

carr Regulators' Roundtable

Regulatory Transformation

The context of organisational change has the potential to fundamentally affect the way in which regulatory organisations operate and exercise their functions. Announcements regarding changing organisational boundaries, the creation of new or merged regulatory bodies, the articulation of additional or contrasting regulatory objectives can be highly disruptive in view of ongoing regulatory activities and relationships.

Regardless of whether such transformation processes are a result of internal organisational change processes or the response to government announcements, the challenge for any regulator in such a context is therefore to sustain organisational attention to key priorities whilst proactively developing the organisation. Core questions therefore include:

- How to sustain regulatory attention to core objectives in a context of announced but yet unspecified organisational change?
- How to develop an organisational core mission in view of wider political uncertainty about the direction of the regulated sector?
- What are some strategies for maintaining stakeholder relationships during regulatory change?
- How can regulators draw on experiences in other sectors to support processes of transformation?
- How can regulatory decision-making ensure the effective management of multiple objectives, such as growth and protective responsibilities?

There are a number of challenges in dealing with processes of regulatory transformation. One is managing the organisation itself. The second is the management of inter-agency relations in areas where boundaries are uncertain or contested. The third is the overall understanding of the policy universe in which regulatory change occurs.

In general, one of the key concerns is whether mergers and re-organisations are likely to succeed in achieving the desired effects in the first place. Most mergers in the private sector are said to be unsuccessful or require, at best, long-term adaptation processes. Expecting, therefore, that reorganisation in the public sector, and in regulation in particular, will lead to immediate success might be highly optimistic. Speaking 'truth to power' in terms of informing ministers that certain changes are unlikely to have a positive effect is an important part of organisational leadership. At the same time, such 'speaking' may also require more 'whispering'. Voicing one's opposition too strongly is likely to lead to further instability in terms of leadership replacement and wider staff departures.

One can distinguish a number of settings in which regulatory transformation occurs. One setting is the merger of a regulatory agency into a broader regulatory agency. The core question here becomes how the original core mission can be incorporated into the new and larger agency's remit and core mission. Where there is very little recognition, this will not only lead to a decline in attention to particular regulatory problems (and the subsequent emergence of blindspots), but also be very unsettling for the staff that is being transferred. An essential part of a transformation process in such cases is ensuring the recognition of the importance of the original remit and related regulatory activities. Equally, incorporating new duties into existing regulators might lead to considerable adaptation problems for existing staff.

A separate challenge is to deal with inter-organisational relations. Concerns about responsibilities are likely to emerge, including also differences between professional and statutory regulators. A further challenge is the context of scandal and crisis. Seeing colleagues in front of enquiries or featuring in radio or TV documentaries sends a chilling effect throughout the organisation.

A further challenge is to balance an initial mandate that might be informed by a particular crisis and that is oriented towards minimising risk with the need to reflect more recent governmental objectives, namely the encouragement of risk-taking to support economic growth. The challenge for any regulator is not necessarily to be bold, but to be prepared when

taking risks. In general, this relates to the question as to how leadership can transform an organisation that tends to err on the side of making Type 2 rather than Type 1 errors.

In such a context, a further question for the leadership is whether it has the courage to deprioritise certain political requests— a key function to acquire is to learn a ‘strategy putting aside’; by trying to respond to every request it is likely that further problems are generated. A context of regulatory transformation that encounters continuous demands from external audiences, especially from the elected government, to take on further tasks and objectives is highly problematic. Trying to address an ever-growing set of requests without sufficient resources is a recipe for inevitable disappointment. During such periods of agency creation or transformation, it is difficult to maintain a clear sense of priorities and to have a strategy to achieve them. The environment is usually highly volatile in view of political and stakeholder opposition. Aligning a regulatory strategy with the statutory framework and the available tools, plus having the appropriate information to support decision-making, is difficult. The ideal setting for a regulatory agency is likely to be one where the primary statutory framework is relatively short, allowing the agency to set out its priorities. Such a framework leaves room for more objectives in secondary legislation - with further guidance to be found in regulatory handbooks.

The challenge then is that, over time, there will be an inevitable layering of individual demands and objectives, leading to highly complex regulatory handbooks. In response, regulators need to find the resource to encourage regular ‘fridge cleaning’ exercises, requiring an active probing as to the relevance of particular guidance and activities. One potential side-effect of attempts at reducing guidance is the dependence on consultancy firms that offer regulated firms advice as to how to navigate regulatory requirements.

In other cases, the problem is not the core mission, but the ‘how’ an agency delivers on that core mission. Here transformation processes are required if the relationship between regulators and regulated bodies is seen to have become too close and familiar. Overall, though, the ‘capture’ question should not be ignored while the term itself might be unhelpful. Organisations should encourage a regular (annual) reflection as to whether the relationship with the regulated sector was too close or too distant. Being close to the sector in terms of information and communication was important. At the same time, not all ‘capture’ is relational and based on familiarity. There are also capture-type phenomena that emerge from structural path dependency.

Having a sense of the core mission and ensuring that there is a narrative that engages with staff is critical in times of transformation. Such change processes require a long-term perspective; for agencies to develop a clear identity involves a long-term process until staff are regarded as experts by the sector and the ministerial departments. It requires an understanding of 'success'; a prioritisation with 'outcomes' is problematic if taken too far. Results might not turn out to be very good, and it is not clear how much a regulator can effect outcomes directly and whether its impact is not too late or could be made visible.

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