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Regulating right: regulation shows its better and local faces

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SOLACE Foundation Imprint

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On a mission to modernise

by Clive Grace and Judith Hackitt



We are delighted to introduce this pamphlet as part of a much wider mission

by the Health and Safety Executive to complete the modernisation of health and safety regulation through a close relationship with local authorities. That partnership is vital to the HSE in delivering its objectives, but it is critical too for local government because effective local regulatory services are at the heart of local authorities' economic, social and environmental objectives.

The "modernisation of regulation" is not merely a catchphrase. The changes that have happened and continue to happen as we move towards a fully risk-based approach represent a real shift and open up real opportunities. Regulation according to Hampton principles - proportionate, transparent, targeted, accountable and consistent - provides a modern framework. It is one that can help to create an efficient climate for business, to advance social objectives, and ensure environmental protection without creating unnecessary burdens. It is all too easy for the media to point the finger at regulators as bureaucratic killjoys. But the main story lies elsewhere.

The new local authority performance framework of local area agreements is a marvellous opportunity to drive home the message that local authority regulatory services are not only core business for local government but also core to delivering outcomes that matter to people. The national priorities are fair trading, better air quality, healthier workplaces, effective control

of alcohol, high standards of hygiene in food businesses, and better animal and public health, but these are important at local level too. We hope that as local authorities negotiate their LAAs they will recognise the part that regulatory services can play in shaping the place for which they are responsible. And this will be even more important in two-tier areas where the districts will be striving to have their voices heard.

It is also important that no one imagines that "better regulation" means removing necessary legislation and lowering health and safety standards. The deterioration in last year's statistics on both death and injuries in the workplace suggest that withdrawing regulation too quickly confirms the need for effective regulation that is intelligence-led and linked to targeted enforcement.

The HSE looks to build on those initiatives. It already works closely with the local council regulatory body, Lacors, and the professional bodies. The government has signalled the importance it attaches to these issues by creating the Local Better Regulation Office to secure more effective performance and the consistency of enforcement action across local authority boundaries.

David Walker has brought together an interesting and powerful range of contributions to illustrate the important and varied dimensions of modern regulation. We thank him and the contributors, and we hope they will stimulate you to look at regulatory services in a new light.

Clive Grace is the chair of the SOLACE Foundation Imprint and also of the Local Better Regulation Office. Judith Hackitt is the chair of the Health and Safety Commission

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The deregulatory wave has peaked

by David Walker, editor, Public magazine



The government would probably deny the central thrust of this essay, which is that the deregulatory wave has peaked, giving way to a calmer, more pragmatic approach that even includes

measures of re-regulation - with a result that the regulatory landscape is looking more pitted and peaked than ever.

Regulators are no less committed to seeking reductions in paperwork and in the on-costs of their work for those being regulated. But, judge for yourself from the contributions in this pamphlet, the regulators also exhibit a renewed confidence in the basic purposes of regulation.

Ministers and officials may say the deregulatory agenda set while Tony Blair was prime minister remains firmly in place. They might point to direct evidence, in the contribution by Clive Grace and Graham Russell. The Local Better Regulation Office (LBRO) is now being constructed in institutional testimony to the continuing effort to streamline and unburden.

As one of his first acts as prime minister, Gordon Brown signed a renewed programme of reform (1). The government is committed "to ensuring that it tackles unnecessary regulatory burdens on the private, public and third sectors", the report adding that much still needed to be done to secure the promised 25% reduction in administrative costs due by 2010. That pejorative phrase, red tape, a favourite of Blair, was duly trotted out.

As part of the summer's machinery of government changes, the Better Regulation Executive was transferred to the Department for Business,

Enterprise and Regulatory Reform to give new focus to moves to simplify regulation to join up regulation and consumer protect and make employment law more straightforward. Risk-based enforcement for business may be put on a statutory footing. How this might affect regulation in the public sector is not so clear, though the government is thinking about applying the principles of the code to public sector regulators.

Admonition

Ministers seemed to welcome the admonition in a National Audit Office report (2) that departments were not going quickly enough in reducing the burden on business. There is no certainty the administrative costs reduction programme will deliver its intended objectives, the NAO warned.

But it's also worth looking at what Brown and his ministers have said and done - at their practical philosophy of government. A different picture emerges. Big events in the post-Blair political calendar have included the summer floods, animal then hospital infestation and financial mayhem. In each instance, an appropriate response was more (different) regulation - more control over development on flood plains, more cleaning of wards, more oversight of animal husbandry, more corsetry around the bankers' waists.

It's true that not all these responses will produce institutional change or an increase in the volume of regulatory activity. But ministers did not object when re-regulation was proposed.

Evidence for change in the weather came from Northern Rock. Despite what the public tell pollsters about mistrust in government, what dispersed the crowds queuing outside the

bank's beleaguered branches was the guarantee of deposits offered by the chancellor of the exchequer. In other words, an assumption of risk by the state.

If, as some have argued, trends in the modern economy (often subsumed under the "g" word globalisation) are often about transferring risk from the corporate sector to individuals, here was a striking instance of the public wish to keep risk collectivised, with government as regulator and guarantor.

In hearings held by the House of Commons' Treasury committee, the respective roles of the Financial Services Authority and the Bank of England were discussed. MPs did say regulation could have been more effective but voices advocating deregulation were conspicuously silent.

In similar vein, the health secretary, Alan Johnson, seemed to delight in beefing up the regulation of NHS hospital trusts when he announced the creation of the Care Quality Commission. (It takes over responsibilities from the Healthcare Commission, the Commission on Social Care Inspection and the Mental Health Act Commission.) The new body will have a specific remit over hospital-acquired infection and, potentially, over private contractors supplying cleaning services to NHS trusts. A large increase in the ambit of regulation ... It's a fair bet the Better Regulation Executive was not consulted prior to the announcement.

Ministers seem to have read in advance the essay by Philip Cullum and Abena Dadze-Arthur, with its criticisms of an absence of consumer focus in the regulatory activity of the Housing Corporation. They decided to create a new regulator for social housing, and charged it to pay more explicit attention to the rights and needs of tenants (consumers). The Audit Commission had bid to take on the social housing regulatory function, which would have flattened the institutional landscape somewhat, and perhaps reduced costs. But no, the Department for Communities and Local Government decided a specific concern demanded an ad hoc regulatory response.

Perhaps the most telling sign of atmospheric change is the downgrading of the Better Regula-

tion Commission. Among the contributions is an excerpt from its report Risk, Regulation and Responsibility, published a year ago (3). The BRC was created by the Blair government as a freestanding body lodged in the Cabinet Office. Under its businessman chair Rick Haythornthwaite, it took pot shots at what were deemed excessive intervention and sought to develop more a general critique of risk aversion.

This report was robust in making a case for letting business go free and minimising interference by the state in social and economic life at large. Individuals and families should take more responsibility for themselves, it said, reading read at points like a neo-liberal manifesto, even though it was signed off, as Lynne Berry recounts in her essay, by existing regulators.

Neo-liberal view

The neo-liberal view relies heavily on models of behaviour supplied by economics. The limitations of that approach, with its heroic assumptions about the rationality with which we make decisions, are criticised in the Economic and Social Research programme on risk, illustrated here by the essay by Peter Lunt and Sonia Livingstone.

The deregulators' view of the world is often dualist; it asserts that economic (market) behaviour exists in a sphere separate from social life and the state. A favourite argument is that income-generating enterprise is hampered by taxation and smothered by regulation; yet the empirical evidence shows that there is huge variation in the co-relationship of profit-seeking and regulation/taxation, and identifying thresholds beyond which disincentive effect apply is extraordinary difficult.

The positive case for regulation has rarely been made in recent times. It may now be returning to favour. There are glimpses of it in the contributions here from Derek Allen of the Local Authorities Coordinators for Regulatory Services. Left to themselves business might well poison or cheat us. There is nothing in market theory that would prevent them. Trading standards officers try to.

Similarly, Geoffrey Podger of the Health and

Introduction

Safety Executive reminds us that people go on being injured and killed at their place of employment and through the negligence of companies and other organisations. No one sensible says such risks can be individualised. Intervention is needed to uphold the law and prosecute where it is breached.

The Blair government's espousal of neo-liberal tenets pushed regulation on to the back foot, intellectually speaking. Policy swung against regulation, leading to lots of talk about red tape, to the BRC and, in the 2005 budget, to a promised cull of public sector regulators on the back of Sir Philip Hampton's report to the Treasury (4). This wave continued with the commissioning of Peter Rogers, chief executive of Westminster city council, to review local regulation and the subsequent creation of the LBRO.

Yet what is striking, now, is how easily Blairite ambitions for a clean sweep were repulsed. Few of the fundamental statutes prescribing environmental or commercial regulation were touched. Administrative changes were effected, for example to match governmental regrouping around children. But in criminal justice, a plan to amalgamate the separate inspectorates for police, probation and prisons was jettisoned fairly quickly.

Duplication

Regulatory bodies are still mighty in number and still duplicate each other. We lack benchmarks and opportunities for mutual learning. In health finance, to take one instance, the Audit Commission, Monitor, the Office of Fair Trading and the Healthcare Commission share turf. Regulated bodies themselves regulate: primary care trusts do GPs to a certain extent and strategic health authorities – regulated like the Department of Health by the National Audit Office – have financial oversight over PCTs.

In his essay Mike Bennett pleads for width of vision on the part of public sector inspectors, but stops short of advocating unification on the radical lines proposed in the report to the Scottish executive by Lorne Crerar (5). He does insist, however, that there must be some symmetry

between the requirements of the comprehensive area assessment of local authorities in England and the inspection regime(s) under which they fall.

