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## How Our Watchdogs Can Add Bite To Their Bark

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*Industry regulators must think ahead and lead from the front if the public are to get the protection they deserve.*

"The purpose of the judicial system is to protect the weak and restrain the powerful." So said Thomas Jefferson in the late 18th century; his words can readily be applied to the regulation of powerful, dominant and monopoly interests in a modern economy.

Regulators today have huge power, far greater than Ministers in the years of nationalisation, much to the infuriated envy of the civil servants who used to be responsible for these things. Utility regulators ensure the physical integrity of water, energy and transport networks. They set prices, so customers are not ripped off and ensure that competition is fair. Financial services regulators are supposed to protect vulnerable investors, enabling them to deal with reputable companies on the basis of sound information. It all makes sense, until it breaks down.

This month, the Parliamentary Ombudsman published her report into the misregulation of Equitable Life. Many thousands of people who lost out had a "justifiable sense of outrage" in a "decade of regulatory failure" and "serial maladministration." The regulators were "passive, reactive and complacent", their actions "largely ineffective and often inappropriate."

As a condemnation, it was strong stuff. But it was far from the first.

Other regulators have faced similar criticisms—some fair, some not. In May 2006, the Transport Select Committee criticised the Office of Rail Regulation for being "timid", having recently taken a "softly-softly approach" to Network Rail, appearing "meek and reluctant to use" its powers, "weak and overly cosy with the primary organisation it regulates". In 2006, the water regulator was severely condemned over Thames Water's repeated failures to meet leakage targets, particularly in a drought against a backdrop of precious water gushing into the streets from fractured mains. In 2008, the Financial Services Authority faced coruscating criticism over Northern Rock. OFGEM, the energy regulator, has been pilloried for alleged inaction over consumer price manipulation.

Regulation is not the dryly technocratic function it sometimes appears, practised by robotic economists and pernickety lawyers with an over-keen interest in the minutiae of compliance handbooks. It matters—a lot. People and businesses need it to work well, proactively and professionally. If a regulator malfunctions, everyone suffers. In cases such as transport, lives can be lost.

When these spectacular regulatory failures happen, regulators face not only well-deserved criticism, but also public and political anger.

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So how can regulators avoid this?

Not falling asleep at the wheel is a good start. They need to be ahead of the companies they're regulating, anticipating problems rather than waiting for them to appear and taking timely, preventative action.

Regulators need the tools to do the job; usually, they have them in abundance. They need competent, professional staff who care about what they're doing, driven by a clear, public interest ethos, plainly articulated by their leaders.

Those leaders must lead—and be seen to lead—even into hostile territory. When I took over as Rail Regulator in 1999, I was shocked how little Railtrack understood about the condition of its assets and the alarming rise in broken and defective rails. The action I took was severely criticised, but after the Hatfield crash took place in October 2000, caused by a broken rail, the critics fell silent.

So who are the regulators? Why don't some of them appear to care about how well they do? Many do; in the organisation I inherited in 1999 I found highly professional people in a state of suffocated frustration. But the effectiveness of an organisation—especially a regulatory authority—and the good it can do is immeasurably determined by the focus, strength of purpose and force of will on the part of its leaders. The men and women at the top must be prepared to defend their policies and their actions, to be accountable and criticised for them.

Since 1997, the Government altered fundamentally the dynamics of decision-taking in the independent regulators, by replacing single-person regulators—I was the second-last—with large regulatory boards. This has weakened the regulators and made their accountability far more diffuse. The new regulators—and their sponsors—appear to like it that way. Ministers protest the legal independence of regulators, but behavioural independence matters just as much. These reforms to regulatory structures have only diminished that, something we should deeply regret.

The appointments process for the regulatory authorities should be overhauled and perhaps put on the same basis as the appointments commissions for the judiciary and the independent members of the House of Lords. There should be more clear blue water between the regulators and the politicians, including in their choosing.

Regulators need to focus on what matters most and give companies the necessary freedom to meet their commercial objectives in a way which is consistent

with the public interest. The regulatory flame is adjustable; companies who behave well should know its tender warmth; those who do not should feel a fiercer fire.

Neither should there be capture, where the regulator finds himself so close to the company or eager to please the Minister that he is smothered into an ineffective, spineless slumber. When the crash happens, the Macavities will slink away into the night, leaving the regulator to take the heat and the citizen to rage and grieve.

Regulators have a duty to explain what they're doing and why, to show that they're on the case, working to their remit set by Parliament and doing it well. They must set and stick to high standards of conduct, explaining their criteria and processes in advance, showing rigorous adherence to thorough and timely monitoring and investigation. When they've acted or decided not to, they must always, always publish their reasons. This is especially important to those who dislike their decisions. In this way, industry, public and political confidence will flourish.

And if this is done, no more might it be said, as it was in January 2008 by Roger Ford, the foremost railway industry analyst, that the regulator was found standing up to his knees in oil-soaked guillemots wondering why the tanker hit the rocks, when he should have been up on the headland firing off rockets to warn before it happened.

Equitable Life may be a regulatory Torrey Canyon. But as the riptide of public anger again drags confidence in these institutions out to sea, let this be the last tolling of the sad and dismal bell of regulatory failure.

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