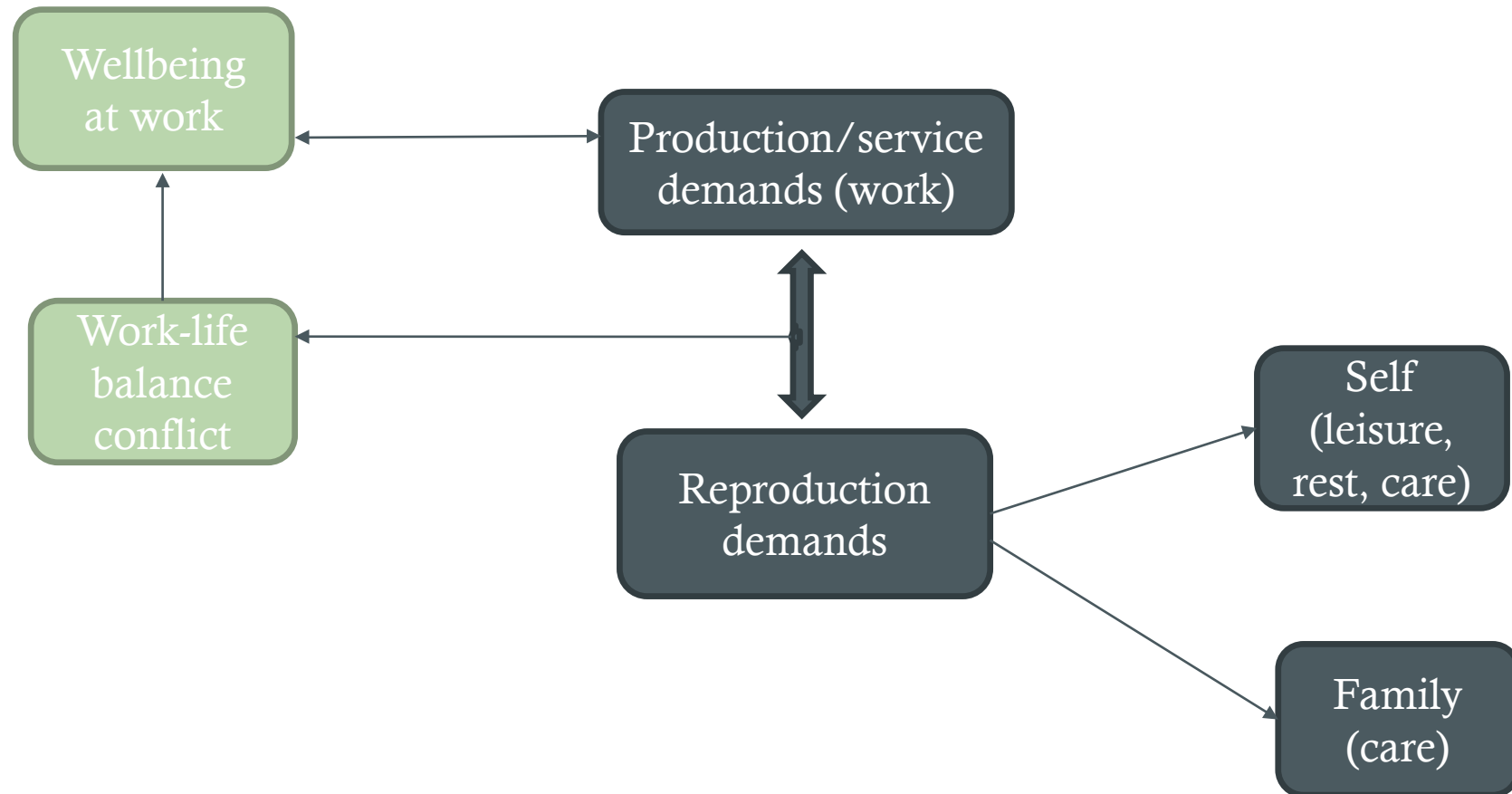


# When the Law Breaks the Law: Bargaining or Litigation over Police Inspectors' Working Time?

Fairness at Work Research Centre  
University of Manchester  
February 17<sup>th</sup> 2016

Peter Turnbull  
Victoria Wass

# Time allocation



# Thinking about Time, Toil and Trouble

- Labour economics 'time allocation model'. Income leisure preferences under constraints – (Becker, 1965) where one of the constraints is the 'lumpiness' of labour demand (van Echtelt et al, 2006)
- Occupational psychology impact of job demands and control on work strain (Karasek, 1979), broadened to include resources (Bakker and Demerouti, 2007) and again to include the non-work sphere as a source of both demand and resources with bi-directional impact of FIW and WIF on WLB conflict (Konig and Cesinger, 2015)
- Work sociology labour process theory – the indeterminacy of labour power and conflicts of interest (Smith, 2006)

