

Risk, Responsibility and Regulation –

Whose risk is it anyway?



October 2006

GOVERNMENT MUST ACT ON THREAT FROM POISON SHIP

There are limits to
how far governments
can protect people

Nanny state has
'stolen the lives of
our children'

Enjoy the perils of play;
Let children take risks
outdoors, parents told

Be prepared to take risks

Bicycle bell crackdown has
the ring of a nanny state

Wearing a helmet
puts you at greater
risk, cyclists warned

Young ignore sun
cancer risks for tan

FAT TESTS FOR FOUR YEAR OLDS AT SCHOOL

Nanny state row as schools
are told to weigh children

Frequent fliers ignore health risk

Regulation may
be restricting
but it does help
to protect us

Classroom health
rules 'deny science
pupils the chance
to run experiments'

Government must
target the genuine
security risks

Protecting yourself
against risk could be
your biggest gamble

Festival chiefs blast
'crazy' safety rules

Savings on school
fire protection put
pupils at risk

IT'S TIME TO STOP GAMBLING
WITH OUR CHILDREN'S HEALTH

Nanny state
'undermines'
public's trust
in business

Get a life and take
sensible risks, says
safety chief

GOVERNMENT MUST ACT ON
THIS RISK TO PUBLIC HEALTH

Greater risks than passive
smoking are taken every day

Go on, take on
a bit more risk

No to a nanny state

Regulate all
estate agents,
buyers demand

How 'boring' playgrounds drive
children into danger

HEALTH & SAFETY
KILLJOYS

GOVERNMENT
MUST ACT TO
HALT THE
CRIME SPREE

IS NANNY STATE
HARMING KIDS?

Nanny state is
robbing young of
real childhood

Study shows risk
assessment is a matter
of perception

Our risk-averse culture hates fun

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Chairman's Foreword



The first major report of the Better Regulation Commission focuses on a growing disquiet about the management of risk in society and what is seen by many as a rising tide of regulation, exacerbated by periodic inappropriate responses to 'risks of the day'.

There is a sense that the current public debate around risk places an over reliance on Government to manage all risks, at the cost of eroded personal responsibility. Contradictory pressures on those in the regulation business – they are criticised both for intervening and failing to act – have served to emphasise classic regulation as the default response. It is time to step back, explore these dynamics and think differently about the interaction of risk and regulation.

The Better Regulation Commission wishes this report to be regarded as a declaration that 'enough is enough' – it is time to turn the tide. As we have gathered evidence for the report, we have encountered concern in many quarters. We hope that this report will act as a vehicle for the coalescence of these disparate cries into a concerted call for action.

We do not seek to blame the Government for where we are today. We have all, in our view, been complicit in a drive to purge risk from our lives and we have drifted towards a disproportionate attitude to the risks we should expect to take. We have all called on the state to manage the process on our behalf, and each incremental intervention has seemed justified by the immediate benefits. The costs of the accumulated burden have only become evident when it is too late.

But, in truth, it is never too late to reverse the trend. The Government may not have led us single-handed into this situation but it is the Government that must now take the first definitive steps to lead us out. It cannot act alone and we believe that the time is ripe for a new public debate about the management of risk. We wish to encourage individual citizens and the media to join in that debate. Our specific recommendations are, though, for Government, and the most important of these calls is for our leaders to redefine our approach to risk management in a number of ways:

- emphasising the importance of resilience, self-reliance, freedom, innovation and a spirit of adventure in today's society;
- leaving the responsibility for managing risk with those best placed to manage it and to embark on state regulation only where it represents the optimum solution for managing risk;
- re-examining areas where the state has assumed more responsibility for people's lives than is healthy or desired; and
- separating fact from emotion and emphasising the need to balance necessary levels of protection with preserving reasonable levels of risk.

But this is only a start. Change initially will not be fast and will require considerable determination, particularly in searching for new ways of targeting risk management policy exclusively towards the most vulnerable in society whilst revitalising the notion of trust-based relationships as a mainstay of communities, organisations and commerce. The Better Regulation Commission believes that the prize is worth the pursuit.

I would like to thank Lynne Berry OBE, who led this study, and Lord James Lindsay, Eve Salomon and Sarah Veale CBE, who helped prepare this report. In researching this subject we were fortunate to be able to call on eminent and experienced witnesses. Although their views varied they were in agreement that the need to rethink 'Whose risk is it anyway?' is urgent.



Rick Haythornthwaite

Chair of Better Regulation Commission

Risk, Responsibility and Regulation – Whose risk is it anyway?

Introduction

The relationship between risk, responsibility and regulation is rapidly emerging as an important theme of policy development. In it lies great opportunity, not only to reduce dramatically the burdens of regulation on society but also to reinforce national qualities of self-reliance, resilience and a spirit of adventure. But there is also a danger that if the relationship is unbalanced, we slip into a cycle of increased regulation to meet the demands of increased risk aversion. In this report, the Better Regulation Commission (BRC) is looking at the dynamics which have been created by the perception and communication of risk by policy makers, the media and each of us as individuals in society. In so doing, we are responding to concerns expressed from many quarters ranging from the Prime Minister in his speech to the Institute for Public Policy Research (May 2005) to, most recently, the Health and Safety Commission in their plea for us to ‘get a life’¹.

We have identified some key questions about how we perceive, understand and respond to risk through regulation. We have illustrated our arguments with a range of case-studies that exemplify both the need for change and the benefits of getting it right. We have recommended changes that would more clearly separate the ‘cause’ (a risk and our public and political response to it) from the ‘effect’ (generally new sets of rules, regulations and guidance).

Last year the Hampton Report² set out clearly how a risk-based approach to regulatory inspection and enforcement can reap significant benefits in terms of better use of resources and the rewards of good leadership practices within businesses, public services and Third Sector organisations. The BRC believes that regulation plays an important role in society – but only appropriate regulation that meets our Five Principles and is brought in reluctantly as a last resort rather than first instinct. As we have said before, where regulation is concerned, “Less is More”³.

We want to challenge the easy assumption that governments can and should manage all risks. We want to see a new understanding between government, regulators, the media and the public that we all share a responsibility for managing risk and that, within the right circumstances, risk can be beneficial and should be encouraged.

The BRC takes risk to mean the full range of social, environmental, economic, technical, health and other threats, large and small, that we as a society recognise and believe that the Government in some way should protect us from.

Of course, we all manage risk every day in our lives, whether crossing the road, playing sport, buying insurance, taking a flight or even bungee jumping. We rightly expect certain basic safeguards to be in place but the BRC would assert, and our many witnesses agree,

¹ Statement by Bill Callaghan, Chair of Health and Safety Commission, 22 August 2006

² “Reducing administrative burdens: effective inspection and enforcement” HM Treasury, March 2005

³ “Regulation – Less is More: Reducing Burdens, Improving Outcomes”, Better Regulation Task Force report, March 2005

Sudan 1 food dye

The issue

Sudan 1 has never been approved for use in foods in the UK. It is currently banned under the EU 'Colours in Food' Regulation 1995. The International Agency for Research on Cancer (IARC), a part of the World Health Organisation (WHO), has assessed the Sudan dyes as genotoxic carcinogens, which can contribute to an increased risk in cancer. They are not approved at any level for use in foods.

The response

In February 2005, the Food Standards Agency (FSA) issued a notice that Sudan 1 was detected in Worcester sauce produced in the UK by Premier Foods and told retailers to remove products containing the sauce from their shelves. This sparked one of the largest product recalls in history with leading supermarkets such as Tesco, Asda, Sainsbury's, Morrisons, Waitrose and M&S removing well known top brand products from their shelves, including crisps, pizzas and ready meals. Premier Foods was estimated to have suffered a financial loss of around £100 million.

However, the risks associated with consuming Sudan 1 at very low levels are negligible.

Other countries made much less of the scare. The New Zealand FSA said that *"the risk, if any, for anyone who has consumed food made with chilli powder as an ingredient is so small as to be immeasurable and consumers are advised not to be concerned"*. This can be compared to the UK FSA, who advised that *"Sudan 1 could contribute to an increased risk of cancer. However, at the levels present the risk is likely to be very small but it is sensible to avoid eating any more....we will continue to take action to remove these [affected products] and minimise the risk to consumers"*.

Questions this raises

Why the different approaches in different countries?

If the substance were not banned, would the risk have been low enough to allow products to remain on shelves?

Were consumers given accurate and balanced information?

that the over-regulation of risk and the resulting glut of rules and guidelines make us less willing to take responsibility for risk, undermines trust and dilutes our sense of adventure.

In preparing this report, we have talked to many people in the media, politics, public and voluntary services, to trades unions, regulators, academics and other interested stakeholders. We found strong support for a debate about risk and regulation, building on previous work by the Better Regulation Task Force (BRTF) on alternatives to classic regulation⁴ and the compensation culture⁵. We found agreement with our view that we now need a shift in the nature of the discussion, leading to fundamental changes in how we perceive and make regulations. We heard concerns about the impact of ‘no win, no fee’ advertising, rising insurance premiums, the fear of being blamed for not preventing accidents and the difficulties of operating in a culture of zero-risk tolerance. At the same time, we observed a wider public debate about the decline of trust in authority, public institutions and the professions⁶.

In this report, we look first at what has led to the current confusion over how we perceive and handle risk. We then consider some of the results of this confusion and the roles of politicians, civil servants, the media, pressure groups and the public. Finally we identify some hopeful signs and make recommendations to bring about the changes we want to see. Throughout, we summarise the evidence we have collected as a series of case studies on facing pages throughout this report. These illustrate particular aspects, both good and bad, of the current approach to risk management and policy-making. Many of them also illustrate the frustrations and concerns expressed by those we spoke to in preparing our report.

Risk and regulation – tangled concepts

The plethora of rules, regulations and guidelines that has become familiar to all of us doesn’t happen by accident.

The public response, often encouraged by the media, to a perceived risk (be that a risk emerging over time or a specific incident) is usually to call for regulation. We can characterise this process, whether precipitous or gradual, as a ‘regulatory spiral’, summarised as follows:

1. The perception of a risk emerges. This can be progressive over time, such as the risks of obesity, or following a specific incident, such as the kayaking accident at Lyme Regis in 1993.
2. A public debate follows, often based around headlines and incomplete or biased information, resulting in a call for ‘something to be done’, which is amplified by the media.
3. Instinctively, the public looks to the Government to manage the risk.

4 “Imaginative Thinking for Better Regulation” September 2003

5 “Better Routes to Redress” May 2004

6 “A Question of Trust”, the BBC Reith Lectures 2002, Onora O’Neill, Press Syndicate of the University of Cambridge

The Adventure Licensing Authority

The issue

On 22 March 1993 four teenagers drowned whilst on a kayaking trip at Lyme Bay, off the Dorset coast. The trip was organised by an outdoor centre which had allocated two canoeing instructors to accompany the school party of eight teenagers and one teacher. The kayaks were swamped by high waves and although the party had been due to return from the trip at noon the emergency services were not called out until 3.30 pm that afternoon, with the survivors not rescued until later that evening.

The subsequent trial resulted in the convictions of the owner of the activity centre and the centre itself on corporate manslaughter charges.

The response

Prior to the Lyme Bay incident, providers of outdoor activities could opt in to a variety of voluntary codes of practice. However, the incident provoked an emotive campaign, led by the victims' parents and supported by the press, the National Union of Teachers and some MPs. They pressed hard for tightened regulations on outdoor activity centres and for a statutory national system of accreditation and inspection.