We lack principles by which the state's regulation of itself should be organised. Specialisation brings detail into vision, but raises the risk of regulatory capture. Take the tiny inspectorate that audits the performance of the Crown Prosecution Service: it is immensely knowledgeable but very close to those it regulates. But move to multi-sector regulation, as with the Care Quality Commission, and fears grow that problems will be missed by inspectors who cannot know enough.

Risk-based regulation

The preferred formula is "risk-based" regulation, in which the regulator relies on an algorithm showing probability of failure in performance and adjusts the schedule of inspection accordingly. This, however, poses the problem of knowledge asymmetry. If the regulated body is clever, it learns how to game and conceal and, having relinquished a heavyweight reporting regime, the regulator will never know.

The Audit Commission has recently tried to address the practical question of how it keeps in touch, once it has backed off, by putting more emphasis on the public. Measures of public satisfaction are held to be proxies for organisational soundness.

The balance between external supervision/intervention for the sake of service improvement and supervision/audit for the sake of due process is struck at different positions across the sectors. In some citizen/customer complaint is highly developed and integrated with regulation. But the ombudsman services for health, local government and central departments are often hard to align with audit and regulation: there is often no one-stop shopping for citizens with concerns.

We are far from the end of the story of how the public sector is to be inspected and regulated. Regulatory reform will certainly continue to be a theme in politics. But deregulation has been seen off. The emerging 21st century world

seems to be demanding more not less audit, scrutiny and regulation. Whether the subject is migration, ageing, environmental degradation or control of harmful behaviour, the public are not saying, with the neo-liberals, that they want to be left alone, though that does not necessarily mean they approve older welfare state-styles of intervention.

In her essay Miranda Lewis discusses how government can intervene to mitigate problem behaviours, especially over-consumption. Evidence mounts that aspects of the modern lifestyle are self-harming, and behavioural change probably has to be instigated by the state. Regulation is finding new frontiers.

1. *Next Steps in Regulatory Reform, Department for Business, Enterprise and Regulatory Reform, July 2007*
2. *Reducing the cost of complying with regulations: The delivery of the Administrative Burdens Reduction Programme, National Audit Office 2007*
3. *Risk, Regulation and Responsibility, BRC October 2006*
4. *Reducing administrative burdens: effective inspection and enforcement, HM Treasury March 2005*
5. *The Crerar Report: the report of the independent review of regulation, audit, inspection and complaints handling of public services in Scotland. Scottish Government, September 2007*

David Walker is editor of Guardian Public magazine

Not so quiet on the regulatory front

by Derek Allen, chief executive, Lacors



Regulation benefits local communities but regulators have to live with silence – people simply don't register the ongoing effort to ensure that the workplace or the food we eat is safe, let alone

that the wine in the glass in the bar is the correct measure or that householders are not being ripped off by cowboy builders or internet lottery scams. Regulation can be delivered more efficiently and effectively, however, and in the wake of the Rogers report regulation needs to be recast as a stimulator of innovation and a proactive mechanism for driving up the quality of life.

The adage damned if you do, damned if you don't, has particular resonance for those involved in regulation. Whether at ministerial level in central government or as an environmental health or trading standards officer working locally, effective regulation is essentially about striking a balance between two competing priorities. On the one hand there is the obligation to protect – be it the public, employees or the environment – and on the other is the need to allow business to operate without the shackles of unnecessary red tape and bureaucracy.

Local government is feeling the strain of a tough financial settlement. At the same time, the pressures stemming from a changing population continue to mount for councils. Individual services find themselves clamouring to prove their worth within a local government framework which threatens to leave behind those who cannot sufficiently demonstrate their value. Regulators should be at the heart of their council's place-shaping agenda and integral to the deliv-

ery of their local area agreement priorities. They can and should help to underpin safer, stronger, healthier communities and drive the economic development of the local area. Many services are already doing this – but the key is to shout about it and to make yourselves heard.

For those of us working in local regulation, the benefits that our services bring to our communities are clear. But one of the exasperating characteristics of a well-performing regulatory regime is that we never hear much from it. Day after day, in towns and cities across the country, council officers quietly and effectively go about their jobs – making sure that your food is safe, that the beer or wine in your glass is the correct measure and that you are not being ripped off by cowboy builders or internet lottery scams.

When things go wrong

But things can, and do, go wrong. Despite our best efforts nothing can be completely safe or risk free. Whether it's an e-coli outbreak in south Wales, a major explosion at a petrol storage facility in Buncefield, or the recent foot and mouth outbreak in Surrey, failures in the system occur that can result in injury or death. In cases like these it is often central government which bears the brunt of the blame, sometimes correctly, sometimes not. Reactions from the press and the public have caused the government to make knee-jerk reactions in the past, with negative knock-on effects for the enforcement community.

The introduction of the Dangerous Dogs Act, for example, as well as some very prescriptive health and safety laws and specific food safety inspection requirements, for councils to imple-

ment of course, have felt a bit like shutting the stable door after the horse has bolted. Regulations that are not properly thought out, that do not focus on outcomes and incentives for compliance with the resources necessary to deliver them, will inevitably lead to failure in the regime.

Business perspective

Successes, however – and there are many – are due not only to sensible and considered legislation from government but also to the hard work of council officers in implementing and enforcing them. It is an incredible tribute to councils that despite insufficient funding stemming from a woefully inadequate fee structure, they have been tremendously successful in implementing the new alcohol licensing regime. This major new area of regulatory work has achieved the principles of good regulation and the required policy objectives which are proportionate, transparent, risk-based, fair and accountable. They have also ensured effective and productive partnership working with the police, leading to a more cohesive approach to alcohol-related crime and antisocial behaviour in our towns and cities.

It is clear that much of the debate so far on improving regulation has been driven from a business perspective. This works from the assumption that there is too much regulation, “red tape” and bureaucracy. It is claimed that the administrative and financial burden this imposes on business stymies economic vitality and competitiveness. In his 2005 review of regulatory services, former Sainsbury’s boss Sir Philip Hampton said regulatory inspection and enforcement costs UK businesses tens of billions of pounds per year in administrative burdens. Hampton was particularly concerned about the inconsistency of local authority enforcement across the country, a concern which has ultimately led to the creation of the Local Better Regulation Office. The regulatory enforcement sanctions bill will equip the LBRO with the power to ensure local authorities improve their environmental health, trading standards and licensing services. However, government cannot just pull levers and see their objectives for better regulation realised. A

former council chief executive who now works in central government once said to me, “It’s a bit like being on the bridge of an oil tanker; you spin that wheel as fast as you can and eventually the ship turns about one degree.”

Central government, rightly or wrongly, has a natural tendency to keep things in the centre and take a “command and control” approach seeing local government regulatory services as delivery agents, accountable to government for their actions. Government agencies have until very recently inundated councils with dozens of key priorities and a bureaucratic reporting regime, often reducing those services’ capacity to deliver the priorities that are most important in their own local areas. This in turn has led to some senior managers and politicians in councils to doubt the relevance of their regulatory services in contributing to their own aspirations and objectives for their communities, which can lead to a disconnection and disinvestment in these services.

Lessening the burden

In an attempt to lessen this bureaucratic burden, Peter Rogers, chief executive of Westminster city council, was commissioned by the government’s Better Regulation Executive to determine a smaller set of priorities that central government expected local government to deliver. He ultimately distilled these priorities down to six (air quality, safe food, healthier workplaces, fair trade, alcohol, licensing and animal health), freeing up councils to devote more resources to addressing uniquely local issues in addition to the new core national priorities.

Two of the most dominant drivers of change in society today are globalisation and the impact of new technology. Regulatory services feel the full force of these changes, perhaps more than any other area of local government.

Technological advances mean normal trading practices have undergone huge changes as the world has grown smaller, with online shopping and the phenomenon of eBay changing consumer behaviour massively. Undoubtedly there are huge benefits to be gained from this

Not so quiet on the regulatory front

type of trading, but the decline of traditional face-to-face purchasing exposes consumers and the wider public to significant risks – anything from deliberate commercial fraud to counterfeit products to lower product safety standards in imported goods.

Demographic changes and new patterns of migration, as well as the exponential growth of the Asian economies, particularly China, are global trends whose impact can be felt locally: the demand for African bush meat or Polish sausages; the spread of Vietnamese nail parlours; the increase in unskilled migrant workers living in poor quality private rented housing.

No quick fix

There is no easy answer or quick fix, but it is clear that an effective regulatory regime has to be risk-based and intelligence-led. It has to be fast and flexible, responsive to a rapidly changing landscape and fully aware of its potential as well as its limitations. Regulators need to work collaboratively with key partners and stakeholders, such as the Gangmasters Licensing Authority or the Food Standards Agency, to make sure that the whole is greater than the sum of its parts.

We should also recognise and reward professional excellence better than is currently the case. Councils need to make sure that they invest in the development and skills needed to lead these important council services in the future. Regulators themselves must use a lighter touch when working with legitimate businesses, helping and encouraging them to comply with sensible regulations and creating a level playing field. Rather than be seen as producing red tape, government and local regulators need to move towards what we are calling green tape, where regulation encourages innovation and drives up standards in a proactive rather than a reactive way.

A really good example of green tape and an excellent model of local government and central government working together on the regulatory agenda, is the partnership between LACORS, the Health and Safety Executive and local authorities. Together, we are mobilising some of our collec-

tive resources to secure improved health and safety outcomes in the workplace. By focusing on where we can make the biggest impact, Councils and the HSE are more effectively protecting those in the workplace from injury or harm, by ensuring a sensible approach to health and safety risk management is taken by businesses. This is good for businesses and can considerably reduce their costs through reduced workplace absence, lower insurance premiums and avoiding costs associated with enforcement action. Council regulatory services have finite resources, and must focus their efforts on those individuals and businesses who pose the highest risk to local people and the local economy. There is nothing which precludes even the smallest local regulatory service from being successful as long as time and money is focused in the right areas.

