

Good regulation

## A golden opportunity missed

**Mark Goyder explains how the combined, misplaced, opposition of the CBI and the UK Treasury led to the demise of OFR**

Last month I predicted the rise of a new, more pro-active style of trade association. How these bodies approach regulation is a key test of their effectiveness.

Some bodies oppose all new regulation. The best are more discriminating. They work out what is needed to allow enterprise to flourish. This can mean asking for more regulation. Enforced certainty is fairer and better than voluntary confusion.

Good regulation depends on:

- clear conceptual foundations;
- a long-term approach based on widely agreed objectives;
- coherence of purpose between all arms of government and regulation;
- widespread consultation on the best way to achieve the goals;
- further consultation on the detailed implementation;
- and regular review.

Bad regulation occurs when governments and industry bodies:

- ignore or forget the underlying purpose of the regulatory framework;
- adopt a tactical approach – allowing decisions to be made on the basis of who brings the most pressure to bear;
- fail to achieve a shared view between different arms of government;
- fail to consult on the best way to achieve the goals; or
- fail to consult on the implementation.

The story of the slow evolution of proposals for a mandatory OFR in the UK – the Operating and Financial Review – and then its hasty abolition, is a parable of good and bad regulatory practice.

### Inclusion

There was, and remains, a clear conceptual framework for reporting. The logic – “an inclusive approach” – goes as follows\*.

The best long-term performers will be well-led companies with clear strategy, robust culture and effective relationships. The best reports will cover not only past financial results, but also the trends and developments today that will drive performance tomorrow.

Investors and companies had agreed about these fundamentals. There had also been shrewd thinking on the implementation. Quoted companies were getting compliance with two requirements for the price of one.

The EU's Accounts Modernisation directive had added to reporting requirements. Thanks to some nifty footwork, compliance with OFR regulations was enough.

Between 1998 and 2005, the UK had regulated well with clear long-term thinking, consensus on the goals, coherence between



Jones and Brown: unlikely buddies a decade ago

different arms of government and regulation, and further consultation on the detailed implementation.

### Losing the plot

So how did it all go wrong? How, from this position of such strength, did the UK's government snatch defeat from the jaws of victory? The answer appears to be a combination of ill-informed lobbying by the CBI and short-term popularity seeking by the chancellor of the exchequer.

There were, of course, serious worries. There were the dangers posed to a company that offered forward-looking information. Many preparers asked for a “safe harbour” to protect them from lawsuits. Then there was cost of auditing. Here the government really lost the plot.

Responding to the worries expressed by the CBI, they could have said: “OK, we remain agreed about the objectives of the OFR. Now let us address the risks. Let's especially talk about how to implement it in an effective way, with special attention to the risks of litigation and to the costs of audit.”

Instead, frightened by the anger being expressed by the CBI, and oblivious of the real value of the OFR to investors, the Treasury thought it saw a simple way of reducing red tape.

The CBI understood the OFR so badly that its director-general even suggested the OFR was about environmental and social reporting. Then the chancellor, equally badly advised, thought he had just saved industry from a piece of “gold-plating”.

But forward-looking reporting is here to stay. Many companies who have invested the effort already are saying that it helps them focus on the real drivers of success.

Investors – and so ultimately pensioners and savers – will suffer because abolition slows down the development of a common language by which to understand the longer-term prospects of companies. The UK will muddle through in an area where, until recently, it was leading the way.

The best outcome would be a fresh focus on the principles that make for good regulation, and a determined effort by both government and the CBI not to indulge in a bonfire of good regulation for the momentary glow that it gives off. ■

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**Ethicalcorp.com keyword searches:**

Operating and Financial Review, CBI, UK, regulation, reporting

\* See The Role of Business in a Changing World, Tomorrow's Company, 1995