Throughout this campaign the Health and Safety Executive (HSE) and the Government argued that legislation was unnecessary and supported a revised self-regulatory system.

However, as a result of the campaign, the Activities Centres (Young Persons Safety) Act was implemented in 1995, which led to the creation of the Adventure Activities Licensing Authority (AALA). The regulations require all activity centres to apply for a licence and to be inspected by the AALA. Half of the estimated 1500 providers of adventure activities coaching applied for a licence and only 13 of these had their applications refused.

Questions this raises

Could the Lyme Bay tragedy have been avoided if the current system been in place?

Was the regulatory response proportionate to the risk implicit in participating in adventure activities?

Who should take responsibility for the risk implicit in taking part in adventure activities?

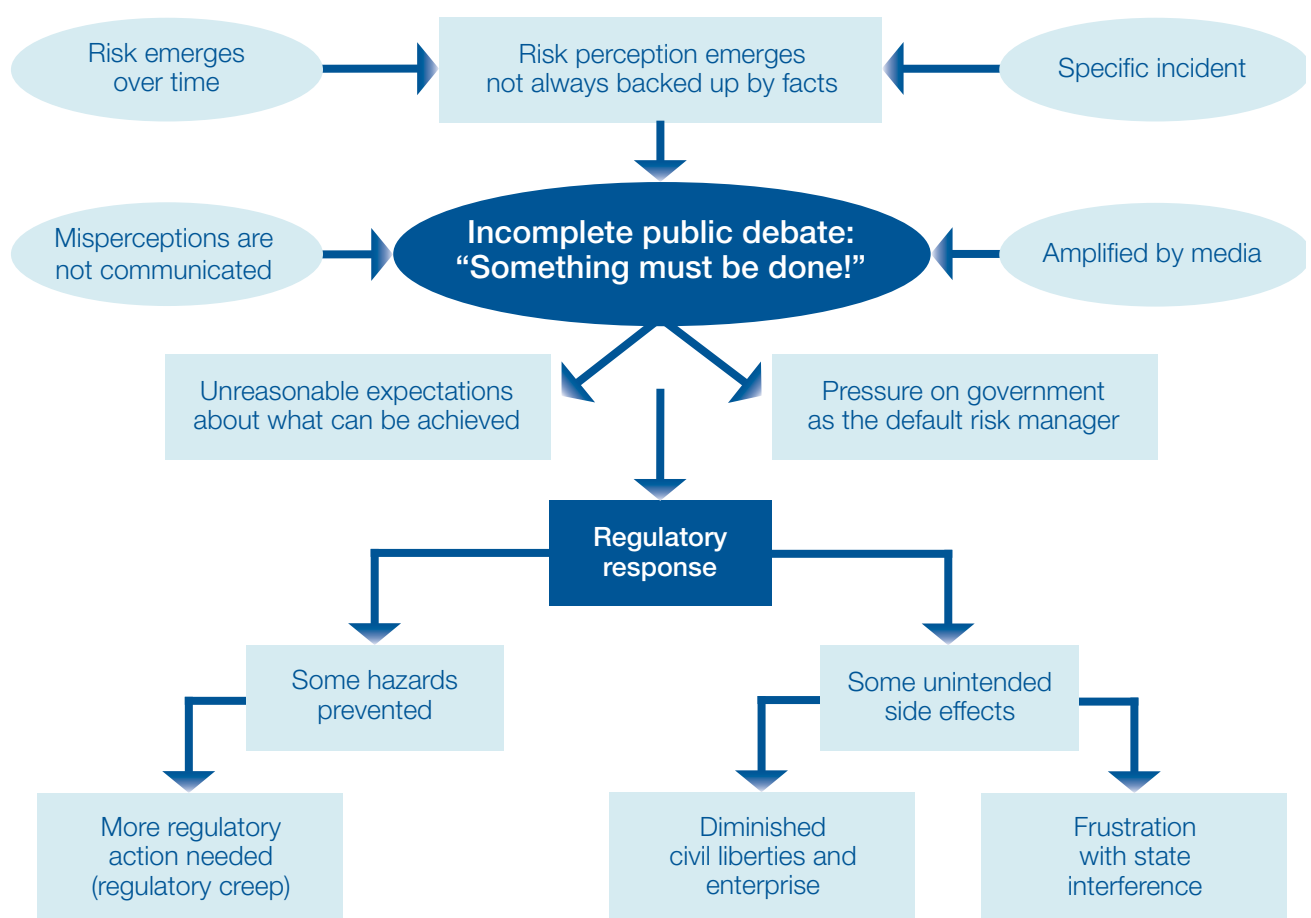
Not all adventure activities are covered by the Act. What were the reasons for excluding other dangerous activities such as horse riding?

Has the creation of the AALA resulted in the closure of activities centres? If so, what impact has this had on other related risks, such as childhood obesity?

The reference to over 600 activity centres being forced to close has been deleted from this page. This figure, provided by The Royal Society for the encouragement of Arts, Manufactures and Commerce (RSA), is disputed by the AALA.

4. Responding to this public pressure, the government makes ambitious claims that it can solve the problem and steps in with a regulatory response, rarely considering the trade-offs involved.
5. As a result, the role of the Government as risk manager is reinforced.
6. When the regulations are implemented, they inevitably fail to solve all the problems and also bring with them unintended consequences.
7. With good implementation, some hazards are prevented, but this does not make news. Other hazards are not prevented and problems persist, leading to calls for more government action.
8. As a result of more regulation, people complain that liberties and enterprise are diminished and criticise the 'nanny state'.
9. Governments are blamed for interfering and acting unreasonably and, as a result, the national level of frustration shifts up a notch.
10. (If we are not careful), governments may seek to address issues of frustration and disengagement through more regulation.

The regulatory response to risk



New child car seats regulation

The issue

In 2004, a survey conducted by the Transport Research Laboratory showed that 5% of 0-4 year olds were not restrained in any way in the rear of cars. That year, 24 children aged 0-11 were killed and 372 seriously injured in cars, with 1,604 children estimated to have suffered light injuries. Studies have shown that adult belts do not provide the best protection for a child. Changes to the law aim to substantially reduce the number of child injuries and fatalities caused by unrestrained children or unsuitable adult belts.

The response

Under the previous EC rules, child seats and boosters should be used 'if available'. New EU child-seat regulations for cars came into force in the UK on 18 September 2006. Children up to the age of 12 and under 135cm are not allowed to travel unless they are in an approved safety seat (i.e. child seat or booster). Offenders can be fined a £30 fixed penalty or a £500 fine if the case goes to court.

The new rules reflect advice that has been given for many years to those transporting children. Surveys show that, in spite of this non-regulatory advice, the vast majority of children over five who should be using a child seat travel just in adult belts, and a significant minority use no restraint at all.

The appropriateness of child car seats depends on the weight of children. As a child's weight changes it will be necessary for them to move up from one type of seat to another. To be fully equipped with all the appropriate seats, parents would need up to four car seats to ensure maximum safety (a rear-facing baby seat, a forward-facing child seat, a booster seat and a booster cushion designed for larger children over 22 kg).

The law allows for a few exceptions: It is recognised to be impracticable to expect the right child seat or booster to be available in a taxi unless parents have brought one with them. "Short and occasional journeys" made for reasons of "unexpected necessity" are also exempted. This will make enforcement difficult for the police who are expected to "use common sense" by Road Safety Minister Stephen Ladyman. He expects officers to appear at school gates from time to time to give parents advice.

Questions this raises

Is it reasonable to expect parents to be able to comply with the rules?

Could parents occasionally refuse to carry another child if no adequate child seat is available? Will the law lead to other, unintentional risks to children, such as leaving them to walk the streets unsupervised?

If enforcement of the law is not meant to be strict, would a non-regulatory approach such as a high-profile education campaign have reached the same outcome in a more efficient and proportionate manner?

Is the state responsible for setting and enforcing rules for parents to transport their own young children?

One result of this process is to put politicians in a ‘no-win’ situation – the classic ‘damned if I do, damned if I don’t’ trap that influences their response to a crisis, whether a human tragedy, transport catastrophe or market failure. They are not helped by the public and media, who express contradictory views about government action – calls for government action are just about balanced, at least numerically, by calls for government to stop interfering.

There is a view that the policy dilemma at the heart of risk management is that policies responding to lay-people’s perceptions of risk tend towards over-regulation, while policies based entirely on scientific evidence will be seen as an inadequate response and will not be supported by the public.

Not every risk and regulation decision will suffer from poor process or scrutiny or go through all stages of the regulatory spiral. We have highlighted elsewhere in this report some examples of good practice. However, we believe that these weaknesses are sufficiently common to cause distortions in the ways we understand, talk about and respond to risk. As a result:

- **Differences in perceptions of risk remain unexplored and unresolved.** Differences in the ways individuals and groups perceive risk and therefore want to respond to it arise from the nature of the risk, the availability of information, its familiarity, probability and controllability, the extent of choice over risk exposure and the level of trust in those responsible for managing it.
- **Our communication of risk is poor.** Risk may be expressed in different ways – as percentages, probabilities, comparators or trade-offs; but too rarely are they used intelligently or tailored for specific audiences.
- **Regulations breed uncertainty and fear.** The growing number of regulated risks, frequently ‘justified’ by lurid headlines or the imaginative use of statistics, leads to a perception that the world is full of ever growing dangers that must be kept in check, usually by more government regulation.
- **The public debate is distracted by special interests.** These include the need to sell newspapers, political pressure to talk up achievements and raise expectations, the nature of opposition politics, opportunistic campaigns, a bias for bad news rather than good and interference from other, usually irrelevant, issues. These often crowd out the presentation of objective, balanced evidence as a basis for people to understand the nature and extent of risks and to decide on their preferred response.
- **Action is often based on emotion.** Misfortune, tragedy and loss sit at the heart of many risk debates and government can be overwhelmed by the need to respond sympathetically and try to make things better. This frequently clouds the process of choosing the best response and can make the option of ‘no action’ appear both uncaring and irresponsible.

The Gangmasters Licensing Act 2004

The issue

On 5 February, 2004, twenty-three Chinese workers were drowned in rising tides whilst cockle-picking at Morecambe Bay, Lancashire. They had been employed illegally by an unscrupulous gangmaster. In the wake of the tragedy, pressure mounted on the Government to legislate to ensure that workers would not be exploited by gangmasters again.

The response

By coincidence, a Private Members Bill was going through Parliament at the time, which sought to get gangmasters licensed in the agriculture sector only. Until the deaths at Morecambe Bay the need for new regulation was questioned, on the grounds that not enough evidence had been produced to prove that gangmaster activity was insufficiently covered by existing legislation. But as the circumstances of the tragedy came to light in the national press, the Bill was passed and extra clauses added to it to include the shellfish gathering sector.

The resulting Gangmasters' Licensing Act was passed in 2004. The Act makes it illegal to operate as a gangmaster without a licence, and also outlaws the use of unlicensed gangmasters to obtain labour. The Act also established a new regulator, the Gangmaster Licensing Authority (GLA) to set and operate the licensing scheme.

The GLA started accepting applications from the agriculture and food processing and packaging sectors from April 2006 and for the shellfish gathering sector from October 2006. The cost of a licence depends on the size of business, with the fee ranging from £500 to £9,000. There is also a one-off charge if an inspection is required at the application stage. This is geared to the size of business with the cost ranging from £1,600 to £2,500.

