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***AN INTRODUCTION TO***

***OUTCOME BASED COOPERATIVE REGULATION (OBCR)***

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**AN INTRODUCTION TO OUTCOME BASED COOPERATIVE REGULATION**

**(OBCR)**

**Professor Christopher Hodges OBE**

**The Essence of OBCR**

OBCR challenges businesses and regulators to cooperate to achieve common purposes and outcomes.

Thus, OBCR aims to incentivise people and organisations to engage more so as to agree their common purposes and objectives and to achieve their agreed common goals. it aims to combine multiple goals of business (commercial success and profit), governments, regulators and societies (economic growth and protection from harm) with acceptable risk. OBCR does this by enabling organisations to opt for basing their activities around demonstration that they can be trusted.[[1]](#endnote-1)

Trustworthiness is built on demonstrating[[2]](#endnote-2) adequate and reliable evidence over time[[3]](#endnote-3) that people do the right thing, i.e. have competence, resource, ethical intentions and achieve desired outcomes rather than undesirable outcomes. The nature of the evidence can evolve over time, as maturity increases, thereby encouraging improvement by large and small businesses. The nature of the evidence may relate to intentions, competence, resources, honesty and so on but especially on behaviours, cultures and outcomes.[[4]](#endnote-4) An organisation should be able to demonstrate its trustworthiness essentially once, with evidence that is convincing to staff, suppliers, customers, investors and regulators, thereby delivering efficiency and consistency. Co-creation and cooperation involving all relevant stakeholders is the preferred mode for designing the system/rules, and then oversight of performance.

Alternatively, regulatees who opt not to use the ‘trust track’ can remain subject to traditional legal regimes and responses.

**Stages of Creating OBCR**

The basic stages in the development of the core elements to support OBCR are:

1. Agreeing amongst all stakeholders the purposes, intermediate strategic objectives, and outcomes that are desired (and not desired). Agreeing the evidence and metrics that should identify the desired and undesired outcomes.
2. Actors producing evidence that they are trustworthy. Trust should be based on evidence produced by each actor that they can be trusted (to behave so as to achieve the right outcomes by doing the right thing). The evidence should distinguish those who can be trusted, and so should qualify for trust-based relationships.
3. All stakeholders should be offered the opportunity to be involved in cooperatively achieving the agreed purposes, objectives and outcomes―i.e. to take responsibility for their actions in this delivery, and to be accountable for delivering the agreed outcomes. This accountability will be measured by metrics on whether the outcomes are achieved, and on improvements in performance in achieving them.

These stages need to be debated between stakeholders on a sector-by-sector basis. At the minimum, initiatives need to involve key regulatees and those responsible for regulation. Discussions will be necessary on identifying and prioritising purposes and outcomes, on what evidence can be produced and how convincing it is in demonstrating trustworthiness, and on improvements in performance and achieving outcomes. Some sectors will take longer to achieve cooperative maturity than others.

Switching to OBCR will be hugely powerful if done holistically across a nation and all regulated sectors, delivering a consistent approach. A central governmental function should provide coordination, consistency, sharing of experience between different sectors, and oversight of progress.

**Optional Tracks**

The system can be configured so as to provide different approaches, that differentiate between, for example:[[5]](#endnote-5)

1. those who produce continuous convincing evidence that they can be trusted (who should benefit from appropriate advantages);
2. those who decline to do this but whose activities are regarded as legal as long as they comply adequately with the legal rules: they will be subject to traditional compliance, surveillance, inspection and enforcement regimes;
3. those who produce modules of relevant evidence of competence, resources, intentions, trust, behaviours and outcomes, which might be building blocks towards category (a): this may be ‘regulatory light’ requirements for small businesses and start-ups.

The ideal is a ‘trustworthy track’, available for those who produce evidence that they can be trusted. Note that this applies to all stakeholders, certainly regulators and regulatees but also other stakeholders. The extent to which actors will be regarded as ‘satisfying’ a level of trust, and the associated criteria, or whether variations will be acceptable, will vary between sectors. Since regulators are themselves subject to trust requirements, criteria of trust applicable to all needs to be co-created and evaluated by acceptable stakeholder involvement.

