decision making is very much on an ad-hoc basis. I tend to make the decisions but I usually run them by my wife. But the sort of decisions that we would make at this stage are really about the product, and about who we want to work with, and who we can work with. Its really about manufacturing, sales and some marketing decisions so actually most of the decision making is quite easy and not that difficult.

Interviewer: Ok, thanks; and in terms of the business then, how many people do you employ?

Participant: Good question - full time there is three, but we sometimes have up to two additional part-time staff depending on how busy we get. However, we own all our resources, so all our equipment, all our manufacturing is sub-contracted out to three factories. There are three main factories that work for us and we give them most of their business.

Interviewer: Is the business a limited company?

Participant: Yeah – yes it is.

Interviewer: So why did you opt for the limited form?

Participant: The reason why we went limited is that we saw it as less risky to ourselves, as opposed to being a sole-trader. So therefore, whilst we knew what we wanted to do in terms of running a

business – the implications we weren't really that aware of. But, it was strongly recommended that we went limited – so therefore, our house to some degree is safe if in the event something went wrong with the business. And in short, that is it – it is as simple as that.

Interviewer: You mention your house is safe to some degree – what do you actually mean by that?

Participant: Sure, well I guess my basic understanding is that as we're a limited business that means that we're – me and my wife, the directors – means that we're not personally liable for the debts of the company, if ever such a situation were to happen. So if the business was ever to get in trouble, at least we'd know we'd still have a roof over our heads.

Interviewer: Ok. I just wonder if I could ask about when you actually started up the company, how did you actually finance the whole thing? Did you have the finance already in place, or did you have to use some kind of personal guarantee to raise some money, or were you able to get a bank loan – how did that all work?

Participant: Ok, well, without going into too much detail we already had some finance in place which was, in actual fact, our own money that we'd saved over time. Of course though, we still needed more capital up front to deal with the initial costs that I guess all businesses must face. So, yeah – we did take out a loan from the bank which was secured against our house. But – in reality the loan was really only quite small. I guess if the business had of started out quite badly then we could have been in trouble. But, I mean, we wouldn't have gone into this if we didn't think it was going to be reasonably successful. I mean, I suppose I was never really worried that we might come unstuck. And of course now, the business is able to stand on its own two feet.

Interviewer: Ok, fine. Well one of the main things I'm here to find out about is your awareness and knowledge of the law as it affects your business. So, I guess if I could maybe just get you to talk a little about some of the main legal areas that affect you, and how much you know about them really?

Participant: Obviously we have financial responsibilities, whereby we have commitments to suppliers in terms of payment. We also have a legal responsibility in terms of how we market our product versus the competition. And so therefore, looking at for instance if we try to do a 'me-too' type product then of course there are copyright and patent laws that we must be aware of. As indeed

companies look at our products and can't do that because we have copyrights for what there worth . . . In terms of other legal issues – you might want to think about Health and Safety. Now, I've got that up there – [poster on] health & safety law but I haven't filled it in. So – who's responsible for what? Now; ***** and I; we're co-directors of the business. In the event of anything happening to, let's say for example, *****; if ***** wasn't our son and something fell on his head in the warehouse; then, we would have an issue. But, it's unlikely. I mean – he could. He is in a position where he could say; 'Well it wasn't secure and it's not safe'. Now ***** – who is working out there at the moment – is self-employed and has worked for us for maybe three years – sort of 5 hours a day or whatever. Now if anything happened to ***** out in the warehouse – I don't know if we would have health and safety issues because she is self-employed. So, you know, it's not that clever – I really should be up to speed with health and safety law and regulations. An issue we've just recently had – and again, I really don't know what the outcome might be – is that we have a product [Drawing board]. And you see whilst these are carded inserts that slot into this frame, we also have a metal insert that can slot into this and can be removed. Now, that actually is quite heavy. Well, we had a letter from a school which was a bit scary - saying that a little kid has almost had his finger chopped off. You see, what they were doing is – there were two kids with this frame. One pulled the metal thing up and the other little lad had his finger at the bottom of the frame. He let go of this metal thing and it came down like a guillotine. So he had to have his nail removed in hospital – fluid drained off it, and so on and so forth. So, basically they're saying to us – there's a letter, and it's gone off to ***** County Council because that's part of where they operate, - and it's saying 'I should be interested to know what action you will be taking as a result of this case. I look forward to your response. I must also inform you that I have already sent accident report forms to our local education authority in accordance with the procedures laid down by ***** Schools'. Of course, when I received that I went, oh my God – what am I going to do. Anyway, I didn't see it as an issue, and sent a letter back – having consulted my solicitor. And that's the best that I can do. And I haven't heard anything back. So, that's another issue – am I responsible or is it the school . . . In terms of those sorts of legal issues – we're not that up to speed on it and we should be better at it. Now, we could go on health and safety courses - one or two day courses – but, we're busy. We could go on other things, whereby our responsibility is outlined both to the consumer and also to our staff. So, that's about it with us.