# Background to Working Time Pressures for Inspectors

- ❖ Inspectors (two ranks) middle/operational managers in police service
- ❖ Overtime 'bought out' of terms and conditions in 1994 (following Sheehy)
- ❖ Professional managers expected to manage own hours within contracted working time
- ❖ Removal of TOIL
- ❖ Austerity – 'more-for-less' (2010-15 – 23% reduction in number of Inspectors 'available for duty' and 17% reduction in Chief Inspectors)
- ❖ Local WTAs re-introduce TOIL but ineffective because no staff cover (lack of resilience)

# Working Time Regulation (WTR)

- ❖ Limit on average weekly working hours of 48 (Regulation 4)
- ❖ Limit on night workers of 8 hours (Regulation 6)
- ❖ Health assessment for night workers (Regulation 7)
- ❖ Minimum rest period of 11 consecutive hours in each 24 hour period (Regulation 10)
- ❖ Minimum rest period of 24 consecutive hours in each week (Regulation 11)
- ❖ Rest breaks at work uninterrupted and away from workstation 20 minutes (police regulations 45 minutes) (Regulation 12)
- ❖ 4 weeks annual leave (Regulation 13)
- ❖ Duty on employer to keep records to show compliance with weekly limit (two years) (Regulation 9)

# ‘Exigencies of Duty’

“pressing need (of circumstances etc.), stringency (of requirements), urgent want, pressing necessity ...  
pressing needs, straits”

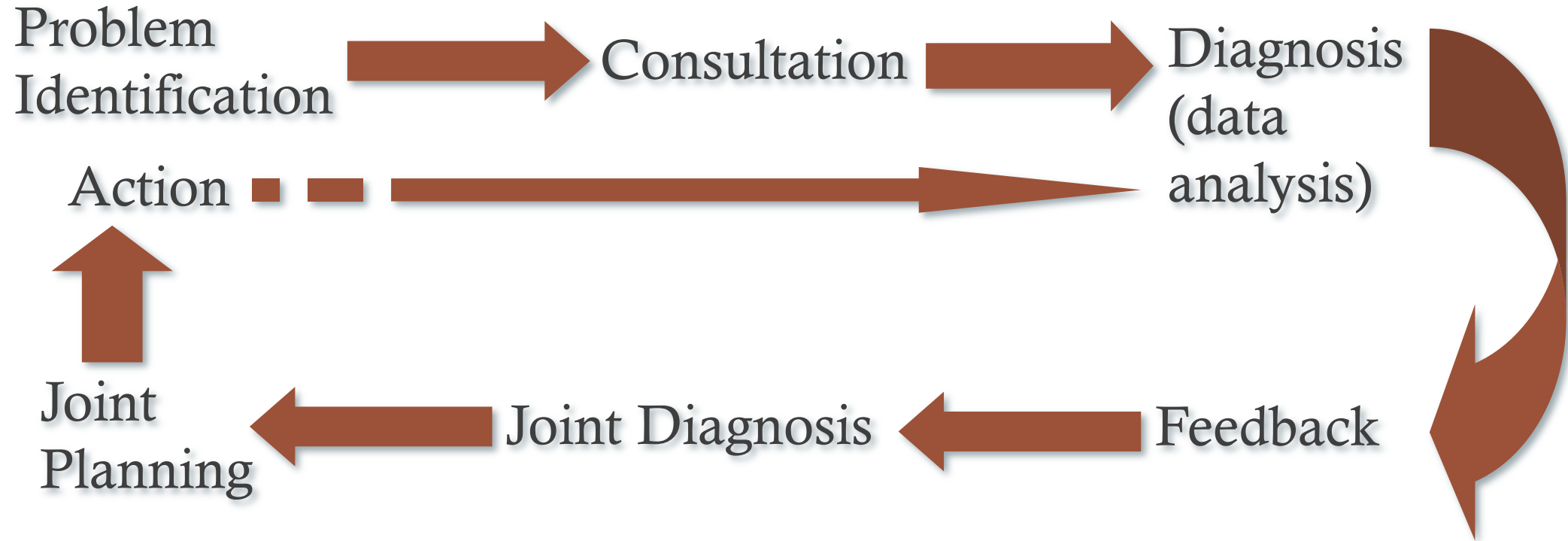
and

“that which is needed or required; demands, needs,  
requirement”

