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The Regulators, the Public and the Media

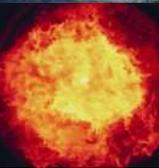
A seminar to discuss the findings of the ESRC-funded project

Public Understanding of Regimes of Risk Regulation

Tuesday 16th September 2008



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Programme

1pm: Lunch

2:00 pm: Peter Lunt: 'Introduction - Changing Regimes of Regulation'

2:20 pm: Sonia Livingstone: 'Regulated Subjects: citizens and consumers'

2:40 pm: Discussion

3pm: Tea

3:30 pm: Peter Lunt: 'Media Representations of the Regulators'

3:50 pm: Sonia Livingstone: 'The Public Understanding of Regulation'

4:10 pm: Discussion

4: 30 pm: Panel: 'The Relationship between Regulators and the Public'
Bridget Hutter (LSE), Kay Withers (IPPR), David Walker (The Guardian)

5pm: Drinks



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The Project

- Context: changing risk, changing regulation, new regulators, growing role (responsibility, empowerment) for the public
- Two parallel case studies, financial services sector (FSA) and communications sector (Ofcom)
- Stage 1: analysis of policy and consultation documents and media coverage, to map how the regulators represent (imagine, inscribe, plan for) the public
- Stage 2: Interviews with key actors from a range of vantage points, primarily from the regulator and civil society
- Stage 3: A series of focus group discussions to explore public perceptions of and responses to changing risks and regulation



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Peter Lunt

Changing Regimes of Regulation



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Changing Regimes of Regulation

- Reasons for Regulatory Change
- Problems with Legacy regulators
 - Industry/government capture
 - Crises
 - Different bodies with different approaches
- Broader Changes
 - Globalization
 - Complexity of market/products
 - Individualization
 - Shift from collective to individual



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Changing Regime of Regulation

- New Regulators
 - Statutory footing
 - Privately funded public regulator
 - Cross sectoral reach
 - Standardization of approach
 - Principled risk-based regulators
 - Unitary body for firms/consumers
 - The global network of regulators



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Statutory Objectives

Ofcom's statutory duties

Communications Act 2003

3(1) It shall be the principal duty of Ofcom, in carrying out their functions;

- (a) to further the interests of citizens in relation to communications matters;
and
- (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition



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Statutory Objectives

**The FSA's statutory objectives
Financial Services and Markets Act 2000**

1. Market confidence: maintaining confidence in the financial system;
2. Public awareness: promoting public understanding of the financial system;
3. Consumer protection: securing the appropriate degree of protection for consumers; and
4. The reduction of financial crime: reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime.



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The changing nature of regulation

- A risk based approach to regulation
 - Risk to statutory objectives
 - Analyse market risk
 - Firms, products, market conditions
- From supervision to self-regulation
 - Data collection and analysis
- Integrated approach
 - Combining consumer and citizenship interests
- Accountable/transparent
 - Select committee, panels
- Institutional public sphere



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Manifold Regulatory Activities

- Research
- Consultation
- Authorizing/licensing firms
- Self and Co- Regulation
- Consumer/Industry panels
- Risk analysis of Market/products
- Market intelligence
- Accountability
- Public/external relations
- Consumer education/literacy



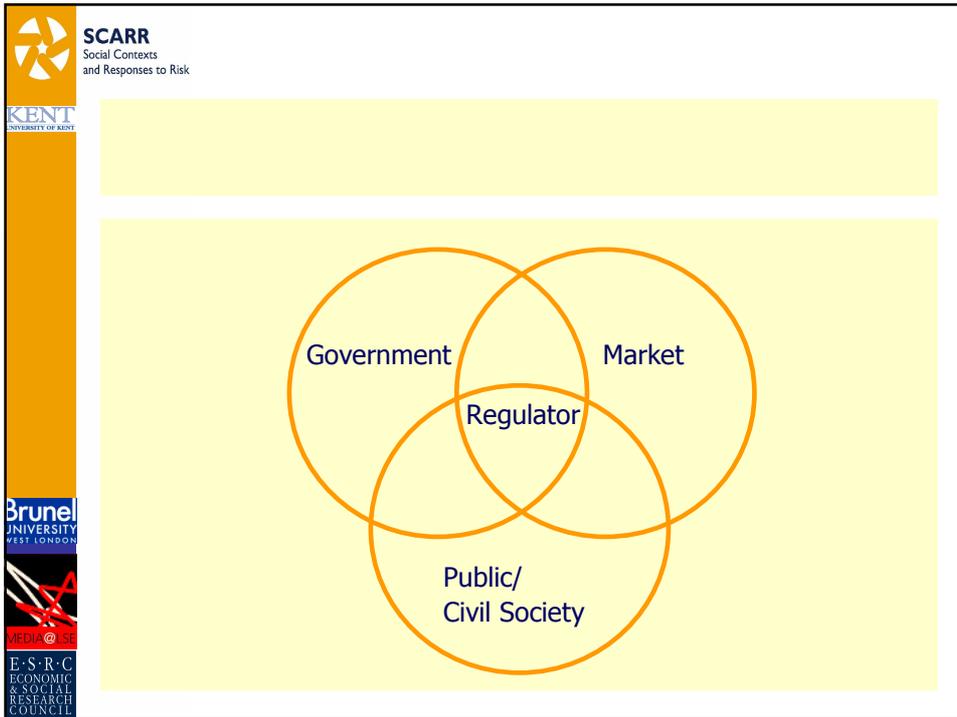
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Hybrid Regulators