Derek Allen is chief executive of Lacors, the Local Authorities Coordinators of Regulatory Services, which provides advice and guidance to help support local authority regulatory and related services. It was set up in 1978 to coordinate the enforcement activities of trading standards. Since 1991, Lacors has also worked on food safety and is responsible for a range of other regulatory and related services

Swimming against a protective tide

By Clive Grace and Graham Russell, the Local Better Regulation Office



The latest edifice on the regulatory landscape is the Local Better Regulation

Office. It stands for less not more regulation, declare its chairman and chief executive, and is therefore itself a risky enterprise. It is swimming against civic and political instincts to protect, even overprotect. Deregulators run the risk that their efforts will be confronted by a crisis, leading to renewed demands for public assurance – and re-regulation.

Better regulation of business at local level has been a national cause celebre since the report by Sir Philip Hampton triggered the (then) chancellor's determination to reconstruct regulation for both the private and public sectors around the concept of risk (Sir Philip Hampton, Reducing administrative burdens, effective inspection and enforcement, HM Treasury, March 2005).

Hampton judged that a major part of the regulatory burden on business arose from the way enforcement was carried out locally. After a couple of false starts on alternative solutions the Local Better Regulation Office (LBRO) was created with a core mission of securing the better performance of local authority regulatory services in accordance with Hampton principles. They specify that inspection should rely on evidence and assessment of risk and be delivered in a way that is targeted, transparent, consistent, proportionate and accountable.

The LBRO will soon be a statutory corporation with legal powers to advise and make proposals

to ministers, and to guide and even if necessary (and with consent) direct local authorities. It will also link up with national regulators (especially the Health and Safety Executive, the Financial Services Authority, the Office of Fair Trading and the Department for Environment, Food and Rural Affairs), help establish national regulatory priorities, and operate machinery which will ensure consistency of enforcement action across local authority boundaries. It will work in England for all its functions; with Wales (hopefully) across many of them; with Scotland and Northern Ireland on the "primary authority" principle in the search for consistent enforcement across UK local authorities as a whole.

Relationships

So, the LBRO has principally a local focus but it is also connected to much wider forces which will shape the modern relationship between business and the state. As such, it forms a small but important part of Gordon Brown's ambition "to make Britain the outstanding success story of the 21st century".

Regulation in the last quarter of the 20th century was dominated by the creation of regulatory bodies aimed at protecting the public from the newly privatised monopoly utilities, and helping to develop and mature the newly created markets for water, telecoms, energy, and so on.

But the LBRO is part of newer thinking. Modern regulation has an active part to play in shaping an efficient business environment, and in reducing unnecessary regulatory burdens without damaging essential social and environmental protections. It is more about "filling in" the state

than it is about "hollowing it out". It is a piece of machinery that has been invented to enable government to steer the business environment more flexibly and at arm's length. It is also there to help align the efforts of local authority regulators with the national regulatory and the professional and representative bodies (and especially the Local Authorities Coordinators of Regulatory Services (Lacors), the Chartered Institute for Environmental Health and the Trading Standards Institute), all of which have a major stake in how modern regulation works.

Connections

Connecting up local and national is also important because what local regulatory services do is critical to both local and national concerns. Government has endorsed the regulatory priorities set out in Peter Rogers' report (reference to come). These are for air quality; food hygiene; fair trading; workplace health; alcohol licensing; and, animal and public health. The government has given the LBRO the job to ensure that these national priorities are properly reflected in local action, and also to keep them under review and advise government as and when they need to change. The local government white paper spelt out the role of local government in delivering key national priorities such as tackling climate change. The LBRO is one way to make that connection more real.

No fewer than five of the new local government 198 performance indicators go directly to the issues which local authority regulatory services deal with. A further three relate to their indirect impact on the creation, growth and success of business at local level, and further connect to the strategic (national) objectives of the new Department for Business, Enterprise and Regulatory Reform. Yet all of this is at the heart of local place shaping – not physically, perhaps, but certainly in terms of the quality of life of communities.

So, does the LBRO represent more regulation, or less? It is not a regulatory body itself, and it is there to reduce regulatory burden. In that sense it may be swimming against the ever-present civic and political instinct to protect, and even

over-protect. Those willing to resist the trend in the cause of reducing the regulatory burden always bear the risk that their efforts will be confronted and confounded by a crisis of protection – be it triggered by fears over the safety of imported toys, or the sudden evaporation of confidence in a financial institution.

Modern politics and media may also be global in ownership and scope, but they are segmented in their thinking. Those who bemoan "regulatory burdens" respond to the instincts which recoil against bureaucracy and an overweening state. But those who say "how dare they" amplify the instinctive outrage of the unfairly offended, and the natural support that is felt for the random victims of those craving profit over people. In truth, those are both imposters, and should be treated both the same.

Regulation is necessarily about benefits and costs. And balance depends on many factors including preferences on risk, the consequences of technology, the arrival of new information, and, indeed, the balance of public opinion as sampled but also shaped by media and political influences. The move to a risk and evidence based approach is a move against knee-jerk regulation. It is about how we weigh up risk in society and consider the role of the state to intervene. How much and when should government intervene? On market failure, certainly. But on the regulatory version of moral panic also? Hopefully not.

Outrage

The LBRO is about steering a ship of well-weighted decisions in the regulatory environment. It is in part about trying to change that equation of "outrage equals more (perhaps unnecessary) regulation" into "outrage equals consideration of benefits and costs carefully", and think about whether this new event is new information, or whether it is just a risk that cannot be mitigated through regulation. In fact, there may be other instruments that are better than regulation, or the status quo may still be the best – for example if this event is not new information, but just a blip, where no government intervention will provide benefits greater than the costs.

The pendulum swing of outrage from "stifling" regulation to a "failure to protect" hides the fact that regulation is not – or, at any rate, should not be – a zero sum game. Not more, nor less, but better is the modern mantra, and rightly so, and an appreciation of the early history of regulation shows that to be the case. The factory acts were not an accomplishment of social reformers alone. They were the product of a genuine coalition of progress between enlightened (and also self-interested) business and moral reformers, a coalition which fed on ideas about better ways to run industry to shape actions and laws which then helped business to meet future economic and social needs.

For the UK to meet the global challenge of the 21st century will call for equally innovative and powerful coalitions. In the small but important sphere of local regulation it is as important to target the rogues as it is to free the compliant from unnecessary burdens. That will call for excellent local authority regulatory services, with capacities, leadership and cultures to match a high ambition. It will also call for government (in Europe as well as the UK) to recognise that good regulation depends on good regulations as well as good regulators, and for the regulators and the professional and the representative bodies to play an active part in championing and supporting the "better regulation" cause.

It is a core part of the LBRO's job to work with them all to construct that coalition of progress, and that is what we aim to do.

Clive Grace and Graham Russell are respectively the chair and the chief executive of the LBRO

How to manage the risks more sensibly

by Geoffrey Podger, chief executive of the Health and Safety Executive



Absolute protection against risk is illusory but so is the idea that regulation is not needed to protect the public, with tough penalties levied for example against those who flout health and safety laws. What is needed is sensible risk management. This embraces collaboration between regulatory agencies, proportionate compliance and minimum paperwork – but also tough enforcement and legal action.

Sometimes regulators feel they are in a no-win situation. On the one hand there are pressures to avoid regulation that stifles business and constrains individual freedoms. On the other are calls, particularly after a serious incident, for absolute protection: "this must never happen again – at any cost". The regulator has to listen to these competing concerns and steer a reasoned and consistent path.

Britain's flexible system is based on the view that those who create risks are best placed to manage them; and that risks should be reduced so far as is reasonably practicable – not eliminated completely. When done well, health and safety management protects people from risks. But when done badly, it can result in work grinding to halt under a mass of paperwork.

We need a sensible approach – saving lives, not stopping them. That does not always happen in practice, and that is why the Health and Safety Commission and the HSE, backed by their enforcement partners in local government, launched a "sensible risk" campaign to focus on practical steps to protect people from the real risks.

The campaign aims to cut needless risk assessment paperwork. Risk assessment is an important step but paperwork never saved a life, at least not on its own. It's action that counts and that is why we have produced examples showing that the paperwork need not be long and complex and onerous.

Others actively support the sensible risk campaign, insurers, lawyers, business organisations, risk managers and health and safety professionals. We are particularly pleased at the lead taken by local chief executives. Many are joining the HSE in signing up to sensible risk, sending a strong message to our staff and communities as to where our priorities lie. The campaign should result in more time being spent controlling real risks and less on bureaucracy, which should encourage more businesses to comply. Early feedback is favourable so we seem to be heading in the right direction.

Understanding

Each regulatory body should identify links or overlaps with other regulators and then work collaboratively with them to minimise the cumulative regulatory burden. We do this already through our joint "competent authority" role in the regime for the control of major hazards.

We have also been exploring ways that we can work more with other regulators through data sharing or joint inspections. Such an approach is a major issue for internal collaboration within local authorities which have a range of regulators, responsibilities and relationships with business.

On enforcement, we are aiming at ensuring consistency and adherence to the principles of

better regulation. Initiatives include a common competency framework for all health and safety inspectors and a national system of "flexible warrants". This is central to our partnership working with local authorities and we can report progress.

We are also continuing to look at the advice and support we provide. Can it be accessed easily? Is it understood by the target audience: it has to be pitched at the right level and we must provide people who are being regulated with examples of what "good enough" looks like.

To ensure we maintain the credibility of the health and safety regime, we must all work together, recognising and delivering the same priorities and applying consistency in our approach and advice.

Catalyst for change

Above, then, are examples of the commission and the HSE acting as a catalyst for change. But we must also be critics of poor performance on the part of the organisations with a health and safety responsibility. We help businesses comply with the law in a sensible and proportionate way; in parallel, the HSE and local authorities must enforce health and safety law, firmly and fairly. We use a range of tools to do this, from offering advice to seeking improvement and issuing prohibition notices.