Interviewer: So on the basis of what you've just said, is there an issue of you not having awareness and knowledge of the law in areas which are readily impacting on your business?

Participant: We haven't and that's for sure. But we do our best based on knowing – well, it's common sense – we do make sure things are secure. But accidents do happen, and will happen. We haven't been visited by any Health or Safety Executive. In fact, we have a very good friend who is in charge of health and safety at ***** Foods in *****. And I was briefly explaining to her – she was interested in what our operation was – and I just said well it's an old cow-shed, right. And basically the cows have gone and the walls have just been washed down, and we've got some racking in there – which, some is secure, some isn't. And we've got things that poke out the floor – metal bits that have been cut off. And she said 'oh my god – let me come and see you'. And, in fact it would be worth using. But the other thing of course with small businesses is always thinking about the cost implications. Now, I'm convinced – however, I still don't spend any, and maybe we should – that spending say £500 on some sort of consultation with a health and safety expert is money well spent. However, you don't do it because you think, well I've got to sell a £1000 worth of kit – so it's got to be incremental business to fund the £500. Well, our business is better than that, but we still don't do it. We're sat here looking at machines and packing and a whole host of other issues that seem to be more important – now, until anything happens then the health and safety bit and other things are not important – which is a huge weakness I know. But you don't know until it happens do you.

Interviewer: Ok, I wonder if I could just follow up on a couple of issues you've just raised – you've touched upon your duties as a director of a company but that you weren't overly sure how you stood, particularly in relation to health and safety matters. Are you aware, as a director, of your responsibility for the health and safety of your employees and anyone else who comes into contact with the business?

Participant: Well, I guess yes and no really. I mean, like I said earlier, I'm not really sure what the situation would be if there was an accident in the warehouse. For ***** , I'm sure that we are in some way responsible, but to what extent I don't really know. As for ***** – who is self-employed – like I said I'm not certain as to what our position would be.

Interviewer: Ok then, still staying on this issue, have you heard of the Health and Safety at Work Act, 1974, and do you know of any of the responsibilities put on you that follow from it?

Participant: The Health and Safety at Work Act – that itself does ring a bell. I'm sure I've heard that before, although I can't say it's really registered too much with me. I certainly wouldn't have been able to tell you what year it was from or anything like that.

Interviewer: So, in terms of the details of the acts, and what it means for you, do you know what responsibilities it places on you?

Participant: No – if I'm being honest I can't say I do really.

Interviewer: OK. I mean the Act states specific responsibilities for employers – and so, as a director, you would have a duty to provide a safe working environment. So really, that means you'd have to ensure a safe environment, and that you'd either have to remove or reduce any risks there might be to employees, and anyone else that might be likely to be affected by the business – how would you say you measure in terms of that responsibility, if I could ask?

Participant: Right – well I mean I was aware that I had some sort of responsibility. I mean I've already said that I'm really not up to speed as I should be – that's something I'd have to admit to, which isn't very clever at all, is it. If you're asking me should I be more up to speed with health and safety law – then yeah, of course I should, but the reality in a business like this is that I haven't got time to find out about what I should be knowing. You just have to deal with these things as and when they come along.

Interviewer: Of course. I can well understand how that might be. Just a couple of other points to do with health and safety - have carried out a risk assessment in your workplace?

Participant: Again no. Have to say that I wouldn't even know how the hell you would carry out a risk assessment. It's not something we've done, anyway.

Interviewer: Right, ok. I guess if we just could for the moment go back to look at the other legal issues which you have to deal with. What would you say would be some of the other key areas, if any?