- The locus of coordinated knowledge on markets, consumers, citizens, representative issues, policy
- The conduct of conduct
 - Business in the consumer interest
 - Consumer education
- Balancing competition and consumer policy
 - Although priority given to economic regulation
- Connection with and Representation of publics
 - Information/education; panels and representatives, research, internal dialogue, assumptions of self regulation and conduct of business
- The locus of public discussion and debate
 - Consultation and pre-consultation
 - Workshops/meetings/speeches
 - Research consultancy



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- ## Alternative Explanations
- Reflexive Modernity
 - Institutional Individualization
 - Governmentality
 - Dispersal of power
 - The conduct of conduct
 - Training and instruction
 - State Theory
 - Denationalisation - quasi state body linked to international networks of regulators
 - Contracting out the functions of the state
 - Public Sphere Theory Civil Society
 - Elite vs participatory democracy
 - Citizen rights or consumer rights (public or market)
 - Free market or modified welfare state
 - Systems Theory: Coordination of sub systems
 - Politics, economy, public


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Sonia Livingstone

Regulated Subjects: Citizens and Consumers


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Regulated subjects: citizens and consumers

- The public: from the implied audience/user to the implied subject of regulation
- Lots of concepts embedded in regulation that suggest an implied, even an ideal subject – good behaviour, rational choices, informed decisions
- A well-behaved, literate public can lessen the need for regulation

A financially literate workforce contributes to a more globally competitive and growth-oriented economy... A skilled and financially literate society able to make its own informed choices will ease the pressure on government to regulate (Anstee, CEO ICAEW)

If people can take greater personal responsibility for what they watch and listen to, that will in itself lessen the need for regulatory intervention (Jowell, Sec. of State)

Today our viewers and listeners are far more empowered. Digital television, the internet and increasingly broadband is putting more choice in the hands of the user. As a regulator, we will reflect that, welcome and encourage it. There can no longer be a place for a regulator ... determining what people 'ought' to have (Carter, Ofcom CEO)



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New discourses of the public's role

Consider 'literacy' . . . A UK press search (Jan-Feb 2007):

- 243 references to print literacy (itself something of a crisis ...)
- 15 references to financial literacy
- 5 for scientific literacy
- 4 each for ICT/computer literacy and emotional literacy
- 2 each for spatial literacy and Gaelic literacy
- 1 each for political literacy, technical literacy, film literacy, media literacy, Catalan literacy and theological literacy
- Add - ethical literacy, environmental literacy, health literacy, information literacy, critical literacy
- But people (like the market) are less than perfect, how should regulation address them?
- In financial services, controversy concerns welfare
- In communications, controversy concerns citizenship
- Back story to the Communication Act 2003 . . .

Ofcom exists to further the interests of citizen-consumers through a regulatory regime which, where appropriate, encourages competition



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A debate in Parliament

- *Draft Communications Bill (May 2002)*
Part 1: Functions of Ofcom – Clause 3
3(1) (a) to further the interests of the persons who are **customers** for the services and facilities in relation to which Ofcom have functions
- *Joint Select Committee (July 2002)*
Ofcom should have two principal duties – to further the interests of **citizens** and of **consumers**
- *DTI/DCMS note on terminology*

| Consumer interest | Citizen interest |
|--------------------------|-------------------------|
| Economic focus | Cultural focus |
| Networks and services | Content |
| Individuals | Community |
| Consumer Panel | Content Board |
| (Legacy – Oftel) | (Legacy – ITC, BSC) |

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- The Communications Bill (Nov 2002)*

Clause 3 (General duties of Ofcom):

(a) to further the interests of **consumers** in relevant markets, where appropriate by promoting competition
- The Lords' debate (June 2003)*

My Lords, I do not wish to quibble with the Minister over words. However, the word "citizen" can define both the individual and the collective—whereas the phrase "community as a whole" could simply be a majority of the collective. They are quite different, both in law and as far as concerns Parliament. (Puttnam)
- The Communications Act (July 2003)*

Clause 3:

3(1) It shall be the principal duty of Ofcom, in carrying out their functions;

(a) to further the interests of **citizens** in relation to communications matters; and

(b) to further the interests of **consumers** in relevant markets, where appropriate by promoting competition.