Questions this raises

There would appear to be no doubt that a hard core of exploitative gangmasters operating illegally exists in the UK and that state action to curb their activities is warranted. However, could gangmaster activity have been effectively regulated by strengthening existing regimes (such as health and safety and employment agencies protections)?

What has been the impact of the additional costs of licensing on the regulated industries? The farming industry claims the Act has unintended consequences. If so, how could these have been avoided?

How do the costs and benefits stack up?

Does the narrow scope of the Act (which covers only the agriculture and shellfish industries) encourage unscrupulous gangmasters to transfer their activities to other industries, such as the hospitality or construction sectors?

Would the Act, and its associated inspection regime, prevent a recurrence of the Morecambe Bay tragedy?

- **There is incomplete information on which to base a decision.** In particular, trade-offs and costs are poorly understood such that government intervention can appear beneficial (or cost-free) simply because the negative consequences are not fully exposed. An example of this was the move from the relatively safe railways onto the much more dangerous roads following the Hatfield rail crash in 2000. There is also little information to help people understand the marginal costs of increasing levels of protection, for example in health and safety.
- **Risk management is generally cumulative.** As new risks emerge and actions are taken, the regulatory stock continues to grow even though new technology or changed behaviour makes some of the old regulations irrelevant. We rarely deal with these obsolete measures.

Our current approach to managing risk and regulation leads, at least in the public mind, to other concerns. One is the erosion of trust resulting from increasing reliance on rules and regulations. We see evidence of concern around the effects of a rules-based culture on individual and organisational resilience, ingenuity and agility. Some claim that our national sense of adventure and entrepreneurialism has been diminished and our sense of community and responsibility has been undermined.

Whatever the evidence, not all these problems can be attributed to the way we regulate risk. However, there is undoubtedly a perception that there is increasingly a 'nanny state' that ties up individuals and enterprises in 'red tape' and prevents them from enjoying the freedoms and taking the risks and responsibilities they would like to take in their own lives. At the same time, we can see that the 'nanny state' is ineffective since, despite interfering more and more in our lives, it does not and cannot stop people being hurt.

Fatalities in 2004 – a selection of figures⁷

There were 512,505 deaths in England and Wales in 2004. 98% were due to disease or illness. 2% (10,644) arose from accidents, including:

- 2,915 falls, such as:
 - 101 involving beds
 - 70 involving ladders
 - 10 on ice and snow

2,728 transport accidents

169 drownings

3 involving lawnmowers

1 lightning strike

At the heart of these perceptions and concerns is an incomplete understanding of the nature of risk and the proper roles of government, citizens and other organisations in managing it. Despite rhetoric to the contrary, it appears that our society is often more concerned to reduce or abolish risk than to support enterprise, adventure and self-reliance.

⁷ Mortality statistics 2004, DH2 31, Office of National Statistics

MMR vaccine

The issue

Measles, mumps and rubella are highly contagious diseases with potentially fatal consequences. In a continued effort to immunise the public against these diseases, the MMR vaccination was introduced in the UK in 1988. The vaccine contains the three separate vaccines in one injection and replaced the separate administration of these vaccines in 1998.

The triple MMR vaccination jab is more efficient and less distressing for the child as it reduces the number of visits to the doctor and jabs by a third. The vaccination led to a drop in reported cases of all three diseases. However, in February 1998, Dr Andrew Wakefield published a paper in the medical journal, the Lancet, which suggested that the MMR vaccine was associated with autism and inflammatory bowel disease.

The response

Dr Wakefield's theories received substantial media coverage and provoked parental concerns about the safety of the MMR vaccine. Vaccination rates for MMR fell dangerously, from 92% in 1996 to 80% in 2003, sparking fears amongst the medical profession that epidemics of the three diseases might break out amongst those children who had not been immunised.

In March 1998 the Medical Research Council concluded that there is "no evidence to indicate any link" between the MMR jab and bowel disease or autism in children. The vast majority of the medical profession supported this view. Dr Wakefield's theories were dismissed and the Lancet admitted it should never have published his study, which they now said was "flawed".

The Health Protection Agency has recently quoted figures saying that the uptake of the MMR vaccine had risen again to 83% in 2005, but this figure was still well below the 92% rate of vaccination reported in 1996. Some parents still remain concerned and do not know who to trust.

Questions this raises

Could Dr Wakefield's theories have been handled differently by all of the parties involved (the media, government, politicians and the medical profession)?

Did mismanagement of Dr Wakefield's theories lead to children being put at more risk of catching the MMR diseases?

Should the Government have placed more emphasis on the risks associated with not taking the vaccine?

Were parents given enough information to enable them to make a balanced decision?

It would often appear that we would rather events not happen than for them to risk causing hurt, for volunteers not to be used than to be exposed to any danger and for opportunities to be missed rather than exploited.

This does not sit comfortably with government commitments to increase people's responsibility and choice. The consequences of the current trend range from the bizarre to the worrying.

Caution: contains nuts

In researching this report, we have come across a disturbing number of examples of regulatory creep as well as extreme examples of risk avoidance and fear of litigation. We have all been amused by warnings like 'Caution – contains nuts' on packets of peanuts and 'Caution – contains milk' on a pack of butter. Much of this kind of labelling is not required by any legislation, but derives from the increasing (and understandable) tendency of manufacturers and retailers to rely on legal and insurance advice to minimise their exposure to the risk of litigation. This may be especially true in a global economy where one size may have to fit all and it is harder to match advice to individual circumstances.

The problem is that these responses by business and industry, while rational at one level, inevitably reinforce the notion that we live in an increasingly risky society and that someone else is always to blame if something goes wrong. There remains a strong fear of litigation, even if the evidence in the UK suggests otherwise. The BRTF stated in its report on litigation⁸ that fears of a growing compensation culture in the UK were wrong. Equally, the House of Lords Select Committee on Economic Affairs found "no significant statistical evidence emerged to support the notion of a developing compensation culture."⁹

However, despite these findings, worries remain about the role of the judiciary and case law in driving a culture of risk aversion. The accretion of case law can lead to regulations being amended in ways that distort their original purpose and increase administrative burdens. Ironically, attempts to restrict the scope for subsequent interpretation of regulations by 'precise drafting' can lead to regulations that are excessively prescriptive and complex, especially when transposing EU directives.

We have also noted the importance of lobby groups in shaping societal attitudes to risk, especially those that are seen as single-issue campaigns. These groups are often helpful in identifying new hazards and have an important role to play in a democratic society, with some NGOs being trusted more than politicians and public institutions. They are essential to any process of rational consideration of all sides of an argument. However, they can sometimes have a disproportionate effect on measures taken to mitigate risk. For example, the Brent Spar oil rig was dismantled and recycled rather than being disposed of off-shore following a Greenpeace campaign. Greenpeace later admitted it had got some of its claims wrong.

Ideally, decisions on risk management should be based on a balanced consideration of all factors. However, the media can amplify a minority voice so that it is heard over its opponents and the loudest voice often wins regardless of the integrity of the data.

⁸ "Better Routes to Redress" May 2004

⁹ "Government Policy on the Management of Risk" 7 June 2006

Cathedral Camps

The issue

'Cathedral Camps' was a charity that gave young people the chance to work on historic buildings. The camps were held at cathedrals and churches throughout the UK, where volunteers could help to clean and maintain these sites. Often this involved being strapped into harnesses and climbing ladders to work on church spires and towers.

The response

As new health and safety regulations were implemented, Cathedral Camps volunteers found that their activities were increasingly restricted. Finally, the maintenance of towers and spires was restricted to professional steeplejacks only and volunteers were instead asked to carry out more mundane tasks in an effort to reduce the risk of accidents.

Although no volunteers were ever injured in the Camps' twenty-five year history, insurance costs continued to escalate. In 2006, insurance costs were deemed to be so high as to preclude any further volunteer activities taking place. Cathedral Camps was disbanded in the same year.

Questions this raises

Were the associated insurance costs proportionate? As no volunteers were injured during these activities, what were the main factors driving up insurance premiums?

How else could the risks involved in Cathedral Camps activities have been managed? Who should have been held responsible for the risks involved?

If a fit and healthy volunteer wishes to spend their holiday maintaining churches and cathedrals, under what circumstances should they legitimately be prevented from doing so?

Once a story starts running and a catchphrase takes hold, it becomes difficult to shift the debate. For example, the headline “Frankenstein foods” made it virtually impossible to have a balanced, evidence-based consideration of the advantages and disadvantages of genetically-modified crops in the UK. The headline stuck in people’s minds and steered the debate in one direction only. A calmer consideration may have yielded a targeted regulatory option that could have dealt with the scientific uncertainties and public fears while retaining the possibility of commercial development for the UK.

Fear of litigation, terrifying and lurid headlines, single-issue campaigns, lack of trust, lack of information, confused accountability and a ‘something must be done’ mentality – all swirl around the policy-making process and put impossible pressure on the system – and ministers – for rapid and decisive action. Unfortunately, in too many cases, the more rapid and decisive the action, the worse the resulting regulation turns out to be, failing to solve the problem while bringing extra costs and unintended consequences.

Managing risk better

A new approach to managing risk would involve government, citizens and organisations in the public, private and voluntary sectors deciding together on how serious risks are, how they should be managed and who should take responsibility for managing them. Decisions would need to be evidence based, objective and rational. Interventions, where necessary, would need to be proportionate and targeted. However, our research shows that there are several obvious problems that would need to be overcome first.

Using evidence

We have been told that, as a society, our generally low levels of scientific literacy mean that risks are not well understood. However, we also know that, even when evidence is produced, it is often masked in impenetrable scientific jargon or not put into context. For example, we do not believe the public would have been so alarmed about the risks associated with the Sudan 1 food dye had they been made aware of the quantities of products containing this dye they would have to consume to put themselves at risk. Saying “there is a small risk” is meaningless without some reference point to explain what ‘small’ means in reality.

Yet when the public is properly informed and trusted with the evidence, presented in ways that make sense, results can be very different. The Food Standards Agency (FSA) was quick to dispel fears over the levels of acrylamide found in cooked foods. They are also running a campaign to highlight the recommended daily intake of salt, targeted especially at high-risk communities. The FSA has also shown that open, evidence-based discussion with stakeholders can bring results. Despite the high-profile of BSE and headline risks to humans, in light of new evidence they were able to reach agreement with consumers to remove the ‘over-thirty month’ rule for the human consumption of beef. The FSA avoided headline opposition to the revised controls now in place, even though they present a slightly higher risk, by making the evidence and options available and trusting the public to engage sensibly with it in an open, rational discussion. We believe that this experience holds lessons for how to engage consumers as partners in deciding on the sensible management and allocation of risk.

Genetically modified organisms

The issue

Currently, no live GM products are approved for sale or consumption in the UK. In the mid and late 1990s, a media campaign highlighted possible risks of so-called 'Frankenstein foods', which caused difficulties for those wishing to research and develop GM foods.

The response

Retailers voluntarily removed GM food products from British supermarket shelves. In May 2000, fields of GM oilseed rape were ploughed up by anti-GM campaigners in the UK. The media campaign on 'Frankenstein foods' contributed greatly to the polarisation of the debate on GMO. It proved difficult to contradict this 'capture by catch phrase' and therefore the case against GMOs gained.