Participant: Well, as I say, company accounts and auditing – that was an issue. However, we obviously have that done being a limited company. And our books and accounts are available to all

and sundry. And we're not embarrassed by that at all – in some respects we're actually quite proud of it. Because we get reports through from this auditing company on education businesses and we're rated around 25th – amongst the top group in terms of the top percentage of successful businesses. However, I'm convinced that if they came in and saw the way we run our business – they might say, well fine in terms of cash-flow, profitability and perception their sort of number one – on the other side of the scale their at the bottom one-to-ten. Their ten – you know, how do they do it? Yeah – I think in some respects we fly by the seat of our pants which is not clever at all, but it's just the way we are. And I think if we had more people that would build up our overhead – we would be much more professional here, but it wouldn't affect the perception of ***** in the big bad world. But, the implications would be on profit margin, revenue.

Interviewer: In terms of assessing your own awareness and knowledge as a business, how would you rate yourself then?

Participant: Well look – lets do a scale of one to ten. On a scale of one to ten, I would say we were eight – one being good. Well, to be honest there's nothing at this moment that impacts on us. Like I said earlier, only until it happens will we know. It doesn't - which is a bit scary but we make the assumption therefore that we're doing most things right, which I'd hope we are . . . Yeah, we understand that obviously within VAT, in terms of returns, that has an impact on the business and we understand that we have to our VAT, and it's a legal requirement and we're very good at that. That is done in house, and we've got a financially qualified book-keeper person that comes in once a week, and that is quite comforting to know that the major issues like VAT, the accounts that have to be in otherwise there's financial penalties, you know Companies House and so on and so forth – and we also have accountants that are based in *****. So the girl that we employ will put it together as best she can, and they will actually do the final accounts and produce them for Companies House – and that is for everyone to see. And that is something we're very much up to speed with – albeit we don't do it ourselves, but we oversee it. So we're fine there. You know, in terms of trading, we obviously supply products. Those products are made specifically for us, which we then sell to whoever. We have a manufacture. We basically sub-contract the work out. Whilst we say we're manufacturers – we own the products. We have them manufactured – the wooden stuff/hardware in *****. And software/card materials in *****. But, again, now this goes back to this thing – is it our responsibility if the thing goes wrong – i.e. the kid losing his finger – or is it the guy that actually manufactures it. We should know that, and I'm convinced they would. Our products don't need to be certified by the EU. For example, we have a water bottle – in order to do business with *****

City council and ***** Water – this bottle is produced in Portugal. We have a mould in Portugal, and we basically buy into the labour in the factory over there. So they do that for us on our mould. They didn't have an EU or CE mark – and they didn't see that they needed to. And I said, well in order for us to sell to ***** Council, we've got to have a CE mark which is a requirement by the council. This means now that we have had this bottle tested and certified. We now know we're covered. In terms of our products, I believe that the paint that we use is sprayed on and is safe. But the rest of our products, we don't have any CE certification or EU standards applied to them. I don't think they need it. I can understand why the bottle would need it. But in terms of our paper materials and our wooden material, I can understand why that wouldn't necessarily need to have it. However, I can understand that with the paint on it and the lead content – there has to be some sort of regulation on that. But, I don't know if the manufacturer has that. You see, that's another thing I need to know. Say if a child poisoned themselves and became ill, just because, I don't know – kids eat things; doesn't matter what it is. We could be implicated on that. Indeed – I'm going to right that down so that I follow it up.

Interviewer: You mentioned the incident which happened in the school again, and I was just wondering whether that product had a CE mark, or whether it had undergone any health and safety checks?

Participant: It's difficult – that metal thing has had its rough edges smoothed over – that was our safety consideration. We say that this thing is to be used in front of class – but we don't say only by the teacher. I think in our next brochure, we will say that. We're waiting for them to come back – our solicitor seemed quite confident about it. I don't think any of these needs to be covered – I just think if we put something like 'Heavy – to be used by teacher only' that will be sufficient. We could put a message on there. It's not a question of covering ourselves – it's just a question we don't want this to happen again. And the other worry we would have is if we didn't respond we would get some dreadful publicity through ***** and then that would actually go to every other authority in the country. And it wouldn't just affect this product – it would affect everything else. And we would suffer as a business. We are addressing that.

Interviewer: What about the issue of copyright or patents on these products?

Participant: Right, we put on one of our products – a counter 'design/copyright reserved'. And on several other products. But what we didn't do is bother to have a patent on it. Then there's a

company in Northern Ireland that are called *****, we've been getting their emails. We actually saw them – they're an ICT training company, simply for schools. I went and had a meeting about ***** Ltd, ***** Group to get some a patent/ protection on our logo. And again, just to protect that was going to be £4500. Now, I wish I'd done it, but I didn't. I've got the paper work lying around somewhere. So, as no one can copy this, because at the moment we're sort of fairly vulnerable. That logo could be used by another business. So, I just haven't had time, and we're still deciding what to do about that. They have used our name, and we've found out through this patent thing that they were out after us so as far as we're concerned they copied out name. And we're getting all there email and CVs from guys trying to join their business. We've bought several names to try and protect us on the internet.