# Researching the Police

- ❖ military style management based on obedience to orders, of 'unquestioning respect' and acceptance of decisions and requests from superiors
- ❖ overtime working is commanded by senior officers under an implicit assumption of 'exigencies of duty' (very few refusals)
- ❖ self-perception that you are indispensable and of need to be ever-available – the thin blue line between mass public disorder and prevalent and overwhelming criminality (officers exaggerate/overplay the 'extreme' elements of the job for heroic effect – the 'canteen culture')
- ❖ macho 'can do' culture that denigrates anyone who cannot or will not 'man up' to get the job done
- ❖ all part of the same team – Chief Constable is 'one of us'/'on the same side' so long hours is part of a team effort (albeit setting a bad example)
- ❖ work is largely routine/mundane BUT an emergency service, first responders, difficult work, difficult people, greater stresses. More protection needed because consequences of mistakes are critical
- ❖ no right to strike ('servants of the crown' not 'employees') BUT explicitly covered by the WTRs
- ❖ recording of hours is part of the repertoire/routine – duty roster, recording of actual hours (over time) as sergeants and constables – and willing to 'report evidence' on working time (e.g. survey responses, focus groups, interviews)

# Action Research Model





# Criteria for (trade union) Action Research

- ❖ Research rigour
- ❖ Relevance for the partner organisation: learning, organisational development, problem-solving or diffusing good practice
- ❖ Research in/as action
- ❖ Strong participation from the trade union, sometimes including employers, in all stages of the research/development process

Source: Huzzard and Björkman (2012: 164)

# Trade Union Action Research

- ❖ Working *with* representative organisations (normative ambition – advancing knowledge for the benefit of unions and their members; and values – labour is not a commodity, human rights should have precedence over property rights, the workplace should provide stakeholders with democratic rights, due process and opportunities for voice and representation)
- ❖ Mode 1 (disciplinary) contribution to social science (knowledge for understanding or ‘cognitive utilisation’)
- ❖ Mode 2 (trans-disciplinary) contribution to practice (knowledge for action or ‘instrumental utilisation’)

Mode 2 is distinctive to action research (Huzzard and Björkman, 2012) and “depends upon academics sensitive to the needs of practitioners and skilled in developing these kinds of research relationships and on firms [unions] who are convinced of the value of this kind of research” (Starkey and Madan, 2001: S9-S10)

“it is not enough to understand the world, there is also a responsibility (in this case that of the researchers) to change it” (Huzzard and Björkman, 2012: 162)

Note: under-represented in literature (and in the days of the RAE – Starkey and Madan, 2001: S21) but REF demands “excellence” (Mode 1) with “impact” (Mode 2)

# Pragmatic Social Science (or 1.5)

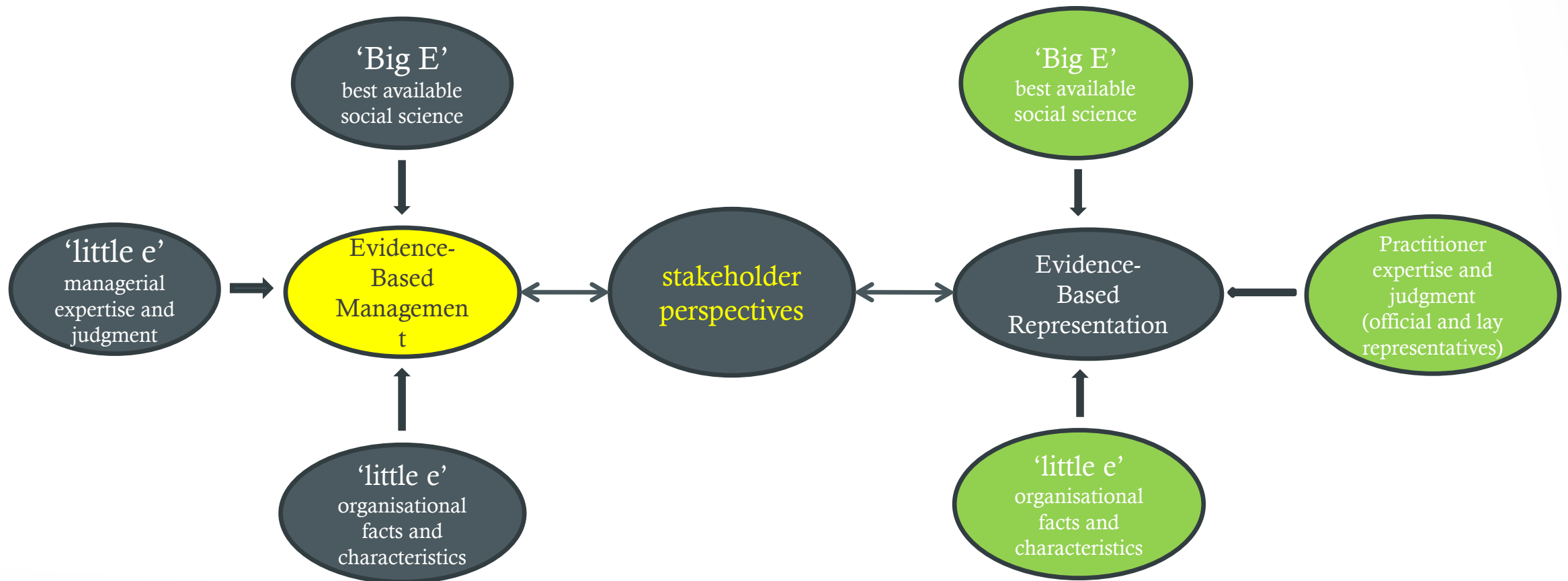
		Theoretical and Methodological Rigour	
		LOW	HIGH
Practical Relevance	HIGH	Popularist Science	Pragmatic Science
	LOW	Puerile Science	Pedantic Science

