



Anna Bradley speaking at the Institute of Government regulation summit November 9 2009

All regulation, whether it's rules, principles, outcomes or risk-based, should ultimately benefit consumers. That all regulation should benefit consumers is far more controversial than it sounds, so let's consider that for a second. Let's be clear that regulating for consumer benefit does not mean that wherever there could be consumer benefit or risk we must regulate. Far from it - often the best answer to risk is for consumers to act as regulators and protect themselves. But where regulation is the best answer, the consumer benefit must be clear and it often isn't.

Regulators have a tendency to focus on the means, that is promoting competition or promoting investment, rather than the end, the benefit or protection of consumers. They assume that the means will benefit consumers, and often they will, but not always.

I believe it is always important to be clear about how regulatory action would benefit consumers. If we don't do this we will be in danger of regulating according to regulatory dogma or stakeholder pressure, rather than for significant consumer benefit. It is always much easier for interested parties to claim that what they want is in the consumer interest if the regulator has no way to test these claims.

To ensure that we mainstream this consumer-focused approach to regulation there are four things that can make a difference, for each of which there are a variety of tools and solutions:

- Knowing what the consumer risks and opportunities are so they can be explored and if necessary addressed
- Predicting or modelling what the likely outcomes of alternative approaches will be for consumers.
- Supporting a consumer-focused organisational culture
- Establishing external sources of challenge and support.

I'll explore each of the four in a little more detail.

Knowing what the consumer risks and opportunities are

To find out what the consumer risks and opportunities are there are a range of widely-used tools. First, intelligence can be gathered from: complaints; feedback from staff, consumers, and consumer advisers; whistle-blowing competitors and so

on. And there is huge potential to use digital technologies here. Second, market research can be used to explore the extent and nature of issues facing consumers. Third, we can find out more directly what is happening in the marketplace through, for example, mystery shopping.

However, not all regulators take this approach. For example, at the General Optical Council I have seen professional claims that consumers need protecting by re-introducing measures that also provide professional protection, but without any independent evidence to establish consumer detriment.

Predicting what the consumer outcomes might be

Predicting what the consumer outcomes might be is an area of relative weakness where regulators often make assumptions. For example, they often believe that all consumers are the same when they are not - different groups of consumers have very different interests. The Communications Consumer Panel is required by statute to advise on the interests of people from different parts of the UK, older and disadvantaged people, including those on low incomes and with disabilities. Often their interests are in conflict, so it is very important for regulators to think about the wider citizen and public interest.

Regulators also think that what is good now will be good for the future. But, consumers' short and long-term interests are often very different. Nowhere is this more true than in relation to the environment, where current consumers are literally paying the price for previous lack of investment in water infrastructure.

Consumers also tend to be thought of as economically 'rational actors', when none of us behave this way. 'Life is too short' for information searches, so instead we use perfectly logical short cuts and signs.

Market research can help us understand attitudes and future expectations. But, often it needs more sophisticated and deliberative techniques to move from what consumers think is in their immediate interests, to what they think is in the wider longer-term consumer interest. The Communications Consumer Panel recently did such work when we studied the place of technology in our future lives. We found that consumers thought broadband access would soon be essential.

And market research is not enough, because what we say and do is rarely the same thing. The Financial Services Authority (FSA) always thoroughly researches its consumer information, and it has improved it enormously as a result. But, these improved documents are not read outside the research 'lab', which is one reason for continued mis-selling of financial services.

We need regulators to engage with messy reality, where behavioural economics is helpful for modelling in a real world way what might happen if...

Supporting a consumer-focused organisational culture

To understand consumers is not enough. Regulators also need staff – their own and in industry – to understand the importance of thinking and acting in the consumer interest. At the Financial Services Authority, I spent time establishing a new and

extensive network of intelligence gathering and testing. However, in the early years it proved quite impossible to marshal the forces of the supervisors of major companies to act on that intelligence.

It is even more difficult to get technical experts such as spectrum analysts, wholesale banking specialists and biotechnologists, to articulate the consumer implications of what they propose to do. Thinking consumer is as much hard work for these highly skilled experts as it is for their consumer policy colleagues to persuade them of the need.

There are several tools and sources of internal challenge that can help to create the right organisational culture, such as having a clear consumer objective. The Food Standards Agency has one clear consumer protection objective; Ofcom has a principal duty to further the interest of consumers and citizens; whereas the Financial Services Authority has four objectives, at least two of which can conflict.

Other examples include: integrating policy making guidance by using tools such as the Communications Consumer Panel's consumer interest toolkit; creating an internal consumer function that champions, challenges and supports; setting up management and board level sponsorship such as the FSA example where there was a designated board member; carrying out audit and review against both process and outcomes at management and board levels by building them into templates for papers; and finally, by setting up a consumer panel – which I will come back to.

Sources of external challenge

Regulators should have a presumption of openness and transparency. This is not always possible, but the presumption changes the way external parties engage and internal parties behave.

Consumer and public interest bodies must be involved early enough to make a difference, and in ways that are efficient and effective for them. This may not be most efficient and effective way for the regulator. Examples of how this can work are the FSA's consumer engagement advisory group, and Ofcom's consumer forum.

Formal written consultation is a surprisingly limited function if everything else is right and input is invited early enough to shape the agenda. External challenge comes from consumer panels, and from a range of public interest bodies. Select committees and the National Audit Office provide external review and audit. And challenge also comes via the legal process in the form of super complaints and judicial review.

Consumer panels

Consumer panels are creatures of statute, where members are approved by the secretary of state. They need expert members and adequate resources in the form of small team and small budget. The strength of consumer panels lies in the balance between independence and proximity to the regulator.

Independence means that the panel has the ability to make views public to spark a wider debate if necessary. It also has a budget to develop its own evidence to

reinforce a case such as the Communications Consumer Panel's recent mobile coverage research, which resulted in a realignment of priorities.

Proximity to the regulator gives the panel advantages such as access to data, research and early thinking. It also provides inside access to senior officials, and an understanding of what is possible so that it can target advice carefully and influence early thinking. So, it's not always necessary to go public.

The panel is not just about ensuring the consumer interest in regulatory policy decisions. It is also about agenda setting and influencing strategic priorities, as well as helping to change the culture of the regulator – which we did through our Consumer Interest Toolkit.

Can the consumer interest be at the front of every mind, in every corner of the regulator? Should consumer panels anticipate their own redundancy? Probably not. Issues, contexts and consumers change, so consumer panels provide a constant source of challenge, if only against complacency, which will probably always be necessary.

A counterweight to industry is always needed. Large industry players are unlikely to give up lobbying anytime soon, and it is easy to lose sight of quieter voices in the face of significant pressure.

The statutory consumer-facing organisation Consumer Focus adds value to the work of consumer panels by applying experience from one sector to another such as in mis-selling, and by addressing cross-cutting issues, for example online public service delivery. But, greater distance from regulatory decision-making means Consumer Focus cannot replicate the consumer panel role.

In conclusion, I would like to say that it is critical that regulators act only where there is consumer risk and/or where there will be consumer benefit. Articulating that risk and/or benefit is a surprisingly complex and difficult thing to do, and all regulators probably have something to learn from each other.