Good Practice Regulatory Change: Managing relationships

The wider literature related to managing relationships

Communicating the reasons for a change

Stakeholder relationships and their familiarity with proposed changes is a key area of Ostroff's (2006) road map. The literature identifies two components to successful stakeholder management. Firstly, familiarity with any of the proposed changes is an important factor that needs to be considered, so that support for the changes can be reached among key stakeholders (Armenakis and Harris, 2009; Lercel, 2019). Familiarity with the change is likely to make it more effective (Lercel, 2019; Shea et al., 2014). If familiarity with a change is low, this will likely result in lower levels of support for the change (Lercel, 2019). The majority of stakeholders must also have a high level of agreement that the policy is appropriate and feel motivated that it will bring benefits (Armenakis and Harris, 2009; Neves, 2009).

Hooper (2019) stresses that familiarity with change does not just mean explaining what technical differences there will be from any change management, but also explaining the potential impact on individuals. Hooper (2019) suggests there is often "very little of 'what this means to you'", which is important to communicating a programme amongst stakeholders and staff. There have also been suggestions that regulators should have "meaningful engagement with stakeholders", so that they can understand what responses would be proportionate when different issues occur (NAO, 2021). However, even a degree of familiarity and support for a change, does not guarantee that it will be effective (Baxter and Clarke, 2013).

Managing regulatory relationships

Inspections have formed a significant aspect of how regulators have enforced regulatory compliance (Vickers, 2008). There can be challenges associated with inspections as a regulatory model as they often rely on the individual judgement of inspectors, who may make personal judgements on whether to be "overzealous" or whether to let smaller things pass (May, 2007). This criticism, and the subjectivity of individual inspectors, has been seen as a flaw within healthcare regulation (Demeritt et al., 2016). It can make managing relationships with regulated organisations more difficult, particularly where a regulator may be moving into more risk-based or self-regulatory models.

Similar challenges were highlighted in changes to Ofsted inspections in 2012 (Baxter and Clarke, 2013). Although initial reforms were welcomed, the longer periods between inspections and questions about the consistency of the scheme across different inspectors and regions, created opposition to the change. Baxter and Clarke (2013) see continuity as critical to the credibility of a change programme and for building trust in a new system. However, there are also challenges within a trust-based system, where regulators are reliant on individuals to disclose information. In these cases, it can be difficult to know whether they are accurately disclosing all of the required

information (Etienne, 2015).

The literature describes a wide range of factors influencing the success of changes to the regulation of healthcare over the last thirty years (Demeritt et al., 2016). One factor focuses on "short-comings in the public engagement strategy" among healthcare regulators (Richardson et al., 2019). This focuses on how the general public believed there were variations in inspection approaches in different parts of the country, and difficulties related to the relationships between the regulator and the regulated party. However, it has also been argued that in an area such as healthcare which is a high public priority, regulation is not able to "completely assure the public that quality of care is good enough and will prevent future scandals of poor care" (Patterson, 2011). This is often due to the variety of levels of care, and different types of care settings and situations, within the wider system.

Findings from the interviews

Identifying and engaging relevant stakeholders

Although many interviewees had good relationships with their stakeholders and understood the groups who would be affected by changes, they described conducting stakeholder mapping exercises to identify relevant stakeholders and inform an engagement plan. This was emphasised as a way of systematically engaging with stakeholders and ensuring groups were not being missed. Regulators developing programmes in response to new sectors or technological changes felt this was especially important as the relationships held by their organisation may not cover all of those likely to be affected by a programme. This also helped to overcome the risk of unexpected opposition to the ideas proposed.

Interviewees described how they ran internal workshops to identify relevant groups, used desk research and spoke to key influencers for suggestions on contacts. In some cases, they worked through existing relationships held across an organisation to make connections with others. A number of regulators described how their existing contact databases were not systematic or held at an organisational level, with individual teams holding contact information separately. This made it more difficult for those leading on change programmes to find relevant contacts or understand who was already linked into key individuals. Several change programmes have had an unexpected lasting legacy by building new contact databases or systematically capturing this information for a whole organisation.

