

National Commission on the future
of governance in the public sector

The future of regulation and governance in the UK

The National Commission

The National Commission is an independent project established to make a unique and necessary contribution to UK public life. We believe a strong and effective public sector is essential to the UK's democratic principles and for a just, sustainable and equitable future.

The National Commission was established out of concern that rapid changes in the world have created enormous threats for the public sector.

The importance of good governance has come into sharp focus during the coronavirus pandemic and the National Commission will provide the fresh thinking needed to drive change in the post-pandemic world.

The commission is built around three pillars: place, digital and citizens. They provide the basis for our framework of enquiry. These capture the central issues facing the public sector in the next decade and will be used as lenses to explore a range of topics that are essential to good governance, including: sustainability, ethics, accountability, policy, leadership and regulation.

Place focuses on issues that are specific to a locality, community or neighbourhood. At the level of place, public sector organisations and partners come together to achieve local social, environmental and economic outcomes.

Digital covers technological transformation, artificial intelligence, machine learning and innovation. The future of good governance must go beyond organisational transformation and tackle issues of legitimacy, ethics, trust, power and data ownership.

Citizens relates to ordinary people's engagement with governance and their changing relationship with public institutions. Public sector governance is struggling to embrace the consequences of increasingly engaged citizens. We're here to explore whether there are alternatives to the current models.

The commission produces evidence-based reports and stimulus papers which make recommendations for the public sector. We hold events that bring together leaders from across society to explore the role of governance in securing a positive future for the public sector.

To help develop a vision for this future, the Good Governance Institute established the National Commission on the future of governance in the public sector.

The Commission was established and continues to be supported by the Good Governance Institute as part of its mission to create a fairer, better world.

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Regulation – challenges and opportunities

Regulation cuts across many of the challenges faced by public sector and its governance. Regulation and governance are inextricably intertwined at all levels.

Although the UK's departure from the EU creates much regulatory uncertainty, it also provides the government with an opportunity to use regulation as a tool to rebuild the economy after the pandemic and realise its target of making Britain a world-leading science and technology hub.

If used effectively, regulation will make significant contributions to achieving sound public outcomes and greater public value. It has already formed the foundation of numerous sectors for many years, from health to energy, but it must evolve to make more pronounced positive contributions to Britain and match the increasingly complex demands of modern society.

Despite its importance, there is no blueprint for effective regulation in the public realm. In recent decades regulation has evolved in response to events and acted retrospectively; now is the time to adopt a more proactive approach.

As one of the few independent bodies looking at the future of regulation, the Commission is interested in raising public policy debate and distilling the unique contribution of regulation to good governance. The Commission recognises that regulation is a core element of good governance; more must be done to clarify its long-term future.

Purpose of summit

In June 2020 we brought together a wide selection of regulators to explore two main questions:

- 1. What changes are needed to statutory and regulatory frameworks to enable more agile and effective governance at all levels of the public sector?**
- 2. How do governance structures and processes inside organisations also need to change?**

The summit was intended to provide much-needed time, space and stimulus for thoughtful reflection on complex issues.

The focus was on the future of regulation and governance and their evolution over a ten-year period.



Summit outcomes

The event reached **ten conclusions**. These are captured in single statements behind which was detailed discussion that is summarised in the following pages.

1. **Existing approaches to regulation are becoming outdated and a unified call to action is needed to advocate for a new era.**
2. **Regulation is under threat from hostile political forces and will therefore need to adapt to justify its existence.**
3. **Regulation is crucial to promoting innovation and adding value to the economy and public sector. It must adopt an outcome-based approach to good governance if it is to be sustainable and add value.**
4. **Regulators and regulated must adopt a radically different mindset by reorienting regulation around public outcomes at all levels – individual, organisational, place-based, and national.**
5. **Regulation can only respond effectively to these challenges if it acts collectively to threats and opportunities, behaving and learning as a coherent sector.**
6. **To work collectively, regulators must share knowledge and information. Currently there is too little sharing of data, practices and thinking. A public sector equivalent to the Regulatory Horizons Council may be beneficial.**
7. **As the public sector becomes increasingly focused on local, place-based outcomes, regulators must meet the demands of multiple-agency, civic and system accountability.**
8. **Regulators must establish better relationships with the regulated, both stakeholders and citizens.**
9. **Regulation must move beyond prescriptions and instead cultivate cultural change to facilitate organisational agility and flexibility.**
10. **A second summit dedicated to regulation was needed to focus on concrete actions and solutions to these issues. This will be held on 27 October 2020.**

Summary of discussions

1 Call to action

“Effective regulation is absolutely vital for public services”

“Regulators are essential to good governance”

“When things go wrong in an organisation, it is invariably a failure of governance”

The enormous societal changes that have occurred during the pandemic have laid bare the need to adopt a new approach to regulation. This period has sharpened focus on issues that arose before the coronavirus outbreak, such as the increasing distance between technological innovation and regulation or the necessity for regulation to keep up with current public sector goals of engaging the public and other organisations at the local level.

