

Regulatory relationships: why they matter

Professor Kieran Walshe | University of Manchester, UK



CLEAR's Seventh International
Congress on Professional and
Occupational Regulation

DUBLIN, IRELAND | MAY 3-5, 2023



#ICPOR2023

**FLORIDA LAW REQUIRES THIS
NOTICE TO BE POSTED ON
ALL FOOD AND BEVERAGE
VENDING MACHINES.**

Report any machine without a
notice to 1-800-352-9273. You
may be eligible for a cash reward.

**DO NOT USE THIS NUMBER TO
REPORT PROBLEMS WITH THE
VENDING MACHINE SUCH AS
LOST MONEY OR
OUT-OF-DATE PRODUCTS.**

Section 212.0515, Florida Statutes (2010), Chapter 2010-138, Laws of Florida. (Section 6, CS/HB 7157, 1st Engrossed)

Effective July 1, 2010, the notice that MUST BE POSTED on ALL FOOD AND BEVERAGE **VENDING MACHINES** will change.

Operators must post the following statement on each machine:

NOTICE TO CUSTOMER:

FLORIDA LAW REQUIRES THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING MACHINES. Report any machine without a notice to 1-800-352-9273. You may be eligible for a cash reward. DO NOT USE THIS NUMBER TO REPORT PROBLEMS WITH THE VENDING MACHINE SUCH AS LOST MONEY OR OUT-OF-DATE PRODUCTS.

The prior notice with specific vendee information must be removed from the food and beverage vending machines and replaced with the **NEW** notice by July 1, 2010.

The notice must be displayed on the upper front of a **vending** machine so it is easily read by the public, unless the placement impairs the use of the machine. The notice must be attached to the machine so it is not easily removed. A penalty of \$250 can still be imposed on the operator for each **vending** machine without the notice. Interest will accrue on the \$250 penalty, according to Chapter 212, Florida Statutes.

The Department of Revenue is authorized to compensate persons who provide information leading to the recovery of unpaid taxes from the operators of coin-operated **vending** machines in Florida.

Persons who provide information showing that a **vending** machine operator has failed to attach the required notice to the machine may be eligible for a reward. The reward can be up to 10 percent of the previously unpaid taxes recovered from the operator. Call 1-800-352-9273 to report violations.

Do we really care about regulatory effectiveness and impact?

- Regulation as a way to deal with society's "wicked problems" – or to avoid having to deal with them by handing them over to a regulator
- Regulatory politics and the contested policy debate among powerful stakeholders – with regulators often blamed for events outside their control
- Regulators driven by legal/statutory mandate, with a culture of risk avoidance and a reluctance to experiment and innovate
- Symbolic and performative nature of regulatory policy and practice – "something must be done" and this is something...
- Regulatory impact is long term, hard to measure, may be an absence of or avoidance of unwanted events

Using research to tackle real regulatory problems

- Can we use data to track and trend regulated organisational or individual performance – and to plan and target regulatory interventions?
- How do regulatory interventions produce impact, and how can we maximise that impact?
- Can we show that regulation actually works? Can we design regulatory research to run alongside regulatory innovations?
- **What do we know about the social and interpersonal side of regulation? Do regulator-regulatee relationships matter?**

Constructing the “regulatory regime”

- Legislative powers and duties
- Regulatory standards and rules
- Regulatory processes and data sources
- Regulatory staff and skill sets
- Regulatory relationships

How much do we think about the different areas of the “regulatory regime”...?

- **Legislative powers and duties**
- Regulatory standards and rules
- Regulatory processes and data sources
- Regulatory staff and skill sets
- Regulatory relationships

Pathways to impact: research on the Care Quality Commission in England



Anticipatory impact



Directive impact



Organisational impact



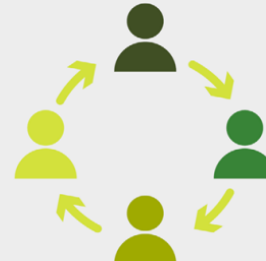
Relational impact



Informational impact



Stakeholder impact



Lateral impact



Systemic impact

Anticipatory impact

- Results from regulator framing/setting quality expectations and organisations understanding those expectations and seeking compliance in advance of any regulatory interaction
- *We found widespread evidence of anticipatory impact – combination of self-compliance with quality/care standards and (proximate to inspection) preparatory but sometimes ritual compliance with process. Needs understanding of CQC expectations, provider motivation, and capability. Lack of anticipatory activity a warning signal about performance?*
- How to maximise it? Develop expectations collaboratively to secure key stakeholder support, focus on credibility and evidentiary basis, and practical implementability. Communicate regulatory expectations very clearly – lots of guidance, examples, learning events, proactive engagement. Avoid ritualised and superficial compliance behaviours