Very few regulators engaged wider consumer groups or citizens in their regulatory change programmes. Although consumer views informed the design of a change, as described above, they were rarely involved beyond this except through existing consumer forums. In a small number of cases, regulators described the changes taking place through social media campaigns or awareness raising activities where changes were likely to effect consumers directly.

Table 2: Common stakeholder groups and example engagement approaches

Group	Example stakeholders	Example engagement approaches
Regulated industries or organisations and their employees	Including small, medium and large businesses/ organisations across relevant sectors, trade bodies and Unions, employee representatives and employees themselves.	1:1 interview programme with key bodies - having conversations as part of existing relationships - workshops, presentations and open forums - publishing information and updates online - connecting through representative groups
Consumers and the wider public	Including consumers of regulated industries, those directly affected by regulations or the change programme and the wider public.	- consumer consultations including focus groups and surveys - social media campaigns - consumer panels or forums that provide guidance to a regulator

Group	Example stakeholders	Example engagement approaches
Expert groups	Including academics, policy experts, other regulators and Government departments.	- establishing advisory bodies or working groups 1:1 interviews
Internal stakeholders	Including senior leadership, teams implementing or affected by a change programme and wider employees.	- internal workshops split by seniority to facilitate honest conversations - regular communication from the Chief Executive with updates on the Intranet - case studies or scenarios to highlight the benefits to different groups - working through line managers and team leads

When and how to engage

While the timings around engaging stakeholders depended on the specific programme and wider context, interviewees felt it was helpful to start engaging stakeholders once an organisation has a clear vision and concept of what the change programme was seeking to achieve. Without this, it can be more difficult to provide the consistency and clear message required to reassure wider audiences. Interviewees emphasised the value of being proactive rather than reactive, particularly when communicating with internal stakeholders. It was felt this approach helped to avoid the risk of anxiety within teams as people may feel nervous if they are not clear on the impact that the change will have upon their role, including job security and their responsibilities, or if they feel they are not involved in discussions.

In addition, regulators suggested having a simplified message which can be used across all stakeholder groups and tailored depending on the audience. This was seen as a way to provide a simple, clear message while ensuring communications showcased the potential benefits of a change to a specific group. It was felt that it was important to consider who is best to engage with stakeholders and prioritise resources effectively. For example, in some cases it may be valuable for the Chief Executive or a senior leader to speak to a stakeholder, while in other cases it may be more useful for those with day-to-day relationships to lead on conversations. Working through existing networks and identifying advocates for a change can also support getting a message across.

A number of regulators established specific working groups to engage key audiences in elements of a change programme. These are groups made up of stakeholders, including consumers, who help to shape and inform the approach to a programme. For example, one interviewee described how they established ongoing working groups for each element of their programme. These groups were open to everyone from across the industry and helped to define how they dealt with specific parts of the project. Throughout, they relied on a series of design principles set at the beginning, which helped to provide a roadmap of their overall aims which they could return to.

"From the very beginning, we've taken an open and transparent approach. The design working group meant that anyone from industry could come along and participate in the development of the design. Naturally, there were some parties more involved. Typically, you see the larger suppliers more involved because they have the resources to do it. But the fundamental principle is that it wasn't representative, it wasn't limited, they could send as many people along as they wanted. And, really, they were fundamental to that design stage. We were reliant upon the expertise within industry of how the existing systems work and how they were connected in order to make the changes."

Building open relationships

Maintaining transparency around a change programme was seen as critical to building trust and buy-in from a broad range of stakeholders. Interviewees recognised that changes can be

unsettling, making it important to be open about the steps in a process and provide regular updates to reassure both internal and external stakeholders. A number of regulators published updates about their programmes online. For example, Ofgem published details of the business cases, engagement approaches and consultation responses linked to their Switching Programme. While the Financial Conduct Authority (FCA) publish a regulatory initiatives grid that sets out their plans and progress against these for the next two years.

One interviewee described how maintaining transparency around regulatory change had been more difficult during the Covid-19 pandemic when they had to implement new approaches quickly. They described how this resulted in some stakeholders feeling as though they had not been consulted and meant the organisation had to rebuild certain relationships after the initial programme was rolled out.

