

**2<sup>nd</sup> Annual Cambridge Conference on Regulation, Inspection and Improvement**  
***The End of Zero Risk Regulation: Risk Tolerant in Regulatory Practice***  
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**An appetite for risk, or a taste for regulation?**  
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**FINAL for food.gov.uk**

**Introduction**

As someone who has been fascinated by risk and regulation for many years, I'm delighted that the subject is now so high profile. The more we talk simply, intelligently and publicly about risk, the better – because we'll get better quality regulation and a better quality of life as a result.

So I congratulate Paul Sanderson and the Centre for Business Research for organising this event. Though, as someone closely involved with not one but two regulators, I'm going to start by taking issue with the perception that we have tried to regulate risk out of existence.

Zero risk regulation is not an objective I've come across in nearly ten years with the Financial Services Authority and the Food Standards Agency.

The Food Standards Agency has never talked about food being absolutely safe for the simple reason that we can't, there is no such thing. We talk only about reducing risks to what is generally acceptable.

I Googled 'zero risk regulation' a couple of weeks ago.

The first four links – and six of the top ten – all mentioned this event. The seventh linked to a 2003 paper from the Financial Services Authority which

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states that it *'is not required to remove all risk from users of financial markets.'*

The challenge for regulators is, 'how much risk?'

Further down the list there was a report from the Health and Safety Executive talking about the tolerability of risk in the nuclear power industry back in the 1980s.

So I think we need to make a clear distinction between regulators' attitudes to risk and what is widely believed to be public pressure for zero risk – though it is interesting to note that the House of Lords 2006 report on risk didn't find any significant evidence of us becoming an increasingly risk-averse society.

We're certainly happy enough to take risks when it suits us. Outside my office in Holborn people are constantly weaving in and out of the traffic rather than walking an extra few yards to the pelican crossings.

What is clear is that people are more inclined to be risk averse if they don't feel in control of a risk themselves – or if they don't believe in the people who are in control of managing the risk on their behalf.

What does that mean for a regulator looking for the optimum balance between public safety and businesses' freedom to innovate, compete and flourish? – which is, of course, of huge benefit to society.

### **Different categories of risk**

First, it means we have to recognise these different categories of risk – those where the public can or can't choose to take 'avoiding action' for one reason or another, whether that is to do with the nature of the risk, or the nature of the information available about it.

This is also where Donald Rumsfeld spoke a lot a more sense than he was given credit for with his 'known knowns'.....his 'known unknowns'.....and his 'unknown unknowns.'

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The known knowns of food safety are the everyday issues like avoiding salmonella or campylobacter contamination, or keeping harmful chemicals out of food. Relatively well understood and relatively well managed risks – most of the time.

These are the sorts of risks where responsibility rests squarely first with the food industry to produce and sell safe food, and to provide appropriate information. It rests then with the consumer to prepare and consume food safely. The responsibility of the regulator is to set the parameters that define safety.

The classic known unknown is atypical scrapie.

We know it's a BSE-like brain disease in sheep which came to light through the more sensitive techniques developed in researching BSE in cattle.

We know it's from the same family of diseases that have been present in sheep for hundreds of years, with no apparent ill effects.

But we don't know if it can be transmitted to humans.

And we don't know how many people would be affected if it can be transmitted.

The scientific tests will hopefully answer some of these uncertainties but will take several years to complete.

Given the uncertainty, responsibility lies primarily with government and the regulator to formulate a proportionate response in the face of a sea of uncertainty. Ours has been to tell the public everything we know about the risks, and what we don't know, and let people decide for themselves whether to take the risk.

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By definition, we don't know what the unknown unknowns are – but if you are a responsible regulator, you spend time looking for them and encouraging companies to look for them.

That then is the first step – to recognise that there are different categories of risk that require different actions, and to be clear about where responsibility lies for mitigating to a proper level.

### **Different attitudes to risk**

The next step is recognising that people, all of us, differ in their attitudes to different risks – take the reaction to the new study on certain artificial food colours published last week.

For some, it was the long-awaited trigger for a ban on all artificial additives. For others, it should be up to the parents what their children eat.

For us, the appropriate response was defined by the science, which shows a clear but modest association – not cause and effect – between two mixtures of a specific set of additives and an increase in hyperactive behaviour in some, but not all, children.

Hence the risk management decision to target advice at parents of children showing signs of hyperactivity at they might see benefits in cutting out foods containing these artificial colours.