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The citizen-consumer

- Ofcom is displeased, and so reframes the Act

You may well have noticed that the careful balance established in the Communications Bill between the duties to **citizens** and those to **consumers** has been upset by a recent House of Lords amendment ... that requires Ofcom to give paramountcy to the **citizen** in all matters ... This late change... seems to us to be unfortunate. (Lord Currie)
- Hyphenated mission - or citizens 'n' consumers solution - two sides of the same coin (and promoting market competition as way of advancing **both** interests)

We are all of us both citizens and consumers... To attempt to separate them or rank them would be both artificial and wrong (Carter)

If it wasn't in the Act, the citizen-consumer language... we might decide that it wasn't terribly useful (Meek)
- Is the citizen interest in media and communications distinct and important?

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Citizens vs. consumers

| | |
|--|--|
| <p><u>Consumer rationale</u></p> <ul style="list-style-type: none"> Wants Individual level Private benefits Language of choice Short-term focus Regulate against detriment Plan to roll back regulation | <p><u>Citizen rationale</u></p> <ul style="list-style-type: none"> Needs Social level Public/social benefits Language of rights (and equality/inclusion) Long-term focus Regulate for public interest Regulation required to correct market failure |
|--|--|

The continuing lack of recognition of 'citizens' and the public interest in broadcasting is, sadly, symbolic of a piece of legislation almost wholly concerned with the interests of commerce (Hay, VLV)

This is more than a matter of semantics (Lord Puttnam)

At the very heart of Ofcom is the duality of the citizen and the consumer (Richards)

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From principles to practice

Taking account of consumer and citizen interests

Ofcom has a principal duty to further the interests of both citizens and consumers.

| | | |
|--|--|--|
| Planning | Projects | Communication |
| <p>Aim: To develop a framework which Ofcom can use to prioritise and plan its consumer policy programme of work and respond appropriately to consumer interest related demands</p> | <p>Aim: To develop a consistent and coherent framework to ensure citizen and consumer interests are taken into account appropriately throughout Ofcom's policy and decision making processes</p> | <p>Aim: To ensure we articulate and communicate our decisions in a way that allows consumers to understand our decisions and explains what the outcomes are for citizens and consumers</p> |

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A belated consultation

- Why? Transparency, response to critics
- Convergence polarises citizen and consumer interests (e.g. PSB, internet regulation, USO for broadband)
- Citizen interests: PSB, plurality, standards, access/inclusion, literacy, privacy
- But retains a romance of the market, and a struggle to grasp the public sphere
- Does recognise tensions and overlaps (Act demands transparency in resolution)
- But technologically determinist (what does mobile/DTV do, not what do citizens need?)
- How should citizens and civil society respond?

The fact that we have not published an equivalent statement on citizens has led some stakeholders to suggest that Ofcom lacks commitment in discharging its responsibilities in this area (Ofcom, 2008)

We tend to think of a market as a vibrant, enticing place where consumers interact, but there is not an equivalent metaphor for the way that citizens interact in civil society (Ofcom, 2008)



