Improving the effectiveness of regulation through better risk management – a view from the United Kingdom’s Risk and Regulation Advisory Council

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The UK’s Regulation Revolution

• Under the Margaret Thatcher government, the UK re-drew the map between public and private sectors
  – major institutional change in utilities, transport
  – culture of out-sourcing and deregulating
  – acceptance of ‘independent’ economic regulators
• Under Tony Blair, a cultural campaign for “better regulation”
  – external challenge from Better Regulation Task Force
  – aiming at policy-makers, stressing the risk element
• Under Gordon Brown, performance management
  – risk-based enforcement (Hampton)
  – burden reduction
  – strong internal controls in the Centre (Better Regulation Executive)
Better Regulation Task Force

The BRTF was given a broad remit to develop the “better regulation” doctrine and, in 1998, it focused on the 5 principles of:

– proportionality
– accountability
– consistency
– transparency
– Targeting

It produced around three major reports each year and gradually built a strong reputation across the world for its analysis and sensible ideas.

2005 – Big Changes

• The 2005 election saw the return of the Blair / Brown team, the culmination of their approaches and then institutional change.

• Philip Hampton produced a report on inspection and enforcement, which set out principles for regulators to follow, especially risk-based enforcement.

• The BRTF produced its last report “Less is More”, which became the seminal document for reducing regulatory burdens on business.
New Institutions

From all this emerged two new bodies:

- The **Better Regulation Executive** was an internal body in the Cabinet Office but with strong Treasury influence and top ranking officials (Permanent Secretary and Director General).
  - The BRE is a classic regulatory oversight body of the sort recommended by OECD for PRO-REG but wholly within government structures.

- The **Better Regulation Commission** replaced the BRTF. It looked at first like a permanent version of the BRTF but its scope was narrower. Its relationship with the BRE was unclear but it certainly had no governance over the BRE and, if anything, was secondary. Its support team was part of BRE. Its role was primarily to oversee ministries’ performance in reducing regulatory burdens on business but its attention became focused on other issues.

Lyme Bay

In 1993, four teenagers drowned in an accident on a school-sponsored activity trip. In response the Government introduced:

- The Activities Centre (Young Persons Safety) Act 1995
- The Adventure Activities Licensing Authority

- Only 13 of the 1500 applicants for licences were refused
  - But over 600 activity centres closed because of the costs
- The regulation may not have prevented the tragedy if it had been in place earlier
- Only some outdoor activities were covered

Were the unintended consequences for young people denied the experience of these activities foreseen?
Hatfield Rail Crash

In 2000, 4 people were killed in a rail crash at Hatfield, just north of London.

• Railtrack, who owned the rail tracks, imposed speed restrictions across vast lengths of track while they carried out checks. These restrictions, as low as 30 kph, caused huge disruption across the railway system for a year.

• Many people therefore travelled by road rather than rail for that year, where the risk of death is considerably greater and probably accounted for many additional deaths.

Was Railtrack’s response proportionate? Should / could government have acted?

The Risk Report - 2006

Driven by such events, The Better Regulation Commission produced The Risk Report which challenged the lack of thinking on Risk Regulation at government level.

It had on each alternate page a short example of good or bad handling of risk through regulation, making it very readable and easily understood.

Essentially, it appealed to “common sense” or “the voice of reason”, through the illustrations and perhaps made the problem seem easy.
The Risk Circus

It was clear that it was not just a matter of the State leaving it to others to manage their own risks. Absence of regulation does not always mean freedom to act. There are other risk actors beyond the State:

• There are risk entrepreneurs who have an interest in amplifying risk, advisers on health and safety assessments, journalists, personal injury lawyers and insurers who interpret or overlay State regulations.

• There is also a withdrawal from personal responsibility and an insistence on rights, including the right not to have bad things happen. This is increased as the State takes more responsibility for solving problems, often in response to public anxiety or through well-intentioned interventions in complex systems.

It is not enough to dismiss the public as irrational, just as it is not enough to assume that there is a rational solution.

