

KEYNOTE SPEECH TO CBR CONFERENCE

12th September 2007

Ladies and Gentlemen,

First let me offer my thanks to the CBR for offering me the privilege of delivering this closing speech but, more particularly, for organising the opportunity for us all to share such a rich and diverse mix of inputs and ideas around the matter of risk management.

I, for one, have found the proceedings extremely useful and stimulating and, standing as I am, between you and the end, I intend to keep my remarks short but, I hope, stimulating.

As one might expect in a community of experts, such as we have heard to today, there is an enormous consistency of viewpoint built on thoughtful study and practice.

The overall message is clear...zero risk tolerance is neither desirable nor achievable in regulatory practice.

Our politicians recognise that the first response call of the public for more regulation in the face of risk is rarely sustained once trade offs and costs are fully understood. They, along with all of us, lament the continuing purging of risks from our lives and potential stunting effect that this can have on the public's capacity to manage risk locally. They recognise, as we all do, that self-reliance, resilience and a spirit of adventure are more vital than ever to success in today's societies but are under threat from over zealous management of public risk.

And yet....

In the numerous instances that I have come across in my first 18 months of ineffective policy, unwelcome curtailment of civil liberties and excessive, unnecessary regulatory burden or 'red tape', virtually all can be traced back to the same root cause.....poor handling of public risk.

Somehow, the good intentions are routinely hijacked somewhere along the policy making road. Our statute book is crammed with regulation that has lost its way and we have, I fear, resigned ourselves to a policy making culture that we know to be flawed. We know we need change but we regard the change of such a culture as 'too difficult'.

We are busying ourselves with making the best of what we have got – the administrative burden simplification exercise is useful because it is reducing burdens and it is forcing officials to embrace the better regulation agenda but it is going to face an uphill battle in delivering on its targets unless we re-ask the questions 'what did we want to achieve with any given policy in the first place?' and 'how might we do that better?' time and time and time again.

We have become obsessed with regulation as burden. Yes, at times it is burden but, frequently, a far more pertinent question is 'why is this policy not working?' or 'was

it really necessary to ‘curtail civil liberties to the extent we have in tackling a given public risk?’

Is it worth bothering to ask these questions? Well maybe it is.

Today, we find ourselves, I believe, in the rare circumstance of having a Government that has been around long enough to become frustrated at the policy making culture that has spawned such a poorly crafted body of recent legislation but with a freshness of outlook in the new administration that potentially has the courage to try to change this culture.

It is therefore no coincidence that I have been gradually shifting the role of the Better Regulation Commission away from the theatre of administrative burdens and towards the more fundamental challenge of tackling the issue of policy making around public risk. This was the focus of our report published last October, ‘Risk, Responsibility and Regulation- Whose Risk Is It Anyway?’. It is also no coincidence that I am in discussions with the Government as to how we adapt our modus operandum to more effectively take our thinking, and indeed, a great deal of the thinking that we have heard hear today, and turn it into effective change and action.

So how might we do this?

Well I guess the place to start with any change programme is with a destination or in this case a ‘definition of a good risk-related policy process’.

I suspect that if we sat down and asked ourselves how we might define a good policy making process around public risk might then we may have different vocabularies but the broad shape would be very similar.

Just before I sat down to write this speech on the weekend, I read the commentary draft of a very good, synoptic report that will be issued by Ian Bartle and Peter Vass of Bath University on a Better Regulation Perspective of Climate Change and the Regulatory State.

In the opening pages, they transcend the battery of principles that surround most regulatory matters these days – including, of course, our own 5 principles of Better Regulation – to suggest five characteristics of a good risk management policy that in turn defines process, that of climate change in this case but which can, in my view, be usefully applied to all risks.

He points out that good policy needs to:

- First, reinforce a sound economy and fair, just society
- Be objective
- Be coherent
- Be based on sound science used wisely
- Finally, be supported by credible commitment

Let’s look at these by way of defining a state of grace before we consider that current reality.