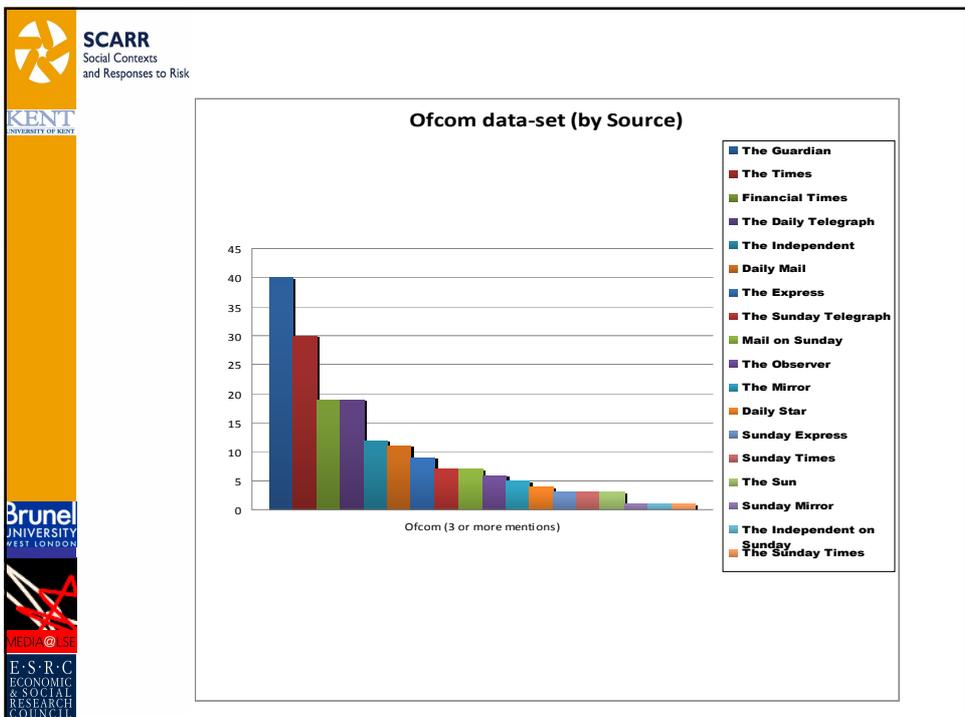
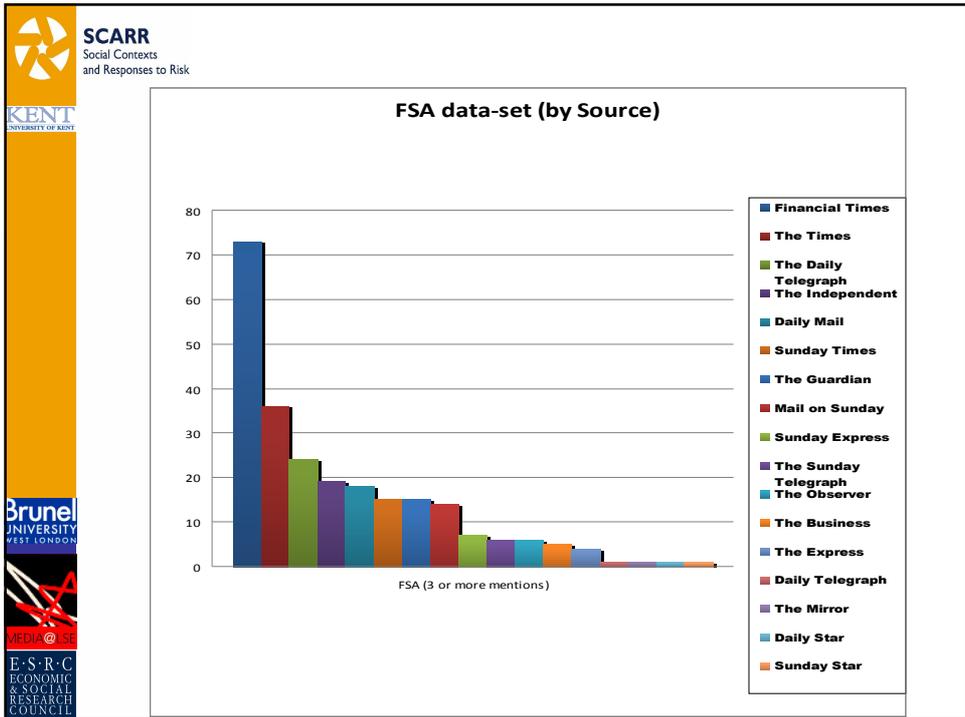
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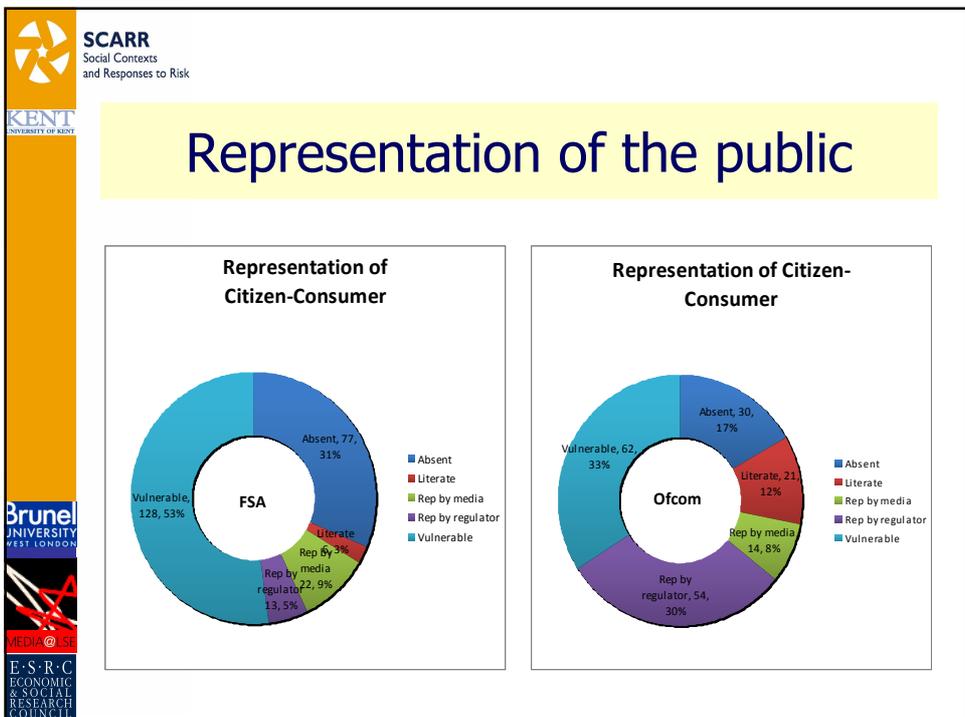
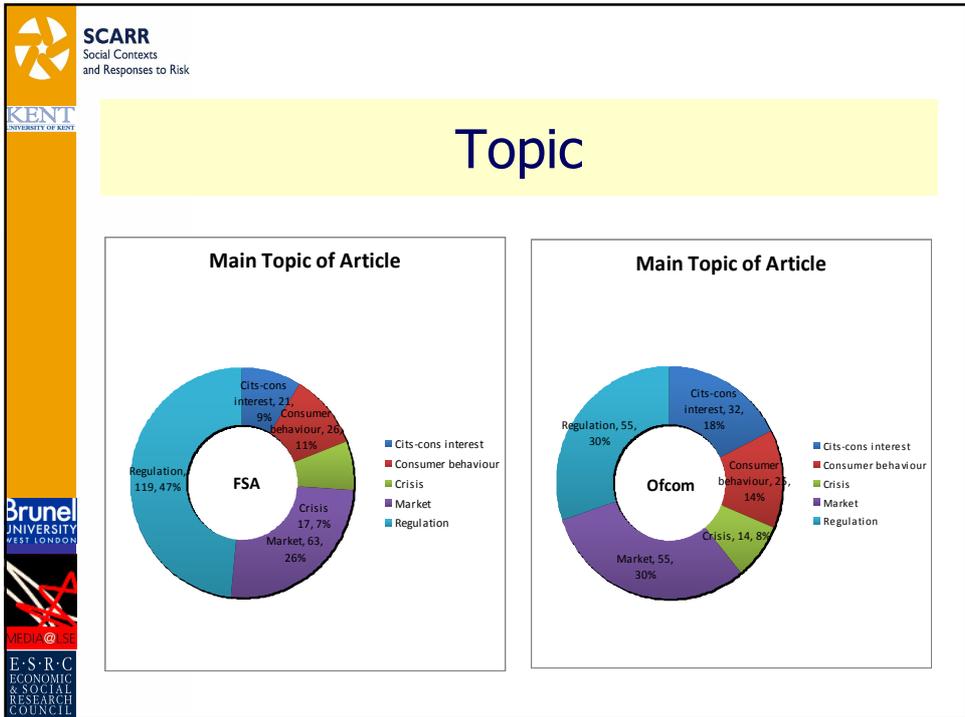