Pragmatic Science – simultaneously academically rigorous and engaged with the concerns of wider stakeholder groups, demands conceptual forms of relevance and presupposes a mutual learning process for (social) scientists and practitioners (i.e. a process of co-production of new knowledge)

“Whilst it is highly desirable that Pragmatic Science should dominate the management field, there are considerable barriers that impede its widespread adoption at the present time, not least the limited availability of researchers who possess the requisite sociopolitical and methodological competencies”

Source: Hodgkinson et al (2001)

# Evidence-Based Representation (EBR)



Source: adapted from Rousseau (2006)

# The “Eureka” Moment

- ❖ ESRC – Knowledge Exchange Opportunities project
- ❖ Region 8 Workshop
  - Met reps
  - Prof. Bryan Vila
  - PFEW lawyer
- ❖ Typology – theory and outcomes

# Options to 'Leverage' the Working Time Regulations

	Legal	Bargaining
<b>Collective</b>	III. FoI requests to expose the deficiencies in Force duty management systems and to mount a legal challenge	I. Inspectors' Branch Boards negotiate local working time agreement (e.g. 'trade' access to information/data on hours for a revision to the 'reference period')
<b>Individual</b>	IV. Accountability to the law (establish 'case law')	II. Use of personal note book/PFEW App to systematically record hours

# Lever I: Collective Bargaining (national)

Pressure from some Branch Boards for national negotiations on working time:

“This Conference instructs the Inspectors’ Central Committee to pursue through the Police Negotiating Board (or whatever mechanism may replace it) that the agreement regarding the pay of the Inspecting ranks reached on 13 June 1994 which is detailed within PNB Circular 94/2 as amended by PNB Circular 94/7 be re-examined and if necessary renegotiated in order that clarity can be provided on a number of issues contained within it.” (MPS Branch motion to the PFEW Annual Conference in May 2012)

“This Conference directs that the Inspectors of the INB (or ICC under current regulations) on behalf of the Inspectors rank nationally, pursues through all available mechanisms, regulations that support Chief Constables in delivering working practices that promote their duty of care to Inspecting Ranks. Duty planning principles of Constables and Sergeants should be used when considering Inspecting Ranks health and wellbeing. The timescales of this should be in line with the timescales set out for the reform of PFEW as laid out in the Independent Review.” (West Midlands Branch motion to the PFEW Annual Conference in May 2015)

# Lever I: Collective Bargaining (local)

Negotiation of local working time agreements:

❖ Scotland

❖ Lancashire

❖ Staffordshire



# Lever II: Individual Bargaining

Inspectors manage their time and/or decline requests to work excessive hours using pocket book record (or App) to “evidence” their decision ...

*“I have an agreement with my line manager that when I need to work long hours I do so, but I then also work shortened hours on other days to compensate. Cancelled rest days are slightly different, those I simply take as a day back (regardless of notification periods); however if it’s an operation subject to the Hertfordshire agreement I also put in a bonus payment application or take the time in lieu at the Hertfordshire rates. All of this is done in negotiation with my line manager who is supportive. I have run this arrangement with the last three line managers in this department and numerous in the previous department”* (HQ) (Region 6 Inspector, male 16 years service).