A commitment to openness was reflected in many of the ways interviewees described engaging their stakeholders as set out in Table 2. They often provided a variety of mechanisms to feed into a programme on an ongoing basis. This was seen as vital to helping design and shape a programme that could be implemented effectively by providing valuable evidence about the potential impact on industry or wider groups. It was emphasised that strong and ongoing stakeholder engagement, if effective, means there should be no surprises when a programme goes out to formal consultation during the design phase, and subsequently when a change programme is launched.

Managing relationships through uncertainty

The flexibility required for implementing a change programme is a key risk that can make managing relationships more difficult as a result of the uncertainty surrounding the approach or the likely outcome. This applies to both internal and external stakeholders who may be resistant to change, particularly where this relates to culture or long-established processes. Conflicting priorities across stakeholder groups is also a risk that makes implementation more sensitive and increases the importance of good relationship management to balance these tensions.

Interviewees emphasised the importance of having a clear communication plan and dedicated resource for communications and engagement to manage this effectively. A number of regulators established specific roles which helped to coordinate messaging and create structure. Interviewees highlighted the risk of programmes possibly being undermined if relationships with their regulated industries were not maintained throughout. One interviewee described how they held internal workshops to explore likely areas of resistance so they could mitigate these. In this way, they drew on the insights and knowledge of people across the organisation to inform their communications plan.

"What are people going to say when we put this out? What are the doubts people will have and do we have lines we can come back to them on?"

Clarifying the role of a regulator

A number of change programmes sought to create a more collaborative or co-operative approach between industry and the regulator. For example, one regulator wanted to take a more preventative approach, working with industry to avoid potential breaches rather than focus more heavily on enforcement action. They described the importance of building a narrative to tell the story around the reasons for a change, providing consistency in how different organisations are treated and going on a 'charm offensive' to help reduce scepticism and mistrust.

"Regulators can speak a different language from industry. Regulators, when involved in protecting public health can have 'right' on their side and power on their side. We need to make sure to put the other side at ease and try and properly engage them."

Reflecting a more collaborative approach, regulators highlighted how it is important to provide a timeframe for communicating changes, where the emphasis is placed on educating industry or providing training and guidance on how to comply with new regulations. However, they also spoke of the importance of agreeing a point or deadline for when behaviours and processes should have changed by. They highlighted how, although collaboration was important, fundamentally a regulator's role is to enforce certain rules which all parties must be clear on.

"There will come a point when we say you've had your chance."

One interviewee described the different style of their change programme team compared to the wider regulatory organisation. They emphasised how their role was to develop an effective approach to future regulation that recognised the context and capacity of industry. As such, they encouraged ongoing and confidential relationships with industry where stakeholders could come with questions or concerns about the planned changes. By acting on this information, the team built credibility and meant they had the information needed to effectively deliver the programme and improve outcomes for consumers. However, they recognised this is not an approach a compliance team could take but reflects the unique nature of a change programme.

"The principle throughout the delivery phase of the programme was 'I am here to help'. I'm not wearing a typical regulator hat, I'm not going to talk to compliance. If you come to me before we go live, I will try and fix it. We are in a fix forward mode, no questions asked."

The relationships between regulators and industry can be more complex where regulation is delivered or enforced by third-parties such as local authorities. One regulator described competing priorities between local authorities that carry out inspections, and the wider industry. For example, they pointed to changes which would make the system more efficient for industry but would require additional resource from local authorities who already have high workloads.

Working through third parties, who enforce regulation and inspections on behalf of the regulator, can allow a regulator to build a more supportive or collaborative relationship with industry, through a focus on developing and sharing guidance rather than direct enforcement. However, it can also increase the number of stakeholders in a programme and add complexity as third parties need to be engaged on the benefits of a change and trained in a new delivery approach, giving regulators less control over implementation. Etienne (2015) has also suggested that there can be risks in relying on third-parties to deliver regulation, as they will not always have the same commitment to the overall aims of a programme. This can also present additional risks, for example if the local authority workforce is reducing or does not have capacity to deliver in a new way.

