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Public sector regulation at a crossroads

The pandemic has underlined the need for a new approach to public sector regulation – one that better embraces system and partnership working while delivering better value and outcomes.

As the easing of lockdown tentatively begins and there is a glimmer of optimism about life returning to business as usual, the time is right to return to the issue of public sector regulation.

Certainly, NHS Providers seems to think so as last week it published its insightful *Regulation Survey Report – Reconsidering the Approach to Regulation.*

Here at GGI we've been thinking about the enormous societal changes that have occurred during the pandemic that have laid bare the need for a fresh look at regulation. Focus has sharpened on issues that arose before the coronavirus outbreak, such as the increasing distance between technological innovation and regulation or the necessity for regulation to keep up with public sector goals of engaging the public and other organisations at the local level.

Moreover, the economic changes required to reorientate Britain after the pandemic, compounded by the unclear post-Brexit regulatory environment, require not only an objective assessment of the state of regulation but, crucially, a whole new approach.

Although there is little evidence so far to suggest that the UK will adopt the controversial 'Singapore-on-Thames' approach to regulation that some spoke about at the beginning of the Brexit process, the government seems likely to seek divergence from Europe.

Given the strain the pandemic has placed on public finances, the Treasury may regard the 90 UK regulatory bodies whose annual running costs exceed £4 billion as a possible area to reduce expenditure.

All about place

There is a growing feeling within the public sector that services can best be delivered at the local level. This can be seen in drives for legislation around integrated care systems, increased calls for local devolution and the apparent need for locally-driven test and trace. This is not only because services can be more effectively tailored to the needs of the public – which increases people's sense of engagement with the state – but also because it allows services and outcomes to be coordinated across organisations.



Consequently, as well as yielding positive outcomes in its specific policy interventions, regulation must also be seen to operate effectively within specific local contexts. As such, regulators must build and redefine their outcomes around these 'place-based' areas to match changing structures of the public sector. By doing so, regulators can remain relevant and demonstrate in accordance with public wellbeing objectives how they are positively contributing to society.

Culture and technology

Promoting culture and behaviour is also key to the future of regulation and regulators must do more in this area. They need to facilitate the right culture in organisations so that they can help regulate themselves.

Models of regulation are evolving too slowly towards AI-supported self-assessment rather than traditional inspection. Too often, they trail behind innovations or are perceived to stifle them. Regulators would be well advised to adopt new ways of allowing the flexibility for organisations to adapt and evolve.

Attempts are being made to move into a role as facilitators of cultural and organisational/system conditions for success. So far, these efforts have lacked consistency, clarity of purpose or support from the regulated for it to become a credible role for regulators in the new world.

To move from merely setting rules to changing the dynamics of organisations regulators will need a particular focus on understanding those they regulate, working with local stakeholders and gaining legitimacy through civic accountability. More sector-specific thinking on how culture can be shaped is also required.

The role of an active, digitally-enabled citizen is as important in this change as any other factor. What is less clear is how this collaborative process will be achieved, given the diversity of regulators in terms of function, size, resourcing and history.

No forum

The lack of a high-profile forum for advocating and exploring regulation across the public sector does not help. Too much thinking remains silo or sub-sector based. Too often, regulators are still seen as restrictors and inhibitors of change rather than enablers of public protection.

This wasn't helped by the 'freedom and innovation' narrative promoted during the command and control phase of the pandemic. It's a simplistic and unhelpful agenda that further separates regulators from a common cause with public sector organisations which, for different reasons, are working through the implications of governance of place-based and civic outcomes – collaborations, partnerships, mergers, systems.

Regulators need to keep pace with developments in the public sector and move away from the focus on individuals and organisations that has predominated for historical and statutory reasons. A shift in focus from organisational governance towards place-based governance requires much greater ownership of public outcomes by a wider range of regulated and unregulated contributors.

In our work developing ICSs and provider collaboratives GGI is supporting partners to think through the evolving role of regulation and how it can deliver improved outcomes and better value for citizens and the regulated.

illuminations



Good leaders know how to balance the safeguards of the precautionary principle with the urgency of getting things done under extreme circumstances. They know they must be ready to account for their actions. Once the pandemic is behind us, the temptation will be to revert to old ways but we would suggest that the spirit of rapid innovation engendered by the pandemic will serve us well as we look ahead and think about ways to redesign our NHS for the new era of integrated care.

Illuminations

- With the development of ICSs now is a good time to make an objective assessment of regulation in the public sector and how it needs to evolve and improve.
- Regulators need to focus on supporting the growth of the right culture and behaviour in the regulated.
- Regulating systems and partnerships is the key challenge and more needs to be done to evolve regulatory thinking and practice in this area.
- The lack of a high-profile forum for advocating and exploring regulation as a shared issue across public sector regulators.

If you have any questions or comments about this briefing, please call us on 07732 681120 or email advice@good-governance.org.uk