The fearful public response flourished in a generally distrustful atmosphere, with memories of the BSE crisis still relatively fresh. Had the debate been managed better, a premature polarisation might have been avoided: research shows that people do not have yes/no attitudes to GM foods, but more subtle opinions. They accept some risk is inevitable but want to know what the benefits are and what the driving force behind the technology is – company profit or the good of the world.

The biotechnology industry claims that the controversy surrounding GM crops has had a significant impact on the UK economy. One observer has suggested that the UK could be up to £2bn worse off. The expertise in this field is now to be found outside the EU, primarily in the USA. To date, countries growing GM crops have not reported any significant environmental damage. It could be argued therefore that options were closed off prematurely in the UK, although it should be added that this does not necessarily mean that there is no risk.

Questions this raises

Did the biotechnology industry or government respond to public concerns over GMO early enough and in an appropriate way? Were the public given enough information about benefits, risks and uncertainties surrounding GMO?

Would a less emotionally charged approach to GMO research not have been more beneficial?

* Mortality statistics 2004, DH2 31, Office of National Statistics

The Precautionary Principle – licence to interfere?

Several people have raised concerns about the use (or misuse) of the precautionary principle as a justification for legislation. The precautionary principle states that if the potential consequences of an action are severe or irreversible, in the absence of full scientific certainty the burden of proof falls on those who would advocate taking the action. Where there is scientific uncertainty the precautionary principle establishes an impetus to make a decision that seeks to avoid serious damage if things go wrong.

We have heard accusations that the precautionary principle is ill-defined and ambiguous. As such, it is a poor basis for preparing legislation. It rarely encourages consideration of opportunity costs, such as an impact on innovation. Further, where many degrees of precaution are possible and in the absence of evidence, it is not clear where to stop.

Clearly, as we are arguing that decisions should be based on evidence of the magnitude and impact of the risks being managed, together with transparency over costs and benefits, the precautionary principle presents a problem. It can lead to over-reaction such as the decommissioning of nuclear sites, where the precautionary principle is said to be a significant brake on progress and inflator of costs. On the other hand, however, mistakes with the precautionary principle can also lead to under-reaction, as with the BSE crisis in the 1990's.

We were interested to read in the European Environment Agency (EEA)'s publication "Late lessons from early warnings: the precautionary principle 1896 – 2000"¹⁰ that there are certainly two sides to the story. It acknowledges that over-reaction is expensive in terms of lost opportunities from innovation and lost lines of scientific enquiry. However, neglecting to take timely, preventative action is also costly, as cleaning up the results of environmental damage and compensating victims can be much more costly than preventing the pollution in the first place. The EEA calls for a better balance between promoting innovation and protecting from hazards and highlights some good lessons from the case studies it examined:

- Acknowledge and respond to ignorance and uncertainty, identify gaps in scientific knowledge.
- Monitor early warnings.
- Be interdisciplinary (anticipate possible side effects/assess composite risks).
- Evaluate a range of options.
- Use specialist expertise as well as lay and local knowledge.
- Take account of assumptions and values of stakeholder groups.
- Avoid paralysis by analysis.

These are suggestions that the BRC is pleased to endorse as a pragmatic way to ensure that the precautionary principle is not misused to bring in legislation in an opaque or smothering way without a sound evidence base or risk analysis.

¹⁰ 10 January 2002

Acrylamide

The issue

In 2002, research from Sweden showed that frying and baking a wide range of food creates high levels of acrylamide. The chemical is classified by international experts as a probable human carcinogen, although there is no hard evidence either way. Practically nothing is known about its effects on humans via the diet.

The response

Following this research, the Food Standards Agency (FSA) recommended that people should continue with their normal diet and cooking methods until more is known about the chemical and its effect. The levels of acrylamide found in the Swedish food tests were a thousand times lower than those that caused tumours in animals. The FSA pointed out that as acrylamide appears to be formed in food by common cooking practices, it was not a new risk and people are likely to have been ingesting the chemical for some time.

The FSA decided that the risk of people contracting diseases from improperly cooked foods was greater than the risk of developing cancer from exposure to acrylamide in cooked foods. Regulations are in place to reduce exposure to the chemical in other areas, such as water, and the FSA has helped to fund further research into acrylamide found in food.

Questions this raises

What are the lessons for other potential 'food scares' involving low levels of risk?

How can different kinds of risk (e.g. risk of cooking food versus risk of eating poorly cooked food) be compared?

How can this best be communicated to a sceptical public?

The role of the media

We have come across a strong perception, both in government and outside, that much of the pressure for new regulation comes from the media, including the printed and broadcast media, the internet and other ‘informal’ campaigns.

Certainly the media can amplify concerns and sensationalise risks. In the recent furore over knife crime, for example, only a minority of the press acknowledged the evidence that the incidence of knife crime, while worrying, had not in fact increased. The Guardian did, however, note,

“Knife crime is the panic of the day. Recently there have been some horrible murders.....but horrible though these crimes are, there is no upsurge. In 1995 there were 243 murders with sharp instruments; 10 years later there were significantly fewer, at 236 last year.”¹¹

Some journalists recognise that the media has a moral duty to report risks in a way that is socially responsible, while others indulge in what appears to be scare-mongering simply to grab attention and presumably to increase sales. Andrew Marr, in his book “My Trade”¹² puts it well.

“The trouble is that most journalists and most readers or viewers are utterly unable to measure risk. Journalism is notoriously reluctant to translate the tentative and balanced assessments of a medical research team or scientific paper. To sell papers, news must move and often that means provoking fear. It needs novelty and is far removed from, for instance, real public health priorities.”

If this is true, we must conclude that calls for regulation – or at least those led by the media – are more likely to be based on deliberately orchestrated ‘moral panic’ than on reasoned argument. In an increasingly media-driven, virtual age, this represents another potential barrier to the adoption of a more sensible, risk-based approach to regulation.

However, our discussions with politicians, senior policy advisors and the media showed that the role of the media is not straightforward. As well as calling for more government regulation to solve ‘urgent’ problems or reduce ‘unacceptable’ risks, the same publication or broadcast may also criticise increasing red-tape and the growth of the nanny state. ‘Something must be done’ articles compete for space with those that lament the growing power of government and the loss of personal freedom. At one level, this can be seen simply as a response to the need to interest the readers, viewers and listeners. However, it may also reflect what has become our instinctive response to risk – to expect government to do something about it when a hazard might affect us but to keep out of it where our own liberties are at stake. People want to be left alone by the state when things are going well but want the state to be there when things go wrong.

¹¹ “Amid this panic over stabbings, we are ignoring what really cuts crime”, Polly Toynbee, The Guardian, 9 June 2006

¹² Andrew Marr (2004) “My Trade – A Short History of British Journalism”, Pan Books.

Dangerous Dogs Act 1991

The issue

In the early 1990s, a spate of vicious dog attacks was widely reported in the national Press. The reports were sparked by the death of an 11 year old child, who was killed in 1989 by two Rottweilers in Scotland. Public outcry ensued as a number of other children were mauled by dogs and photographs of their often horrific injuries were presented across the front pages.

The response

Mounting pressure on Parliament resulted in the implementation of the Dangerous Dogs Act in 1991. The Act introduced strict guidelines for owners on how their dogs should behave in public. It also identified a range of breeds of 'dangerous dogs' and targeted pit bull terriers and similar breeds. Dogs deemed dangerous under the Act must be registered, micro-chipped, insured, muzzled and kept on a lead in public. The penalty for flouting the new law was harsh: owners could be ordered to pay hefty fines and serve a prison sentence of up to two years, whilst unregistered dangerous breeds were mandatorily destroyed. Following a backlash from dog owners amidst widely reported cases of unregistered cross breeds being destroyed, the Act was amended in 1997 so that the mandatory death penalty on unregistered dogs was dropped.

While hard statistics of the incidence of dog attacks in the UK are publicly unavailable, "what figures exist suggest that deaths from dog attack are in single figures each year ... and the biggest risk of dog attack appears to be in the home from the family pet." However, figures are available for 2001, when 3400 people were hospitalised after a dog attack. This figure, registered 10 years after the Act's implementation, showed a 25% increase in dog attacks between 1996 and 2001.

In September 2006, two horrific attacks on children by Rottweilers hit the headlines, one of the breeds not covered by the 1991 Act.

Questions this raises

Was regulation the best way to deal with the risk of dangerous dogs?

Has the Act achieved its objectives?

One school of thought suggests that a dog's behaviour is more likely to be influenced by the way it is brought up and trained. Was the Act correctly targeted?

It is often difficult to distinguish banned breeds or to determine whether cross-breeds are deemed dangerous. Could a different approach have made enforcement easier?

Hence, as we move forward with this debate, the BRC would like to engage further with the media to discuss their role in supporting a sensible, evidence-based debate about the management of risk in our society. We hope they will respond positively and we have identified some good examples that give us encouragement. In our view, the approach taken by the government and the media to the current pension debate has been reflective and balanced. As a result, detailed discussion of options and their implications for citizens and organisations has been encouraged. While the answers are not easy, higher levels of informed awareness, created and sustained by the media, have certainly increased the quality of the debate and the degree of support for the preferred options.

In another area, bodies such as the Commission for Social Care Inspection (CSCI) have engaged the specialist press to ensure that the voices of service users are heard in the development of regulation and inspection. Together with the Healthcare Commission, CSCI is reviewing all its regulation to ensure it is both outcome-based and user-led. Similarly, the Chief Scientific Officer, Chief Medical Officer and Chief Veterinary Officer held a series of meetings with the editors of national newspapers to inform a reasonably calm approach to the issue of avian flu. We need to see many more successful initiatives like these.

Approaches to risk in government and regulators

Ministers, national and local politicians, policy advisors, public servants, inspectors and civil servants have a general tendency (often encouraged by systems of accountability and governance) to be risk averse for fear of the consequences were they to miss anything which could go wrong. We believe there is a strong cultural imperative, supported by formal and informal incentives, for government and regulators to seek to control all risks.

This starts with ministers and politicians, who tend to see their role as legislators, a view that is reinforced by the primary activity of government and Parliament – the proposing, debating and passing of new laws. To some extent, the legal background of many politicians encourages them to reach first for legislative solutions to problems rather than looking for alternative solutions. Further, there has been a tradition that getting an important Bill through Parliament is a good way to progress a political (and civil service) career.

Some regulations also come about as a result of the perceived need to respond to accidents and unfortunate events. All ministers will at some point face the problem of an incident developing into a political risk and governments want negative headlines nipped in the bud. Getting stories off the front page is an important ministerial skill and one way to do this is to reach for the statute book and to promise to regulate.

This is slowly changing and we are encouraged by examples of the Government and regulators refusing to give in to inappropriate calls for new regulation, however strident. For example, the Healthcare Commission resisted calls for hasty regulation to counter the risk of MRSA in hospitals. Instead, they produced new guidance on hygiene, while sponsoring further research to strengthen the evidence base to show whether new regulation would be effective.

MOT

The issue

Drivers are required to keep their vehicles (on the road) in a roadworthy condition. The purpose of the MOT Test is to ensure that cars, other light vehicles, private buses and motorcycles over a prescribed age are checked regularly to see that they comply with key roadworthiness and environmental requirements.

