

Taking Advice: the relationship of advice to the risk of non-compliance

John Brady

Anglia Ruskin University, Cambridge UK

Abstract

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The UK Hampton Report (2005) recommended that increased advice giving by regulators to regulatees would improve compliance; there was, Hampton argued, a 'need for advice'.

Conclusions:

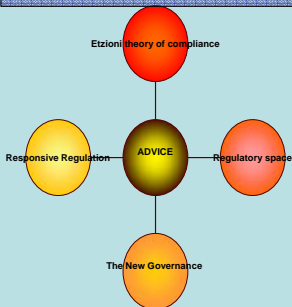
Advice is negotiated in normative and institutional frameworks. Advice is an opportunity for regulators to gain a deeper compliance, more flexible and focused on outcomes. To do this advice becomes a part of the methodology of compliance. The notion of 'quasi-control' is discussed locating advice alongside other regulatory controls.

Regulatees have to be equal partners and pro-active in the advice-giving problem solving process.

Methods:

1. Multi-disciplinary literature review
2. Case study of HFEA advice materials (Brady 2006)

Analysis



References

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For additional information please contact:
John Brady
Regulatory studies
Anglia Ruskin University
john.brady@anglia.ac.uk
Mobile: 07759816251
www.anglia.ac.uk/hsrceregulation

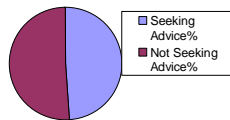
<http://myprofile.cos.com/brady33>

Regulators should give more and better advice!

- Hampton argues advice will give:
 - Better and more effective comprehension of regulations and data requirements
 - An increase in the probability of compliance
 - Enhancement in the achievement of regulatory outcomes (Hampton 2005 p. 5).

Does anyone want advice?

Businesses seeking advice



49% of businesses are seeking advice (especially on regulation).

- Most use accountants, or
- Consultants, Chambers of Commerce
- Fewer use government/regulator sources. Inconsistent and conflicting advice.

What is the problem?

- **Advice costs £1.4 billion – seen as a burden to business (Better Regulation Executive 2007b: p. 8)**
- **Regulators could help with better and clearer information**
- **Law and regulations difficult to understand**
- **Lack of understanding of process management and controls**

Deep problem

- Regulation is not working, command and control (CAC) criticised all round
- The growth of networks, the private and the public, governance rather than government
- Shallow instrumental compliance with rules
- Regulation should support improvement
- Regulatory sophistication promoting better outcomes for consumers

A multi-disciplinary review of advice.

The review concluded:

- ✓ Advice giving can be defined as promoting change and positive outcomes.
- ✓ The giving of information alone is unlikely to change behaviour.
- ✓ Affective and motivational factors also play a part.
- ✓ Advice taking leading to decisions might well be mediated through a number of 'advisors' including colleagues and families.
- ✓ Advice takes place in a social and normative context and may not be an event but a process.
- ✓ Advice most likely to change behaviour will probably have some face to face or personal contact element, in order to negotiate differences.
- ✓ Many potential psychological and group influences in advice process.
- ✓ Whilst advice might be disseminated to the individual the regulatory target is the changing of individual and organisational behaviour. This might better be achieved by designing advice to interact with organisational processes, institutional cultures and normative frameworks.

The experience of advice reflects decentred, networked, normative relationships.

Designing advice for compliance

Pre-conditions for compliance

Knowledge of the rules

Clarity – are the rules too complicated or expert.

Level of acceptance – are the regulations seen as reasonable?

Normative commitment by the target group (Organisation for Economic Co-operation and Development 2004: pg 36)

Management conditions for compliance

Technical ability to identify non-compliance within the business and relate regulatory requirements to their own business practice

Managerial motivation to identify and monitor non-compliance

Technical ability to identify necessary changes

Managerial ability, resources and motivation to implement the necessary changes

Managerial ability to review and monitor the necessary changes (Department of Trade and Industry 2006: p. 66)

Advice as a quasi-control

- Advice is not a cybernetic control. It does not have a director, a detector and an effector (Hood, et al. 2001: p. 24-27; Hood, et al. 1999: p. 45-46).
- Nevertheless, it is a form of control in that it alters the relationships necessary for the achievement of regulatory goals (Green and Welsh 1988: p. 295) .
- Working in institutional structures, networks and normative frameworks may enable deeper commitment in line with the Etzioni theory of compliance (Etzioni 1961). A move from coercion and instrumentality to normative adherence.

Conclusions

- Advice can be defined as a process of change however, it is apparent that the experience of advice might often mean that advice is less than effective.
- Regulators should embrace advice as a tool for improving compliance.
- Advice initiatives by regulators may benefit from an early design assumption on how the advice is communicated, how it is mediated and by whom, understanding that the experience of advice is more often than not with people rather than artefacts.
- The pro-active regulatee would be enabled to challenge the regulator rather than simply comply (comply or explain).
- If advice could produce a constructive non-compliance accelerating sectoral innovation and reform then it might also produce the enhanced compliance with regulatory objectives as argued by Hampton.