The concept of a **sound economy and fair, just society** reminds us that we place a significant trust in politicians to maintain the balance between protecting citizens and maintaining freedom; between purging and preserving risk; building that resilience, self-reliance and spirit of adventure; building the capacity of the public to deliver personal and collective fulfilment but all the time ensuring that the vulnerable are not left exposed. Mindful always of these balances, we expect the Government to protect the public from harm and disadvantage from public risks of all shapes and form. We expect Ministers and officials to deliver on this undertaking under all circumstances – particularly in a crisis when they must resist the clamour of the scaremongers and stiffen the resolve of the timid.

We expect them to buy time before intervening in the complex economic and behavioural systems that characterise most public risk issues today. Time to really understand the ‘supply chain’ or systemic aspects of a risk, time to understand the real cost and influences of key factor, including externalities, and, finally, time to understand the complex impact of any intervention including consequent impacts and the dangers of unintended consequences.

Objectivity suggests a ‘disinterested state’, the acceptance of responsibility where that responsibility should be properly assumed and policies that are based on rigorous cost benefit analysis that is evidence based and recognises qualitative and quantitative factors, as well as monetary and non- monetary factors.

The ‘disinterested state’ concept, in other words one in which the regulatory state seeks to make decisions in the ‘public interest’ and not the interest of itself or other parties, requires a suppression, I would suggest, of the controlling instincts of government. It is never hard to find public voices that are pleading for more reduction of risk if you are looking for an excuse to intervene but good policy must be founded on a far more sophisticated and penetrating understanding of public perceptions and tolerances of risk.

Because the public, on the whole, understands risks far better that is generally given credit for. If a risk is well explained, in terms that can offer a relative as well an absolute expression, wherein the trade offs and costs are understood then the public is, on the whole, able to understand the nature and implications of any given risk.

And if the public understands a risk, can afford to mitigate the risk and is doing no harm to others then let’s leave the management of that risk to the public and move away from that principle with slowly and reluctantly. Let the Government be the last, not the first to accept responsibility for management of that risk.

But make that decision based on all the cost benefit facts, facts that give due consideration not just to the rational, logical considerations that are so important to policy making but also to the enormous body of behavioural and social science that can so usefully inform consideration of alternatives.

And so we move to Bartle and Vass’ third characteristic of good policy making – **coherence**. That all material considerations should be weighed and evaluated, that policies are integrated and complementary and that the state uses all options and arms of the regulatory state in a considered way, deploying independent regulators, for

example, beyond core statutory duties to influence attitudes and secure understanding as well as build consent and participation.

Such coherence of consideration and understanding is difficult to achieve without the **wise use of sound science**. This suggests the judicious application of the precautionary principle, particularly in relation to outcomes which are potentially avoidable and could be termed catastrophic if realised. It suggests that governments which have set up a due process to collect and evaluate the evidence must, in the end, make a firm policy decision based on the present, possible futures and their probabilities. Uncertainty must be converted into decision-making certainty based on exhaustive and authoritative gathering of the relevant data.

And all of this must be backed up by **credible commitment**. A commitment to tackle the issues in hand, protected from the vagaries of short term political considerations. A commitment to institutionalise processes that ensure ministers make the necessary decisions and stick with them. A commitment to learn and adapt as interventions into the complex world of public risk take beneficial effect and yield insights that offer the possibility of continuous improvement.

- Reinforcement of a sound economy and fair, just society
- Objectivity
- Coherence
- Sound science used wisely
- Credible commitment

Five characteristics that define a culture of policy making that we would reasonably expect to allow good intentions to deliver desired outcomes, even in the most complex situations, and even if it did not work out right first time but required a period of considered learning and adaptation. A culture that would reflect with enormous distinction upon the offices of policy makers. A culture that would enjoy the trust of the public in its Government to manage risk on its behalf.

Is that the current reality?

No, the worlds could not be farther apart and, as a result, that oh so desirable public trust is on the wane.

The approach to policy making is all too often characterised a precipitous and premature journey from problem to solution to intervention. Scant respect is paid to the complexities and interdependencies that lurk within the matters of public risk such as climate change, obesity in children, security, shifting roles in healthcare, child safety. We are not dealing with the policy issues of the Victorian era where public health issues could be solved by digging a trench and building a sewer. Interventions today require a rigour and breadth of consultation, research and consideration that are rarely displayed today.

