

Trade associations – a resource for the civil service

Sir Mark Boleat

The Civil Service is under pressure as never before. Substantial staff cuts have significantly reduced capacity, and on top of this Brexit has imposed a massive workload on a number of departments.

But the Civil Service always adapts. Doing less is one option – even if this does mean trying to head some wilder political ideas that are doomed to failure but cannot be allowed to be seen to fail.

Clever outsourcing is another solution. And really clever outsourcing is doing it without paying. Many businesses are a long way down this path. Petrol stations have outsourced manning the pumps to drivers, supermarket customers now are their own check out staff and the airlines have outsourced printing tickets to their customers.

Some government agencies are also adopting this approach – particularly the regulators who make clever use of their powers to force regulated business to commission expensive studies all of which can be justified from the point of view of the business, but which have the added advantage of protecting the regulator by, in effect, outsourcing part of the supervisory process to a consultant but getting the regulated organisation to pay for it.

Section 195 of the Banking Act 2009 is a good example -

Independent report

(1) The Bank of England may require the operator of a recognised inter-bank payment system to appoint an expert to report on the operation of the system.

(2) The Bank may impose a requirement only if it thinks—

(a) the operator is not taking sufficient account of principles published by the Bank under section 188,

(b) the operator is failing to comply with a code of practice under section 189, or

(c) the report is likely for any other reason to assist the Bank in the performance of its functions under this Part.

(3) The Bank may impose requirements about—

(a) the nature of the expert to be appointed;

(b) the content of the report;

(c) treatment of the report (including disclosure and publication);

(d) timing.

This effectively gives the Bank carte blanche to require a regulated payment system to commission a report, which will help the Bank in its supervisory role. Properly used, this is a useful tool. It can help the regulated institution by providing useful analysis and persuading the members to fund it (because they have no choice), whereas if the institution tried to initiate such a report it would probably not be supported by its members.

Sadly for them, most legislation does not give civil servants the power to require a business or a trade association to commission such reports. But with a bit of imagination the good civil servant can go some of the way towards doing so.

The best trade associations have always been allies of good civil servants. Generally, they have the same agenda once policy is settled – that is to ensure that it works and at minimum cost. Their regulatory and legal staff can often provide a useful “second pair of eyes” in carefully scrutinising lengthy legal documents so as to ensure they achieve their desired purpose.

But for this to happen there must be a sound basis of trust between the civil servant and the trade association official. Once this is established then co-operation is a “win win” for policymaking and the industry. To some this might seem a little too cosy, with the assumption being that the industry is trying to frustrate the wishes of the government. While this may be the case occasionally it is not the general position. Industry has the same objective as government in ensuring that legislation achieves its intended purpose.

Associations and officials can gently conspire in the pursuit of good policy making by some mutual back scratching. I can recall a few conversations along the following lines –

- Official: “Our minister has had another daft idea” (there was “previous” here). Can you please be robust and say this is rubbish.”
- Trade association executive: “Please excuse the letter to the minister from my chairman. This is aimed purely at the members. Ignore it.”
- Official: “It would be really helpful if you could send the minister a letter saying that your members would rather pay higher fees to help us be better resourced. I have a draft here.”
- Official: “The minister is influenced by the number of representations he receives – quality is irrelevant. So please get all your members to write individually.”
- Official: “This submission is not up to your usual standard and will embarrass you if it remains in its present form. I have marked some points. Can you take it away and have another think before you finally submit it?”
- Trade association executive: “My Chairman thinks I am not doing my job unless he has a meeting with the minister in the next few weeks. Otherwise he is a good chairman. Can you please arrange a non-meeting”?

But not all trade associations are effective. In some cases they lack the resources necessary to do their job; in other cases they have the resources but use them badly. Civil servants should not regard themselves as “takers” of whatever trade association structure and people that exist in the sectors that they deal with. With a few simple steps they can significantly improve the quality of trade associations – to the benefit of themselves and the sector represented by the trade association.

The first prerequisite is fully to understand the nature of the trade associations purporting to represent the sector. Some associations are remarkably coy about their membership, and some are little more than the mouthpiece of a single company or even a single person. Civil servants, particularly those new to a sector, should ensure that they fully understand the trade association landscape – which can easily comprise 20 or more associations. Asking for full details of membership and a serious estimate of the extent to which a sector is represented is a good start. And quickly assessing which associations are good and which are not can pay dividends. The good civil servant knows whose representations are worth reading and whose can be safely sent to the trash folder. A good quality representation from a tiny trade association or even an individual is worth more than rubbish from a trade association with 100% industry coverage.

But this is where the clever civil servant can improve the position. It is not difficult to put pressure on a bad association to improve. Here we need to understand the dynamics of trade associations. With a transient board and a chairman who has other priorities and may not even be aware of the employment terms of the chief executive, a bad chief executive can stay in office for years. A few tools can change the position-

- A really bad association has a bad chief executive. A minister or senior civil servant having a quiet word with the Chairman of the association or the chief executive of the largest member can work wonders. The script should be along the lines of: “Your sector does a good job and there are some good people in the trade association. But the Association as a whole is ineffective, producing poor quality evidence and adopting an unhelpful stance in talking with us. As a result your sector is not getting the policy outcomes it needs. We are willing to help but cannot do so until you sort out the Association. Frankly, your chief executive is not up to it. You could do much better.” I know (from experience) that this is often sufficient – helping to crystallize thoughts that already existed and accelerating what would have eventually happened anyway – but perhaps too late.
- Asking for evidence to back up assertions and questioning submissions. A few simple questions can be very effective –
 - “You have said that it is clear that.....Could you let us have the evidence on this?”
 - “You have said our analysis is faulty. Can we have a detailed critique next week?”

- “Your submission makes different points from those you put forward six months ago. Can you explain why your view has changed?”
- “Our people have had a quick look at your submission and raised a number of issues where it would be helpful to have further information.”
- “How does your analysis tie in with the recent report by PwC that came to very different conclusions?”
- And the regulator approach can be tried – “your evidence on this is thin and we do not have any research ourselves. KPMG has done some work in this area. It would be really helpful if you could commission them or another consultancy to do a detailed study. We would be happy to give advice on the terms of reference and to give whatever help we can to the consultant.”
- Rewarding the “good associations” by the minister accepting invitations to events (assuming the minister is of the sort who is wanted at events!) and saying the right words. And, conversely, studiously ignoring the bad associations. Standard words to be used at every association event can prolong an unsatisfactory situation. (I recall a bizarre event when a minister praised a trade association chief executive at a reception just two hours after he had been told that he was being fired – and even credited him with a knighthood!)

These sorts of tactics may not work at all in some circumstances. But they are virtually costless and in most cases will produce a beneficial effect for the association and the government machinery.

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Sir Mark Boleat has run a number of trade associations, had done major consultancy projects on associations for the government and has written a number of studies on trade associations. He also has experience as a regulator and on the boards of commercial and voluntary bodies. From 2012 to May 2017 he was Chairman of the City of London’s Policy and Resources Committee – the “political leader” of the City. He is currently Chairman of LINK, the company that runs the country’s ATM network. He was knighted in the 2017 Birthday Honours for services to the financial services industry and local government in London.