"A lot of the initiatives that we want to bring in to support local authorities might not be the best for businesses, stuff that is good for business might be more of a burden on the local authority. You want to improve compliance, so we were looking at penalties, but this places a burden on local authorities to do that. It is a constant challenge to support all of our stakeholders. In the past, we have very much focused on nurturing relationships with local authorities and we didn't get the balance with consumers and industry right."

Legal Services Board case study: Engaging stakeholders from design to delivery

The Legal Services Board (LSB) is an independent body responsible for overseeing the regulation of lawyers and legal professionals in England and Wales. It ensures that the interests of consumers are placed at the heart of legal services. It launched a consumer-focused sector-wide strategy in March 2021 called Reshaping Legal Services. This sets out nine challenges that need to be overcome in order to reshape legal services to better meet society's needs. The strategy sets a ten-year strategic direction for the legal sector (2021-31), with a focus on the role

of regulation in making the market work better for people who need legal services. The strategy also identifies priority areas for the legal sector over a three-year period (2021-24) and how the LSB will contribute to these priorities.

Engaging a wide range of stakeholders was a key part of their approach to designing the strategy and formed a main strand of their activities from 2019 onwards. The organisation wanted to ensure they reached out to parts of the sector they did not regularly speak to, as the strategy needed to reflect the diversity of perspectives across legal services and not only focus on regulated bodies. In particular, they wanted to include the consumer side of the legal sector, reaching out to lawyers and legal businesses, local government, government agencies and broader consumer groups. However, given the LSB is a small organisation, they needed to work efficiently to prioritise resources while including the breadth of perspectives required.

A dedicated communications and engagement manager for the programme established a plan for stakeholder engagement. This involved stakeholder mapping, including through internal sessions within LSB to identify who they were missing, establishing a stakeholder database to track and evaluate engagement, administrative support for the team to communicate over email, and prioritising engagement activities. Throughout, the LSB focused on segmenting the legal sector to identify who to engage with and the best approach to doing so. For example, the team thought carefully about who from LSB should be reaching out to each external stakeholder and tailored their approach accordingly. This included:

- one-to-one conversations with the Chair of the LSB and/or the Chief Executive
- conversations through existing policy leads
- evidence sessions bringing four or five people from a similar sector together with a board member
- larger consultation events which were open to anyone wanting to join and help throughout the development process, actively encouraging feedback on the strategy
- a summit with key senior stakeholders across the sector
- a formal written consultation with the opportunity to provide feedback on the draft strategy both in writing and at wider events

As well as working through existing connections to identify wider stakeholders, the team conducted desk research, social media analysis and horizon scanning to see who was talking about related issues, and LSB staff went to pre-existing events to network and make new connections. The team also spoke to other regulators and government departments, such as the FCA, HM Land Registry and the Office of the Public Guardian, who could have a perspective on the legal sector.

"We were always very conscious of trying to facilitate as much of a two-way conversation as possible, trying to listen and reflect on what are the big challenges in the sector and how did that match up with our research and more widely."

The organisation sees itself as unique in having convening abilities to bring people together across the legal sector and is keen to continue to do so since the publication of the strategy. They see this as a key way of delivering regulatory and sector-wide change for society, so the LSB continues to emphasise bringing people together, facilitating conversations and championing collaboration. This includes through:

- a microsite, specifically established to communicate the strategy, with information on the sector's progress. It includes stories and case studies from across the sector on stakeholders' activities and plans.
- hosting an annual Reshaping Legal Services conference to bring stakeholders together to maintain the momentum it has built up, collaborate, and encourage commitments which the LSB can track progress against.

- a system of relationship managers with policy leads connected to each regulator who can provide updates and maintain open communication channels.
- establishing the Market Transparency Co-ordination and Oversight Group to bring together regulators to collectively improve consumers' engagement with the market. Market transparency was a key challenge identified by the LSB as requiring regulatory change. The group is chaired by the LSB and attended by regulators in the sector as well as the Legal Services Consumer Panel which represents consumers. The Consumer Panel has existed since 2009, but the new approach brings them together with regulators to foster dialogue.