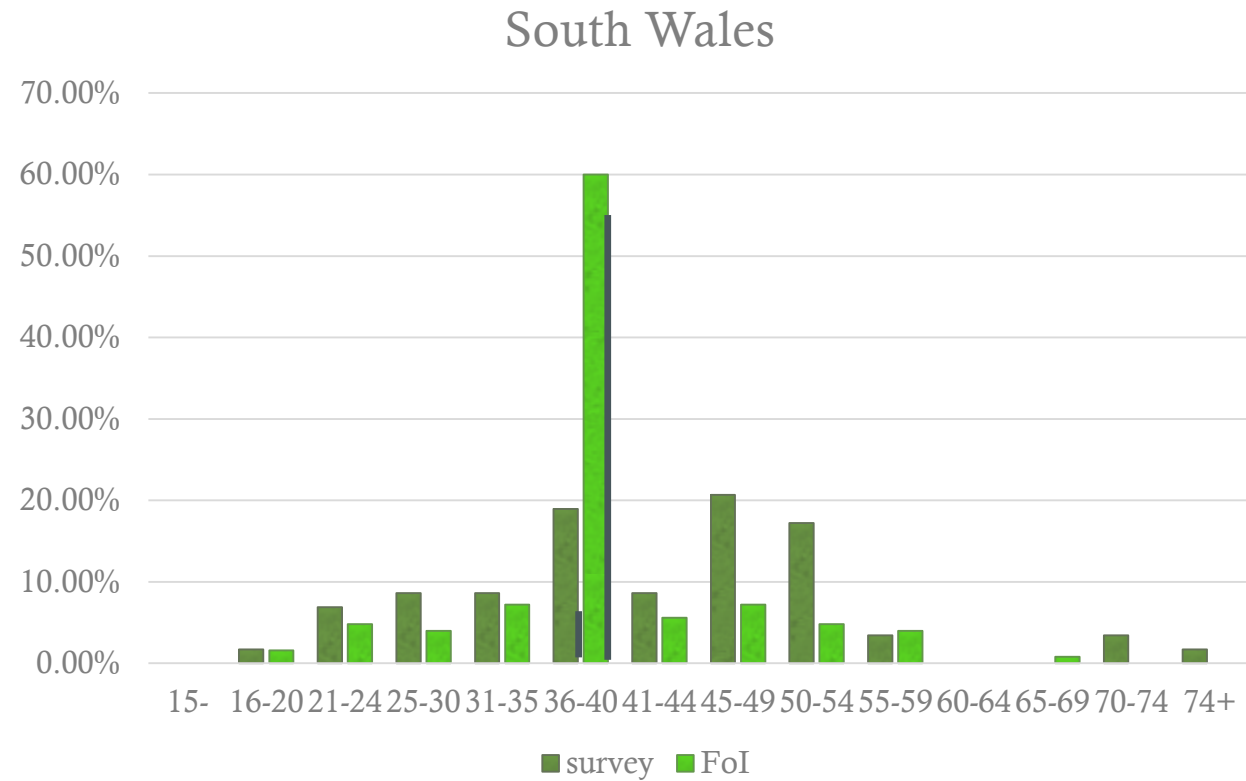
# Lever III: Collective Legal

- ❖ Potential breach of the WTR (Regulation 9 and Regulation 4)
- ❖ *Time for Justice* survey 24-30 January 2011 working time diary
- ❖ FoI request February 2012 (within 2 years) reference week
- ❖ Only 17 out of 43 Forces were able to produced any information
- ❖ Forces often provided rostered hours (didn't understand the difference)
- ❖ Some understood and qualified the accuracy of the record