Moreover, the economic changes required to reorientate Britain after the pandemic, compounded by the unclear post-Brexit regulatory environment, require not only an objective assessment of the state of regulation but, crucially, a whole new approach. Regulators are left asking how this can best be articulated and by whom.

During the summit it was clear that navigating these enormous challenges requires strong collective action that can reassert the public value of regulation. One response is a call to action that unites regulators around a clear position of advocacy.

A call for action must determine what and who needs to change, and how.

2 Hostile political forces

“The government seem to believe a bonfire of regulators will turbocharge the economy”

“Politicians often misunderstand the role of regulation and want to attack its prescriptive nature”

Many at the summit feared that the government will attempt to remove regulators or merge their functions. This is particularly acute in the context of Britain’s departure from the EU, as despite regulatory divergence remaining a key sticking point in negotiations, many felt this gave the government an opportunity to move away from the European regulatory regime.

Although there is little evidence so far to suggest that the UK will adopt the controversial ‘Singapore-on-Thames’ approach to regulation that some spoke about at the beginning of the Brexit process, the government seems likely to seek divergence from Europe.

Given the strain the pandemic has placed on public finances, the Treasury may regard the 90 UK regulatory bodies whose running costs exceed £4 billion as a possible area to reduce expenditure and boost the economy. Regulators agreed the time was right to make a positive cross-sector case for regulation and underline its importance to Britain while combatting the perception that their contribution is solely negative.

3 Regulation is added value in a changing world

“It is inevitable that regulators try to solve the problems of the past”

“Regulation needs to be forward-thinking and agile – to respond to the changing world we are in”

“We need effective regulation to be transformational and innovative”

In the face of the multiple threats and challenges facing the sector, there is a need to make a positive case for regulation. Regulators must show how their policies' outcomes benefit citizens' wellbeing and produce economic rewards. This case can effectively be made in line with the government's plans to develop the UK's science and technology capabilities. If regulations are made in accordance with these policy objectives and with an awareness of the need to facilitate innovation, they can contribute positively to the economy.

As the speed of technological development increases and continues to disrupt sectors, regulators who manage to stay ahead of this can have a vital role in guiding the public sector into adopting and making best use of new technologies. In particular, the increasing use of AI in the public sector can be mediated by regulations that ensure both that it is governed correctly and that boards are made fully aware of its potential. Regulators can provide the tools for boards to fully understand the ethical, risk management and accountability issues behind AI, but they can also provide a roadmap for understanding how to make best use of these.

As the Regulatory Horizons Council have stated, the fourth industrial revolution will only accelerate transformation in public life. It is essential that regulators can adopt mechanisms that allow them to keep pace with innovation, learning from the private sector where appropriate, and cultivate its adoption in the public sector to ensure better outcomes for all.

Enabling and demonstrating the positive outcomes of regulation goes beyond technology. Our summit contributions from a range of sectors, including healthcare and higher education, showed a desire for regulations that embed the kind of flexible working and decision-making practices that have become common during the pandemic.

From universities teaching exclusively online to remote consultations, significant service changes have occurred much faster than would have seemed possible before the pandemic. Yet contributors felt changes to regulation were needed to institutionalise these developments as existing practices were preventing lasting change.

Further work is required from regulators so they can keep up with these advances and have broader mechanisms for illustrating they have achieved positive outcomes.

4 Regulation demonstrating positive social and economic outcomes

"The future of regulation lies in outcomes rather than outputs"

"People see regulation as negative, but it should foster positive cultures and innovation"

There is a growing feeling within the public sector that services can best be delivered at the local level. This can be seen in drives for legislation around integrated care systems, increased calls for local devolution and the apparent need for locally-driven test and trace. This is not only because services can be more effectively tailored to the needs of the public – which increases people's sense of engagement with the state – but it also allows services and outcomes to be coordinated across organisations.

