



Ethical Business Practice and Ethical Business Regulation

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How Do You 'Regulate'?

Old Regulation

make *rules* and enforce against individual infringements, assuing that they occurred because people committed them culpably as individual occurrences, and that enforcement would *deter* future breaches.

New Regulation

address *human behaviour*

as revealed by the empirical science of behavioural psychology
(rather than philosophical or economic theories).

Support organisational culture and ethical behaviour, as society and people expect.

This continuously supports a culture based on ethical values
as revealed by empirical evidence of actions and performance.

Evidence

1. Behavioural psychology – based on extensive research

- We are ‘predictably irrational’, not the rational actors of economic theory
- Good people do stupid things, usually not seriously
- We are strongly influenced by social groups and by our concept of fairness

1. Genetic biology and its evolution

- Genetic mutation in *homo sapiens* from defensive (blame) to an ability to make moral judgments (an ethical gene)
- That enabled our species to be able to collaborate, which was critical to our success
- Because collaboration is based on trust, which is based on evidence

1. Regulatory practice: research (eg responsive regulation) and published enforcement policies

- Many effective regulators use ‘advice and support’ rather than deterrence or confrontation
- ‘Have a big stick, talk softly’: still need effective powers
- UK policy of ‘Regulated self-assurance’ and ‘earned recognition’: *Regulatory Futures Review* (Cabinet Office, 2017)

2. Evidence of what does *not* work

How do humans work best? Together

Let's all do the right thing
and
Demonstrate that we're doing that

Hence trust

The Concepts

- **Ethical Business Practice (EBP)**

An organisation in which the leaders consciously and consistently strive to create an **effective ethical culture** where employees **do the right thing**, based upon ethical values and supported by cultural norms and formal institutions. EBP requires people who can **recognise ethical dilemma, challenge constructively, speak up** if they know or suspect unethical behaviour, and who **use mistakes and wrongdoing as an opportunity to learn and improve**. Engagement with EBR then requires the organisation to be **open** with its regulators and provide evidence of EBP.

- **Ethical Business Regulation (EBR)**

An **engaged relationship of trust** between a business, or a group of businesses, and a regulator, or group of regulators, in which the business produces evidence of its ongoing commitment to EBP and the regulator recognises and encourages that commitment.