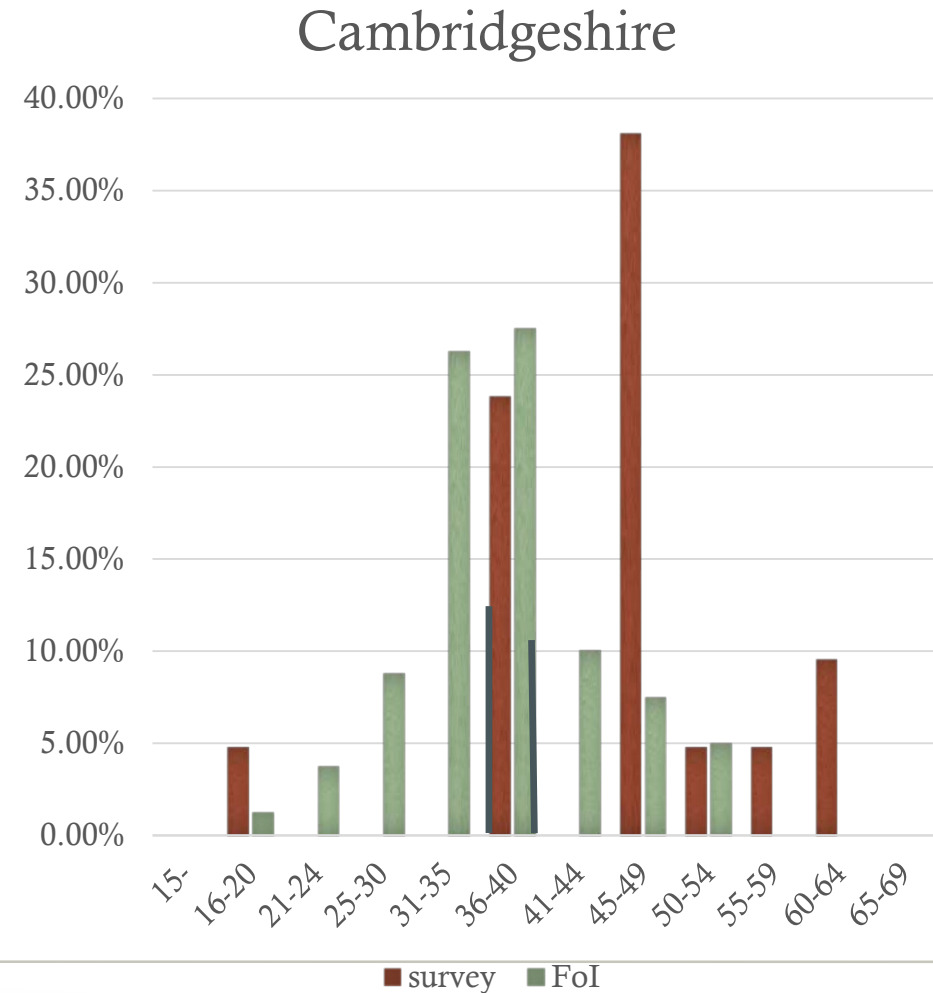
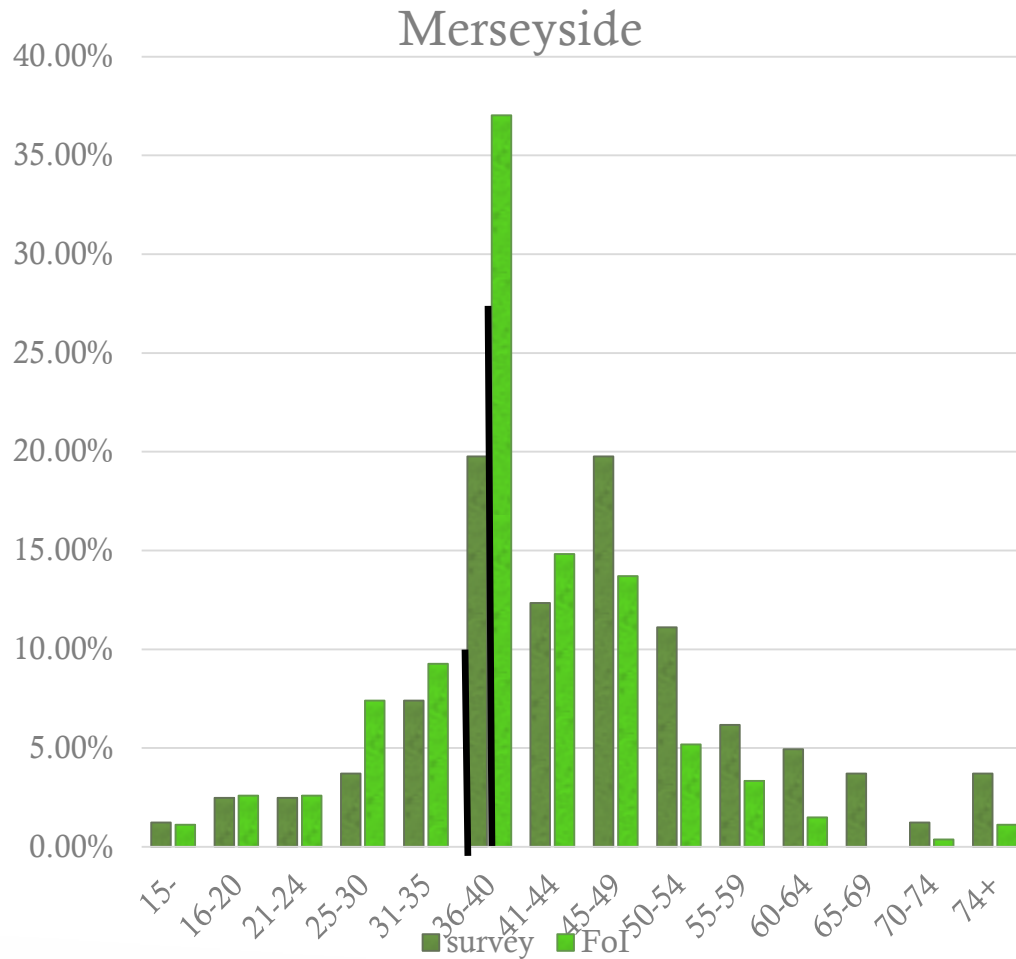
# FoI response from Wiltshire Police