Interviewer: Just quickly on that issue of business names, had you heard of the Business Names Act, 1985, and did you know how that would affect you as a limited company?

Participant: No and no. I mean the thing to do with the business names is something that I need to follow up on, because obviously them having the same name is causing us both problems.

Interviewer: Ok, fine. I'm just also interested to know how you go about your dealings with clients. So, how do you regulate that process when, say you're selling or buying with another business?

Participant: In terms of contracts with clients, what it is is we just produce an order and accompanying letter. We have something saying 'subject to our terms and conditions' printed on that. But again, we don't have anything in writing which actually states our terms and conditions. I'm sure we did produce something that said terms and conditions available on request. So, if someone actually asked me for it though – we don't have it. We have an invoice which says payment within 30 days and that is basically it. In terms of other contracts, we don't have employment contracts. ***** is on PAYE with us, but he doesn't have a contract. We had a guy, who was working full time with us, and he had some sort of contract, but it wasn't anything substantial. I guess we could have had a problem with him if something went wrong . . . I mean in terms of doing business with other companies – not schools, we think they're safe – we have never taken up a credit reference. We just don't do it. It's a huge weakness. I think the attitude is we can't be bothered. We've not experienced too much in the way of late payment or contractual issues. We had a situation once with a customer in ***** who we sold a trampoline to. He didn't pay us and we chased him. He had split up with his wife, and said that she should pay. So we said we will get

legal but we'll give you a chance – pay us something. So he paid £200. You can't avoid that. We could have put him under pressure through a solicitor but we didn't . . . What I experienced was that we never had too much of a problem with cash flow. That's because people paid as per our agreement when we do the deal; which is a legal requirement – that's on the education side of the business. On the sports side of the business, my biggest customer, who is the biggest sports retailer in Europe, decided he would pay me when he wanted to. Because he's a large company and I'm a small company I couldn't say 'We're not going to work with you', because if I said that I wouldn't have a business. So, I wasn't in a position to challenge him for two reasons. Firstly, I wasn't too sure how I could. Secondly, I needed his business. But, I was fortunate in that if there was any financial implications in terms of cash flow, the education business could fund it. However, there is a big issue as regards small businesses supplying to big retailers despite the penalties that exist in theory. The large businesses can simply threaten to not work with the smaller ones anymore. Cash flow means SMEs are reliant on payment. In the education market, we work with arguably the biggest companies in the sector, who are also our biggest customers, but I sat down with them and made explicit our terms; i.e. when and how we expect to get paid, and said that you have to work with them. In fairness, most of them have behaved quite well. However, in business in general, I'd have to say the big retailers don't like paying their suppliers.

Interviewer: Ok, so would you say perhaps that regulation concerning late payment, and maybe contract law more generally, is something that you may need to look at more seriously in the future, given what you've just said?

Participant: Well, financially and on the issue of non-payment, we've had situations and we had one situation recently where one client abroad hasn't paid us for 16 months now. We've chased them and chased them and also sent them several letters requesting payment. Evidently, European law is going to become more of an issue for us, especially as we're looking to supply independent schools worldwide. We have not taken up one reference with those businesses abroad that we have dealt with so far; so we've been very trusting. This non-paying client has eventually got back to us. If it was in the UK I would have got our solicitors on to it and said I want my money. However, I haven't bothered because it's abroad. So I should be up to stream with this area. In certain markets, we are fairly naive especially in Europe and beyond. But I guess the implication from this is suggesting do we either employ somebody with that type of import/export experience and who can deal with the legal issues that accompany this. Or do I spend time myself which I can't afford to do?

However, the primary issue that prevents me from employing legal professionals is the sheer cost of doing so, which can be frightening.

Interviewer: Ok. In terms of sources of information that you use for the law, you've touched on the role of your solicitor but are there any other sources that you use?