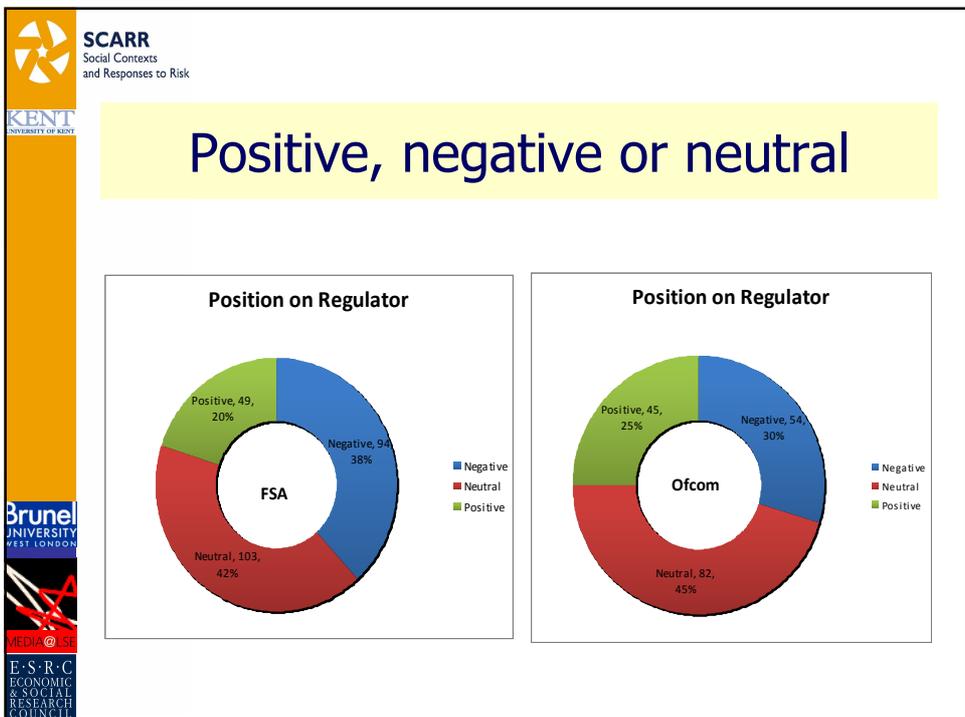
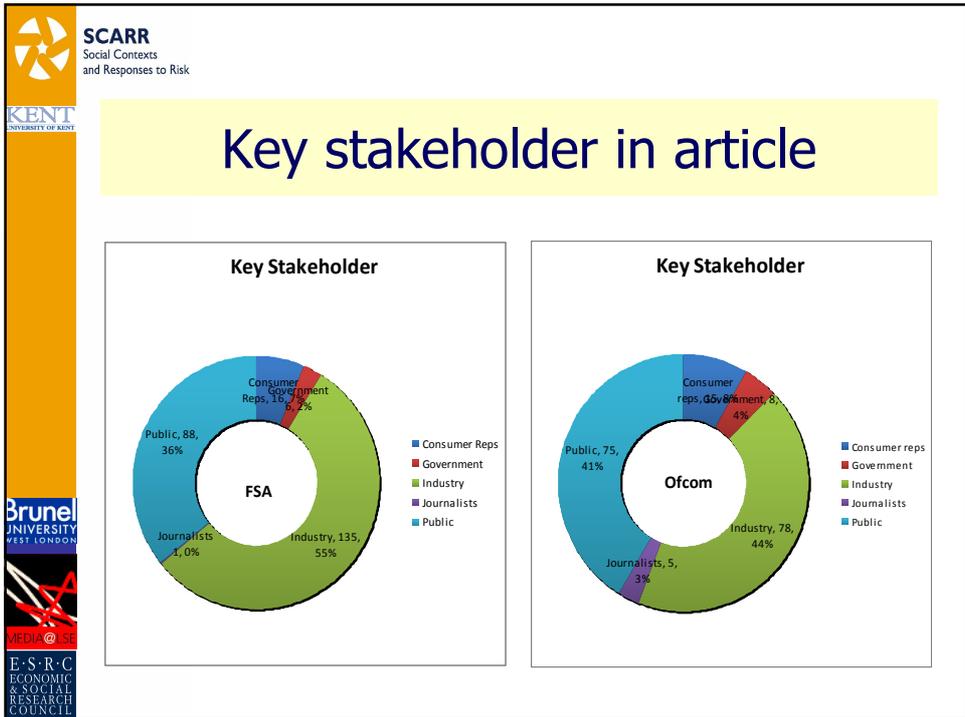



