

# Regulatory crisis

**Bridget Hutter** and **Sally Lloyd-Bostock** explore how disasters, crises and regulation interrelate

Disasters and crises can undoubtedly have major regulatory impact, in both the immediate and the longer term, especially in a world where regulators have become useful targets of blame when things go wrong. But the interrelationships are extremely complicated. By no means do all disasters become crises for regulators responsible for the area in which a disaster occurs. Not all disasters lead to regulatory challenge let alone reform. Furthermore, agendas and interpretations shift as disasters unfold, and regulators themselves become players shaping the trajectory of a wider crisis or disaster. Interpreting and responding to disasters and crises is fluid, embedded in social environments, and open to multiple influences, some not readily visible. 'Regulatory crisis' provides a conceptual tool for interrogating these interrelationships. Looking at regulatory crisis as a phenomenon in its own right we can ask what leads to the construction of a risk event as critical for regulation? We can start to disentangle the variety of factors and processes which determine how major crises and disasters may or may not challenge and reshape regulation and the role played by regulation and regulatory agencies in disaster scenarios.

In our book, *Regulatory Crisis: negotiating the consequences of risk, disasters and crises*, a detailed examination of selected cases helps us to examine some of the factors that contribute to, and shape, regulatory crises following major risk events. Case histories illustrate the varied forms such crises can take, but also highlight characteristics that are shared across very different cases and regulatory contexts. They show how features of a regulatory organization, its relationships with other organizations, and the broader environments within which it operates, can combine to create a crisis for regulators. Close analysis challenges some current ideas about risk and disaster. It reveals that failure to manage risks may not be central or even neces-

sary for a regulatory crisis to emerge from a disaster, and that the impacts for the regulator can take on a life detached from the precipitating disaster. Competition to control interpretations and narratives has growing influence as time goes on, and this is reflected in formal sense making. The eventual impacts of disasters on regulation can be very loosely connected to the original risk event, with potential implications for learning from risk events.

The case of Dr Shipman illustrates some of these points. Shipman was a UK general practitioner who murdered a large number of patients in his care between 1974 when he entered practice and 1998 when he was finally exposed. The case became a regulatory crisis for the General Medical Council (GMC). Once Shipman was exposed the spotlight was quickly turned onto the GMC as the regulator of the medical profession with responsibility for ensuring that doctors registered to practice were fit to do so. However, failure to ensure that Shipman was 'fit to practise' does not emerge as the main reason for the regulatory crisis for the GMC. Rather, the case became a focusing event for a long-standing 'crisis by ignorance' as the GMC failed to satisfy persistent calls for adaptation. The GMC had increasingly been criticized as over-protective of doctors and had been operating in a climate of growing dissatisfaction for some years. Extensive reforms had been proposed but progress on them was perceived to be slow. 'Use' of the crisis to forward a

reform agenda put into circulation a narrative blaming the GMC. Indeed, the eventual Shipman Inquiry exonerated the GMC from blame – but nonetheless criticized the GMC strongly and at length.

The eruption of the Icelandic volcano Eyjafjallajökull in April 2010 illustrates the role of regulation itself in the genesis and course of a regulatory

crisis, and the way in which international regulatory networks can tie the hands of a national regulator such as the UK Civil

Aviation Authority (CAA). The prescriptions of regulation had enormous consequences for the aviation industry, leading to closures of airspace across the UK and most of Europe, with huge and mounting economic impact. The harm was financial rather than physical. The

Eyjafjallajökull eruption had contaminated some of busiest airspace in the world during a peak holiday period, and the ash cloud was predicted to linger. Diverting around it (the response envisaged by international aviation regulation) was not an option. The crisis was fuelled by interest group activity and the production pressure to resume flying became extremely high. This meant recasting the risk as the regulators' precautionary stance rather than as a safety issue. The event tested the existing regulatory approach to breaking point and gave rise to a second-order crisis – a crisis of regulation. But we also see how the regulatory crisis was minimized by the response of the regulator and how blaming of a regulator can fizzle out. The CAA became the target of direct and vigorous blame in the media, but the case illustrates how blaming is used as a tool to promote particular interests, dropping out of use when pursuit of those interests dies down. Skilful handling of the crisis by the regulator was also evident. Senior members of the CAA with a background in aircraft engineering were actively coordinating and working with others they had identified as interested parties to explore the possibilities for agreement on a less precautionary response. They managed their public profile and relationships with government, avoiding long-term fallout, containing the crisis, and eventually restoring their legitimacy.

Our cases underline the importance of regulators being flexible and responsive and remaining sensitive to their environments. Contemporary societies nourish expectations that regulatory authorities should be able to

anticipate and control risks and have in place plans should they fail. The cases show how malleable these expectations are. The way they play out in a particular case depends on the particular regulatory climate and the vulnerability of regulators to reputational damage and blame. We also need to understand how chance and opportunism play a role in crisis trajectories, especially in long-lasting crises. The relationship between regulation and governments can be crucial. For example, the financial crisis of 2007 and the BSE crisis highlight the vulnerability of regulators following a change of government. Governments have the power to give and to take away. They can create and abolish regulatory agencies and change their resources. Disasters can become opportunities for governments to initiate change for political reasons. Conversely, the 7/7 London bombings illustrate how a regulatory crisis can lead to government protection of the regulator (in this case MI5) and to increased resources.

Rationales for reform might lead us to question how well adapted regulatory regimes are to controlling risks. The construction of a risk event as critical for regulation implies a disruption beyond the sensibilities of existing regulation – a disruption that reveals the limits of regulatory anticipation and management. Through the lens of disasters we can learn more about risk regulation, and the boundaries of regulation and risk management.

This article is based on Bridget Hutter and Sally Lloyd-Bostock's book *Regulatory Crisis: negotiating the consequences of risk, disasters and crises*, Cambridge University Press, May 2017.

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