

Risking regulatory capture at the UK's Food Standards Agency?

The delivery of safe food and health governance is challenging and contested,¹ and knowledge and institutions independent of vested interests are essential for public health.²⁻⁴ In the 1990s, new institutional architectures for food and health regulation were created to serve two purposes. First, governments sought to rebuild public confidence in both food safety and policy making in the wake of crises, including salmonella, bovine spongiform encephalopathy, pesticides, dioxins, hormones, and antibiotic residues. Second, in response to commercial pressure to liberalise international trade, which portrayed differences in national food regulations as protectionist barriers, ostensibly scientific bodies were created to provide a uniform international regime. A decade on, how is the UK's Food Standards Agency (FSA) doing?

The FSA, set up in 2000, despite undoubted progress in some domains, struggles in others. One such tussle is about front-of-pack nutritional labelling. The FSA along with British consumers and their representatives favour a traffic-light system, but food-industry heavyweights prefer a quantitative percentage system with guideline daily amounts. After intense lobbying from the industry, European Commissioner Markos Kyprianou proposed to adopt percentage guidelines, a decision viewed by some as potentially compromising public health.⁵ The FSA and the European Food Safety Authority have, however, also been criticised for failing to respond robustly about

additives and hyperactivity, toxic effects of aspartame, *trans* fats, and acrylamide.⁶

Poachers allegedly make good gamekeepers, but it is important to prevent what Marver Bernstein in 1955 called "regulatory capture", by which regulatory bodies become subservient to the industry that they were set up to regulate.⁷ Mindful of this danger, the initial 1997 proposal recommended that the FSA's Board should be independent of ministers and of the industries the Agency would regulate.⁸ The subsequent White Paper⁹ diluted that by proposing that although the FSA Board should include people with a background in industry, "public and consumer interests should be in the majority". The Government envisaged the Board would consist of individuals with a proven track record, relevant skills, and experience, mostly from a wider public-interest background without any specific affiliation. In a parliamentary debate on the FSA Bill, ministers provided assurances that those with relevant industry interests would always be in a minority.¹⁰

To its credit, the first FSA Board raised international best practice by holding meetings in public and publishing declarations of Board members' interests, while distinguishing between personal interests (direct employment or shared ownership) and non-personal interests (eg, departmental colleagues with direct corporate links). FSA rules state that "as a minimum, all personal or business interests which may or, in the judgement of the Board Member, may be perceived by a reasonable member of the public to influence their judgement, should be declared. Such interests will include, but will not be limited to, involvement in the agriculture, food and related industries. In addition, other interests which do not appear to be immediately relevant to the work of the Agency may also be declared, at the discretion of the Board Member concerned."¹¹ The wording suggests that those provisions apply only to current interests, but they need to be extended to cover recent and previous interests because previous employment in industry might be perceived to influence judgments, and might even be doing so.

Bernstein suggested that, on average, regulatory capture occurred in the USA after 15–20 years. It is too early to tell if the same will be true of the FSA



Bread-packing production line

or the European Food Safety Authority. Unresolved questions about corporate links have been raised about expert advisers to the FSA, the European Food Safety Authority, WHO's International Programme on Chemical Safety, and the international Codex Alimentarius Commission.¹²⁻¹⁸ The first FSA Board (May, 2000) had 14 members, of whom five declared relevant personal interests.¹¹ In December, 2007, five of 12 declared personal interests but one analyst has argued that if recent interests were included, the number would rise to 11 of 12 who "either works, or worked, for a food, farming or catering company, or own shares in such companies, or is an adviser to the industry or has a close relative working in it".⁶ In March, 2008, after new members had been appointed, the balance altered. Although seven of 14 declared current interests, if previous commercial and industry interests were included, nine would be seen as having present or recent commercial interests.¹⁹ Although the Code of Conduct safeguards the participation of Board members in the discussion of matters in which they have a potential interest, in view of the preponderance of Board members with industry interests and the Code's failure to deal clearly with recent and previous interests, the undertakings provided by ministers on the independence of the FSA Board have not been consistently or fully implemented. That implementation deficit is unacceptable.

With the UK Conservative Party consulting a proposal to weaken the FSA, if returned to power,²⁰ and demands to improve political accountability, the FSA needs all the support it can get. The credibility and trustworthiness of the FSA is the currency in which it trades. Ministers, the FSA, and the public cannot afford to allow that currency to depreciate.

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Five metaphors about global-health policy

In January, 2009, a new administration will assume power in Washington, DC, USA. Whichever of the current presidential candidates wins, US foreign policy will change direction. One element of this policy will be global health, a subject often characterised by controversy. The debate that will shape the next administration's approach to global health has begun,

including the decision by the US Institute of Medicine to update its 1997 report on US global-health priorities.¹ What principles might inform this debate?

Policy makers often reason by metaphors to boil down a set of complex policy tradeoffs into a few consistent strategies and principles.² We suggest that there are at least five metaphors that can be applied to global health