But people's actions are seldom defined only by the science. That has to be taken into account so that risk management actively helps people to make the choices that feel right for them.

I'm not sure that we got that balance quite right last week. We could have talked more about how we are pushing the food industry to give parents more information sooner to help them make choices. And we weren't clear enough about why an immediate ban wasn't the answer – actually because there is no overriding public safety risk. We are, though, urging the European authorities

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– where responsibility for a decision rests – to look at our new evidence as a matter of urgency.

As a result, perceptions were not that we acted proportionately, but that we were not being sufficiently active in managing the risk.

Another example is the change in 2005 to the Over Thirty Month rule, which was one of the original BSE control measures that kept higher risk older beef out of the food chain.

The switch to testing older cattle for BSE, actually introduced a very slight increase in risk – up to 2.5 additional deaths from variant Creutzfeldt-Jakob disease over the next 60 years as a result of exposure over the next six years, according to the worst-case scenario modelling done in 2004.

But consumers have generally accepted the increase in risk – despite the public expenditure savings and savings to farmers being fairly intangible benefits for most people.

Why is that? In large part because BSE has declined so sharply in cattle – to under a hundred new cases a year, compared with 37,500 at the peak in 1992.

In this case we were scrupulous about talking openly to people, including the media, over several years about risks and uncertainties.

We talked publicly about the comparison of costs per life saved by the alternative control measures, and comparing the costs between the old and new regimes.

I see the switch to BSE testing as a risk the public were prepared to take on the balance of evidence, even though the benefits in terms of public expenditure are remote.

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I like to compare that with beef on the bone, which is a risk many people are very willing to take. The benefits are immediate and obvious.

If the risk is not of direct benefit to the consumer, then acceptance is less likely – as we've seen with GM foods.

If we are going to talk about regulation that is more tolerant of risk, we have to understand more about the complex trade offs people make all the time between benefits and costs.

### **Principles and trust**

So far I've talked about different categories of risk and different appetites for risk.

There is a third ingredient you need as well, which I'm coming to.

But first there is a basic principle, which is that you should only regulate when necessary.

Classically, that means where there is market failure – which is usually characterised by an imbalance of power, structures, or unequal access to information.

If regulation is necessary, that should lead you to two questions:

- What outcome do we want to achieve? and
- What is the best regulatory tool to get us there? What is the best means of nudging the market in the direction you want it to go in?

I'm a great believer in setting an outcome and letting the market get there as markets are generally far more efficient than regulators' diktats. Hence our emphasis for example, on information like the traffic light labelling scheme

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which gives consumers clear, simple information in a way they find most useful – particularly when you are putting something in your shopping trolley every few seconds.

The other tool of choice is the carrot – such as ‘earned recognition’ schemes that reward responsible businesses with fewer inspections.

For regulators, the three characteristics I believe are essential to making this more flexible regulatory approach work are independence, competence, and transparency.

**Statutory independence** – so that you are free of external influence from whatever direction. We are fortunate in that we have a very clear statutory objective – to protect the public health in relation to food safety and consumers other interests in relation to food.

**Competence** – which you can build in with good governance, access to the best available scientific evidence, and an enlightened use of expertise. You have to show competence in your judgements and delivery all the time, every time.

And finally **transparency** – which is how you illustrate that you are independent and competent.

In that way, you hope to earn the trust that is essential if you are going to regulate in a way that is more proportionate to the risk, than to people’s immediate reactions to it.

### **How does this apply to food?**

That’s the theory. How does it work in practice?

First, there is no one-size-fits-all approach – certainly not for food regulation.

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Sudan 1 and acrylamide are both potential human carcinogens – but the way you stop a shoe polish dye like Sudan 1 being used to doctor cheap chilli powder is different to the way you minimise exposure to the acrylamide that forms naturally when you fry chips or make toast.

One helpful distinction we can make is between upstream and downstream risks.

As a rule of thumb, food safety risks are mainly upstream, above a point where consumers can use influence through choice. Diet and nutrition risks are generally 'downstream'.

The rationale for regulating food safety is relatively straightforward.

If things go wrong, people fall ill. There's a tendency to think of food poisoning as a couple of days of discomfort.

Actually, ten people a week die from food poisoning, and there are life-long consequences such as kidney failure and dialysis for some of the three-quarters of a million cases a year.