Regulator
Committed
to EBR

Ethical
Business
Regulation

Business
committed to
EBP

Models of Regulation and Compliance

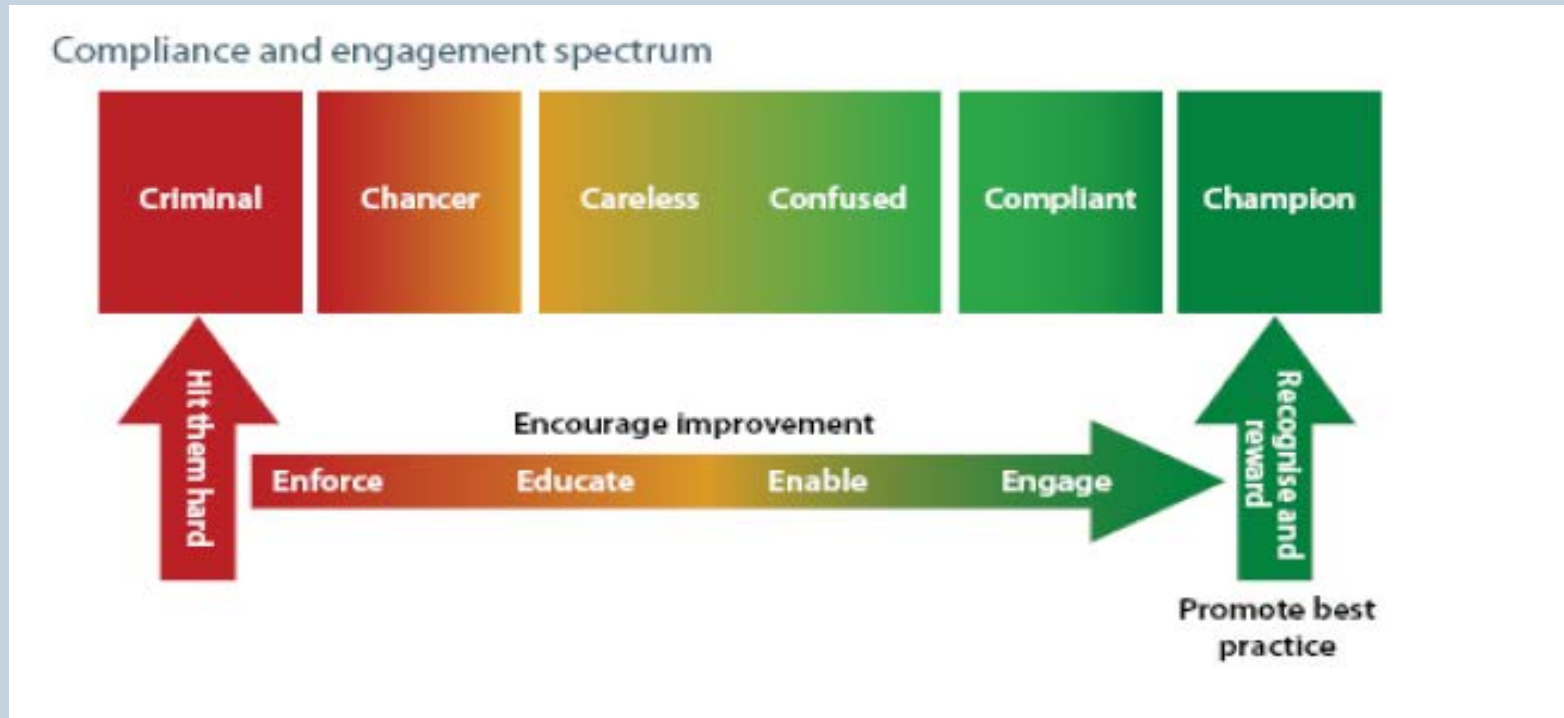


Regulators need a diverse tool box



Proportionate Enforcement:

Scottish Environmental Protection Agency



Supportive

Effective inspection and enforcement: implementing the Hampton vision in the Office of Fair Trading. A review supported by the Better Regulation Executive and National Audit Office (Better Regulation Executive, Department for Business Enterprise & Regulatory Reform and National Audit Office, 2008).

Toward Effective Governance of Financial Institutions (Group of 30, 2012).

Civil Aviation Authority Regulatory Enforcement Policy (Civil Aviation Authority, 2012).

Statement of consumer protection enforcement principles (OFT, February 2012). *National Local Authority Enforcement Code. Health and Safety at Work. England, Scotland & Wales* (Health and Safety Executive, 2013).

P Lunn, *Regulatory Policy and Behavioural Economics* (OECD, 2014).

Standards of Conduct. Treating Customers Fairly. Findings from the 2014 Challenge Panel (Ofgem, March 2015).

Corporate Plan June 2015-March 2018 (Revenue Scotland, 2015).

Competition Policy: A better deal: boosting competition to bring down bills for families and firms (HM Treasury, December 2015).

Corporate Governance and Business Integrity. A Stocktaking of Corporate Practices (OECD, 2015).

Better Business for All and Growth (Better Regulation Delivery Office, 2015).

Statement of principles for licensing and regulation (Gambling Commission, 2015).

Food We Can Trust: Regulating the Future (Food Standards Authority, 2016).

Consultation on Ofwat's approach to enforcement (OFWAT, March 2016).

Farm Regulators' Charter (DEFRA and Others, 2016).

Scottish Government Response to the Working Group on Consumer and Competition Policy for Scotland (March 2016).

Monetary penalties for breaches of financial sanctions-guidance (Office of Financial Sanctions Implementation, HM Treasury, 2017).

Enforcement Policy (Regulatory Delivery, 2017).

Mixed – moving left

The Bribery Act 2010. Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010) (Ministry of Justice, 2011).

The Prudential Regulation Authority's Approach to Banking Supervision (PRA, April 2013).

Enforcement and Sanctions – Guidance. Operational Instruction 1356_10, version 2 (Environment Agency, 2014).

Enforcement Guidelines on Complaints and Investigations (OFGEM, June 2012).

Economic enforcement policy and penalties statement (ORR, 2012).

Enhancing consumer protection, reducing regulatory restrictions: Summary of responses to the discussion paper and decision document (Legal Services Board, April 2012).

The future of retail market regulation (Ofgem, December 2015).

Enforcement policy (Care Quality Commission, 2015).

Our Approach to Supervision (Financial Conduct Authority, 2018); *Our Approach to Enforcement* (Financial Conduct Authority, 2018)

The Financial Conduct Authority: Approach to Regulation (Financial Services Authority, June 2011).

The FCA's approach to advancing its objectives (FCA, July 2013).

FCA's Decision Procedure and Penalties (DEPP) Manual ("credible deterrence").

Prioritisation principles for the CMA. Consultation document (Competition & Markets Authority, 2014).

Serious Fraud Office.

Deterrence

OFT's Guidance as to the appropriate amount of a penalty (Office of Fair Trading, 2012), OFT423.

Changing Banking for Good: Report of the Parliamentary Commission on Banking Standards: Volume I: Summary, and Conclusions and Recommendations HC Paper No.27-I, II Parliamentary Commission on Banking Standards, 2013.

U.S. Department of Justice Memorandum, "Individual Accountability for Corporate Wrongdoing," September 9, 2015.

Penalty guidelines. s.392 Communications Act 2003 (Ofcom, December 2015).

Enforcement Policy

- Strong powers
- Integration of all controls: public, firm, market, professional
- Objectives
 - Cease undesirable activity
 - Full redress
 - Confirm cause of the behaviour
 - Steps to prevent recurrence of behaviour
 - Integrated marking of seriousness
- Ability to resolve *all* issues swiftly, especially by agreement, negotiation

How can you use EBR to
increase trust?

