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Draft Abstract

Principles Based Regulation: Stability, Risk and Trust

Implicit in regulation is the relationship between consistency and trust. At a basic level, regulation could be characterised as sets of rules and assumptions, applied to prevent unfair treatment of those with limited redress and to promote outcomes which might not otherwise be produced. Underpinning these broad statements is a presumption that business sectors will not deliver these beneficial outcomes left to themselves.

The physical form of this presumption is both wider and more finely-grained regulatory control over business, ever-expanding rule books, more detailed compulsory reporting and an oppositional approach to securing consistent outcomes, that supposes absence of trust and prizes stability above all else. What emerges from this is sometimes called 'regulated trust', a trust based on the self-interest of staying the right side of the rule book, as distinct from 'real trust', the belief that people will do the right thing.

Since the turn of the century, progressive regulators have been giving greater thought to the value of outcomes for consumers, rather than the processes by which those outcomes might be achieved. The concept underpinning this is that, by giving businesses more flexibility, those businesses will be more enabled to treat consumers fairly. Innovation is promoted: in tight regulatory environments, regulated bodies too often can become shaped to the requirements of the regulatory regime in an unhealthy symbiosis.

This shift in emphasis has marked the rise of principles based regulation. This form can be described as a kind of co-regulation, in that the principles intended to guide the behaviour of the sector are also the principles which encompass how the regulator will behave. Regulation is a power relationship and classic, rules based regulation demonstrates this, often quite starkly. But rules based regulation can hamper the regulator's own discretion by leaving little space to negotiate how desired outcomes are achieved. In particular, rules based regulation asserts the primacy of stability over proper exploration of risk. But even then, the kind of stability achieved may be that founded on mistrust of innovation, and so work against the interests of consumers.

Principles based regulation seeks better alignment of business interests with regulatory aims, allowing greater efficiency in regulatory engagement and repositioning regulation as value rather than cost.

This paper will look at recent developments in principles based regulation among British regulators and will focus in particular on how development of deeper and more meaningful trust between regulators and their sectors helps to deliver the necessary degree of stability, while leaving scope for proper risk. The promotion of risk has, historically, been counter-intuitive for regulators. A keener focus on consumer outcomes makes it more apparent, however, that service improvements cannot emerge from static situations. The paper will ask how consumers with limited choice or redress can best continue to be protected, while at the same time providers are encouraged to innovate, to improve delivery.