There tends to be a focus on deaths, but actually, is illness a greater cost to society?

Consumers generally can't see for themselves what's going on inside a food factory, or what has gone into their food.

So regulators set safety standards, enforcement oversees them, and food businesses take responsibility for meeting them – or take the consequences if they don't.

Over the past five years we've seen what happens when that partnership works well, with 1.5m fewer cases of food poisoning.

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That has saved an estimated £756m in treatment, lost productivity, pain and suffering.

The rationale for regulating nutrition is more complex.

I'll briefly summarise both strands of the argument.

The social case is that government has a responsibility for the health of the population.

About a third of all deaths from cancer and heart disease can be attributed to poor diet, and an unquantified proportion of deaths from stroke.

That equates to something over 100,000 people every year dying prematurely as a result of poor diet.

The economic case is that it is more cost effective to intervene than not.

Poor diet, along with lack of exercise, is the major contributory factor to obesity and overweight, costing the economy between £6.6 and £7.4 billion a year at a conservative estimate.

Poor diet is also a major contributory factor to type 2 diabetes, cancer and coronary heart disease – which together cost the NHS over £13 billion a year.

The Wanless report, updated today, has highlighted the dangers in the future in relation to the NHS.

But is regulation the right way to manage dietary risks?

You can't force people to eat their greens, but we won't as a country be able to pay the medical bills if we keep getting fatter.

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Improving the diet is much more about changing behaviour rather than structures – which is incredibly difficult, as we all know.

Most of the Agency's nutrition initiatives are voluntary rather than regulatory and look to work with the grain of the market to influence people, products and environment.

Take the example of the need to reduce salt

- We inform people about the risks of eating too much salt
- We encourage the food industry to reduce salt content.
- We show people how to choose products with less salt.

This is a virtuous circle. As consumer demand increases, so does the incentive for the food industry to produce lower salt versions of their products.

This is also the strategy behind traffic light labelling – our voluntary guidelines for simple colour-coding of the nutritional content of a range of processed foods like pizzas, sandwiches and breakfast cereals.

Effectively, it's the regulation of information to allow consumers readily to compare and choose more healthy food. It also drives companies' product development.

## **Conclusion**

I said earlier there is no single approach to risk management, but there are universal principles for more risk tolerant regulation.

One is regulate only when necessary, and then start with the tools that work with the grain of the market – information and incentivisation.

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I believe that the optimum form of regulation is to ensure people are properly informed and in a position to manage risks for themselves. It is certainly easier to get people to change behaviour by choice rather than coercion.

That leads to the second principle, which is good communication.

If we want risk-tolerant regulation, we need to start by improving the public understanding of risk. That means receiving as much as transmitting – listening to people and understanding their attitudes. Being a learning and porous organisation.

That means talking about risk in language that people understand and using examples that people relate to.

There's a feeling that the more you tell people about risks, the more safeguards they'll want against them. But actually, we've found the opposite, as with the switch to BSE testing, which allowed us to regulate with more risk.

The third is transparency.

The success that the Food Standards Agency has had to date is down to us not just telling people about the risks. It has come from engaging people in the risk management process from the earliest stages. Getting an understanding how people feel really about the risk, and having them shape the risk management strategy.

All our independent scientific advisory committees have lay members, and our Board makes every policy decision in public. I would recommend the discussion we had on folate fortification at our open board meeting last May to anyone who is interested in seeing how that works in practice. All our board meetings are webcast, as well as being open for people to attend in person, and the webcasts are archived on our website ([food.gov.uk/aboutus/ourboard/boardmeetings/](http://food.gov.uk/aboutus/ourboard/boardmeetings/))

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Sixty-one per cent of people see us as an organisation that they can trust – that is our most precious asset.

I still think that we can get better at involving and inspiring the majority of people who currently think they have better things to do with their time than spend it with us. That probably applies to all regulators.

Finally, the most important role of a modern regulator is to be a risk leader – making bold decisions based on risk and helping people see the advantages of the right and tolerable levels of risk.

The world has always moved forward by taking risks – some have paid off, some have resulted in disaster. The challenge for a regulator is to get that risk judgement right – preferably every time, but at least on above average return.

The downside is a perception of incompetence, which can lead to abolition. The landscape is littered with defunct regulators.

But it was Jonathan Swift who said, ‘it was a brave man who ate the first oyster,’ and look what a benefit that has brought us.