There is mounting evidence that higher levels of integrity are correlated with commercial success in many contexts[[6]](#endnote-6) and this is recognised by major investors.[[7]](#endnote-7) It is striking that ethical businesses find that internal organisational structures tend to be flat rather than hierarchical, and decisions are made by empowered staff, rather than by a limited number of managers.[[8]](#endnote-8) They achieve more when operating in an open, trusting and ethical environment of psychological safety.[[9]](#endnote-9) There is also recognition that the culture of an organisation has a powerful moderating (regulating) effect on behaviour and outcomes.[[10]](#endnote-10)

**Rationale**

OBCR is based on the idea that we achieve more when we cooperate. It is based on extensive research into human behaviour (psychology and in organisations), business management, and comparing different approaches to affecting the behaviour of individuals, groups and organisations. In particular, it builds on the findings that people who are intrinsically motivated to do the right thing tend to achieve far greater success than people whose activities are subject to external attempts at control. It also builds on recognition that organisations that have cultures that are open, ethical and psychologically safe tend to be more successful. Plus, it aims to engage all relevant stakeholders in agreeing common goals and their achievement.

OBCR aims to create a framework that supports cooperation rather than conflict in regulation. It builds on a great deal of psychology, developments in good corporate culture, research into the causes of disasters and into effective regulation and ‘enforcement’. By creating a cooperative relationship between businesses, regulators, government and citizens, the aim is to achieve the goals of all stakeholders.

Much of the evidence of trustworthiness is already collected, but not necessarily deployed well. Much of it concerns technical systems and compliance, to which people have added evidence on behaviour and culture. Important developments can be built on in how good businesses operate, and their systems. By some co-creating a fresh approach, there should be no need to duplicate corporate and regulatory data, and there should be an overall reduction in requirements.

OBCR continues evolution in the way many businesses manage themselves and do business, and the way many regulators approach regulation and enforcement. The concept of *regulatory delivery* challenges legislators and regulators to focus on whether the purposes and outcomes of regulation―from protection to prosperity―are actually being *delivered*.[[11]](#endnote-11) This is prompting some fundamental re-thinking in practices in business, markets and regulation. Behavioural psychology prompts thinking about the importance of organisational *culture* (how groups of people tend to behave) in achieving good outcomes and compliance. Culture―meaning ethical culture[[12]](#endnote-12)―has been recognised as fundamental from banking[[13]](#endnote-13) and corporations generally[[14]](#endnote-14) to achieving safety in any operating or manufacturing organisation.[[15]](#endnote-15)

**A Problem Solving Model**

This integrated system involves identifying problems and solving them. In a cooperative regulatory model, every actor/stakeholder has a role, assumes responsibility for performance of that role, and is accountable for such performance and contribution to the core functions that are necessary for maintaining performance in achievement of the basic purposes and outcomes. The basic functions include problem identification and problem solving:[[16]](#endnote-16)

Establish clear purposes, outcomes, norms/rules

Support systems & culture to work well

Identify problems

Take action to prevent recurrence and repair damage

Monitor to decide if further change is needed

Identify the root cause of each problem

This system is operated constantly, responding to fresh information. The system is operated by institutions and mechanisms that deliver effectively all of the *functions*. For example, the identification of problems will be achieved partly by open cultures that support information flow in an environment of psychological safety (and no blame) and by data collection and feedback mechanisms from operators (businesses) third party certification and accreditation, and user feedback (eg for consumers through Ombudsmen platforms). The operation of the system is, of course, predicated on the expectation that all actors will cooperate in achieving the purposes and outcomes based on commitment to the shared ethical values, and that evidence will differentiate those who do so from those who do not.

**Advantages**

The OBCR approach has the following advantages:

1. offers stakeholders, especially regulatees, constructive involvement in making the rules (co-creation), identifying and fixing problems;
2. is built on a foundation of trusted businesses, who produce a single set of evidence that they are trustworthy, which should be acceptable by staff, customers, investors, suppliers, regulators, communities); this will incentivise opportunity to build a reputation for trust; simplification of qualification for contacts and procurement; speedy identification of problems and cooperative response to fixing them (changes to improve performance and reduce risk, and making redress – largely avoids ‘enforcement’).
3. has a major focus on the evidence of achieving the common outcomes and of behaving fairly and well;
4. identifies and solves problems in a cooperative, supportive, ‘no blame’ environment;
5. reserves traditional enforcement tools for those who do not cooperate ethically but behave criminally;
6. provides significant opportunities for simplification, and integration of private management/assurance systems and public regulatory systems, eg in any manufacturing chain and food chain, reducing ‘red tape’;
7. provides significant economies and increased productivity (through simplification of objectives and strengthening internal motivation) under a trust-based system rather than rules-based one.
8. frees minds to think about improvements and innovation. It costs little to implement – it’s just about doing things differently.