And when the HSE prosecutes, we carefully target cases where it is warranted to serve the interest of justice, and to send a strong signal to others that no one should believe that they can get away with serious health and safety breaches. We believe this is also the basis on which local authorities prosecute.

A recent review of our enforcement policy statement confirmed that our stakeholders support this approach. In his review of the application of regulation to business, Professor Richard Macrory found that penalties appear too low to allow a proportionate response to some offences and provide an effective deterrent - a view that I strongly share. So, one of our priorities is to continue to press for tougher penalties in the courts for those who blatantly flout the law.

The health and safety record in Great Britain is one of the best in the world - something we can all take considerable pride in, while recognising the many contributors to that record. Indeed, over the past 30 years, health and safety in British workplaces has significantly improved. As a result, every week the lives of at least four employees are being saved and more than 300 serious injuries avoided. And every day 500 fewer workers identify ill-health problems related to work compared to 15 years ago.

However, improvements can still be made. We will continue to focus on the real causes of harm in the workplace, confronting tales of risk-averse decisions that trivialise health and safety. And strive as a regulator to ensure we operate in the most effective way possible.

Geoffrey Podger is chief executive of the Health and Safety Executive. Formerly chief executive of the Food Standards Agency (FSA) from its inception in 2000, he was a civil servant in the Department of Health and the then Ministry of Agriculture, Fisheries and Food

Who does what?

The 1974 Health and Safety at Work Act placed duties on all employers to protect the health and safety of their employees and those affected by their work. The Act led to the setting up of Health and Safety Commission and the Health and Safety Executive. Commissioners are usually nominated in close consultation with the unions and employers' bodies. The HSC, which maintains an occupational health advisory service, is a quango under the Department for Work and Pensions and is intended to provide strategic direction for Great Britain's health and safety system. It is advised and assisted by the HSE, which has day to day responsibility for enforcing health and safety law, investigating accidents, licensing and approving standards in hazardous areas and sponsoring research. Local authorities also enforce health and safety in certain areas.

Doesn't the consumer know best?

by Philip Cullum and Abena Dadze-Arthur,
National Consumer Council



Who is best placed to assess the "burden" of regulation? The answer has to be the

local communities on which it impacts, and which benefit from its protections. Regulators of public services need to ensure they keep sight of the interests of consumers. This essay calls on the Local Better Regulation Office to open debate about enforcement priorities, moving beyond the usual suspects in the regulatory community and creating dialogue with the people who are the focus of regulation.

The regulation debate has excluded the public and is too often dominated by vested interests – even when the primary purpose of the regulation is all about consumers, and even though it is consumers and taxpayers who often pay the price of regulatory failure, through increased costs, greater complexity and inadequate services.

Regulation has become an established profession, no less important in a world of complex organisation than its forebears of medicine, law and the mediaeval guilds. And yet, like all professions, what counts for approval and success is shaped not just by a neutral interpretation of the public good but also by the interests of those, with the relevant expertise and knowledge, who participate. The challenge in the debate on regulation, as with every other profession, is to reconnect professional practice with public concerns without losing the expertise that required such specialist knowledge and skills in the first place.

We don't want regulators to become consumer advocates – that's what bodies like the National Consumer Council, Which? and Citizens Advice are for – but we do expect them to consider and involve the public in reaching decisions that affect us all, and to regulate in a way that delivers the best consumer outcomes.

User power

Nowhere is this more important than in Britain's public services. Few public servants nowadays neglect to talk about users, even if some don't yet accept the language of consumerism, and there's a growing understanding that public services which don't benefit the public in some way are pointless. In fact, they are worse than that – because at a time of growing financial pressures, spending money on services that don't meet people's needs comes at a hefty price in terms of opportunity cost.

The former prime minister, Tony Blair, presented public services as "an emerging relationship between the state and the citizen, where government is not something done to you, it is something you engage in. That way, we see services improving naturally, spurred on by the demands and the needs of those who use them". His successor confirms the government's promise to "meet the new challenges of ... communities under pressure – and forge a stronger shared national purpose – by building a new relationship between citizens and government that ensures that government is a better servant of the people".

So the direction of travel in public services is very welcome, even if the journey is by no means

over. Policy aspirations need to be embedded on the ground, the rhetoric about focus on users needs to be truly internalised and expressed in everything that public services do, and the many examples of good practice and creativity around the country need to be shared and built upon.

Public service regulators can play a key role in driving and reinforcing this important change in culture. If they don't live the messages about consumer focus, and integrate it into all that they do, why should the services they regulate? They can be a real force for good - but first they need to exorcise their own demons.

We believe there would be much greater momentum towards better regulation if there were a more precise and upfront articulation of regulatory objectives, which would often (but not always) be about protecting or promoting the interests of consumers. This would also allow a much clearer assessment of what is working and what isn't.

Of course, regulators have very different statutory objectives and not all are focused solely or explicitly on consumers. But most, if not all, public service regulators have a profound impact on consumer experiences.

Wider picture

The Audit Commission says it aims to ensure that public money is spent "economically, efficiently, and effectively" - then adds that it wants to help providers deliver "better outcomes for citizens, with a focus on those people who need public services most". The Education and Inspections Act requires the new Ofsted to see that services are efficient, effective and promote value for money, and also to ensure services focus on the interests of their users.

By no means all regulators have understood this - too many remain caught within the professional ethos of the services they exist to regulate or appear unable to see the wider picture.

The Housing Corporation manages to fill a website page describing "what we do" without mentioning tenants even once.

This focus on financial performance and build-ings, rather than people, perhaps goes some way

to explain why the social housing sector came out so badly from NCC's study of third sector delivery of different public services.

The public dimension of regulation is still too often an afterthought - regulators increasingly act in the name of consumers, but all too often fail to understand them. Work undertaken by the NCC and the Local Government Association (LGA) has revealed that current systems for understanding consumers are poorly coordinated and lack the sophistication to respond to new opportunities and overcome future challenges.

Obvious sources of information - whether the daily experience of frontline staff or knowledge held by other organisations working with similar user groups - could be exploited more effectively. Many organisations do have quantitative data analysis systems, but these are unable to process qualitative, community-produced intelligence into "usable" data.

Satisfaction

Consumers would - not unreasonably - like to know more about which services are doing well and which badly. Over two-thirds tell us they would like to be able to compare independent customer satisfaction ratings for different public services. Regulators could help make this happen. But too often key data doesn't exist (regulators measure what is easiest instead of capturing what is important to consumers), or it is gathered inconsistently or kept under wraps.

Keen to find practical solutions, the NCC and the LGA are working in partnership to determine measures of public satisfaction with local government services. We are collaborating with local authorities to develop a new system, owned and managed locally, which is flexible and can be tailored to local needs. This allows for segmentation, to provide as detailed as possible an understanding of the diverse range of consumer experiences with a local community. This ground-breaking development will lay the foundation for increasing satisfaction of service users.

There are some fascinating examples of innovation across the regulatory arena, although sharing of best practice seems to be the excep-

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tion not the rule – and relatively little of the creativity seems to be coming from within the public service regulators.

We still observe a lack of leadership and ambition to engage consumers as collaborators in regulatory processes – even those concerning the assessment of services' performance.

Much of the machinery of public service regulation remains stubbornly focused on the measurement of outputs. The softer, more outcome-based results that really matter to consumers, such as public satisfaction, social capital or community cohesion, are still too rarely reflected in inspections or regulation.

Misfiring regulation can actively damage the consumer interest, by providing reasons to do the wrong thing. The pressures of performance league tables and the threat of intervention can mean there is neither the incentive nor the means for providers to measure whether consumers are really happy. The danger is that providers deliver services modelled against what satisfies regulators – not consumers. It also means that service commissioners are not including user-led criteria as a mandatory part of all contracts.

Customer focus

We are however starting to see some welcome shifts in the philosophy and practice of public service regulation. These include the national performance framework's new emphasis on customer-focused measures and the government's move from a rolling programme of inspection to a risk-based approach that is tailored to individual areas and focused on outcomes and local priorities.

Perhaps most significant of all is the planned creation of 150 Local Involvement Networks (Links) representing the views of the local population, endowed with powers to assess the nature and quality of service providers, and ultimately commissioning local services. The Links, which are expected to be operational as soon as April 2008, represent a major opportunity for regulators to engage with the public – but they also provide a challenge to closed ways of working. It is critically important that regulators

work effectively with these new bodies – but doing so will require cultural change, fleetness of foot and openness to innovation, and board-level commitment.

Increasingly, professionals and the public are working together as co-producers of public services, from school governors to parish councillors and tenant-run housing associations. And NCC research suggests that about 80% want to feed into the design, delivery and scrutiny of their services.

But regulators are lagging behind. Many must do more to engage service users and the wider public in order to help assess and improve the services they regulate. People could also help shape the regulator's own strategy and workplan.

This will for example be critical in the establishment of the Local Better Regulation Office (LBRO), which will seek to drive up the performance of local authority regulatory services. This new body must open up the debate about enforcement priorities, moving beyond the usual suspects in the regulatory community and creating real dialogue with the people who are the focus of regulation.

Getting regulators' consumer engagement right could provide the impetus for more open ways of working. It isn't only consumers who are excluded by regulators – there's too often a failure to harness the local knowledge of inspectors and other frontline staff, a lack of joining up with statutory stakeholders, and a desperate need for a stronger culture of collaboration between different regulators.

The NCC's work with the Healthcare Commission on regulation and patient and public engagement indicates an enduring ethos of "the professional knows best", with professional inspectors seen as having a superior grasp of issues. Traditionally, public service users are viewed as passive recipients of professional interventions, rather than as active participants with a unique contribution to make in the assessment and regulation of services that impact on their lives everyday.

