

Encouraging regulatory conversations

Julia Black and **Martin Lodge** highlight how the Regulators' Forum offers a unique setting for the discussion of regulatory experiences

One of the key characteristics of the so-called age of the regulatory state is the growth in prominence and number of regulatory agencies, in the UK, EU member states and internationally. Much has been written about the growing European networks of regulatory bodies and competition authorities, arrangements governing concurrency and the co-operation among those regulators tasked with utility and competition-related

therefore represents an experimental venue to encourage the exchange of knowledge, not just between practitioners, but also between **carr**-based researchers and the world of practice. Such a setting requires trust, interest and a spirit of curiosity in order to encourage free and frank exchanges. A different setting, one dominated by a concern for organizational reputation, would quickly descend to the performance of highly stylised 'best practice' presentations and rehearsals of well sounding stock phrases from the 'better regulation' dictionary.

achieve intended outcomes and behaviours and on what basis performance should be evaluated in the light of the expectations from different constituencies.

- › regulatory failure, specially in the view of developing structures to respond effectively to events and crises;
- › transboundary issues, in particular in relation to the experiences in other jurisdictions, whether in terms of devolved jurisdictions, fellow EU or non-EU jurisdictions, or in terms of jurisdictional overlap and intergovernmental relations, especially with regards to EU institutions.
- › stakeholder engagement, especially in light of widespread interest in alternative ways in which to engage diverse stakeholders in the decision making of regulators.

What kind of lessons can be drawn from these conversations and discussions?

One key insight has been that there is a genuine appetite for knowledge exchange among regulatory bodies that until now have not had the opportunity to exchange experiences and perspectives. Regulators struggle with similar problems. Such problems refer, for example, to questions regarding the operation of risk-based regulation in the light of various pressures, the ways in which regulatory organizations seek to identify changes in business behaviour or responses to new technological applications, or the different means through which regulators engage with other bodies at the national and the EU level. Similarly, regulators share an interest in moving towards outcome-based regulation. However, the implementation of such an approach faces problems as both regulators and regulated prefer the comfortable certainties of checklists. Regulators usually depend on shared responsibilities, therefore requiring cooperation when it comes, for example, to information exchange. Regula-

portfolios. However, these economic regulators are just one side of the story. There has been, as yet, hardly any endeavour to bring together those regulators in the UK whose primary responsibilities relate to the inspection of quality and safety standards. This absence is even more surprising given the considerable importance of these regulatory activities for economic and social life.

This gap was one of the main motivations for establishing the Regulators' Forum. Since June 2014, **carr** has held a series of meetings on cross-cutting themes during which a variety of regulators considered experiences and challenges. These meetings were held under the Chatham House rule to provide for a 'safe space' in order to support frank and free exchanges without fear of unwelcome reprisals or publicity. The Regulators' Forum

Over the past year, the Regulators' Forum has covered a variety of themes. These include:

- › enforcement and inspection, especially the experience with risk-based regulation, the use of complaints and other alternative information gathering devices, and different ways of conducting inspections;
- › emerging risks, particularly how regulators seek to monitor changing market structures and behaviours and how regulatory organizations adapt to identify and adjust to emerging risks;
- › regulatory performance, in particular in relation to how regulators know whether and how interventions



tory attention might be dominated by sector-specific dynamics, but concerns and problems are widely shared. For instance, some regulators may have suffered more high profile incidents and failures than others. However, at the core of all regulatory activity is a concern about the consequences and limitations of regulatory interventions, especially in the context of changing technologies, diversifying market participants and depleted public finances. One key shared insight emerging from the Regulators' Forum has been, for example, a preference for themed inspections. These are inspections that focus on particular business activities, and that are aimed at generating a constructive relationship between regulatory authority and industry.

A second insight is a greater appreciation of the variety of contextual conditions under which regulators operate. Some regulators can rely on well established relationships with their regulated industry which facilitates exchanges of information, a shared interest in identifying emerging risks and in learning lessons. Some regulators benefit from close relationships with their industry associations, others face regulated industries which might not always be considered as well intentioned. Some regulators have a clearly identifiable set of constituencies, others are faced with highly diverse regulated populations. Some regulators depend on third parties for information and/or on information that can hardly qualify as 'real time'. Some regulators can rely on 'hard' data (of varying degrees of gameability), others have to rely on the often diverse judgement calls by inspectors. Equally, while regulators report similar approaches towards the identification of emerging risks, the source of these risks varies greatly, ranging from those due to changing technologies, changing business models, societal expectations, and those to wider politico-legal changes, which are often unrelated to the primary activities of the regulator. Such

variety of contextual conditions calls for more reflective debates about the utility and application of regulatory instruments across regulatory bodies, for example risk-based regulation.

The third insight relates to the nature of 'knowledge exchange' itself. Ideas such as 'impact' and 'knowledge exchange' are highly popular with government departments, funding agencies and university managers alike. What then can be said about the 'value added' of the Regulators' Forum? Knowledge exchange is about bringing together the worlds of practice and of research. The Regulators' Forum has established itself as a key venue for exchange among UK practitioners in regulation, with a growing number of members from an increasingly diverse set of regulatory bodies. Such exchanges are unlikely to deliver immediate changes in practices. However, if regulation is about learning about the impact and limitations of particular regulatory interventions, about facilitating reflection on the possibilities and limitations of particular approaches, and the ways in which problems are being tackled, then knowledge exchange represents a diffused model of information dissemination.

Furthermore, knowledge exchange opportunities, such as the Regulators' Forum, have a distinct advantage for academic research into regulation. **carr** has always prided itself for conducting substantively important, public-minded research. Learning from the challenges faced by diverse regulators, and confronting academic debates with the experiences of regulators offers the space for a greater appreciation of the 'real' world of regulation. At the same time, it provides a privileged venue to challenge regulators with findings and theoretical assumptions. Finally, the Regulators' Forum also tells us something about 'good regulation' – this 'good regulation' is about the appreciation and careful application of regulatory interventions and not about the search for the latest regula-

tory fashions. It is about realising the potentially asymmetric costs and benefits of regulation affecting some businesses and societal actors rather than others. In short, in an age of budgetary squeezes and general hostility towards regulation, the Regulators' Forum offers the opportunity to develop a greater appreciation of the experiences of regulators, especially in terms of learning from the successes and limitations of regulatory activities.

The Regulators' Forum is supported by LSE's HEIF 5 knowledge exchange financial support scheme. Further information on the individual themes of the Regulators' Forum as well as web-videos on particular sessions can be found on the **carr** website.

Julia Black is a **carr** Research Associate, Professor of Law and Pro-Director for Research at the LSE. **Martin Lodge** is **carr** Director. They co-chair the Regulators' Forum.