It is envisaged that a country that adopts the OBCR approach holistically will transform commercial and economic success for business, and make the jurisdiction highly attractive for investment and as a supportive global base.

Involvement of all stakeholders in co-creation has the following advantages:

* It builds *ownership of the achievement of the purposes and outcomes* and accountability for observance of the principles and rules on the part of those who have to apply them. It maximises individuals’ *internal motivation* for achieving them. This powerfully supports compliance and with innovation in performance.
* It builds in the *support of citizens*, civil society and those who are the intended beneficiaries of the system. This facilitates both challenge and support for the outcomes and actions that follow.
* It draws together the *knowledge and expertise* of all relevant parties, especially government, regulators, academia, business, intermediaries, not just in agreeing the desired outcomes but also in ways of achieving them. It captures ideas and overcomes silos, enabling the development of joined-up thinking.
* It provides *challenge to established thinking*, which is necessary for testing and developing ideas. The tone of the discussion can be carefully moderated, within a culture of respect for the contributions of all stakeholders and mutual trust, so as to facilitate relevant debate but maintain joint cooperation and achievement of the core goals.
* It should enable the *identification of barriers and gaps* that impede achievement of the purposes and outcomes.
* It bases behaviours, rules and cultures on *principles that the society values* and encourages debate and balance between potential conflicts in values, purposes and outcomes at an early stage, so as to provide clarity in implementation.

**Purposes, Outcomes and Cooperation**

Both in business organisations and public regulatory systems, it is increasingly realised that more is achieved where everyone is aiming at the same shared objectives, has the same common purposes, and is making their own contribution to achieving the desired outcomes.[[17]](#endnote-17) This produces working together to achieve shared purposes and outcomes. It also means identifying and taking steps to avoid undesired outcomes.

The big shift comes in thinking of regulation in a new way, aligning regulatory protection and good business practice. The traditional idea has been that regulation is limiting, a barrier and something to be ‘enforced’. A fresh approach would build on best business practice – doing the right thing, widening objectives to encompass sustainability and stakeholder outcomes – to align the protection goals of regulation. It is implicit that businesses need to demonstrate that they achieve best practice.

This can mean that purposes and outcomes that might conflict need to be discussed and balanced. For example, producing profit, prosperity and growth can conflict with protecting society (including workers, customers, investors, communities and the environment) from harm. It is significant that the mantra of maximising shareholder value[[18]](#endnote-18) has given way to corporate social and environmental responsibilities, the UN’s Sustainable Development Goals,[[19]](#endnote-19) and business leaders’ adoption of a stakeholder model of corporations in 2019 by 181 CEOs of major U.S. corporations.[[20]](#endnote-20) Equally, some governments have required their regulators not just to ensure the goal of protection but also to take into account the objective of business growth in what they do.[[21]](#endnote-21)

The core idea is to get all relevant parties together to work out not just *what* needs to be done but also what needs to be *achieved* and *how* to do it. Introducing the focus on purposes and outcomes from the start, and continuing the focus on achievement and delivery, will *accelerate the outcomes*.

**Contrast with a Traditional Authoritarian Model**

A vertical, authoritarian, ‘command-and-control’ model, in which the basic techniques are to identify *non-compliance* with *rules* and then *enforce* the rules by imposing sanctions, on the theory that that will incentivise people to comply or *deter* people from not complying. This is essentially an authoritarian, rule-based, linear progression:

Rule → identify breach of rule → enforce rule, impose sanction → assume compliance (deterrence)

Yet scientific research has shown that:

1. There are many reasons why people break rules, ranging across a spectrum from the dishonest/criminal, through the well-intentioned but distracted, incompetent, lack of resource, or just an accident.
2. The theory of deterrence has little impact in avoiding errors, or reducing future risk.
3. There are many other and better ways of avoiding errors and reducing future risk.
4. Good people will usually respond if they are supported to focus on improving their competence, performance awareness, and so on.
5. There is much psychology (supporting rather than undermining people’s intrinsic motivation) and research on how ‘enforcement’ works (or doesn’t) that addresses this.