There is great complexity

Complex
Understandable in retrospect but not predictable
Activity: Tactical Policy
Method: Probe and respond

Complicated
“Known unknowns”
Predictable but still uncertain
Activity: Strategic Policy
Method: Research and plan

Chaos
Acute crisis, predictable or not
Activity: Restore order
Method: Act

Simple
Known rules - Predictable
Activity: Operations
Method: Apply systems

Rational decision-making

Political Judgement
... but that may be easier to ignore

Perhaps the most crucial stage in policy-making is defining “the problem” yet mistakes are easy to make, especially if:

- it is left to the policy-maker to define the problem
- media suggests the problem is easy to quantify
- it is considered a single problem, rather than a systems problem
- there is a belief that it can be “solved”
- there is an attempt to do so with one intervention / regulation

Next Steps

On becoming Prime Minister, Gordon Brown wanted to strengthen the Better Regulation Executive and re-focus the Better Regulation Commission around implementing the Risk Report. He gave the BRC the following remit:

“The Government believes that policy-making would benefit considerably from a fuller and more rounded consideration of public risk. I have asked the Better Regulation Commission, building on its report “Risk, Responsibility and Regulation” (the Risk Report), to devise a structure and approach that ensures that this ambition is embedded in real policy action, even when facing pressures to react to events.”
Risk and Regulation Advisory Council

The RRAC is a successor to the UK’s Better Regulation Commission, tasked with taking forward the BRC’s “Risk Report” of 2006. We are focused on political / policy decisions that lead to bad regulation, usually in response to high public anxiety. Our audience are Ministers and senior policy-makers.

It is a generic problem faced by governments in all democracies: how do you respond when the public urge you to do something that is confused, ignorant, short-term but very strongly felt?

The RRAC remit

To:

• work with Ministers and senior civil servants to develop a better understanding of public risk, and how best to respond to it, through a series of workshops which consider both good and poor practice

and

• work with external stakeholders to help foster a more considered approach to public risk and policy making

Ministers may also seek advice on particular issues from time to time
Initial thoughts

• It is easier to mitigate the damage than mitigate the risk
• Intervene cautiously and often. Probe and respond to what emerges, rather than manage the risk by way of a single “surge”.
• Lay off the risk as far as possible through structures: have independent decision-makers, regulators and “experts”. But also foster bottom-up calls for responsibility.
• Avoid extending further the State’s responsibility because it is difficult to reverse. The most influential signals come from Ministers, not the media.
• Above all, give leadership so elect talented leaders!

… it is only that legislative systems may not work like this!

... and realism

There remains a place for strategic, evidence-based policy that is informed by the extensive literature on risk regulation. There is also a place for arms’ length regulation by independent regulators who apply risk principles.

But “regulatory storms” will still happen: they may come from anywhere, are largely unpredictable and are far more common that we like to think. For these political leadership remains crucial, even if better buffering is possible.

Some political risks just cannot be transferred
Key features and innovations of the RRAC model

- The RRAC specifically focuses on Risk Regulation, on the sources of regulation rather than on the impacts
- It is independent but supported by a team under the Chief Economist, with strong Ministerial support
- It works through action learning sets, not through written reports and recommendations
- It is focusing on 3 topics and has or is gathering for each all the "wrong" people in the room in order to maintain the multiple perspectives of Ministers, senior officials, media, NGOs and other stakeholders
- It is working to understand how the public can best be helped to understand the risk / regulation trade offs
- It is working with ‘risk actors’ to ensure their views are heard

Resources

The Council has a Chair and 6 other members, all independent, all unpaid and all with experience of regulation:

- It has a small secretariat within the Strategic Policy Analysis directorate-general in the Department for Business, Enterprise and Regulatory Reform, reporting to the Chief Economist.
- It has until April 2009 to deliver a significant change. What happens after that depends on what impact it has had.
- It has strong political support.
- It is building strong public support.
What does success look like?

In 2001, Foot and Mouth Disease led to the slaughter of millions of animals, billions of pounds of public cost and huge damage to the UK.

vs.

In 2007, the government managed concurrent outbreaks of FMD, avian flu and blue tongue with minimal interest shown by the public. The public trusted the government to deal with it. The Press tried to escalate it but failed.

How was success achieved?

Political leadership was calm, taking second place to scientists

• affected stakeholders supported government action, rather than escalated the hazard, because they were in the process of accepting a transfer of risk of animal disease from government to industry

• good evidence for decisions, good process to apply them, good judgement on presenting it and good public engagement beforehand.
Areas in which the RRAC has been active

But many more could bear review!

The public are quasi-rational about risk. They fear hazards but ignore probabilities. High-threat but low probability events dominate, for example national lotteries and air crashes.

That remains the main area where the RRAC works because of the political balance needed between “rational” action and democratic response.

Instinct  Reason
Current UK topics instinctively leading to greater regulation perhaps without clear pause to understand the trade offs

Health and social work: obesity and the regulation of the medical profession

From The Times
November 12, 2008

After 17 months of unimaginable cruelty, Baby P finally succumbed

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