Consequently, in addition to demonstrating that regulation yields positive outcomes in its specific policy interventions, it must also be seen to operate effectively within specific local contexts. As such, regulators must build and redefine their outcomes around these 'place-based' areas to match changing structures of the public sector. By doing so, regulators can remain relevant and demonstrate in accordance with public wellbeing objectives how they are positively contributing to society.

5 Regulation must respond collectively

“Regulation has to be a shared activity”

“Regulators are recognising that if they don’t come together, it isn’t going to work”

“Regulators must be joined up with each other and those in the sector.”

The complex and wide-ranging challenges faced by regulators can only be fully addressed if regulators work collectively. Acting alone will lead to incoherence and undermine plans for the future. The lack of a coherent action plan for regulation could be disastrous, and underlines the need for a common forum for public sector regulators to collaborate and compromise to agree shared principles and objectives.

There was a concern at the summit that regulators are often too siloed and do not spend enough time together thinking through how they can make the biggest, most consistent impact. This not only prevents them from engaging on issues they share, but also creates inconsistencies that undermine their position.

The summit came to the conclusion that regulators need to act quickly and coherently to find solutions. A recurring theme was the need for a forum to develop this industry-wide approach and form a collective voice on the biggest issues and the best approach to positive regulation.

The National Commission aims to identify how a strong understanding of all our research themes can be integrated into plans for each sector. A shared space could enable regulators to integrate their approaches into these themes and collectively focus on the principles of good governance to guide future perspectives on regulation.

This raises the question of whether the importance of cooperation is widely enough recognised to reach the compromises necessary to achieve a common approach, or whether sector-wide collaboration needs to be mandated.

6 Information sharing

“There’s so much rich data that can be shared between regulators ☐ it can tell you so much about a sector, or even the culture of an organisation”

“Regulation must work cross-sector”

Regulators were keen to stress the potential of sharing knowledge and data. The collaborative practices described above must also lead to the pooling of intelligence and data, research and insights across traditional boundaries.

Many regulators noted how the intra- and inter-sector exchange of data can lead to more efficient and enlightened policymaking, yet they lack the structures to achieve this. What is needed is a move from intermittently sharing intelligence and commissioning research for narrow purposes towards a much wider-ranging shared intelligence-gathering approach that is coordinated and visible, open and transparent.

The government’s National Data Strategy may go some way to addressing the specific issue of data sharing across the public sector, yet this in itself will require careful regulation. The public will need to be assured that explicit protocols for information-sharing are in place to protect their interests, while the public benefits of more organisations having access to this data must be clearly communicated.

Providing reassurance about data protection is crucial across the public sector, in particular public protection, where the sharing of confidential data across multiple agencies at national and local levels is routine.

However, the summit made it clear that data protection alone would be insufficient; there needs to be a more concerted effort across regulation to entrench data, research and knowledge-sharing practices.

How can a collective action forum embed the practices of information-sharing among regulators and is this the best setting to facilitate these processes?

7 Multiple agencies and civic accountability

“Regulators must regulate systems rather than institutions”

“Economic regulators in particular have had a tendency to lock themselves in ivory towers and speak as if they’ve swallowed an economics textbook”

“Regulation need support from the relevant sections of government and has to be seen as responding to citizens’ concerns”

A central challenge for regulators is to adapt to changes in the way organisations operate. Across the public sector, from health to public protection, organisations are coming together to drive collective outcomes across communities rather than single organisations. This place-based approach aims to connect more effectively with citizens at a level that is important to them, delivering interventions that provide the most value for the public.

This poses difficulties for regulators if they are not aligned with how organisations are operating. It will be especially hard for regulators to demonstrate positive outcomes if they do not measure success in the same way as the organisations they regulate. Regulators risk being out of step with important changes in the public sector and losing their relevance.

Regulation must evolve to meet these local demands and match the various measures of success at different levels of government. Key to this is demonstrating, not just to politicians but to the public, that regulation adds value to their community.

These sector-wide approaches must also be balanced with an understanding that place or system outcomes differ and are not universal, as do the needs of various regulators, yet the principle of regulating for the citizens is common to all regulators.

Regulators must therefore find the best method to collectively keep pace with the changing dynamics of the public sector and universally adapt quickly to maintain legitimacy and relevance.

8 Growing better relationships with the regulated

“We cannot create a dividing line between us and citizens – they care passionately about these issues”

“Regulators need to be encouraging and challenging us to think about new models for governance”

“If regulation is a co-created process, it will have far more legitimacy”

Many summit contributors felt that regulators are often too inflexible, stemming from a lack of contact with those they are regulating. Some expressed concerns that regulation is simply a top-down process, which sometimes results in little understanding of how and why policies have been developed.