The good news is that there are some positive

precedents to build on, from across the world of regulation. The Human Fertilisation and Embryology Authority has involved the public in decisions about highly technical and morally complex issues. The National Institute for Health and Clinical Excellence (Nice) has established a citizens' council which can cross-examine witnesses and make recommendations, which NICE must consider and respond to.

Tough decisions

Our own evidence confirms that consumers are willing and able to get involved in helping to make tough decisions. This not only results in services people actually want, but also improves risk management and leads to better outcomes of regulation that command widespread support.

It's time for a strong signal from government that the consumer interest should sit at the heart of much regulatory decision-making. We need regulatory systems that are built on continuous conversations with service users and the public – starting from where people are, rather than assumptions of how they behave; making the most of their experience and insight; and building support for tough decisions.

Future regulation could be a force for democracy in addition to wellbeing and economic advantage, by operating in ways that open out complex issues and trade-offs for public deliberation. This will require leadership to overcome some of the established cultures of regulation. But it is essential if regulators are to keep pace with the cultural changes underway in our public services.

Philip Cullum and Abena Dadze-Arthur are deputy chief executive and senior policy advocate at the National Consumer Council

When a consumer is not a citizen

by Peter Lunt and Sonia Livingstone



On whose behalf do regulatory bodies regulate: industry, consumers,

or the public at large? Moves to scale back intervention may have pushed the regulatory burden on to the public and firms, which are now expected to be fully versed in the language, risks and regulations of complex markets. One effect is that risk to citizens and consumers may get focused on vulnerable members of the community in contrast to the competent majority. Regulation needs to get clear the distinction between consumers and citizens.

It's not only the caring end of the public service that must grapple with the conceptual shift turning "citizens" into "consumers". Other public institutions, firmly located in the economic sphere, must also learn to balance the needs and rights of both – starting with understanding how they intersect. In this paper, based on research supported by the Social Contexts and Responses to Risk (SCARR) Network (see box), we explore attempts by regulators to come to terms with their responsibilities as protectors of the public interest.

We focused on regulation in financial services and media and communications, examining the Financial Services Authority (FSA) and the Office of Communications (Ofcom). Both are relatively new, their obligations enshrined in acts passed in 2000 and 2003. Both too have the public interest at the core of their statutory objectives, resulting in extensive public-facing

communication activities backed by consumer policies. These operate in conjunction with direct market interventions and other industry-focused activities; however, they also mark a concerted withdrawal from direct supervision in favour of lightening the regulatory burden.

To this end the regulators work to shape and improve relations between companies and the public, primarily by raising awareness among the public of their regulatory rights and improving the ability of individuals to negotiate the risks of the markets and by working with firms to establish principles of fair treatment for consumers.

Research

Both Ofcom and the FSA underpin their consumer policies and strategies with research designed to better understand consumer needs and motivations. For example, the FSA has investigated the difficulties encountered by consumers of financial services at the point of sale, exploring the personal characteristics that might influence decision making as well as the effectiveness of product information. Ofcom also uses research to position itself as an evidence-based regulator, and both undertake analysis to measure the success of their strategies.

We argue that although the use of research is commendable, the way it is framed could be improved. Research topics and priorities are determined by the regulator's policy agenda, rather than from an independent exploration of the issues, and the results tend to confirm the regulator's prior assumptions. Meanwhile, the studies themselves are often carried out by market

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Risky business

In response to growing academic interest in risk, the Economic and Social Research Council launched a £2.8m programme looking in depth at the "non-rational" way in which people make judgments and how trust and mistrust wax and wane – the emotional bases of trust having been little explored. The project has been running from 2003 and winds up next year under the direction of Professor Peter Taylor-Gooby of the University of Kent. Among the emerging findings:

- People get used to risk if it's on their doorstep daily. Communities living near nuclear power stations put risk into the background to their everyday lives and are quite prepared to make trade-offs between risk and economic benefits, in terms of jobs and prosperity. A factor is trust – how far the managers of the stations are regarded as competent.

- Perceptions of risk are strongly connected to income and background and cross refer. People who fear crime are also more likely to fear accident and illness and losing their job. Consumer concerns, however, don't seem to be connected to social class. Perceptions of risk in general decline with age, though less slowly with fear of crime and worry about illness.

- Parents' perceptions of risk afflicting children in general are strong but curiously unconnected with the actual behaviour of their children. Parents' working hours did not seem to affect how either they or their children viewed the riskiness of the world around them.

- Research hints at a puzzling dislocation of what people say they are worried about and what they actually do. Young people, for example, express "a heightened sense of insecurity and risk" but it seems to make no difference to the way they go about planning their lives and certainly doesn't make them seek to manage risk better. Younger people do, however, seem to have a greater belief in self determination and their own ability to make it in the world.

- Faith and sexual orientation affect risk

perceptions, with gay and lesbian people more anxious about pensions and insecurity, at least in relationships.

- The labelling of issues and problems affects the way people perceive them. In the debate about genetically modified crops it makes a difference if reports refer to "cross pollination" rather than "contamination" and "weeds" rather than "biodiversity". Media and focus group research shows that the notion of contamination dominates media discourse. Proponents of GM have failed to get the issue framed as a new approach to cross-pollination. In debates about stem cell research concepts such as "human embryo" or "blastocyst" compete with one another. Visual imagery also matters.

- People find it difficult to assess the likelihood of different events happening. This applies even to those with high levels of education. People are poorly informed about the incidence of events, even those about which they are concerned such as burglaries on road accidents. However the provision of information on the actual rates of such events locally makes little difference to their responses.

When a consumer is not a citizen

research companies, which deliver research as a service, rather than from a testing and theoretically robust academic standpoint; in other words, the research can lack a critical eye.

Ofcom makes a policy distinction between its responsibilities to consumers and to citizens. Consumer interests are far more clearly defined, covering issues such as spam, the switch to digital broadcasting, and complaint handling. Issues such as universal access and, increasingly, protection of vulnerable consumers are positioned as citizen interests. Notably these have been represented as potentially imposing on those of consumers, for example when provision of services to all increases the cost to some.

This distinction lies at the heart of the continuing tensions faced by regulators attempting to balance individual and collective interests, the need to create the environment for a competitive market with the need to protect the vulnerable, and the old supervisory approach with the new "lighter touch regulation".

The move by regulators to scale back direct intervention pushes the regulatory burden onto the public and on to firms, now expected to be fully versed in the language, risks and regulations of complex markets. The effect is that risk to citizens and consumers arising from the development, advertising and sale of products and services is focused on vulnerable members of the community in contrast to the competent majority, arguably reflecting a broader social change from a welfare mentality with an overall rights-based approach to a more targeted support for vulnerable individuals.

The outcome, exacerbated by the use of generalised self-reporting market research evidence to drive economics-focused policy, is market problems reframed in terms of individual shortcomings, and much less clarity when it comes to questions of the common good.

Peter Lunt is professor of media and communications at Brunel University and Sonia Livingstone is professor of social psychology at the London School of Economics

Numeracy skills in short supply in third sector

by Lynne Berry, chief executive of the WRVS



The voluntary sector gets hit when ill-considered regulations are extended and in this essay Lynne Berry welcomes the review being conducted by the Office of the Third Sector to ensure they are proportionate, targeted, and appropriate for voluntary organisations. But the third sector is also sometimes in the forefront of those demanding more regulation. Berry is a member of the Better Regulation Commission and argues the public gets confused over the likelihood of an action and the severity of its outcome. In a largely innumerate and unscientific society, we are poor at assessing probability.

I've switched from regulator to regulated several times in my career. Now, again, I've turned from gamekeeper to poacher. After a decade or so of regulating some sizeable social and moral issues - charity, equality and social care - I'm back in the third sector running a huge voluntary organisation with around 60,000 volunteers and 2,500 staff delivering services designed to help older people get more out of life and to build strong, supportive communities. The WRVS is one of Britain's largest charities, best known for meals on wheels, day centres for older people, hospital services and emergency support at times of crisis (during the floods and after bomb attacks, for example).

During this period I've also been a member of the Better Regulation Commission where I chaired a working party that produced the report Risk, Responsibility and Regulation (see page 28).

So, what's it like being regulated again (not that regulators escape regulation of course)?

How, in the fiercely independent third sector, does regulation play out? In a fairly complex way, I think. It's not just about being subject to regulation. The third sector is sometimes the source of clear, articulate and compelling demands for more regulation. After all, regulation is a means of creating a socially agreed set of standards - establishing a framework for the sort of society we want to live in and authorising the powers to enforce these obligations.

Key policy areas

My experience as a regulator is not about regulating markets but about areas of key public policy - charity and public trust in the third sector (the Charity Commission), equality and human rights (the Equal Opportunities Commission) and the conduct and standards of those who work in social care (the General Social Care Council). These all play into some of the deepest social concerns about the relationship between citizens and the state, about individual choice and freedom, about protection at times of vulnerability. They say what sort of society we want and provide the means of working towards it.

They are also good examples of the sorts of concerns that the voluntary sector itself has. They are about the provision of services that (at their best) make the world a better place and create safer communities with a sense of mutuality and solidarity. They are about providing essential services to people at times of need - and throughout their lives. They are about establishing civil liberties through a regulatory environment.

This is intriguing. The voluntary sector is not only the place that identifies gaps in social provi-

sion, that cherishes its independence of thought and action, its capacity to be critical of policy and practice, to demand more and different policy and provision. It is also the sector that, increasingly, acts in partnership to provide social care, education, information, health, housing and other social services. It operates in this highly regulated arena and is not immune from the costs of regulation. Governments in all parts of the UK have emphasised that the sector is its partner of choice; its role in the mainstream of services is newly recognised, honoured and supported. Consequently calls for its regulation grow – as, inevitably, do calls to maintain and reinforce its independence.