Meanwhile, we witness endemic risk aversion within Whitehall, inconsistent risk appetite across departments, deep misunderstanding of public tolerance of and capacity to handle risk.

Where public risk is not correctly understood and managed, citizens in general but particularly those who are already disadvantaged are not properly protected from high risks; they are not enabled to take appropriate decisions themselves about risk; they do not experience the benefits of a more entrepreneurial and resilient society; and they lack trust in regulatory decisions. Business and public services face greater constraints on their ability to innovate and focus on customer needs. Voluntary organisations can be crowded out by bureaucracy. Policy makers do not achieve their objectives because they are insufficiently prioritised, do not focus on outcomes, waste scarce regulatory resources and reflect a lack of understanding of how service providers and customers really behave. Valuable process tools such as Regulatory Impact Assessments and consultation become discredited and gradually fall into disuse.

A litany of symptoms that we see in whole or in part everywhere we look within realm of regulation and policy making. A system of conversations that is fundamentally flawed. A system that is crying out for change.

So, we know where we want to get to but how do you change a system that is apparently so well entrenched and defended?

Well, change the conversations and you change the culture of policy making. Good conversations lead to good outcomes.

How do we do this?

First, declare that change is possible – I passionately believe that it is. But that is not enough. Enough key opinion formers, many of whom are in this room, have to declare that enough is enough – that the culture of policy making has to change to meet the challenges that we face today and that we are not truly going to see a step change in the treatment of public risk and the quality of regulation until this shift both addresses reparation of the past and new practice for the future.

Second, stop pointing fingers and blaming the politicians and officials. We are all complicit in a forcing policy making conversations into unhealthy territory. It is striking from where I sit that Ministers and officials are under significant and continuous pressure – pressure from a confrontation parliament, an aggressive media, sophisticated lobby groups, short term career pressures. This pressure reaches clamouring heights in the wake of tragedies such as Lyme Bay, Morecambe Bay and Hatfield. They are facing issues of such a complex and elliptical nature that the causes can be genuinely hard to pin down, let alone build a consensus around tackling the matter.

And meanwhile, are we saying to Ministers that we want them to take their time, take the best course in light of all the facts, be objective, coherent, use science wisely?

Are we saying, please don't rush to pretend you understand this or that all is settled and clear cut?

No, are we hell. We say we want clarity of purpose and determined action and we want it now.

So they oblige. How? By conflating too many problems into simplistic formulations, overly narrowing the field of consideration, making prejudicial announcements, collecting evidence to support these prejudices.

And then we see error compounding error as implementation with a determinism and prescription born of the fiction that it is possible to get interventions in these complex behavioural systems right first time.

But is it any wonder that this fiction lives on when the slightest sign of a Minister exhibiting the instinct to trial, learn and adapt is greeted with headlines of ‘Government U-turn’ and accusations of indecision. Headlines that sell papers we buy and so perpetuate this corrupted process and approach.

Something has to change and I sense that the government wants it to change. Let’s not be so crass as to think that Ministers enjoy failure in policy-making, whatever their rhetoric. Bright, committed people do not set out to fail. They are unhappy and unwilling victims of a system from which is pretty hard to escape without a few key ingredients:

- Committed leadership from the centre of government, making change in policy making culture a priority and doggedly pursuing its delivery;
- The will and resource within Whitehall to reprise poor policy and take a different approach to new policy making, identifying better solutions with better targeted and proportionate responses to risk management issues
- Sympathetic external challenge that can do two things:
 - o First, focus on specific issues within the flow and stock of regulation, raising questions forcing targeted reprise of policy process
 - o Secondly, forge some space for this reprise by encouraging more committed involvement of key stakeholders amongst the community represented here today, parliament, the media, single issue lobby groups, the public and voluntary sectors, business, the unions, the public and so on. Committed involvement tends to reward genuine effort with the space and time required to deliver a high quality effective solution rather than the expedient failure is more typically the case today.

And that is where we as the Better Regulation Commission, or whatever they want to call us in future, come in.