The Influences on an
Organisation



Elements of Ethical Business Practice

Leadership and Culture Framework

- **The Foundation**
- **People and Ethos**
- **Aligned Systems and Processes**
- **Questions to assist leaders**
- Examples of types of evidence

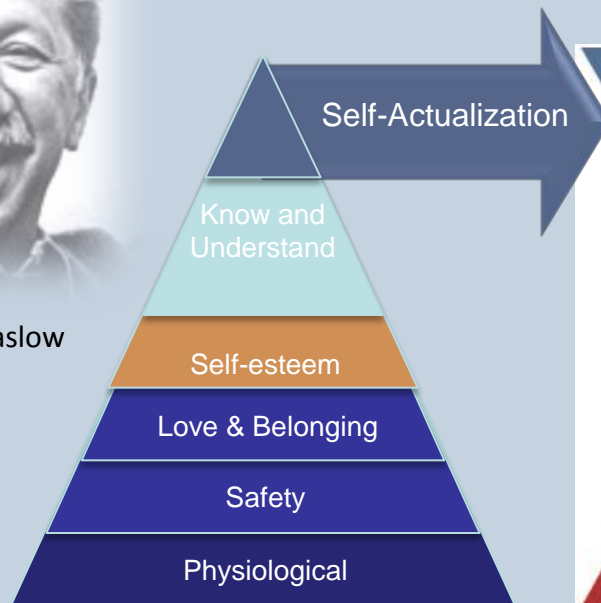
Values-based Ethics and Compliance Framework

- Values-based Code, policies and procedures
- Risk assessments, incl. culture
- Communications, face-to-face awareness & training, E A's
- **Speak-up in psychological safety**
- 3rd party involvement, due diligence
- Collection of evidence for learning and trust building

Maslow's Needs to Barrett's Consciousness



Abraham Maslow



Needs



Consciousness



Richard Barrett

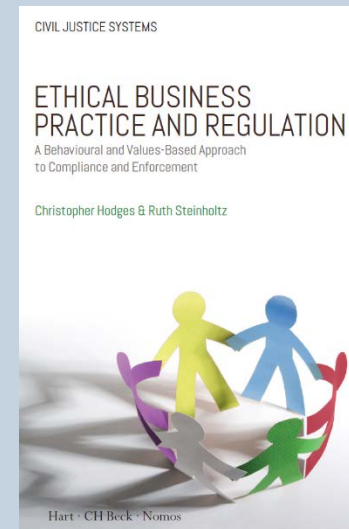
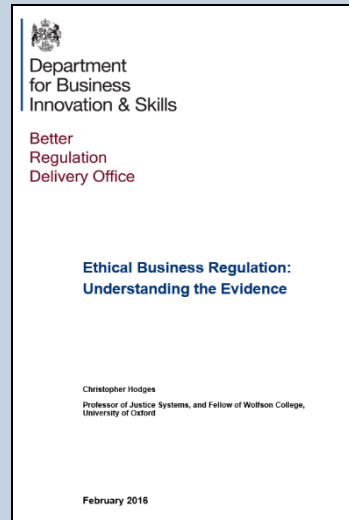
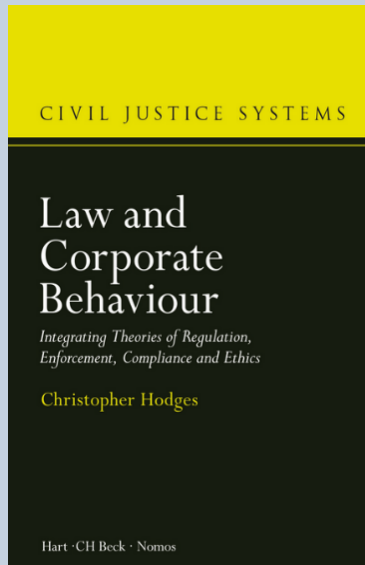
Seven Levels of Organisational Consciousness

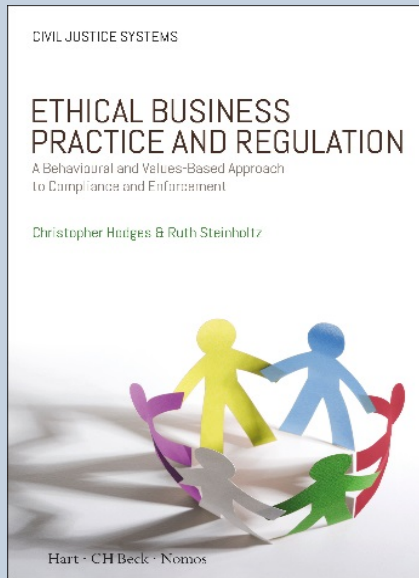
(Focus): Full Spectrum Awareness



EBR Implementation Strategy

- Incremental, rather than big bang
- Pilots and case studies
- Building capabilities
- Public and political education





Thank you!

“Regulation is fundamentally about how people in organisations actually behave. This book pulls together the evidence on “what works” in getting the right results.”

Richard Thomas CBE, Information Commissioner (2002-9),
Committee on Standards in Public Life (2012-17)