
Editorial

Regulatory tone

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Training doctors these days is rather more complicated than it used to be. There's more stuff to learn than there was. There's less time, due to the Working Time Directive, to learn the more stuff. And now they have to learn about the doctor–patient relationship, also known as the bedside manner. It is well known that patient recovery has as much to do with the relationship of the doctor to the patient as it has with advanced surgery and antibiotics. So trainee doctors learn how to be nice, and how to relate to the patient. In fact, if they don't pass this module, they can't be doctors.

In other words, the packaging is as important as the content. And that applies in most areas of life. What impresses that on people is either training or market forces. Anyone who has had the depressing experience of passing through Luton Airport on route to some exotic location will know how that competition works. Where there is a monopoly, that is as passengers go through security they are treated to bare walls, extensive queuing and discourteous treatment – and then they enter into the welcoming, attractive and comfortable gate area, where of course there is competition for custom.

Regulators do not of course face competition for their custom. HM Revenue & Customs (HMRC) though, for example, does have a kind of charter or code of conduct. It has nine points, which have emerged after several years of frustration by its 'customers'; these include:

What you can expect from us:

1. Respect you;
2. Help and support you to get things right;
3. Treat you as honest;
4. Treat you even-handedly;
5. Be professional and act with integrity;
6. Tackle people who deliberately break the rules and challenge those who bend the rules;

7. Protect your information and respect your privacy;
8. Accept that someone else can represent you;
9. Do all we can to keep the cost of dealing with us as low as possible.

What we expect from you:

1. Be honest;
2. Respect our staff;
3. Take care to get things right.

These terms reflect what has come to be called in the national policy as the balance between rights and responsibilities, or the social compact. Whatever it is, it seems a sensible way for government to deal with the governed in a democratic structure.

In practice of course even Homer nods. And when a former Chancellor of the Exchequer was in office it appeared that the Charter was more often honoured in the breach than in the observance. Dealing with the Treasury and HMRC has become fraught in recent years, so much so that a cacophony of complaints, only slightly reduced in recent times, emerged from that hotbed of radical campaigning, *Taxation*, the journal of tax anoraks everywhere. The problems included aggressive attitudes, unreasonable expectations of taxpayers, abuse of power, delay and a host of other complaints. Despite what was on the website, on the phone (if you got through) the attitude of the working taxman was often very different.

In practice (so far), I have personally not found such attitudes prevalent in HMRC although the Treasury have in the past suffered from arrogance and distance and isolationism (now rather less in evidence than before). But it is all too easy for those in power to abuse their power, whatever

their senior officers say about the approach that should be taken. Junior officials understandably being disenfranchised will seek to apply what power they have in making life difficult for their 'customers'. It is the job of their superiors to make sure that does not happen.

By way of contrast, just look at the way that Apple manage their affairs. They do of course produce superior products. But they also empower (and train) their staff to be nice to their customers. And even their most junior staff are allowed to make expensive decisions without needing to refer higher up the scale.

Regulators of course have political and statutory problems and obligations. And they also have many masters, so it may not be quite so simple, or so they plausibly say. And they are worried about regulatory capture. But anyone who has tried to call someone at the Pensions Regulator and been faced with a determined telephone operator set on creating an implacable barrier to communication or has asked for an e-mail address of an individual there will know that user-friendly is not really the right word; even within the political and legal constraints there is no need to rule by fear.

It is not that regulators should not do their jobs (maybe that's a debate for another day). But what is giving cause for concern is the way they do their jobs. And pensions is a prime example of the way it might be said to be going wrong. The term that is often used in these discussions is 'regulatory tone'.

Regulatory tone is a tricky beast to define, but as in the famous elephant it is easy enough to recognise it in action. On the surface the regulators' mission statements (not always easy to find on their websites) speak of openness and a cooperative spirit. In practice, certainly lower down the food chain, such behaviour is sometimes hard to find.

One recent example of this was the publication of a notice by the UK Pension Protection Fund, which suggested it was not minded to allow trustees to buy missing persons insurance. Such insurance can indeed prove expensive, and it is not certain whether it is good value for money. But trustees are vulnerable to litigation after they

have surrendered their assets with which to defend themselves (as the Pensions Protection Fund board and executive is not; they benefit from statutory immunity). And since even the professional ones do not charge enough to carry unlimited risks (and the lay ones are putting their homes at risk) the notice seemed rather harsh – especially since it did not rehearse the argument for making such a statement. Regulators need not only to regulate but to explain why they regulate, and mention that their decision may involve a balance of risk and reward.

There is clearly a developing gap between the regulator and the regulated; even the police recognise that they can only police with consent and spend time and money on good relations. What can be done to improve matters in the pensions industry?

There are perhaps three or four immediate steps that could be taken, without much cost or delay. One is simply the tone of communications; guidance notes and other notes need to express a sense that trustees, employers, members and regulators are almost always on the same side – and enjoy mutual respect. The recent admonitory note emanating from the Pensions Regulator following its rebuff by the courts in the *Bonas* case did not express the fact it had learnt by its experience, or even that it had made an error of judgement, simply that it was determined to chase what it considered malefactors no matter what. It pandered to two of its stakeholders – the members and the press – but brought itself into disrepute with the others. More time with its communication consultants would not come amiss.

Second, would be a determination to get out and about. The chairmen of both main pension regulators (and their chief executives) seem to be adopting low profiles; what they should be doing is punishing their diets by lunching as much as they can. Getting out and about lets them not only spread what messages they have – but enables them to learn about what impression their staff are creating, and what is concerning their stakeholders (subject always of course to the concern about regulatory capture) well away from the silo that is their headquarters. Listening by senior officers seems curiously lacking.

Third, they should establish genuine user-groups to enable slightly more feedback about the way that they operate. It is true that there is a regular perception audit, but the way the questions are phrased in such an audit resembles the Zimbabwean general election system. It is hard to express analogue views in a digital survey.

Finally, it would be sensible to give the senior staff at least some training in regulation, perhaps by taking a degree or at a minimum a diploma course on how to be a regulator. Unpaid trustees

for example are encouraged to follow some form of learning as part of their role; yet paid regulators, despite specialist skills in accounting or mathematics, have in general few specific skills on how to be a regulator. If they completed a formal qualification in regulation it is probable that they would at least learn a decent bedside manner.

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