The Daily Mail paradox

One of the contradictions in this debate about regulation and the third sector is what could be described as the Daily Mail paradox. It isn't only that august newspaper that seems able simultaneously to demand that "something should be done" and to call for the burden of regulation to be lightened. It's the voluntary sector too. The latter is particularly active in the field of public risk and protection. This results in new policies from government which leads to more regulations that affect the whole of society – voluntary organisations included. Current concern about the effect of Criminal Records Bureau checks, leading to the vetting and possible barring of volunteers, is an example of how a policy designed to protect is also seen as limiting civil society.

Having gone back and forth between regulation and the voluntary sector – does being in the voluntary sector feel different today? A dozen years ago, when I chaired a working group on standards for the report on the Future of the Voluntary Sector chaired by Nicholas Deakin, we were a long way off any consensus that such a subject was even proper for the voluntary sector. The nearest we got was to something that was loosely called "towards setting standards for the voluntary sector" – and even this was resisted by many. Now, to say that standards and therefore regulation are necessary is accepted – you can't

be part of public provision without being part of public accountability. When I was there the Charity Commission was in the process of introducing new accounting requirements – then seen as an intrusion, now as an obvious part of public accountability.

However, things do feel different now and it is because of the growing emphasis on risk and an understanding of proportionality. Talk then was of deregulation; it's now of better regulation and of getting it better still. It's no longer an alien concept. The greater acceptance of the principles of better regulation affects all regulation, and not just the voluntary sector. Here, though, the Charity Commission is leading the way, tackling seriously the challenge of being a risk-based regulator. The Office for the Third Sector is reviewing regulations to ensure they are proportionate, targeted, and appropriate for voluntary organisations.

Most importantly, the debate about regulation is also going upstream. It's going to the heart of what sort of society we all want to live in, and to better policy making. And this is where the third sector has a particularly important part to play.

In the Better Regulation Commission report on risk and regulation we noted that, although it's a key role of government to manage public risk, it's not possible for it, or indeed for anyone or anything, to manage all risk out of existence. We share a mutual responsibility for each other and we need to ensure policy supports that mutuality, and is created through an objective examination of risk, rather than through headline-grabbing action.

Skewed perceptions

In our report we acknowledged perceptions of risk are often skewed and, through the resultant public debate (in which third sector organisations will often play a great part) there is a spiralling of demands – demands for action and demands to prevent such an event ever happening again. Politicians are caught; they can't win. If they do nothing the clamour continues. If they act they are accused of tying us up in red tape.

Much of this is because we have, as a society,

few effective means of communicating risk.

There is confusion between the likelihood of an action and the severity of outcome. And, in our largely innumerate and unscientific society, we are poor at assessing risk, probability and therefore the best actions.

This perhaps is where there is a real role for the voluntary sector – and a real challenge. Become more numerate, develop convincing and credible ways of using evidence, don't rely on passion. The last prime minister commissioned the BRC to undertake this report on risk and regulation in response to concerns about conkers and playground safety, about school trips and compensation claims, about enterprise and innovation being stifled. The current prime minister has asked us to go farther and look at the idea of public risk, and to devise a structure that would embed this in policy making. We have presented our first findings and now wish to champion a vision of a policy-making environment in which high quality flexible processes lead to public risk being tackled in a targeted, proportionate manner so that good intentions lead routinely to good outcomes.

The lessons for the voluntary sector are to be part of building public trust. We don't want to and can't regulate risk away. But we do want a society in which the third sector can thrive, can press for change and can articulate the consequences of risk so that responses are proportionate and appropriate. However, we in the voluntary sector also need to be careful what we wish for – because we just might get it.

Lynne Berry is chief executive of WRVS. She was, until September, chief executive of the General Social Care Council and before that of the Equal Opportunities Commission and the Charity Commission. She is trustee of several voluntary organisations, including the National Centre for Social Research, and a member of the Better Regulation Commission

Doing nothing may be the best option

The Better Regulation Commission

Here is a "classic" statement of the case for radical deregulation. It's from the report Risk, Responsibility and Regulation: Whose risk is it anyway, published last year by the Better Regulation Commission, a panel then chaired by the businessman Rick Haythornthwaite. Regulation stems from a culture of risk minimisation in the public services. The excerpt makes the case for people taking more personal responsibility for their lives, and managing risk themselves. Regulation should be a last resort. All alternatives, including doing nothing, should first be carefully explored.

Ministers, national and local politicians, policy advisers, public servants, inspectors and civil servants have a general tendency (often encouraged by systems of accountability and governance) to be risk averse for fear of the consequences were they to miss anything which could go wrong. We believe there is a strong cultural imperative, supported by formal and informal incentives, for government and regulators to seek to control all risks.

This is slowly changing and we are encouraged by examples of the government and regulators refusing to give in to inappropriate calls for new regulation, however strident. For example, the Healthcare Commission resisted calls for hasty regulation to counter the risk of MRSA in hospitals. Instead, they produced new guidance on hygiene, while sponsoring further research to strengthen the evidence base to show whether new regulation would be effective. It is a much more difficult task to explain convincingly to a sceptical public why regulation might not be the best answer than simply to promise to regulate.

To do so requires a proper understanding of risk and the options for managing it, including the costs involved and trade-offs required.

Sir Gus O'Donnell, head of the home civil service, has called on civil servants to be less risk averse and to focus more on delivering meaningful outcomes for people, rather than tying them up in bureaucratic procedures which, however elegant or internally consistent, fail to deliver. "Ask forgiveness not permission," he says, hoping to encourage a culture of personal responsibility and controlled risk taking that will release energy and innovation among officials.

However, putting the focus more clearly on delivery will not of itself remove the culture of risk aversion. We may well be prepared to reward risk taking when things go well but the public services are easy targets when things go wrong. Several of those we spoke to believed that the parliamentary public accounts committee (PAC) encourages a culture of risk aversion. They mentioned the robust nature of its questioning and a quest for individual accountability when interrogating civil servants. Most were sceptical that, in a PAC hearing, one would want to rely with any confidence on a defence that "at the time, this looked like a manageable risk and I decided to take it."

Finally, at the front line, those who implement and enforce regulation often shy away from making reasoned and proportionate judgments of how best to respond to risk in the real world. Being keen to avoid blame if things go wrong, it can seem as if they don't just want to mitigate the most likely risks, but are intent on removing all possible hazards. So incentives and culture need

to change – for ministers, civil servants, local authorities, regulators and frontline inspectors. Fear of bringing the government or a council into disrepute for inappropriate regulation must become at least as powerful as the fear of possibly letting something through that increases risk. The present culture encourages the state – ministers, councillors, officials and regulators – to feel that they must take total responsibility and impose systems to neutralise all potential hazards.

Turning the tide

The tide is turning. One senior politician told us that the most important task in politics today was the “sound assessment and management of risk”. We found regulators considering new approaches to regulation and risk. We welcome the introduction of the Compensation Act 2006. It is designed to remove the pressures of fear of litigation, which can be a significant contributory factor when deciding whether to take risks. It protects individuals who are undertaking a “desirable activity” (eg taking school pupils on holidays or educational trips) against litigation for personal injury damages by, for example, the parents of an injured child.

We also heard how self-regulation and the exchange of information between consumers can provide effective, non-regulatory controls. The star-rating system on eBay, for example, uses customers’ comments to provide quality assurance. Such systems of self-assessment, based on trust between buyers and sellers rather than external rules, takes power from traditional, external authorities and gives it to the consumer.

We are encouraged by these developments. They suggest that people, especially as consumers, are increasingly prepared to take some responsibility themselves for ensuring that the standards they expect are delivered, rather than relying on rules and regulations set and enforced by others. This is certainly the case in the disability movement, where service users are no longer prepared to accept rules that limit their choices but instead are ready and able to insist on solutions that work for them.

The current entanglement of risk and regula-

tion is unsustainable and undesirable. Accordingly, we call for a fundamental change of culture, recognising that this will require bold political leadership and significant shifts in policy.

Many of the concerns about risk and regulation are also about perception and we know that perceptions of risk and real risk are not always the same things. We are therefore calling for a public debate, to be led by government, on the nature of risk in society and the role of government in responding to it. There needs to be a change in culture, one which seeks to achieve two goals.

First, we must seek to inform individuals in ways that enable them to make sensible risk decisions and to exercise personal responsibility.

Second, we need to allow individuals to manage risk where they have the knowledge to make an informed assessment of the risk, consider the risk to be acceptable and regard the cost of mitigating the risk to be affordable or insurable. The Better Regulation Commission believes that all policy-making should start with a simple principle: “When informed adults choose voluntarily to expose themselves to a risk and/or take responsibility for managing that risk and their behaviour does not harm others, the government should not intervene.”

The road away from individual management of risk towards classic government regulation should be travelled slowly and reluctantly. All regulatory alternatives, including the “do nothing” option, should be examined and the costs and benefits assessed as broadly as possible. We can think about the management of risk in terms of a risk management hierarchy. At the top is the individual, at the bottom the European Union and other international organisations. The policy-making task should be unequivocal – to push as far up the hierarchy as prudence permits on each and every single occasion. This drive towards personal responsibility requires willingness on the part of individuals, as illustrated by the Financial Services Authority’s policy of “treating customers fairly”. This involves risks being communicated openly and clearly so that informed adults can make up their own minds alongside

Doing nothing may be the best option

the press being engaged early so that there are no secrets and the relevant issues are effectively and publicly scrutinised.

How do we reverse the trend?

Despite the frustrations with the current situation, commentators from the media, from public service, politicians and regulators alike, were adamant that, without high level leadership, it will be impossible to untangle risk and regulation and put each in its proper place. This leadership starts with a declaration from the most senior levels of government of a shift in direction, building on the earlier work of the Better Regulation Task Force, Philip Hampton's report and the ongoing work of the Better Regulation Executive.