The response

The UK (as with a number of other Member States) currently goes beyond the EU minimum requirements for MOT testing. MOT testing in the UK is required 3 years after a vehicle is first registered with annual tests thereafter. This has been unchanged since 1967, despite the fact that modern vehicles are safer and more reliable than ever before. This is primarily because the MOT assesses the wear of safety critical components such as brakes and tyres rather than inherent reliability of the engine, gearbox or electrical systems. When originally instituted in 1960 by the then Ministry of Transport, the test only applied to vehicles over 10 years old although this was quickly changed to the current pattern. A test for a car with up to eight seats currently costs up to £44.15. Using a vehicle without a valid test certificate carries a maximum fine of £1,000.

There could be scope, while still meeting our EU obligations, to put back the date of the first MOT test from year 3 to 4 and have biennial tests until a vehicle is 10 years old. This would save motorists around £80m in test fees (based on an average fee of £35) in addition to savings in time and inconvenience. However any decision to reduce the frequency of MOT testing would need to weigh the benefits against any potential adverse consequences, including for road safety.

Questions this raises

Should the vehicle testing regime be modernised to make inspections more risk-based or to bring the UK in line with the rest of Europe?

What information on costs and benefits would be needed in order to decide what the optimum MOT regime should be?

What approach should the government take to deregulation when there are potential risks, such as increased road casualty rates, as well as benefits involved?

Who should be responsible for the condition of visible safety critical components such as tyres, the owner or the state?

It is a much more difficult task to explain convincingly to a sceptical public why regulation might not be the best answer than simply to promise to regulate. To do so requires a proper understanding of risk and the options for managing it, including the costs involved and trade-offs required. Training is clearly necessary and there is too little training available for ministers in managing and communicating risk. We know from our discussions that ministers would generally welcome such training and one of our recommendations is that it should be made available as a priority, both for ministers and senior civil servants.

The role of civil servants is, of course, also relevant. During our research, it was put to us that ministers should not be held accountable for inappropriate and excessive regulation. We were told that ministers “really only want to solve problems”, that they act on advice from officials, and that the advice from officials is “almost always to legislate”. While it is not the BRC’s role to join a blame game, we know from our work with government departments that civil servants can contribute significantly to the culture of risk aversion across government. Select committees and the media hold ministers and civil servants responsible for avoiding risks and they naturally become increasingly risk averse.

Some departments are less comfortable working with scientific and economic data and their officials have less exposure to risk-based analysis. In such contexts, departmental reward systems can operate to reinforce the status quo. Our report “Implementation of the Licensing Act 2003”¹³ showed how attempts to cover off every risk and control every eventuality through detailed secondary legislation, led to an over-complex and bureaucratic implementation regime being imposed on licensed premises and local authorities. We have similar concerns over the implementation of Home Information Packs and the mandatory energy performance certificates.

Sir Gus O’Donnell, Head of the Home Civil Service, would seem to share our concern. He has called on civil servants to be less risk averse and to focus more on delivering meaningful outcomes for people, rather than tying them up in bureaucratic procedures which, however elegant or internally consistent, fail to deliver. “Ask forgiveness not permission,” he says, hoping to encourage a culture of personal responsibility and controlled risk taking that will release energy and innovation among officials.

However, putting the focus more clearly on delivery will not of itself remove the culture of risk aversion. We may well be prepared to reward risk taking when things go well but the public services are easy targets when things go wrong. Several of those we spoke to believed that the Parliamentary Public Accounts Committee (PAC) encourages a culture of risk aversion. They mentioned the robust nature of its questioning and a quest for individual accountability when interrogating civil servants. Most were sceptical that, in a PAC hearing, one would want to rely with any confidence on a defence that “at the time, this looked like a manageable risk and I decided to take it.”

13 Better Regulation Commission, April 2006

Gas Safety Regulations

The issue

Health and Safety Executive (HSE) figures reveal that every year about 30 people die from carbon monoxide poisoning caused by gas appliances and flues which have not been properly installed or maintained. Many others also suffer ill-health. In the mid-1990s, a number of carbon monoxide deaths were widely reported amongst those who lived in rented accommodation, particularly students. Some of their landlords were subsequently prosecuted and found guilty of manslaughter.

The response

In an effort to reduce the number of deaths from carbon monoxide poisoning in rented accommodation, gas safety legislation was amended in 1994. The Gas Safety (Installation and Use) Regulations 1994 required landlords to be responsible for the safety and maintenance of gas fittings, appliances and flues. They must also have them checked annually by a registered CORGI gas fitter and issue the tenant with a safety check record. The Government's administrative burdens measurement exercise has estimated that the cost of these annual checks and certification comes to £236 million. These requirements do not apply to owner occupiers. HSE is currently undergoing a review of the gas safety regime to improve and modernise the regime on a risk and evidence basis.

Questions this raises

Are the landlords' requirements to undertake an annual safety check in the Gas Safety Regulations risk based?

Could the risk of carbon monoxide poisoning in rented accommodation be sufficiently mitigated in a less costly and bureaucratically burdensome way?

Is the scope of the regulations correct: should *all* home owners be made more responsible for maintaining gas and heating appliances in their own homes?

This is not a view shared by the PAC itself. It insists that it supports risk taking as a means to improve performance and drive innovation, so long as these risks are managed effectively. David Davis, a former Chairman of the PAC said “I am not convinced by the mantra of too many civil servants that they avoid risk because of fear of the NAO or PAC.....In my view the cultural barriers to risk taking within the civil service present a much bigger obstacle”¹⁴. There appears to be a perception gap which the Government and the PAC need to address.

Finally, at the front line, those who implement and enforce regulation often shy away from making reasoned and proportionate judgements of how best to respond to risk in the real world. Being keen to avoid blame if things go wrong, it can seem as if they don't just want to mitigate the most likely risks, but are intent on removing all possible hazards.

So incentives and culture need to change – for ministers, civil servants, local authorities, regulators and front line inspectors. Fear of bringing the Government or a council into disrepute for inappropriate regulation must become at least as powerful as the fear of possibly letting something through that increases risk. The present culture encourages the state – ministers, councillors, officials and regulators – to feel that they must take total responsibility and impose systems to neutralise all potential hazards.

A shift in attitudes

In undertaking our research, we sensed that the tide is turning. One senior politician told us that the most important task in politics today was the “sound assessment and management of risk”. We found regulators considering new approaches to regulation and risk. We heard ministers talking about combating risk aversion and embracing a new settlement with the public about personal responsibility and a pragmatic response to risk.

In an interview on obesity¹⁵, the Secretary of State for Health stressed the need for individuals to take personal responsibility. “There’s only so much the government can do....people need to want to change their lifestyles and take responsibility for their health,” she said. Despite this clear statement that government cannot (and should not be expected to) solve the problem, there continue to be calls for Ministers to bring in new regulations to ban certain junk food advertisements.

We heard that government departments, such as the Department for Environment, Food and Rural Affairs (Defra), are responding differently to incidents and about what they had learned from previous over-reaction and how they were avoiding turning problems into crises. The Health and Safety Commission is calling on people to ‘get a life’ and the RSA (Royal Society for the Encouragement of Arts, Manufactures and Commerce) gives a clear message that regulation is not always the best response to risk.

We were pleased to find a publication by the Treasury “Managing Risks to the Public – Appraisal Guidance” (2005). This sets out a framework for managing societal risk, including good practice in communication and the economic valuation of risk.

¹⁴ “Risk taking: the PAC view” by David Davis, National Audit Office Focus magazine, May 2001

¹⁵ Quoted in the Guardian, August 29 2006.

School Lunchbox inspections

The issue

Recent Government figures show that obesity levels in children are reaching unprecedented levels. Current trends indicate that by 2010, more than a million British children will be classed as obese. This means that obesity in girls is expected to rise from 16% to 22% by that time; for boys it is expected to increase to 19% (a rise of 2%)*. Childhood obesity has been linked to medical problems in (young) adulthood including diabetes, heart problems and a range of cancers. The cost implications of these obesity figures could be huge for the NHS and for the national economy.

The response

TV chef Jamie Oliver caused a media storm with his school dinners campaign which revealed that large numbers of children were eating a very poor diet of low quality junk food at school. The findings of research commissioned by the Department for Education and Skills and the Food Standards Agency into school meals in secondary schools in England prompted the Government to commission the School Meals Review Panel to recommend changes to current school meal standards to reduce fat, salt and sugar. The Panel's recommendations which have been implemented this school year, include:

- banning salt from dinner tables;
- increasing the quality of meat products, such as burgers, and reducing the frequency with which they are served; and
- restricting the serving of deep fried foods to twice a week.

As part of the drive to improve healthy eating in school, many schools have developed whole school food policies, which could include setting rules on what foods can be brought onto school premises in lunchboxes. As a result, unhealthy food is sometimes removed and locked away until home-time. Schools set such policies in their role of having responsibility for various aspects of the day to day running of the school such as conduct or school uniform. However, this has caused upset amongst some of the children affected, and objections from parents, who feel that schools should not be interfering in what they choose to give their children to eat.

Questions this raises

Who should decide what food children can take into school: parents, schools or the Government?

How should the risk of increasing levels of childhood obesity be managed? Who is best placed to manage that risk?

How might the Government open up the broader debate to include relevant other policies such as those affecting the access of young people to sports and playing fields?

* "Forecasting Obesity to 2010", Joint Health Surveys Unit, August 2006

We welcome the introduction of the Compensation Act 2006, which received Royal Assent on 25 July 2006. It is designed to remove the pressures of fear of litigation, which can be a significant contributory factor when deciding whether to take risks. It protects individuals who are undertaking a 'desirable activity' (e.g. taking school pupils on holidays or educational trips) against litigation for personal injury damages by, for example, the parents of an injured child.

We also heard how self-regulation and the exchange of information between consumers can provide effective, non-regulatory controls. The star-rating system on eBay, for example, uses customers' comments to provide quality assurance. Such systems of self-assessment, based on trust between buyers and sellers rather than external rules, takes power from traditional, external authorities and gives it to the consumer. The National Consumer Council (NCC) told us about the 'good builders scheme', which relies on customers posting their comments and ratings about builders on a website for all to share. In addition, we heard about risk underwriters developing preferential insurance terms in certain sectors for companies complying with accredited disciplines that demonstrate that they are managing risk to a lower level.

We are encouraged by these developments. They suggest that people, especially as consumers, are increasingly prepared to take some responsibility themselves for ensuring that the standards they expect are delivered, rather than relying on rules and regulations set and enforced by others. This is certainly the case in the disability movement, where service users are no longer prepared to accept rules that limit their choices but instead are ready and able to insist on solutions that work for them.

The Better Regulation Commission's view

The BRC asserts that the current entanglement of risk and regulation is unsustainable and undesirable. Accordingly, we call for a fundamental change of culture, recognising that this will require bold political leadership and significant shifts in policy. Far from reducing necessary protections, these changes should enhance them, as we would move to a system based on a more coherent understanding of risk and how and by whom it should be effectively managed. It would also ensure that where it is appropriate for governments to intervene through regulation, this is done on the basis that this is demonstrably the best possible option and is targeted in the most appropriate fashion.

Many of the concerns about risk and regulation are also about perception and we know that perceptions of risk and real risk are not always the same things. We are therefore calling for a public debate, to be led by government, on the nature of risk in society and the role of government in responding to it.

There needs to be a change in culture, one which seeks to achieve two goals.

First, we must seek to inform individuals in ways that enables them to make sensible risk decisions and to exercise personal responsibility.

Second, we need to allow individuals to manage risk where they have the knowledge to make an informed assessment of the risk, consider the risk to be acceptable and regard the cost of mitigating the risk to be affordable or insurable.