The rule/breach/sanction approach is based on getting people to *comply with a rule*, rather than aiming to *improving their performance*, whether up to a required standard or above it. Hence

* high-risk safety regulators (eg CAA) operate Performance-Based Regulation, aimed at constant vigilance and improvement;
* other effective regulators (eg OPSS) talk about identifying the right ‘intervention choice’, in which traditional enforcement tools are only one (extreme) option.

The shift is from a rule-breach-enforcement mode to values-objective-outcomes-data-feedback-fixing problems-improving performance. So what is needed is a system that:

1. identifies where people need improved competence, resource, focussing, and
2. provides the right support, reserving protective enforcement as a last or urgent resort, but
3. maintains protection of society and markets by using hard enforcement measures on those who choose deliberately to break the rules and harm others. This requires segmentation of people/organisations, based on the extent to which their intentions are ethical, and their demonstrated competence.

This can be done like this:

1. Helpful **rules** that support good performance: the principles of good practice in a code of ethical practice, and technical rules, mainly in guidance/standards (regularly updated); legally enforceable rules triggering right to intervene and especially formal enforcement should be designed to be activated as a long-stop to protect against really unacceptable behaviour.
2. A **commitment** by traders and regulators (and others like assurance bodies or regional hubs) to observe the ethical and technical rules. the basis on which people engage should be agreed and should conform to society’s values and norms, i.e. ethical values. Codes of ethical practice will be central documents.
3. A **data system** that identifies performance, problems and risks. The data can be contributed by traders from their trust/technical sources, from feedback by certification & assurance audits and inspections, from customers and suppliers (eg complaints), or anything else. It will identify both generic issues and issues with specific traders. A sectoral Ombudsman is a good host for this portal and database.
4. A **feedback system** that identifies actual levels of performance, including comparisons with market average (eg the Drinking Water Inspectorate’s risk and issue system). Traders would be given their own aggregated data and anonymised comparative performance data. Regulators would have more specific access. This allows traders to institute their own action to improve performance. Platforms operated by Ombudsmen will be particularly effective here.
5. A **support and intervention system** that provides targeted support or intervention, and if necessary formal enforcement. this can be organised on a national basis in some sectors, but often will be an integrated regional Authority/Business Hub/Chamber of Commerce. The possibility of enforcement will be necessary but will be a backstop in many sectors, whereas most actors will be supported in improving their performance. This will rely on an ecosystem of information, advice, training, support and intervention.

**Some Successful Examples of Elements of OBCR**

Some regulators have proved that the ‘trust approach’ works holistically right across a sector, eg aviation safety. Huge opportunities if this were expanded generally in business, and in the NHS & social care, property, teaching etc.

In the past 40 years, especially since the UK 2005 Hampton Report, the general direction of regulation and enforcement has been to be more engaged and supportive, and less authoritarian and enforcement-led. The Primary Authority scheme is a good example of effective cooperation between businesses and Local Authorities. Some regulators have shifted their approaches significantly, but could go further (with great success) if they were encouraged and able to.

There is increasing recognition that (ethical) organisational culture is critical: in the past decade, organisational culture has been viewed as essential in good business practice, financial services, Corporate Governance Codes, and compliance systems. As with much performance/compliance evidence, that on culture is *internal* to an organisation and there should be no need to duplicate with external/regulatory requirements. Codes are increasingly being used in many sectors, and are increasingly including requirements for *ethical* practice.

There are various successful examples of co-creation involving all stakeholders: Ontario’s heating & operating engineers (with a facilitator); Ofcom’s revision of the Broadcasting Code; Independent Spectrum Broker for revising bandwidth allocations; WICS Scottish Water price-setting procedure. The South Australia energy/water regulator (ESCOSA) has created an OBCR-inspired ‘reg light’ track for SMEs, based on limited requirements, evidence of trust, and cooperative support.

Many people are thinking about digitisation and use of data: this focuses minds on the type of data that is relevant for management, performance, reputation, and achieving outcomes. The UK Drinking Water Inspector uses data imaginatively to demonstrate to water companies comparative risk and compliance: the HSE and others are investigating combining multiple data sources. A new data approach opens major opportunities for reducing ‘red tape’ bureaucracy.

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| Professor Christopher Hodges OBE MA PhD FSALS FRSA is *Emeritus Professor of Justice Systems, Centre for Socio-Legal Studies, University of Oxford; Supernumerary Fellow of Wolfson College, Oxford; Co-Founder, International Network for Delivery of Regulation (INDR*). He advises governments, regulators and businesses globally on regulatory and dispute resolution systems. |

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