Relational impact

- Results from nature of relationships between regulatory staff such as inspectors and regulated organisations, in which legitimacy, longitudinality and mutual respect/credibility contribute to informal, soft, influencing actions and impacts
- *We found relationships very important to regulatory impact. Need space and time to develop, opportunities for informal interaction. Development of mutual trust, confidence and credibility key to relational impact. CQC staff competencies in interpersonal and social skills matter greatly*
- How to maximise it? Invest in quality/development of both CQC staff and others engaged in regulation/inspection - seek out champions and most trusted peers. Enable the engagement of very senior and highly credible leaders in the regulatory process. Avoid transactional regulatory behaviours and relationships

Regulatory relationship types

<i>Goal</i> – relationship	Regulator	Provider
Self-interest – “A social exchange relationship. Considerations of gain and cost dominate”	Acting in the interests of the regulatory organisation.	Acting in the interests of the provider.
Authority – “A vertical relationship from superior to inferior. Orders are expected to be given and obeyed without question”	Reinforcing power asymmetries to maintain compliance with regulators recommendations or requirements.	Complying with the regulators recommendations or requirements without question for fear of sanctions.
Legality – “A relationship determined by legal rules. Both regulator and regulatee are expected to follow legal rules.”	Empowered to monitor providers and enforce the regulations/standards as required.	Complying with the regulatory standards as they are the legal requirements.
Judgement – “A relationship determined by morality or science. Considerations of truth or right dominate.”	Requesting, collecting and triangulating evidence on which to make judgements about services.	Providing evidence to support claims and justifying the validity.
Solidarity – “A horizontal relationship of trust. Regulator and regulatee are expected to show solidarity to one another.”	Working with providers to improve, through open communication streams.	Being transparent with regulators, trusting they have their best interests at heart.

Etienne, J. (2013). "Ambiguity and relational signals in regulator–regulatee relationships." *Regulation & Governance* 7(1): 30-47.

CQC research: authority relationship type

- *[Staff] were very, very nervous about either letting themselves down or letting the surgery down and it's very difficult for them ... they're worried about their jobs and if they say something wrong does it mean the surgery will close? Because they've had the fear of God ingrained into them, not by me I hope, because CQC just screams panic to everybody. (Practice Manager, general practice, area C)*
- *We wanted to make a challenge, but CQC said 'the matter is final, don't bother coming back', basically. (Medical Director, adult social care, area F)*
- *We had to work at building our relationship with CQC ... we did the classic thing, which is, 'the data's wrong, ...'. We tried to challenge them, in fact, our chief executive challenged them ... that did us a huge disservice ... we have known, to our cost, as an organisation, that being defensive, and being attacking of the CQC serves no purpose. (Head of Quality Governance, mental health, area A).*

CQC study: solidarity relationship type

- *I ring [the lead CQC inspector] when we've got things bubbling that I think she needs to know about ... and if they have people going to them, they will ring us ... it doesn't feel like a checking relationship ... it feels like a sharing relationship ... that is about the CQC wanting us to be the best we can. (Director of Nursing, mental health, area C)*
- *Our inspector was a very nice gentleman ... he was an ex-registered manager, so I thought he was brilliant and he is the type of inspector that we need because he knows the business ... I've had inspectors and they're really young ... and I just feel that they've not got enough knowledge to advise me (Registered Manager, adult social care, area F).*
- *Overall, I thought the process was quite positive. The main inspector was absolutely delightful. At one point during the day I got wobbly, and she said 'no, its fine, go and have a cup of coffee, we'll be fine'. And I think that was just the pressure of the whole day. (Practice manager, general practice, area C)*

CQC – so what did we find?

- All five relationship types present – but two predominate, authority and solidarity which are almost polar opposites
- Relationship type partially dependent on perceived performance and response to regulatory intervention
- Regulatory relationship largely shaped by regulatory front-line staff – no policy intent, direction or training
- Relationships dependent on skills, credibility, trust and mutuality, longitudinality on both sides
- No one regulatory relationship type preferred – horses for courses – but lots of questions eg congruence vs mismatch, static vs dynamic

Conclusions: relationships matter!

- Regulation is a social process – enacted by and between people in organisational and professional settings
- Regulator/regulated relationships matter to regulatory effectiveness and impact
- Relationships are often shaped by front-line staff – with no apparent policy intent, direction, training or development
- So what can we do? Foreground regulatory relationships in policy/strategy, focus on staff skills and recruitment, include in staff development/training and seek feedback/monitoring/evaluation

Thank you

- Kieran Walshe
- Professor of Health Policy and Management, University of Manchester, UK
- kieran.walshe@manchester.ac.uk

MANCHESTER
1824

The University of Manchester
Alliance Manchester Business School