Nanotechnology

The issue

According to the Royal Society and Royal Academy of Engineering, nanotechnology encompasses the design, characterisation, production and application of structures, devices and systems by controlling shape and size at the nanometre scale. One nanometre is 80,000 times smaller than the width of a human hair. There is endless potential for the use of nanotechnologies, although their development is still at an early stage. For example, nanotechnologies have been used to improve the application of sunscreen, to make clothes stain-free and to make sunglasses scratch resistant. Technologies are still being developed which could be used in administering drugs, tissue engineering, quantum computers and energy systems – the potential is huge and is still being explored.

There is an ongoing debate about the extent to which the products of nanotechnology pose new risks. There are particular concerns with regard to the potential environmental and human health risks posed by free engineered nanoscale materials. Wider societal concerns have also been expressed, such as the use of the technology for surveillance and military applications. The media has previously chosen to highlight the ‘grey goo’ theory, whereby self-replicating nano-robots replicate out of control and consume all living matter on earth. However, more recent media coverage has tended to focus on the toxic effects of engineered nanoscale materials.

The response

Despite some calls to regulate and strictly control the products of nanotechnology, the Government is allowing development to continue while it determines the nature and extent of any new risks through a programme of research. It has also instigated a programme of public and stakeholder engagement on nanotechnology, including a ‘Sciencewise’ debate. All of the Government’s activities are informed by the Royal Society and Royal Academy of Engineering report on nanotechnologies, which states that “many applications of nanotechnology pose no new health or safety risks” but that there are areas where more research should be conducted. The report also dismissed the ‘grey goo’ theory as likely to be physically impossible.

Questions this raises

Opposition to nanotechnology does not appear as great as the resistance to genetically modified foods – is there a reason for this?

Would the Government have responded differently if media or public pressure was greater?

The BRC believes that all policy-making should start with a simple principle:

“When informed adults choose voluntarily to expose themselves to a risk and/or take responsibility for managing that risk and their behaviour does not harm others, the government should not intervene.”

In other words, personal responsibility should be encouraged. Building on the principles of subsidiarity and devolution, the state should not intervene and assume responsibility for risks that are better managed by individuals, families, businesses, organisations or local communities. In the absence of contrary evidence, government and regulators should assume that those they regulate are capable and trustworthy.

As the BRTF recommended in its reports “Imaginative Thinking for Better Regulation”¹⁶ and “Avoiding Regulatory Creep”¹⁷ the road away from individual management of risk towards classic government regulation should be travelled slowly and reluctantly. All regulatory alternatives, including the ‘do nothing’ option, should be examined and the costs and benefits assessed as broadly as possible.

We can think about the management of risk in terms of a Risk Management Hierarchy. At the top is the individual, at the bottom the EU and other international organisations. The policy-making task should be unequivocal – to push as far up the hierarchy as prudence permits on each and every single occasion.



¹⁶ September 2003

¹⁷ October 2004

Replacing the Over Thirty Month Rule (OTM)

The issue

Bovine Spongiform Encephalopathy (BSE) was first identified in the UK in 1986. More than 183,000 cases have been confirmed in the UK to date, of which more than 95% were detected before 2000. As of September 2006, 162 Creutzfeld-Jacob Disease (CJD) cases were recorded in the UK.

The response

The Over Thirty Months (OTM) Rule – one of the BSE control measures designed to protect public health – was introduced in 1996. It effectively prohibited human consumption of meat from cattle aged over 30 months at the time of slaughter. Farmers were compensated for cattle destroyed under the accompanying OTM Scheme. Until it was replaced, the OTM scheme cost the UK more than £3bn.

In consideration of the decreased risk to consumers and the disproportionate costs of maintaining the rule and following a thorough consultation, the Government replaced the OTM Rule with the new BSE Testing regime for OTM cattle in November 2005. The new control of testing cattle for BSE before they enter the food chain is much less costly: According to Food Standards Agency (FSA) calculations, the OTM scheme cost about £370m a year, compared to an estimated cost of about £60m a year for BSE testing.

Cattle aged over thirty months are now able to enter the food chain if they have tested negative for BSE. This brings the UK into line with the rest of the European Union where testing of cattle other thirty months old has been operating since 2001.

In July 2004 the FSA calculated that retaining the OTM rule would place a value on the cost of preventing a fatality at between £480m and £2,400m. With the replacement of the OTM rule by BSE testing, it is estimated that between 0 and a worst case of 2.5 additional CJD cases could occur over 60 years.

Questions this raises

How proportionate was the OTM rule to the risk it sought to address? Would any other solutions have been acceptable to the public, media or the Government?

If between £480m and £2,400m was being spent to prevent one fatality through the OTM scheme, could that same amount of money have prevented many more fatalities if it had been allocated to, for instance, road safety or the health service? If so, how should such decisions be made?

This drive towards personal responsibility requires willingness on the part of individuals, as illustrated by the Financial Services Authority's policy of 'Treating Customers Fairly'. This involves risks being communicated openly and clearly so that informed adults can make up their own minds alongside the press being engaged early so that there are no secrets and the relevant issues are effectively and publicly scrutinised.

Caveat Emptor – The approach of the Financial Services Authority

Modern case law and consumer legislation, whilst continuing to recognise the importance of consumers taking responsibility for their decisions, have increasingly made clear that particular acts or omissions by sellers will reduce a buyer's responsibility for an unhappy outcome. Modern, proportionate regulation recognises that consumers differ in experience and expertise in relation to different kinds of products and services (which themselves differ in the risks they present), and need advice and information. That information needs to be accurate, clear and intelligible. It also needs to be provided through a genuine desire to inform consumers rather than simply to avoid litigation.

While recognising such *qualified* consumer responsibility, it is also reasonable that consumers be encouraged by regulators, sellers and others to have the confidence to take an appropriate degree of responsibility for their actions and to act in ways that will maximise the chance of good outcomes for them in dealing with sellers. Such actions can include reading attentively adverts and other material associated with a product or service, thinking and communicating clearly about their own particular needs, making use of available safeguards such as cancellation periods, and being assertive in complaint if they perceive unfair treatment. Such actions can help consumers protect themselves and, if necessary, enable them more effectively to describe their actions and thinking to a court or ombudsman, should any dispute over a transaction go that far. And as sellers become more sensitive to customers' needs and requirements, and improve some of their own behaviour, they will likewise contribute to consumers taking more responsibility and bearing it more effectively.

But this also, in part, requires that the information provided is tailored to its audience and is delivered in a comprehensible, relevant fashion. While it is commendable that the Financial Services Authority encourages the principle of caveat emptor, the financial services sector is noted for a style of communication that appears more designed to avoid regulatory and legislative risk than to genuinely inform. There is evidence from the insurance sector to suggest that the nature and extent of information provision associated with financial products disables rather than enables caveat emptor.

How do we reverse the trend?

First and foremost, we need leadership. This disentangling of risk and regulation will not come about without clear, unambiguous and bold leadership. The most common response to our question about whether the link between risk and regulation could be untangled was scepticism. Despite the frustrations with the current situation, commentators from the media, from public service, politicians and regulators alike, were adamant that, without high level leadership, it will be impossible to untangle risk and regulation and put each in its proper place.

Naked streets – handing back responsibility

The issue

The Department for Transport (DfT) and local authorities design and implement safety measures to prevent road accidents from occurring. The basic road markings, lighting, signs and crossings help responsible motorists drive safely. They are often supplemented with traffic calming features such as speed-bumps and chicanes.

Accidents still occur regularly. In 2005, there were 271,017 reported accidents on roads in the UK in 2005. 3,201 people were killed. Even though numbers are decreasing, with ever increasing numbers of people and vehicles travelling in the UK, the risk of transport accidents inevitably remains.

The response

In recent years, several local councils in the UK have been testing an innovative Dutch technique to reduce traffic incidents called 'de-cluttering'. In Wiltshire, white centre-lines were removed from the roads in Seend Village – accidents decreased by a third and the average speed reduced by 5%. In Kensington, the High Street has been de-cluttered of devices originally installed to protect pedestrians. Barriers between pedestrian areas and the road have been removed, kerbs have been stripped away from junctions and the number of street signs has been reduced, resulting in a drop in accidents.

The idea originated in the Netherlands, where the concept (called 'naked streets') has been taken even further. Dangerous junctions have been stripped of traffic lights, road signs, directional markers and pedestrian crossings. To the approaching driver such intersections are totally ambiguous, and with nothing to tell drivers what to do they have to figure it out for themselves. As a result, drivers seem to approach it cautiously and with an eye on what everybody else in the vicinity is up to.

Supporters of the 'naked streets' concept argue that drivers, pedestrians and cyclists are forced to interact, make eye contact and adapt to the traffic, instead of relying on signs and signals. They are given more responsibility for their actions on the road. Without the conventional rules of the road in place, drivers tend to slow down and develop an understanding of their environment. It may be that road users pay less attention to their surroundings if they feel protected by an array of signs telling them what to do.

Where 'naked streets' have been adopted, accidents have gone down as have average speeds, and as traffic moves more efficiently journey times have decreased. DfT has commissioned research to explore de-cluttering, suitable speed restrictions and how to minimise the environmental impact of traffic signs and street furniture.

Questions this raises

Can we pass any lessons on to other sectors or is this a unique success?

Is the idea of restoring personal responsibility (rather than relying on external authority) one that can be established in other areas?

This leadership starts with a declaration from the most senior levels of government of a shift in direction, building on the earlier work of the BRTF, Philip Hampton's report¹⁸ and the ongoing work of the Better Regulation Executive in the Cabinet Office.

Next, there needs to be accountability for changing the direction, with specific people (ministers, politicians, public/civil servants) made accountable for delivery of this new approach to risk management. Finding alternative ways of addressing risks through shared, non-governmental action should become a career-enhancing move for ministers and civil servants. We need to expose the root causes of misguided risk management and the absurdities they produce and learn from them.

In September 2006 residents of a block of flats received letters from the Council informing them that they had to remove urgently all doormats from outside their front doors. This was apparently because doormats represent a 'tripping hazard' in the event of having to leave a flat quickly in a fire. The residents were unable to recall any such accidents and many objected to the removal of the mats, pointing out that their doorframes presented a greater hazard.

We need to learn from examples of new approaches to risk management, such as the 'naked streets' initiative in the Netherlands and similar projects elsewhere in the UK, that devolve greater responsibility for risk management to the individual. We need to reduce the flow of new regulation (and communicate effectively the reasons for following alternative routes) and also conduct risk-based reviews of existing regulation. We need to implement what we have got effectively, following the Hampton principles to ensure that inspection and enforcement are proportionate.

One of the lessons already known is that the involvement of stakeholders is vital. For example, this has been at the heart of Defra's strategy on avian flu and enabled the department to develop prompt, proportionate and science-based policies for when incidents occurred. Good stakeholder networks ensured a good flow of information and therefore a greater understanding of the options by all sides. Confidence in Defra's decision-making was enhanced by the trust that was built amongst its stakeholders.

What is possible?

If there is to be a change; if we are all to take responsibility for the risks we choose to take; if Government is to limit its interventions to areas where it is right for responsibility to be dealt with by national legislation; if the media is to begin a debate about when it may be right to seek the Government to act and when it may be wrong to call for it to do so; if, in short, a different future might be possible, what are our recommendations? How can we set course for such a future?