We intend a fundamental shift in style, away from our set piece reports to a modus operandum of facilitated workshops involving key policy makers and key stakeholders, workshops that seek to turn back the clock and re-ask that question ‘what is we were trying to achieve in the first place?’, workshops that rehearse and seek commitment to better process, better conversations in the reprise of consideration of the policy options and implementation route.

Although we have our hit list of issues that we would wish to tackle in these workshops, we intend to gather other options from the likes of yourselves – so your priorities please – ministers, officials, other stakeholders and surveys of the public.

The critical output from these workshops is a commitment to deliver from those charged with tackling the issues, principally ministers, along with a clear charted list of actions. The workshops would seek to make recommendations for action except in respect of choice of policy intent where they should not and would not seek to usurp the ultimate authority and accountability of ministers.

The success of these workshops would depend on a number of factors being in place.

First and most importantly in my view, the establishment and maintenance of a committed network of external stakeholders, in other words, a network including you, for whom the Commission acts as a node, catalyst and pathway for concerted involvement in specific issues.

Secondly - for any given topic and in a mix tailored to suit - involvement of all key internal and external stakeholders including not only ministers but also policy makers, the Better Regulation Executive, departmental experts, parliamentarians, risk theory and management experts, topical experts, media representatives, behavioural theorists and representatives.

Then, high quality preparatory data, excellent facilitation of process and dialogue as well as a willingness to address both good and bad practice.

But above all, success would depend on the unwavering and strong political support from the Prime Minister and all key ministers for the process. This support would encompass commitment to ensure that the right people attend the workshops and agreed actions are delivered.

Besides specific impacts around public risk policy making, we would expect two important by products. In the short term, we would have the reason and narrative that would allow us to ensure that Ministers and officials were given the time and space to get the policy rethink delivered as well as the benefit of the doubt, and at times the acknowledgement of success, that are so essential to sustainable change programmes. Longer term, we would have training case study material that can be used to build a new awareness and capability amongst Ministers and officials in matters of risk.

Success would breed success. Many of us would, I suspect, welcome any shift towards a more effective style of approach to cultural change but will ask the question ‘is there really a desire on the part of the senior ranks of government to see a change or is this another game of smoke and mirrors?’ We will find out over the coming weeks and months but I sense that the new Prime Minister is concerned about the anachronistic and frequently ineffective approach to policy making and has the courage to try something new.

Why? Well besides the soft signals, including his request in the July Machinery of Government announcement for us as the Better Regulation Commission to propose to him such a new approach, I think that we can take some encouragement from the

recent handling of the Food and Mouth outbreak. Putting aside concerns about the fact that the outbreak is likely to have started from Pirbright, the conduct of the risk management response reflected a capacity for systemic thinking, inclusive handling and adaptive learning that has, hitherto, been rare.

We saw leadership – real leadership – that set the tone. There was no Ministerial grandstanding and the prominence of the Chief Vet built public confidence that they were being informed intelligently.

Preparation was thorough. This was not a reaction to a crisis but a handling of a foreseeable event in accordance with a risk management plan.

Key stakeholders were engaged and turned from potential critics in helpful allies. The only voice looking for drama and intrigue was the Press and that became very transparent very quickly to the public.

Here was a set of conversations that were fundamentally flawed the last time around but that had received a systemic, thoughtful makeover so that next time around better process led to a better outcome.

One swallow doesn't make a summer but examples such as this should be allowed to chip away at the resignation and cynicism that any shift in culture such as I have proposed will face.

I believe that a group such as ourselves, armed with access, senior commitment and focussed intent can, through well managed dialogue, make an enormous difference, transforming a declaration of the end of zero risk regulation into a policy reality, delivering more effective policy, liberating lives and tackling regulatory burden where it ultimately needs to be tackled, at the policy intent source.

I intend to continue to move the Better Regulation Commission towards this purpose but clear in the knowledge that it can only be achieved with the support of the likes of those in the room and in partnership with the many organisations committed to this cause. We rarely bring subject expertise but our reputation for independence and balanced, evidenced based, actionable interventions and our privilege of access put us in an ideal position to support your work in delivering real change.

If it means that the passion and knowledge displayed here today can make more a difference for our support then it will have been time well spent.

Thank you.