Peter Lunt

Media Representations of the Regulators









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Public announcement with a twist

- Financial Times, February 3, 2007 Saturday, FT MONEY.
- “Thousands of customers could find themselves in illegal schemes”
- The apparent announcement is used as a vehicle for criticism of the regulator
 - The **regulatory burden** is too high
 - The approval process is too lengthy
 - Capitalisation rules
 - The introduction of regulation will have **negative market impact**
 - Reducing variety and flexibility of products and services
 - Driving small firms out of the market
 - A sense of **panic** is introduced
 - The changes are imminent, firms will not be registered, it won't be possible to transfer



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Tabloid tales

- Clarkson Lambasts the FSA
 - Save and Lose the Shirt of Your Back*
 - Sunday Times, 4th Feb 2007
 - Regulators are prophets of doom
 - In order to justify regulation
 - They make problematic assumptions about consumers and the market doesn't protect the consumer
 - Investment products bring risk and low returns
 - The regulator points the finger of blame at the consumer rather than the industry



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Public Information: The Press Disseminates for the Regulator

- Stephen Womack, Mail on Sunday, Feb 18th, 2007
FSA Consumer Education work conducted by Pfeg
 - Enhancing financial literacy
 - Links with industry partners (HSBC, Standard Life)
- Andrew Mourant, Guardian, may 22, 2007
Interview with Robin Blake of Ofcom
 - Literacy for consumer and citizen
- Only question: is this too much for the regulators?