If regulation is to share the population outcome objectives of local organisations and take on greater civic accountability, there needs to be greater mutual understanding between regulators and the organisations they regulate.

Regulators would elicit greater trust and be better positioned to achieve cross-organisation outcomes if the policymaking process incorporated greater feedback and learning from the public sector. This would also add greater legitimacy to the role of regulators in achieving system results. However, this cannot be achieved unless active efforts are made to ensure regulators have dialogue with stakeholders to fully understand their needs and objectives.

Regulation must be proportionate and still ensure it adds value. Regulators must therefore decide how best to manage this through dialogue with the regulated, by formal or informal means.

9 Regulating for cultural change

“Promoting culture and behaviour is key to the future of regulation”

“Regulators must do more in culture and behaviours”

“By 2030, I want regulators to facilitate the right culture in the organisations so that they can help regulate themselves”

Models of regulation are evolving too slowly towards AI-supported self-assessment rather than traditional inspection. Too often, they trail behind innovations or are perceived to stifle them. Regulators need to adopt new ways of allowing the flexibility for organisations to adapt and evolve.

To address this issue, our contributors felt regulations should facilitate cultural change in organisations. This would build on their work to better understand the organisations they regulate while also embedding good governance practices.

Attempts are being made to move into a role as facilitators of cultural and organisational/system conditions for success. So far, this has too little consistency, clarity of purpose or support from the regulated for it to be a credible role for regulators in the new world.

This is an ambitious plan and realising these goals will require long-term thinking and concerted effort. To move from merely setting rules to changing the dynamics of organisations regulators will need a particular focus on understanding the regulated, working with local stakeholders and gain legitimacy through civic accountability. More sector-specific thinking on how culture can be shaped is also required.

10 The second summit

Our second summit, on 27 October 2020, will explore the following questions:

- **What are the next steps to be taken on the call to action? How and by whom?**
- **How should the contribution of regulation adapt to address the challenges of the next decade?**
- **What is the active role of citizens in future regulation and governance?**
- **How should thinking around public sector governance change to make it a positive partner for regulation and vice versa?**
- **What are the critical cross-cutting themes around which a new deal for regulation can be developed?**

Concluding comments

Each of the ten themes requires regulators and regulated to think and work differently, collectively and individually. The role of an active, digitally-enabled citizen is as important in this change as any other factor.

What is less clear is how this collaborative process will be achieved, given the diversity of regulators in terms of function, size, resourcing and history.

The lack of a high-profile forum for advocating and exploring regulation as a shared issue across the public sector does not help. Too much thinking remains silo or sub-sector based.

Too often, regulators are still seen as restrictors and inhibitors of change, rather than enablers of public protection at a fundamental level. This was a fundamental part of the 'freedom and innovation' narrative promoted during the command and control phase of the pandemic. This is a simplistic and unhelpful agenda that further separates regulators from a common cause with public sector organisations which, for different reasons, are working through the implications of governance of place-based and civic outcomes – collaborations, partnerships, mergers, systems.

Regulators need to keep pace with developments in the public sector and away from the focus on individuals and organisations which has predominated for historical and statutory reasons. A move from a focus exclusively on organisational governance towards place-based governance requires much greater ownership of public outcomes by a wider range of regulated and unregulated contributors.

The National Commission is clear that regulation and governance are closely connected. Both will remain equally important over the coming decade. However, it is no longer in the public interest for lines to be drawn antagonistically. A positive dynamic has to be generated that sees regulators and those they regulate jointly generating greater clarity and impact in a way the public can understand and help shape.

The critical step now is to move from comment and opinion to defining principles and generating necessary action.

The Commission will be working towards a high-impact deal by focusing on what the new relationship should look like between governance, regulation and the regulated, and between governance and citizens.

We are optimistic that it will be possible to define the longer-term characteristics of a positive regulatory and governance climate that connects to citizens.

Participants

We are grateful to the following for their involvement in the Regulation Summit that took place in June 2020.

John Barwick, Chief Executive and Registrar, The Health and Care Professions Council (HCPC)
Selvin Brown MBE, Director of Engagement and Policy, Health and Safety Executive
Paul Buckley, Director of Strategy and Policy, General Medical Council
Dr. Tracey Cooper, Chief Executive, Public Health Wales
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Warren Seddon, Director of Strategy and Communications, Parliamentary and Health Service Ombudsman
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On behalf of the National Commission and GGI:

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