Participant: If you talk about all of the stuff on law that is out there - It doesn't filter down - things like government initiatives. Nothing seems to impact on us. That could be a weakness because if we could be bothered to be up to speed on it and took it all in, that could be a benefit for us. But we don't do it - we just don't do it. I'm sure it's true of most small businesses that, say, you come in at 9.00am and we close down at 3.00 - we have a son to pick up from school. There are other things to do. We could wrap ourselves in our business 24 hours a day. Well, quality of life is actually quite important. And, to the detriment of the business and things that could be good for us, we don't do it or make effort to find out about it. Now, ideally what I'd like, and which would be absolutely perfect for someone like us is a one pager and it's not electronic that just states the key criteria - you know the legal bits and the advantages and benefits, rather than scrolling through lots and lots of paper or pages on the screen. That would be the one that would get me going.

Interviewer: As a small business owner-manager then, do you think that maybe there would be some benefit to be more involved in government initiatives designed to help small firms - to have more of say in what would be best for you or how best you could be supported?

Participant: I think the answer is yes - small businesses could certainly share something with the Government but from my own personal experience I've not had a need in 5 years to get involved with it. However, if a point in time arose whereby I needed to get up to speed with legal implications within our business because we've done something wrong, whatever that may be, then I think I'd be more keen to say 'well hold up' and question why the law is as it is and then get more involved in sharing some of the issues facing small businesses. But that all said, for example, if I'm out of this office, as is often the case, travelling both nationally and internationally; companies, colleagues and competitors that we deal with have an image of ***** that simply isn't the case. The reality is the image we portray is markedly different to the realities of the actual business environment we work in. When the government puts to the bed some of its legislation, its hard to envisage that they have a picture of a company like ourselves. If we're blunt about it, I'd say we

offer a fantastic service but don't have the resources to deal with all these regulations and I doubt that the government would take notice of our views anyway.

Interviewer: So how then would you say . . .

Participant: But, certainly the knowledge is a weakness. Things happen daily that crop up. When we set our business up 8,9,10 years ago, we knew nothing. And we know a lot now. However, the things that you're here to talk about, we don't necessarily.

Interviewer: Ok, so how would you say you manage your legal responsibilities then – is the law a serious concern for you? And also, what do you think affects what you know about your legal environment?

Participant: As I've talked about already, we're a trusting business. The nature of our business suggests it would be, because we're dealing in education. I have to say it is fairly easy doing business in education. By and large, you produce the goods and you get paid. We raise an invoice and we get our money – that's what really counts. The rest just isn't a real priority. Obviously, and we've seen it today, there are laws that impact on us that we don't know about. But then, we've been in business for how many years and we haven't had to know about them. No one's been to check up on us. I don't think we are policed at all. We've been up 10 years and we've not had one visit. We've had a VAT inspection, but in terms of other things we've had nothing. Is it a secure business? The only visit we had was when we insured the building – and that was public liability and personal liability issues, and that was purely from an insurance point of view to see how much the premiums would be. We do have employer and public liability insurance – and that's what I would probably have to call on with this ***** schools issue - so that's over to the insurance. I guess it is a safety net. We feel quite comfortable with that. For some reason we did it only recently, but we now know how vital it is. I'm convinced that if you spoke to any other business like us – husband and wife family business – the situation will be the same. The knowledge might be better, maybe. I would imagine – there are so many small businesses that still have a responsibility but just aren't up to speed with the law. Maybe sector will have something to do with it – we definitely see education as a low risk area. I think size is certainly a reason why. I also think because there is some much that is thrown at you – hence my request for a one pager – so much government regulation and legislation, that I can't be bothered to read it all. There will be something else tomorrow. Something in the paper this evening. So and so saying the government has just done something for

small businesses. I just can't be bothered. I just need to drive my business forward by producing products, sending out invoices, and chasing up payments.

Interviewer: From what you've said, and from your own appraisal of your situation, the law doesn't appear to be unduly impacting on your business – why do think that is?

Participant: If you look at my situation, I left school at 16, with something like 5 O-levels. Not interested in education. All I wanted to do was play sport – football or tennis. I suppose like everyone really. But then I've worked in 4 big organisations that have had a structure in place, so that all these things were done for me. By background has always been sales – so that's what I'm interested in really. The law doesn't impact on the business, until such time as it happens. Then I would be up to speed very quickly. I'm certainly aware that I should be more up to speed . . . In order to have sufficient awareness and knowledge, you need to have someone in here fulltime. If I was to devote say a day a week to just law, then the main thrust of the business gets compromised. I talk to businesses who have better knowledge, but also others that have much worse. We just sell stuff.

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