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Advertising to Children

- The Times, Feb 23rd, 2007
Agrees with Ofcom's analysis of the problem
 - Ofcom research
 - Moderate effects
 - Advertisers use a range of sophisticated marketing methods aimed at children
- Concerns about Ofcom's handling of the ban on advertising
 - The intervention too complex
 - Firms can advertise their brand if not their products
 - Ofcom's approach to identifying banned food products problematic – leading to anomalies (raisins and white bread)
 - No evidence of regulatory effectiveness
 - Parental regulation







Research and technology

- Jack Schofield

DAB standard adopted in the UK inferior to DAB2
Ofcom response reported as

- Consumer Research demonstrating high levels of satisfaction with Dab sets and service

Schofield replies

- Comparisons not valid – DAB radios small, many are mono, better than transistor radios
- DAB does reduce hiss but not high quality audio reproduction

Illustrates the use of research to support Ofcom's policy position rather than as an independent fair test



Other issues

- Regulatory Creep

- Regulatory Disclosure

- Taste and Decency

Celebrity Big Brother

Political Correctness

- Clarkson, Ofcom the taste police

Family Parenting Institute

- Ofcom vs the BBC

Restrictions on iPlayer

Public service review

- Mergers

Articles on media ownership and acquisitions

- BSyB's purchase of 17.9% stake in ITV

- Crisis: The Credit Crunch



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Themes of media analysis

- Different positions taken on regulation
 - Responsible Journalism
 - Dissemination, Literacy
 - The Consumer Champion
 - Anti Regulation in Principle
 - Freedom --- Market
- Comparison of two regulators
 - FSA = risk, consumer, technical
 - Ofcom = value, citizen, taste/preferences
- What's Missing
 - Government
 - Governance
 - Citizen Issues
 - Broader context of regulation
 - Globalization
 - International regulators

Critical Discussion of models of Regulation



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Sonia Livingstone

The Public Understanding of Regulation

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The role of the public in regulation

- How do members of the public understand matters of risk and regulation in their daily lives? Perhaps an unexpected question . . .
- As consumers, do people feel empowered (informed, literate) to exercise personal choice and take responsibility in relation to complex and risky decisions?
- As citizens, are people aware of changing relations between government, regulators, commerce and the public? Including public-facing regulators?
- The public's understanding of regulation is important in evaluating the accountability, legitimacy and effectiveness of the new regulators

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Focus groups

16 focus groups
(116 people)

| Location | Demographic | Number (gender) |
|------------|----------------------|-----------------|
| Eastleigh | AB New Earners | 3 m; 4 f |
| Eastleigh | AB New Families | 4 m; 3 f |
| Leicester | C2D New Families | 5 m; 3 f |
| Leicester | AB Recently Retired | 4 m; 4 f |
| Harlow | C2D New Earners | 3 m; 2 f |
| Harlow | C2D New Families | 4 m; 4 f |
| Barnet | AB Midlifers | 4 m; 3 f |
| Barnet | AB Recently Retired | 5 m; 3 f |
| Lewisham | AB New Earners | 5 m; 3 f |
| Lewisham | C2D New Earners | 1 m; 7 f |
| Chelmsford | AB New Families | 4 m; 4 f |
| Chelmsford | C2D Midlifers | 4 m; 4 f |
| Swindon | C2D Midlifers | 2 m; 4 f |
| Swindon | C2D Recently Retired | 2 m; 4 f |
| Brighton | AB Midlifers | 5 m; 3 f |
| Brighton | C2D Recently Retired | 3 m; 3 f |

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What do rules and regulations mean to you? What comes to mind when I say 'regulation'?

- Frustration, concern, scepticism
- Plentiful examples from workplace, employment law, education, protection of rights (e.g. disability), control of public behaviour (parking, smoking)
- Ready awareness of institutions (planning, refuse collection, immigration office, council)
- Awareness of sources of change (Brussels, political correctness, bureaucrats, regulation creep)
- Diverse views regarding personal vs. managed choices (e.g. parenting)

Health and safety was a bugbear for me at work because they suddenly came in like a latter day Spanish Inquisition. They'd been given a certain level of power and, like football referees, they were not allowed to use common sense.