“This type of information is not stored in a way which can be easily extracted. To answer the question posed we would have to firstly identify all Chief Inspectors and Inspectors and then establish which area they worked. Identifying the area in which they work allows us to access the correct database on our RMU software system to find the said officer. Secondly, having located the officer in question, we would have to manually count up the hours worked in the week requested. Wiltshire police has some 70 officers in the ranks requested. Under the circumstances I am absolutely confident that to locate, retrieve and extract the information you seek would by far exceed the time obligations upon this authority to comply, and in so doing would exceed the fees limits. This is set at £450 calculated at a flat rate of £25 per hour for those work activities comprising of confirming the information is held, locating it, retrieving it and extracting it. Therefore the request falls under the exemption of section 12 of the Freedom of Information Act 2000.”

# Working Time Data from South Wales



# Working Time – DMS *vs.* Survey Data



# Met Custody Referral to HSE

- ❖ Mayor's Office for Policing – call on HSE to investigate reduction in custody suites
- ❖ IBB – Met (role of local rep) similar investigation
- ❖ Two independent reports, same conclusion
- ❖ Met Police required to consult and progress any changes through H&S Committee

# Lever IV: Individual Legal

## *Inspector Claire Clark v Commission of the Police for the Metropolis*

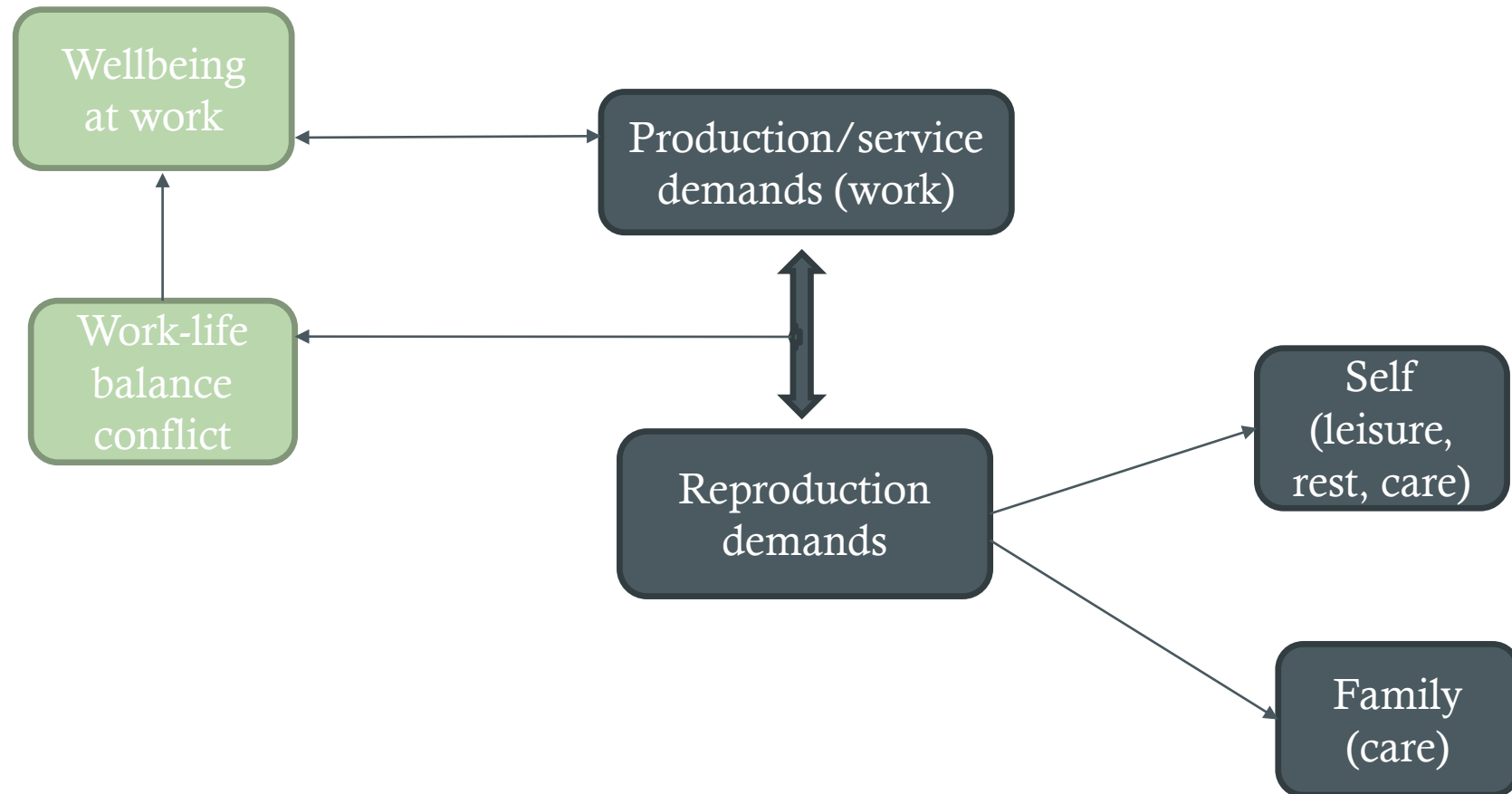
- ❖ Equal Pay Act 1970
- ❖ Part time Inspector working 32 hours per week, often worked additional hours which were not remunerated
- ❖ Full time inspectors (86.5% men) were paid for 40 hours even if they worked longer
- ❖ 95.7% part time Inspectors are women
- ❖ Finding: Inspector Clark entitled to be paid for additional hours up to 40 hours otherwise discriminates against part-time Inspectors
- ❖ Followed by PFEW online survey to all part-time Inspectors in MPS with information on how to make a claim (back dated with interest), details of their hours and over-time and difficulties experienced in working overtime

# Does Research Lead to Action and Impact?

- ❖ TUAR reflects the strong normative foundations of industrial relations, potential to develop theory and sustain/nourish practice