Next, there needs to be accountability for changing the direction, with specific people (ministers, politicians, public/civil servants) made accountable for delivery of this new approach to risk management. Finding alternative ways of addressing risks through shared, non-governmental action should become a career-enhancing move for ministers and civil servants. We need to expose the root causes of misguided risk management and the absurdities they produce and learn from them.

We need to learn from examples of new approaches to risk management, such as the "naked streets" initiative in the Netherlands and similar projects elsewhere in the UK, that devolve greater responsibility for risk management to the individual. We need to reduce the flow of new regulation (and communicate effectively the reasons for following alternative routes) and also conduct risk-based reviews of existing regulation.

What is possible?

We recognise that regulation has an important part to play in achieving the social and economic goals that governments and citizens want. We have a collective, social responsibility to protect those who are vulnerable, but we need to guard against making assumptions about vulnerability.

We believe that legislation and regulation, important though they are, can only ever play a small part in a sensible and proportionate

approach to risk. Alternatives to classic regulation will often work better, stimulate more enterprise and innovation, promote greater freedom and choice, inspire greater self-reliance and responsibility, be cheaper and impose fewer burdens. Trust needs to be rebuilt and, encouragingly, the public are voicing a willingness to take on more responsibility themselves. Developing appropriate, non-regulatory (or lighter touch) options that engage individuals, communities, alternative social institutions and enterprises will often be the solution.

We are calling for a new, more broadly based and complete dialogue, with fact and emotions more clearly distinguished. We want to see better, more comprehensive responses, developed with sufficient time to explore options and their implications. We want recognition that risk can be creative and exhilarating, whilst also acknowledging that some risks need to be managed. However, risks should be managed in the right place and we stand for the principle that the management of risk should rest with those best placed to deal with the issues involved. Where legislative or regulatory intervention is deemed necessary, it should be targeted and all costs and benefits should be understood. We also believe that there should be a neutral space in which calls for regulatory responses can be examined, not only for their immediate effectiveness but also for their potential for building capacity for the future.

This is an excerpt from Risk, Responsibility and Regulation: Whose risk is it anyway, Better Regulation Commission

Let's not be sorry rather than safe

by Bridget Hutter, professor of risk regulation, LSE



Here is the rejoinder to the case for radical deregulation. Is the charge of "red tape" a diversionary tactic by those who may want to avoid being regulated in the public interest? Is it scaremongering to warn people of the dangers of food, or the workplace? We cannot live in a risk free society and we cannot live in a society without regulation.

The need for responsible debate is paramount, yet there is growing unease about the way in which the current debate is being framed; how risk, regulation and responsibility are being portrayed; and the assumptions being made in the debate.

Risk regulation is a balancing act between different interests and interest groups. It involves balancing risks against protection, and determining levels of risk aversion and of risk-taking in ways which reasonably allow innovation and which do not unreasonably harm others. The rationale for any regulatory intervention is that it addresses a market failure and that the benefits of intervention exceed the costs. A simplistic "let's cut red tape" approach is likely to have detrimental consequences where regulation meets these two criteria.

Knee-jerk regulation

Yes, there is some unnecessary regulation out there, and it is no bad thing if the BRC is instrumental in its removal. Knee-jerk regulation often falls into this category. But is it fair to claim that the public rely on the government to manage all risks? The answer is sometimes, but certainly not

to the extent that recent reports and speeches would suggest. Academic research has shown that risk regulation cannot be predicted on the basis of public opinion. In fact, for forecasting it is not much more useful than spinning a coin.

Presentation of this debate is shrouded in ridicule and urban myth. There is a concentration on both the trivial and anecdotal; girl guides burning their legs on sausages, concerns about hanging baskets, fish-smelling fish and chip shops, conkers and doormats. Regulation and risk management are derided. And the confusion of policy, implementation and red tape reveals either a deep misunderstanding or is a diversionary tactic. All political parties are to blame here, and in so doing they appear to belittle the very real risks which people do face. Worse still, the debate is being framed in such a way that it is perceived as scaremongering to remind people of everyday dangers such as workplace injuries and fatalities, the safety of our food, or consumers facing large financial losses.

Unbalanced debate

The debate is unbalanced because of the weight given to the costs of regulation compared to the benefits: some economists have already expressed concern about the figures being quoted here. The chairman of the Environmental Industries Commission has joined academic voices criticising inadequate methodologies in the assessment of the costs and benefits of regulation. Proportionate regulation is talked about, but actually discussed and researched in ways which favour sectoral interests. The voice of the consumer seems quite lost in all of this.

Let's not be sorry rather than safe

The discussion of responsibility is typically framed in terms of individual and government responsibility. But regulation typically happens because the market or society fails to behave responsibly. Indeed, the Better Regulation Commission report (see page 28) rarely refers to business responsibility and some of the examples of supposedly bad regulation they cite are examples of corporate irresponsibility. Take the example of the use of the Sudan 1 food dye in many food products. The use of this dye is banned but most of our leading food retailers were found to have put it into their foods. The BRC questions the regulator's recall of products containing the banned dye.

Is this an example of responsible corporate behaviour and irresponsible regulatory behaviour? No! Responsible corporate behaviour is not to put banned substances into food products. If you think the ban is unwarranted you tackle that problem and have it properly and responsibly debated.

Hatfield crash

Another example is rail safety. The BRC asks whether the response to the Hatfield crash was proportionate. But it does not recognise that Hatfield was the culmination of many frustrating efforts to get the train companies to maintain our railways safely: it is the persistence of the non-compliance which is key here. And who remembers the outcry over automatic train protection, following each of Clapham in 1988, Southall in 1997, and Ladbroke Grove in 1999? Is such protection mandated some 18 years later? No.

Corporate responsibility cannot be ignored. Some regulation is necessitated by irresponsible business behaviour. Indeed, moves towards more principles-based regulation, such as the Financial Services Authority's Treating Customers Fairly initiative, depend entirely on senior management being prepared to exercise their responsibility.

I end with another BRC assumption - that we are "regulating all risk out of our lives". Is this true? I don't think so: caving is the fastest growing sport in the UK - not known for being risk free. Since the 1990s there has been a dramatic

increase in risky new sports: snowboarding, skateboarding, BMX riding, wakeboarding and similar pursuits. Excess drinking, increased consumption of drugs and online gambling are all ever present. Responsible debate means looking at all aspects of risk regulation and everyone's responsibilities and it also means looking at all the evidence.

Bridget Hutter is professor of risk regulation and director of the Economic and Social Research Council Centre for Risk and Regulation at the London School of Economics

Familiarity with the ecosystem is needed

By Mike Bennett, assistant director general, SOLACE



When there is wide consensus on the need for regulation and the need to minimise its impact, we should be addressing practical questions of implementation. A lesson from a tragedy, Aberfan, is about width of vision. Local authorities, enjoined to think across areas, must insist that inspectors go wide, too. Whitehall departments must not be allowed to shrink the regulatory horizon.

To regulate or not to regulate is not really the question any more. Consensus reigns when it comes to the role of regulation in our market economy. John Redwood's recent report on competitiveness for the Conservative party endorsed the 2005 Hampton review, and came to many similar conclusions. In rhetoric there is agreement – between the government and the Conservative party at least – that regulation is necessary, but that it could be done better.

Defending the importance of regulation the Redwood report argues that good regulation can save lives, promote competition, create stability and protect the environment. Regulation is necessary where markets fail, for example because of the existence of externalities or the abuse of market power. It may also be justified to protect vulnerable consumers from exploitation, and to ensure that people have access to basic goods and services. Hampton drew the issue in similar terms.

So if there is consensus on the need for regulation there is also agreement that the regulatory state needs to be "better" than it is at the moment. It's not that too much or too little is bad,

but that regulation has to be right – or better, as the current idiom has it. But better than what? Better in what way?

If the answer is going to be more than a short-term fix then we need some grounding notion or theory of regulation to guide us.

Both Redwood and Hampton seem to accept a public interest theory of regulation that sees it as the state's role to regulate failure and to avoid crisis arising from contradictions in the market economy. Left to themselves banks might bankrupt, employers could exploit employees, traders may seek short cuts and society would suffer. The role of regulation in our society is resolving contradictions between "prosperity and protection", as Hampton puts it.

This means the focus of regulation is not the regulated, the government or the individual customer, but the public interest. The purpose of regulation is to help resolve conflicts between legitimately competing interests within a complex society.

The resulting burden for the regulator is massive. By displacing the tensions of the market – or of industry or of governance – we make them the responsibility of the regulator. The problematics of regulation become clear. Our social, economic and governmental systems are so full of risk to themselves and to society as a whole that government establishes a system of regulation to take responsibility. These systems are not sufficiently self-sustaining so they need the hand of the regulator (acting for the state and public interest) to resolve conflict and contradictions where they arise.

No need to ask why regulation is so conten-

Familiarity with the ecosystem needed

tious and difficult to get right. It sits in a place between competing interests; it might be virtuous but it can't be comfortable and no wonder it needs to get better. Too much regulation reduces the freedom to act, too little weakens the protection in the system. As the Health and Safety Executive said reflecting, on its 30 years of existence, "as health and safety issues increasingly enter the field of public debate, [we] have to strike a careful balance between being perceived as over-zealous and not doing enough."

And the difficulty of the balance is of course one of the challenges. The regulator spends so much time being lobbied and influenced can it really always see the true path? A popular theory of regulation among economists observes that because there is so much at stake for organisations being regulated they invest resources to influence the regulatory process. By contrast while the public as a whole has a lot at stake, any one person has only a very small stake and so has little incentive to invest resources in affecting the regulatory process.