I think that people in Brussels, or in the government, and local government are all just making up rules and regulations... because they are paid to make up rules and regulations.

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Concerns about regulatory practice

- Too much regulation, too complex and in the wrong places
- Burden of negotiating intractable systems
- Regulation is ineffective – silly, petty, nutty, fails ordinary consumers in practice
- Lack of legitimacy
 - in whose interest? 'us' and 'them'
 - work experience undermines trust
 - lack of (interest in) engagement
 - regulation should offer consumer protection, esp. for vulnerable

I think the whole thing of striking a balance between what is logical and sensible, instead of what has become an absolute mass of rules and regulations... So the whole pendulum has really swung too much...it's like we are all treated as if we are idiots.

There is no incentive though, is there, to help yourself? You just don't know because it is too complicated. The tax credit people say one thing and then you ring them up and they say something else. It's just too complicated half the time and I think they rely on that, people thinking oh, I can't be bothered because it's too much hassle.

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What kind of society do we live in?

- Support regulation for social cohesion
 - but then process should be public,
 - in the public interest, enforceable,
 - by elected representatives (cf. law)
- But doubts about society's direction
 - surveillance
 - loss of common sense
 - red tape, nanny state, targets
- For social order, must ground rules in lifeworld, not impose from on high (else lack of trust in institutions)
- Rights detached from responsibilities
- Scepticism based in personal experience and tabloid media

I think that rules and regulations are a positive thing because it keeps everyone together. It helps us follow what we're going to do and stops people from straying. I think it's a good thing for society to keep everyone together.

Going back, the rules of life were learnt from the moment you were born from your parents.... These are common sense ways of behaving in life really, and because they are bringing in so many rules and regulations, adults are sort of losing that responsibility.



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Communications and financial services regulation compared

- Financial risks generate huge concern, individuals seen as very exposed
- People become aware of the FSA mainly in a crisis context
- Financial issues typify 'the problem with regulation' (but if regulator acts, it's seen as more regulation)
- Communication regulation more a public policy issue (privacy, libel, advertising, children)
- Industry seen as both over-regulated and that regulation 'lacks teeth'
- Aware of regulator if regulated workplace, consumer problem, media coverage

- Well, I think they should be made to regulate themselves. There should be somebody making them do it, not just that they think ... you know, well sorry, it didn't perform.

- Financial Services something is supposed to regulate but they've got no teeth, have they?

- I think it's us that have a problem with the media; other countries have media that is not regulated anywhere near as much as ours?

- In terms of content? (Interviewer)

- Yeah, but they certainly don't print the rubbish that ours do; it's just not wanted.'



Conclusions I

- People have strong principles about regulation, grounded in experience
- They understand that regulation balances self-regulation by firms and individual responsibility but fear the burden on individuals is too great
- They support regulation in principle but are very critical of the practice – unaccountable, not in the public interest, far from common sense
- People are comfortable being a consumer, though critical of how consumer needs are met; little expectation of engaging as a citizen
- Yet, contemporary problems of trust, legitimation, participation and self-efficacy apply as much to regulation as other domains of public life – ‘us’ and ‘them’
- Considerable dissent, depending on background but a shared agenda of dilemmas/concerns
- And a shared repertoire of anecdotes and experiences which show regulation to be misguided or intrusive, while the ‘real’ problems of society are ignored



Conclusions II

- Paradoxes in public understanding
 - endorse personal responsibility, but want protection and back up
 - want more choice but struggle to understand complex decisions
 - want individual responsibility but prefer to trust ‘old-style’ regulators
 - worry about the vulnerable but resent intrusive regulation
 - say they are not listened to, but ignore opportunity to engage, consult, complain
- Also lots of confusions
 - legal/regulatory systems, relation between UK and EC, facts and anecdotes
 - cf. importance especially of the tabloid press
- Also some silences, absences
 - relation of regulators to the market
 - consumer-facing work of the regulators
 - possibilities for consumer/citizen representation
- The task remains for the regulators in raising public understanding and managing public expectations



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Panel Discussion

'The Relationship between Regulators and the Public'

- **Bridget Hutter**
Professor of Risk Regulation, LSE, and Director of the ESRC Centre for Risk and Regulation (CARR)
- **Kay Withers**
Research Fellow in the Institute of Public Policy Research's Strategic Research Team, IPPR
- **David Walker**
Editor of 'Public' (*The Guardian*) and Managing Director of Communications and Public Reporting at the Audit Commission



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Thank you!

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