¹⁸ "Reducing administrative burdens: effective inspection and enforcement" HM Treasury, March 2005

Hatfield Rail Crash

The issue

On 17 October, 2000, a high speed passenger train bound for Leeds derailed at Hatfield in Hertfordshire. The train had been travelling at over 115mph. Of the 200 passengers on board, 4 were killed and 70 injured. Subsequent investigations found that microscopic cracks in the rails caused a rail to fragment when the train passed over it at high speed.

The response

Railtrack, who at the time owned all rail tracks across Britain, imposed speed restrictions across vast areas of railways whilst investigators assessed the safety of the tracks. Railtrack acted to avoid the risk of further accidents and subsequent personal injury claims. The speed restrictions, some of which were as low as 20mph, caused massive disruption across the network for around a year after the crash.

There is no doubt that Railtrack acted in a way they believed would best protect the health and safety of rail passengers. However, as a result of the widespread disruption, many commuters decided to travel by car rather than by rail. As the risk of dying on the roads is greater than that of travelling by rail, it has been estimated that “the increase in automobile traffic led to five additional [road] deaths in the first thirty days after the Hatfield crash”^{*}.

Questions this raises

Was Railtrack’s response to the crash proportionate?

Should Railtrack have considered the wider transport safety implications of their decision to cut speed restrictions on the railways? What role might the Government have played in this?

What other risk management solutions might have been employed?

Is our perception of the risks associated with travel skewed? If so, what could be done to readjust this?

^{*} Sunstein, *Risk and Reason*, p.2

It is important to understand that this report is not intended to remove or reduce essential regulatory protection. In making our recommendations, we are not mounting a challenge to the notions of essential public safety and public confidence or to the existence of legislation and democratic responsibility. Nor are we challenging the important role of Parliament in debating the parameters of the sort of society we want.

We recognise that regulation has an important part to play in achieving the social and economical goals that governments and citizens want. We have a collective, social responsibility to protect those who are vulnerable, but we need to guard against making assumptions about vulnerability.

We believe that legislation and regulation, important though they are, can only ever play a small part in a sensible and proportionate approach to risk. Alternatives to classic regulation will often work better, stimulate more enterprise and innovation, promote greater freedom and choice, inspire greater self-reliance and responsibility, be cheaper and impose fewer burdens. Trust needs to be rebuilt and, encouragingly, the public are voicing a willingness to take on more responsibility themselves. Developing appropriate, non-regulatory (or lighter touch) options that engage individuals, communities, alternative social institutions and enterprises will often be the solution.

We are calling for a new, more broadly-based and complete dialogue, with fact and emotions more clearly distinguished. We want to see better, more comprehensive responses, developed with sufficient time to explore options and their implications. We want recognition that risk can be creative and exhilarating, whilst also acknowledging that some risks need to be managed. However risks should be managed in the right place and we stand for the principle that the management of risk should rest with those best placed to deal with the issues involved. Where legislative or regulatory intervention is deemed necessary, it should be targeted and all costs and benefits should be understood. We also believe that there should be a neutral space in which calls for regulatory responses can be examined, not only for their immediate effectiveness but also for their potential for building capacity for the future.

To help achieve all this, our recommendations are set out on the following pages.

Recommendation 1 – Changing our approach to risk

In its policies, regulations, announcements, correspondence, targets, performance agreements and actions, the Government should:

- a) emphasise the importance of resilience, self-reliance, freedom, innovation and a spirit of adventure in today's society;
- b) leave the responsibility for managing risk with those best placed to manage it and embark on state regulation only where it represents the optimum solution for managing risk;
- c) re-examine areas where the state has assumed more responsibility for people's lives than is healthy or desired; and
- d) separate fact from emotion and emphasise the need to balance necessary levels of protection with preserving reasonable levels of risk.

Clear leadership is vital if we are to achieve a shift in risk management culture and policy-making in the UK. This needs to start at the top levels of government but must then cascade to every level of the public sector, including regulators, local government and front-line enforcement.

We call on government at all levels, regulators, professional bodies, consumer groups and all those with an interest in the better management of risk to respond to this call for change by insisting that all policy-making be crafted around the following propositions:

- Zero risk is unattainable and undesirable.
- Any intervention should clearly specify the risk that is to be managed, the objective to be achieved and the reason why state intervention is considered the optimum risk-management solution.
- Interventions should not replicate existing procedures.
- Any intervention should be targeted on those who are most at risk.
- The costs and benefits of the risk reduction should be quantified and comparable with other interventions in the sector.
- The opportunity cost of risk management should be clearly set out.
- The intervention should be reviewed on a regular basis to ensure that it achieves the desired outcomes cost-effectively.

We want the Government to state its commitment to these propositions and set out what it intends to do to bring these changes about as soon as possible after the launch of this report.

Turning intent into specific ideas

The Better Regulation Commission intends to organise a series of regional meetings in the period January – May 2007 in order to explore further ways in which these propositions might be implemented in practice.

We would also like to work with the media on a seminar to discuss how risk is communicated in the media and their role in creating or challenging a culture of risk aversion.

Recommendation 2 Establish the Fast Assessment of Regulatory Options (FARO) Panel

We recommend that the Government establish a 'Fast Assessment of Regulatory Options' (FARO) panel to examine calls for government intervention. The panel would advise government on regulatory and non-regulatory options to respond to incidents, accidents and issues, except where immediate national security issues are at stake.

The Panel should be independent, politically neutral and external to government. It should provide timely advice to ministers on appropriate, cost-effective responses which have a real impact, having considered all aspects of the risks involved, trade-offs, priorities and policy alternatives.

We believe it is critical to the credibility of any shift in approach to risk that the Government treat future incidents and issues in a different way than in the past. We would like to see the creation of an impartial, fast track regulatory impact assessment option. We take the view that pressures for ministers to do something will always be there. The FARO Panel will ensure the decision on how to react to this pressure can be made through a formal, time-limited process that is able to gather and analyse the necessary evidence and propose the most appropriate options for a response.

Ministers would be expected to refer all incident-related regulatory issues to the Panel, except immediate national security issues. Examples include Morecambe Bay (Gangmasters), Lyme Bay (adventurous activities), knife crime, MMR, GM crops, food scares and transport accidents.

The Panel would be constituted when required. A Chair and core membership of up to eight independent experts, including economists, scientists, lawyers, social scientists and the Better Regulation Commission Chair would be fixed. The Panel would call on politicians, government officials, media representatives, citizens and other stakeholders, as well as expert witnesses, to assist its work. The Panel will build a contingent network, with experts and a broad base of representative people pre-selected, enrolled and trained in its procedures.

The Panel would review the incident, evidence, existing legislation and what further measures are needed. It would seek to ensure that, where regulation is recommended, it would conform to the Five Principles of Good Regulation.

The Chair would be tasked with submitting advice to ministers on appropriate responses by an agreed deadline. The Panel's advice would be made public to safeguard the Panel's independence and credibility.

A minister would be under no obligation to accept the Panel's advice, but if not, would be expected to explain why a different course of action was justified, taking into account the evidence and risk assessment presented.

The Better Regulation Commission recognises that there are examples where regulators and departments have dealt with risk management issues with enormous clarity, thoroughness and calm in recent years.

These include the Food Standards Agency treatment of acrylamide risks, the Defra response to the first appearance of an avian flu case in the UK and the way the Department for Work and Pensions has handled the national debate on pensions.

The existence of the FARO Panel should not be allowed to act as a disincentive to departments to consider how best to tackle risks. In order to avoid this situation, the Panel should work with the relevant department from the outset, taking its counsel as the core of its assessment process.

We expect that the FARO Panel need not be a permanent addition to the policy making process. While it may cause a delay and add to the costs of policy making, any additional costs will be substantially less than the long-term costs to the country of rushed, inappropriate and poor quality legislation. As understanding of risk management options increases, both in government and society, we believe that the need for an independent panel such as FARO is likely to diminish. Accordingly, we recommend that the Government set up FARO initially for 5 years and review at that point whether it need continue. It should also review whether the Panel should play a role in adjudicating cases where the:

- complexity and overlaps of regulation, or the statutes of different regulators, lead to conflicting or inconsistent approaches to regulation; and
- an ex-post review is required, for example, when the effectiveness of a particular risk-based policy approach has been questioned following an incident or accident.

Recommendation 3 – Targeting the responsibility for managing risk

We recommend that government departments and agencies with responsibility for regulation should ensure and demonstrate that, when designing regulations and their implementation, responsibility for managing risk is allocated to those best placed to manage it.

We are concerned that the broad intent of pushing up the Risk Management Hierarchy wherever and whenever possible that was implicit in past Better Regulation Task Force reports has not yet had a significant impact on decision-making. We want this to be regarded as a priority rather than a general statement of intent. We want to see departments and regulators becoming more outcome-based and finding innovative solutions (regulatory and non-regulatory) as close to the top of this hierarchy as possible. If this fails to deliver a change in approach then consideration should be given to establishing a statutory duty.

Driving responsibility for managing risks up the hierarchy implies that individuals, organisations and communities are trusted to behave responsibly. They also need access to sufficient, good quality information and the ability to use it, together with support mechanisms such as insurance. Where these preconditions are not present, departments should try to find ways to encourage and build them before allowing drift down the hierarchy. Where the preconditions are partially present, departments should seek to understand the distribution and target policy accordingly.

This is a responsibility that should not only apply to government. Communities, businesses and other organisations should also seek to push the responsibility up the hierarchy towards individuals and employees, with the prize being higher levels of resilience, self-reliance and innovation.

Areas for further work

The Better Regulation Commission would like to work with government departments, regulatory agencies and key stakeholders to understand better how more autonomy (whether earned, claimed or assumed) and self-regulation could be used to address risks currently managed further down the hierarchy.

We would also like to work in partnership with the Department for Communities and Local Government and others to seek ways to empower individuals and communities to take back responsibility wherever possible.

The Better Regulation Commission would also like to work with the Association of British Insurers (ABI) to review insurance industry practice and assess how insurance can support a drive to move up the hierarchy. A more resilient, empowered society which manages risk better should reduce costs and insurance premiums. But the insurance of new risks, will, of course not be easy to price. We would appreciate help from the ABI in scoping a regime that would reward greater personal ownership of risk management, eliminate unnecessary costs and moral hazard, and prevent any upsurge in the compensation culture.

Recommendation 4 – Reduce the high costs of risk management

We recommend that, by the end of 2007, each department and agency with responsibility for regulation should work with the Better Regulation Executive and Better Regulation Commission to identify the principal risks they are protecting against and what short and longer-term outcomes their interventions are designed to achieve.

Those departments and regulators with targets to reduce risk should assess and publish details of the costs of reducing their principal risks to target levels. Costs should include both hard financial costs and the softer costs of the impact of their activities on behaviour and culture. Where the marginal cost of risk reduction is relatively high or exceeds the benefits achieved, they should set out how they propose to reduce those costs. This may include changing the nature and ambition of their target and/or changing the nature of their intervention.

If not already available, this information should be published in the annual simplification plan.

The Government should collect information on the marginal cost of risk reduction across government to establish benchmarking data and a body of good practice in how to assess and reduce these costs.

Principal risks would include:

- those which incur the highest cost (administrative or policy costs) to manage;
- risks with serious political, social, environmental or health consequences; or,
- risks that attract high levels of public interest.