- ❖ Action research provides a useful model for REF – requirement for excellent research (publications) with impact (case study) – but ...
- ❖ A slow, politically complex process – resilience of researchers as well as police Inspectors!



# Time allocation



# Humberside 2015

*The feeling of not having enough time both at work and at home, and certainly none for myself.*

*The knock on effect of working at this pace is on my family life, my first rest day is normally spent with me recovering from the previous week and I have not been much company for my wife and kids. If I only have one day off for whatever reason, this does have an impact on not only my home but my work as I don't have time to sufficiently recover and get ready for the following week. I had a week's holiday booked and I was worrying about what was going to happen while*

*I was away, worried about how many emails I was going to return to, worried about some complaints I had to try and resolve, worried about some staffing issues we have on the team, worried about a meeting I had to chair the day after I returned from holidays and how I was going to find time to prep for it.*

*We talk about life work balance in interviews for promotion but in reality is not valued.*

# ‘Relevance’ without Rigour

“The notion of being handed ‘relevance’ on some sort of silver platter, with no obligation to think, probe, work, has been the cause of enormous amounts of managerial malpractice”

Henry Mintzberg (2004) *Managers not MBAs*, p. 400.

# Researchers *qua* Interventionists

“The ‘interventionist as researcher’ seeks to uncover general principles with implications for practice that can be shared between practitioners. The ‘researcher as interventionist’ seeks to talk to other researchers, and then, in addition, to other interventionists” (Eden and Huxham, 2006: 395).

# Research-Oriented Action Research (ROAR)

“Action ethnography is, in many respects, an attractive descriptor of this type of action research because it takes from ethnography the notion of building theory from naturally occurring data but emphasizes that the data follows from action-oriented interventions. Like case study research, it is concerned with building general theory from a single or relatively small number of data gathering situations” (Eden and Huxham, 2006: 292).

- ❖ rigorous research
- ❖ action orientation
- ❖ Research outputs as the primary *raison d'être*

# Who are our Stakeholders?

## Stakeholder Map