Potentially this can lead to the regulator being captured by a particular set of interests and the uses of public resources and powers to improve the status of certain professions, groups or organisations.

Some 41 years ago at 9.15am on Friday, October 21, 1966 a waste tip slid down a mountainside into the mining village of Aberfan, near Merthyr Tydfil in South Wales. The slide engulfed the school and about 20 houses in the village before coming to rest. 144 people died in the Aberfan disaster: 116 of them were school-children. About half of the children at Pantglas Junior School and five of their teachers were killed (1).

According to Professor Iain MacLean, Aberfan illustrated a failure by the mines inspectorate to look above ground. Its culture was underground. Inspectors were drawn from the ranks of ex-colliers. The Aberfan Tribunal found that many witnesses had been oblivious of what lay before their eyes. It did not enter their consciousness. They were like moles being asked about the habits of birds.

At Aberfan professional knowledge was undone by its own exclusivity. The organisation of knowledge and power around the professions has led both to high levels of expertise and progress but has also encouraged conformity and an insularity which leads to a narrowness of interest and approach.

Many SOLACE members would recognise the danger of regulatory capture but would generally accept the notion of regulators trying to balance interests in the public interest. Subsequently they might shake their heads at the impossibility of such a feat and then point out how unjustly the system treats their locality.

Among chief executives, individual views of course range widely but I believe there is a general consensus across the UK that the external review and challenge provided by regulation is valuable but that the burden of inspection and regulation overall is disproportionate and excessive.

This critique of course has been widely accepted, not least among the regulators themselves. Many SOLACE members would, no doubt, recognise that in local government the debate around regulation has benefited from wide debate in recent years, led by the Audit Commission whose contributions have been thoughtful, transparent and influential. The commission has recently been developing with others an approach which attempts to mitigate the risks associated with capture by working towards a more holistic and corporate approach. As well as emphasising the independence of the regulator from government, this approach articulates the multifaceted nature of the role - providing assurance to taxpayers and at the same time reflecting the views of service users.

Plans for the comprehensive area assessment - which take account of this - have just been published and SOLACE will be working to influence how the proposals develop over the coming months. The CAA will be developed and delivered jointly by all the inspectorates responsible for assessing local organisations and services and that the area as well as the institution will form the basis of the assessment. This shows a genu-

ine effort on the part of the inspectorates to join up not just their reporting but their judgements too and to approach regulation more holistically. If this works it should guard against the risk of moles missing the habits of birds.

However challenges remain. The first major risk that remains in the regulatory system for local government is the extent to which the new approach will be supported by other players, especially central government departments driven by their own political and professional agendas.

Most chief executives would no doubt endorse the finding from the "Lifting the Burdens" taskforce finding (2) that there is a mindset among civil servants that the excessive regulatory burden is every other government department's fault because those imposed by their own department are just too important to reduce. This is often reinforced through professional silos from government department to council department.

If the departments of health and children, for example, were to drive the regulatory bodies they sponsor in significantly different directions then collaboration could quickly fall apart. Significantly, while the Hampton review proposed the merging of public sector inspectorates, recent evidence - eg social housing - suggests that government departments still want to separate issues between regulators.

The second risk lies in the relationship between the inspectorates and the government's regional offices. The potential for duplication or disagreement over the negotiation and evaluation against the local area agreement is significant. This relies on the government office, which has responsibility for agreeing the local area agreement, accepting the Audit Commission's assessment of performance and progress. Might the government office not be tempted just to check or ask a few questions itself?

Having said all of which the third key risk lies in the ability of the commission to recruit people with breadth and depth of skills to understand negotiate and complex "political" context cutting across area-based and professional inspectorates as well as government offices.

For my money, better regulation needs an

ecosystem with people who understand birds and moles and how they interact - not just specialists in the habits of one or the other.

1. Aberfan: government and disasters, Martin Johnes and Iain Maclean, Welsh Academic Press 2000

2. Bringing about a new relationship between central and local government and citizens, Lifting the burdens taskforce progress report 2006-07, p9, Local Government Association

Mike Bennett is assistant director general of SOLACE

From the public to the private sphere

by Miranda Lewis



Regulation may be a special case of a much wider question about government – how effective is it at changing people's behaviour? Recently attention has focused on

behaviour in formerly intensely private areas, such as eating and household management – of energy and refuse. Even if there is a collective case for intervening, how can the state regulate such behaviour?

Although states have always explicitly and implicitly intervened in citizen behaviour, the terms of the debate in the UK have changed markedly over the last 150 years. As the great Victorian civic infrastructure projects were implemented, there was a heated debate about the limits of state intervention. Much of this focused on the provision of public goods such as sewage services and clean water, which are now widely understood to be entirely appropriate for government action.

The recent focus started to shift to more personal behaviours with the then hugely controversial Seatbelt Act in 1983, and the large-scale public health campaigns of the late 1980s, on topics such as drink driving and HIV/AIDS prevention.

Current debate is characterised by a focus on what was once thought to be intensely private. Behaviours in the home such as use of energy, eating habits and waste disposal are all under scrutiny, not only from government but also culturally, as illustrated by the rise of popular programmes such as *You are What you Eat* and *How Clean is Your House?*

Although government attempts to change public behaviour are nothing new, since 1997

Labour has explicitly made the case for interventions. Some of the more controversial of these include education of parents, antisocial behaviour orders and the ban on smoking public places.

Partnership

Interventions reflect a growing understanding that intractable policy problems cannot be solved by government alone. Citizens – along with the private sector – need to be engaged in partnership with government if policies are to be effective. This involves asking people to take greater social responsibility for their behaviour.

For example, national efforts to reduce CO₂ emissions rely heavily on individuals altering their transport patterns and domestic energy use. In health a sustainable and successful NHS depends on the health choices made by millions of individuals. There is evidence to show that small changes in lifestyle can have a substantial impact on health and longevity. One study found that if the government target of 70% of the population exercising for 150 minutes or more every week were met, sick days would be cut which among other benefits would save employers millions in lost productivity.

Policy is moving towards a sense of partnership between state and citizen which aims to ensure that people are empowered to solve problems themselves, and away from a situation in which decision are taken on our behalf. There is increasing evidence that engaging people in this way improves wellbeing (I. Halpern et al 2004), and that citizens themselves want to take more responsibility for their own behaviour in some areas.

Yet these attitudes tend to be somewhat contradictory. For example, while 89% of people agree that individuals are responsible for their own health, 75% think that the government should intervene to actively discourage people from putting their own health at risk. This tension sits at the heart of debates over behaviour change.

Debates about behaviour change need to be seen in the context of wider social uncertainty about the relationship between citizen and state. Low levels of public trust in government make it harder for the state to act effectively in controversial areas. If they were framed in a way that helped to develop a common approach to joint problems, behavioural debates could be an opportunity to move towards a better relationship between government and people. But, if anything, public perceptions of state interference risk undermining trust further.

Behavioural interventions

So far not enough has been done to ensure that equity is central in behavioural interventions. One of the problems with a paradigm focusing on changing behaviour is that it runs the risk of framing public policy as a matter of individual failing and pathology and overlooks the structural barriers that can prevent people making the choices they might wish to make. A certain level of income or good health may be necessary to make effective choices.

Specific interventions may increase inequality. For instance, all current models of carbon taxation find that without compensation (which is often inefficient to administer) the poorest 20% of the lowest decile of households would be net losers (2. Dresner 2006). Targeting the behaviour of particular groups can lead to increased social exclusion. There is evidence that the public debate about asbos has led to many young people feeling marginalised and vulnerable, not just those who have been given asbos.

There is also a danger that the sheer number of emerging initiatives may make people in particular communities feel even less able to do things for themselves, rather than being empowering. Initiatives very often focus on the

same people and their health, environmental, welfare and crime behaviours. More initiatives are targeted at poorer groups than at the well-off. The instruments used to change behaviours among these groups tend to be harsher for example using fines and conditionality rather than information.

The class skew of particular behaviour means that in the debate over rights and responsibility, richer people are not thought to need encouragement to develop social responsibility in the same way as poorer groups. Yet it is the better off who have a disproportionate impact on CO₂ emissions, for example.

The government does not act alone

Behaviour is extremely complex and results from multiple individual, social and environmental factors. The government only plays a small part in this process and in itself is not monolithic. Different departments act on different imperatives, and may produce conflicting policy/ Local government sets the scene for much of the behaviour under discussion here, particularly environmental, for example by encouraging recycling. The traditional state instruments of sanctions information and incentives undoubtedly influence behaviour both directly and indirectly though their contribution to wider social norms. Yet the media, private sector and voluntary sector all play their part in the development of norms and availability of choices.

The private sector has a particularly important role in influencing behaviour. Advertising and marketing can be very influential in changing social norms, and the private sector's spending on advertising dwarfs the amount government spending. The private sector also impacts on the environment in terms of which choices are made, by influencing social norms, and by the provision of goods and services that set particular standards - such as the amount of salt in food. The government needs to balance the needs of a prosperous economy today with the implication to public health or environmental goals. This can make managing the role of the private sector challenging - say where a particular industry

From the public to the private sphere

chimes with public opinion. For example there is some evidence to show that higher taxation on alcohol reduces consumption. For political reasons, however, this is not a policy option; both the alcohol industry and public opinion are very opposed to higher taxes on alcohol.

Miranda Lewis has written States of Reason.

Freedom, responsibility and the governing of behaviour change, £11.95 IPPR, 2007

www.ippr.org, and is a former associate director at the Institute for Public Policy Research

1. Halpern, D et al. (2004) Responsibility and changing behaviour: the state of knowledge and its implications for public policy, Prime Minister's Strategy Unit, Cabinet Office

2. Dresner, S. Fiscal incentives to reduce environmental resources use, IPPR research seminar, May 2006



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