In researching this report, we found it difficult to find hard data to determine whether or not the marginal costs of risk reduction are in reality excessive despite frequent anecdotal complaints of such. This difficulty is compounded by the comparative rarity of high quality Regulatory Impact Assessments and an absence of transparent cost/benefit analyses of proposals to tighten risk reduction objectives.

Some agencies have progressive targets to reduce, for example, the incidence rate of fatal and major injury, pollution incidents or cases of food poisoning. Other agencies do not set out clearly what outcomes they are seeking to achieve and it is essential that these objectives are made transparent. We would like to know what are the costs of achieving steady reductions in these kinds of risks and how the costs compare between different policy areas. Without this information, it is impossible to assess whether actions to reduce the risk are proportionate or whether resources could be better deployed elsewhere.

Area for further work

We are pleased to note that the Food Standards Agency, Health and Safety Executive (HSE), Financial Services Authority, Environment Agency and Defra have taken a public lead in risk management and have achieved some good results. Some have already done much of the work called for in this recommendation.

However, there is scope for more radical thinking around rebalancing risk and responsibility, based on better assessment and more public discussion of risk reduction costs and trade-offs. We would like these organisations, with their stakeholders, to work with us to identify examples where risk management costs might be out of balance, together with suggested remedial action. We also want them to help us identify good practice in risk management that can be used across all government departments and regulators to help deliver the optimum balance between the costs of risk reduction and the benefits achieved.

Recommendation 5 – Managing risk by providing information

We recommend that the Government sets out the circumstances in which requiring the provision of information to consumers genuinely helps the effective working of markets. This work needs to be informed by recent developments in media content, information technology and behavioural science.

The provision of information in a market can be a good alternative to more intrusive regulation provided that the information can be understood by consumers and real protection is delivered at a justifiable cost. It is also essential that information is targeted at and tailored for those whom the regulation is trying to protect.

Government should consider whether some existing information requirements hinder the operation of effective markets – for example by increasing costs and therefore prices, or by reducing competition.

Conversely, the Government should also assess whether there are instances where formal regulation can now be better replaced by well targeted requirements to provide greater information to consumers.

We are concerned that, in areas such as labelling on food and the documentation provided with financial services transactions, there may be too much focus on providing exhaustively complete information, often driven by a desire to avoid legislative or regulatory risk, rather than finding more meaningful and effective ways to communicate with customers.

We are aware that different policy areas take different approaches to this issue. For food and financial services, a major thrust of recent policy has been to encourage or require providers to make detailed information available to consumers, for example on pack labelling. In other areas such as telecoms, this approach has been less evident.

As a starting point, we believe that the recent exercise to measure administrative burdens should provide evidence of the cost of these information requirements to providers.

Recommendation 6 – Review the stock of regulation to make sure it allocates risk appropriately

We recommend that, as part of their ongoing simplification work, government departments and agencies with regulatory responsibilities should undertake targeted, post-implementation reviews of policy areas where the allocation of risk no longer reflects current objectives or prevailing circumstances.

Where the review concludes that changes are required, departments and regulators should include proposals for deregulation or amending regulations in their simplification plans by autumn 2007.

We want the Government and regulatory agencies to review and where possible remove examples of bad or ill-conceived law that remain on the statute book from former times. We have identified two potential types of ‘bad law’:

- Laws passed quickly in response to some incident, accident or event (sometimes called ‘knee-jerk regulation’). As a matter of policy, all such laws should include review and sunset clauses. As so few of them do, they should now be systematically reviewed and reassessed to see whether they are still needed and relevant.
- Laws that reflect past circumstances and, when looked at from today’s perspective, look increasingly anachronistic, cumbersome or irrelevant. For example, much of our current weights and measures legislation may fail this test when seen against current priorities in consumer awareness, business responsibility and reputation management.

Post-implementation reviews should be carried out in close consultation with stakeholders. They should assess the continued need for regulatory intervention and whether the regulation, as currently drafted, understood, implemented and enforced is delivering the desired outcome at an appropriate marginal cost without damaging or unintended consequences.

Reviews might usefully begin with the following policy areas:

- **MOTs** – where the frequency of testing has remained the same for almost 40 years, while cars are now much safer, more reliable and more environmentally friendly.
- **Transport safety** – The contrast between expenditure on rail safety and road safety measures.
- **Public procurement** – The opportunity cost of measures to reduce fraud in public sector procurement.
- **Government relationships with the Third Sector** – We see repeated examples of the cost of performance monitoring being significantly greater than the benefits gained from the monitoring. The BRTF also highlighted several areas of legislation unhelpful to the Third Sector in its November 2005 report “Better Regulation for Civil Society”.

Areas for Further work:

The Better Regulation Commission will work with departments, regulators and the Better Regulation Executive during 2007 to identify more candidates for post-implementation review. The results of the administrative burdens measurement exercise will also suggest examples of regulations to review as part of this process.

We have also noted with great interest the impact of paradigm shifts in safety management such as those achieved in the Dutch 'naked streets' experiment. It begs the question as to whether more innovative approaches could be adopted elsewhere. We will work with agencies and departments to understand better the extent to which other policy paradigms have been fully explored and whether there are options to deliver a safer world in a manner that is both more cost effective and more in tune with a perceived need for greater self-reliance, resilience and spirit of adventure in society. In other words, how can we turn the Health and Safety Commission's plea for us all to 'get a life' into action faster?

Recommendation 7 – Launch a 2007 campaign against regulatory inconsistencies and absurdities

We recommend that the Government launches a campaign in 2007 to identify and resolve:

- a) Structural, legal or other inconsistencies between the statutes, goals and obligations of different regulations and regulators many of which are likely to have arisen from differing risk management remits and perspectives.
- b) Absurdities (or unintended consequences) caused by inappropriate interpretation or implementation of regulations, guidance and procedures.

All departments and regulators should work with stakeholders and the public to compile and publish a ‘hit-list’ of inconsistencies, unintended consequences and absurdities by June 2007. They should then commit to resolving these as far as possible by April 2008, incorporating details into the 2007 updates of their simplification plans.

We want 2007 to be the year when we finally tackle and solve the more bizarre and unintended consequences of the way regulations interact and are implemented and enforced.

We have been impressed by what the Dutch have told us about their experience in resolving inconsistencies and absurdities. Following a request that they issued in 2003, the Dutch government received 800 suggestions of regulatory overlap, operational conflicts, inconsistency and perverse results from all sections of their economy. With strong leadership and the full co-operation of all parts of government and parliament, they were able to resolve the majority of these issues by 2005/06.

We want the Better Regulation Executive in the Cabinet Office to co-ordinate the 2007 campaign across government and regulators. The Better Regulation Commission will encourage departments, regulators and stakeholders to identify cases of inconsistencies and candidates for inclusion in the campaign.

The Government should publish regular reports of the suggestions received and the responses to them by government and regulators.

We would expect that some of the most burdensome inconsistencies will require an element of ‘adjudication’ between departments and, as indicated in Recommendation 2, we would expect that the FARO Panel would offer recommendations to ministers based on neutral, evidence-based analysis.

Recommendation 8 – Provide high quality training in risk management

We recommend that ministers and senior civil servants (including government legal advisors) should, as part of the National School of Government training programmes, receive training on understanding risk and the options for managing it. This training should include a specific module on communicating risk and handling the media following a major incident, including appropriate recourse to the FARO Panel.

Independent regulators should develop and provide similar training in risk for their Boards and staff, as well as continue actively to exchange best practice in risk mitigation and management.

We are encouraged by the progress being made to develop a better regulation culture. However, if risk is to be understood and managed better, key decision makers need initial and ongoing training in the new approach to risk management that we have outlined in this report.

We would like this training to cover:

- Understanding and measuring risk – differences between real and perceived risks.
- Options for risk mitigation and management and the risk management hierarchy.
- Costing risk and risk trade-offs in achieving policy outcomes.
- Communicating risks in language people understand and relate to.
- The need for continued focus on desirable outcomes and how to evaluate the success of different risk management options.

The National School of Government (NSG) is developing training for ministers and senior officials that will also be open to independent regulators and others. The Better Regulation Commission will discuss with the NSG how to include relevant, high quality training on risk management as part of this ongoing work.

Recommendation 9 – Be accountable for delivery

We recommend that the Cabinet Office better regulation minister, together with better regulation champions in government departments and independent regulators, be made accountable for ensuring regulation takes appropriate account of risk, allocating it to those best able to manage it and, where possible, reducing risk management costs. This will include:

- Ensuring that all government departments and regulators put in place ongoing and effective systems of liaison and consultation with their key stakeholders to address risk management issues in their policy areas;
- Providing an effective system of incentives for ministers and civil servants to ensure proper account is taken of risk;
- Responsibility to specify in their annual reports their progress in establishing a better regulation culture, including the better management of risk; and
- Developing effective means to share and publicise best practice in the understanding, management and communications of risk across UK government and regulators and the European Union.

We also recommend that Parliamentary committees provide robust and effective challenge where regulatory proposals allocate risk in an inappropriate way and do not inadvertently promote risk-averse behaviour in ministers and civil servants.

Our intention here is to make sure that the government and regulators have in place effective systems and the right incentives to deliver a risk based approach to regulation. We also want to see greater transparency in reporting their actions and assessing progress on implementing our recommendations.

Annex A – About the Better Regulation Commission

The Better Regulation Commission was formed in January 2006. We are an independent body which monitors and challenges the UK government's regulatory activity and provides advice on how to regulate better. We aim to improve legislative outcomes and, at the same time, to reduce unnecessary burdens on citizens, business and the public sector.

The Commission is non-political. All of our members are unpaid volunteers, appointed by the Minister for the Cabinet Office for their individual skills and qualities and for their knowledge of the regulatory environment. Members come from a variety of backgrounds – small and large business, voluntary sectors, trade unions, local authorities, enforcement bodies and the professions are all represented. The Chair of the Better Regulation Commission is Rick Haythornthwaite, who is a Managing Director at Star Capital Partners Limited and Non-Executive Chairman of Mastercard Inc.

The **Five Principles of Good Regulation** underpin our work:

Proportionality – regulators should only intervene when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised.

Accountability – regulators must be able to justify decisions and be subject to public scrutiny.

Consistency – government rules and standards must be joined up and implemented fairly.

Transparency – regulators should be open and keep regulations simple and user-friendly.

Targeting – regulation should be focused on the problem and minimise side effects.

Members of the Better Regulation Commission

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Teresa Graham OBE (Deputy Chair), Baker Tilly

Adrian Askew, Connect

Lynne Berry OBE, General Social Care Council

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Annex B – Members of the Better Regulation Commission who prepared this report



Lynne Berry OBE (sub-group chair) is the Chief Executive of the General Social Care Council, the social care workforce regulator, which she joined in 2001. Lynne was previously Chief Executive of the Equal Opportunities Commission and Executive Director of the Charity Commission.



Lord James Lindsay is Chair of the UK Accreditation Service (UKAS) and is Vice-Chair of SAC Ltd. He was previously Under-Secretary of State for Scotland and House of Lords spokesperson on Defra issues.



Eve Salomon is a freelance legal and policy consultant, specialising in broadcasting-related matters both domestically and internationally. She is also a member of the Gambling Commission and a Commissioner of the Press Complaints Commission.



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Annex C – Contributors to this study

We would like to thank the following for taking the time to contribute to our study.

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Dame Deirdre Hutton, Chair, Food Standards Agency

Simon Jenkins, writer and columnist

Sir Paul Judge, Chair of RSA's Risk Commission

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