**Regulators Forum – Calibrating Enforcement**

Professional regulators are faced with the continuous challenges of achieving a degree of consistency in decision-making and of ensuring that regulatory objectives are re- assessed in the light of public expectations and professional norms. This requires an engagement of both public and professional views in an area where traditional consultation methods have received only very little interest. There is therefore a need to establish different forms of communication to establish what contemporary ideas about appropriate professional conduct might be.

This general set of challenges requires professional regulators to consider a range of methods to engage with public and professional audiences, ranging from online surveys, twitter polls and project websites that are sent to regulated firms, and public meetings. The importance here is to ensure that there is a good representation from different parties: different responses offer regulators a platform to consider what kind of justifications drive decision-making.

One regulator conducted one such extensive exercise, involving over 5,000 respondents across live events, online survey, twitter poll and postcard campaigns. One of the key aspects of this exercise was to gauge whether professional views coincided (or not) with those of the public when it came to different types of misconduct. The exercise included a set of vignettes, ranging from the misuse of client's money, private misconduct (such as fare dodging) and embarrassment and lack of confidentiality in handling clients' information. The key interest was in understanding how seriously different audiences regarded such incidents.

The results of this exercise showed that there was broad agreement between public and professional views when it came to understanding the seriousness of particular types of misconduct. However, at the same time, respondents that were from outside the profession regarded certain types of misconduct as more serious than professional respondents. This applied in particular to questions of competence and maintaining information security and confidentiality.

There was also a slight generational difference, with younger respondents being more lenient when it came to misconduct due to performance pressures, such as demands from superiors or behaviours that could be regarded as attempts at 'doing well'. There was also a pattern that public expectations were more 'forgiving', if there was no financial harm to clients.

Such kinds of exercise offer insights into wider reviews of enforcement practices as well as an updating of professional Codes of Conduct. They suggest that intent and harm caused do matter to the wider public and the profession.

There was a general tendency that certain rules were generated to address a particular incident, only for this rule then to be ignored. Instead, an exercise which drew in public and professional views allowed a conversation about how enforcement should be practised. Where Codes of

Conduct were broadly high level, such kinds of exercises could inform how and why certain rules were applicable and therefore maintain public confidence in the profession.

There was also the question as to what the purpose of such Codes were – whether they were to ensure justice when something went wrong, or whether they were primarily about deterring malpractice. In many ways, such an exercise could offer both, as ultimately all carrots needed some degree of 'stick' to be accepted. At the same time, it was important to view differences between professions – in some cases, harm done was irreversible (leading, for example, to death of patients), in other areas, malpractice would not lead to irreversible physical harm. Such differences had implications for the way in which process regulation was being conceived.

More generally, engagement processes that built on social media and live events offered the opportunity to raise the awareness among the profession and the wider public that the regulator's job was not straightforward: it suggested that the job inherently required value judgements and that the main objective was to enhance consistency. Such exercises showed that regulators did not make arbitrary decisions but were seeking to make balanced judgements.

It was also evident that individual respondents from the professions were more likely to remember the examples and the subsequent discussion of the results rather than particular aspects of individual Codes of Conduct. It was also interesting to note which areas attracted most debate and what different audiences thought about what was required to be doing 'the job properly'. Furthermore, there was an advantage that such exercises could get 'board buy-in' as well as broader commitment from a regulator, especially where one could not publish the reasons behind an individual decision but only be transparent about the overall approach. The timing of such an exercise was also critical, it could support the ambition of a new organisational leadership to show that it was in 'listening mode'.

More generally, there was a question about how such exercises could feed into wider regulatory approaches, especially differences in regimes facilitating entry into the profession and regimes that controlled conduct of those within the profession. There was always a question as to why these two regimes differed. The question of controlling those in the profession became more and more important as there was a need to maintain public confidence. It also meant that there was an enhanced debate about a 'risk-based' approach: such an approach assumed that harmful things would happen in the future. However, often there was not necessarily agreement about what the 'harm' was in terms of a) whether it was a bad thing and b) how serious it was.

ML
July 2016