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Developing business representation in newly regulated sectors

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Introduction

This paper aims to –

- Establish the need to secure effective business representation in sectors being subject to specific legislative, regulatory or policy measures.
- Explain how that need can be met such as to maximize the effectiveness of the policy-making process.

The paper draws heavily on one case study – the regulation of labour providers under the Gangmasters (Licensing) Act 2004, although the analysis is generally applicable.

Trade associations generally

Trade associations are organisations set up by companies within a sector to provide them with two basic services – representation and the provision of information and advice. Some provide other services such as training and conferences but these are not basic trade association services. Some associations also run self-regulatory schemes, generally with great difficulty. There are inherent tensions in representing a sector and regulating it. It is particularly difficult for a new trade association to take on a regulatory role.

Some general features of the nature and operation of trade associations should be noted –

- They comprise companies that compete with each other and which therefore may be unwilling to co-operate.
- They suffer from the free-rider principle, that is companies benefit to a large extent (and almost totally in respect of representation) whether they pay to join or not.
- Their objectives are long term and not easily quantifiable; it is therefore difficult to establish whether an association is being effective and difficult to sell membership.

Trade associations tend to be strongest in sectors subject to specific and extensive regulation. There is a clear need for representation, generally to a specific regulator or government department, and companies need sector-specific information about the measures that apply to them.

It can be observed that trade associations are particularly strong in financial services, communications and utilities, all subject to specific regulation. Conversely, they are relatively weak in retailing and service industries such as building work and car repairs.

The role of trade associations in policy-making

Some officials may see trade associations as “the enemy”, seeking to frustrate the wishes of government. In practice, good trade associations substantially aid the policy making process in several ways –

- They can provide the views of the industry through a single source, rather than many individual companies. Good associations are also expert on public policy and therefore present views in a way that is relevant to the process and do not, for example, demand things that cannot be done.
- They can be an informal sounding board at the early stages of the policy-making process. This should help ensure that the industry, the issues, and the implications of possible policy measures are properly understood.
- Staff of an association should be expert on their sector and the relevant regulation and legislation and therefore can provide a useful resource to policy makers. They can provide factual information when needed and can usefully provide a check, particularly to help ensure that draft legislation and regulations are not faulty and will achieve their desired purpose.
- They can help “sell” policies and regulations to a sector if they have been consulted and involved.
- They can be a counterweight to other lobbying bodies, such as environmental groups and trades unions.
- They can be a channel of communication between an industry and the government. This can include using the association as a cover for an official view that could not otherwise be given. (Wording such the following can be useful: “The association believes that the government’s current intention is to introduce the new regulations from.....)

However, trade associations can bring these benefits to the process only if they are effective. This requires that –

- They effectively represent the interests of their members.
- They have staff who can add value through their own knowledge of the sector and of regulation.

In turn these require that their membership covers a reasonable proportion of their sector and that they are adequately funded.

The specific problem in newly regulated sectors

For reasons that have already been explained trade associations tend to be strongest in sectors subject to specific regulation. They tend to be weak or non-existent in sectors which are being newly subject to regulation. This is largely because there has been no need for a representative voice or for specific information and advice services. The sector may also have problems that have precipitated the need for regulation that in turn may make it difficult for a trade association to be effective. Those companies engaging in malpractice which leads to regulation tend to unwilling to support a trade association and indeed may actively obstruct any association.

However, a sector being subject to regulation for the first time needs an effective representative voice, and government also needs a strong association for the reasons set out above. In short there is likely to be a need for a strong trade association, but one will not exist.

In such circumstances efforts will be made by some of the market participants to establish a new association or to strengthen an existing one. Such attempts generally fail for one or more of several reasons –

- In the case of an existing association the staff are not capable of doing what is now required.
- Most businesses will not understand the need for a strong association, and therefore will not be prepared to finance it, until it is too late.
- The distrust between competing institutions cannot quickly be overcome in such a way as to allow the association to have effective leadership from its members.
- There is lack of understanding about how to establish a trade association even if there is a willingness to do so.

There generally needs to be a kick-start which requires significant funding – more than is likely to be available from potential members in the short term. The funding is likely to be a minimum of £50,000 a year and more realistically £100,000 a year. This sum has to be sufficient to allow the employment of a top quality director part time and the establishment of a website (all the infrastructure a modern trade association needs). This funding can come from one of four sources –

- A group of large companies in the sector. This is possible only where the sector has a group of relatively large companies willing and able to provide the necessary finance. This model was followed in the establishment of the Council of Property Search Organisations – an association was needed because of the introduction of home information packs. It is also being followed in the establishment of the Employment Related Services Association.
- A large customer or supplier who recognises the need for a strong trade association and for whom it is worthwhile to provide the necessary financial support. This model was followed in the establishment of the Organisation for Adult Trades and Services where the financial support came from a significant customer – the Festival of Erotica. That association eventually collapsed because the sponsor wanted total control. The model was used more successfully in the establishment of the Association of Independent Financial Advisers where the financial support came from the life offices that obtain business from financial advisers.
- An individual willing to run the association and take the financial risk in so doing in the hope that the association will become viable in the longer term. This model has been used in the establishment of the Association of Labour Providers.
- The government or a regulatory body. In some sectors (financial services and communications for example) regulators do this to some extent by funding practitioner panels. Where a new regulatory regime is being established funding may be available to support a new association as part of the cost in establishing the regulatory regime.

Management and administration of a new association

There is now a fairly well trodden route that can be followed to establish a new association.

The first stage is to adopt a standard, four page, constitution for a new trade association that has worked effectively for a number of associations (including the Council of Mortgage Lenders, the Association of Independent Financial Advisers, the Organisation of Adult Trades and Services, the Council of Property Search Organisations and the Association of Labour Providers). The basic features of this are –

- The association is unincorporated.
- Management is in the hands of an executive committee to which everything is delegated.
- The executive committee has power to appoint a director.
- Transitional provisions set out the names of the initial executive committee (to serve until the first AGM) and the initial subscription scale.

This constitution can then be used as the basis for a modest “prospectus” which should be sent to all companies in the sector inviting them to join.

The modern association can be run entirely on a virtual basis. There is no need for a physical office or administrative staff. The necessary infrastructure comprises –

- A virtual office giving an address and telephone answering service (available for £50 a month from the London Center).
- A website as the means of communication to members and the outside world (set up cost about £2,000 and perhaps £1,000 a year to manage).
- The use of e-mail as a means of communication with members.
- Borrowing or hiring meeting rooms as necessary.

Where a new association is of significant size then it may be necessary to have administrative support. This can be provided by another trade association, preferably in a related field, or by a specialist association management company such as Kingston Smith Association Management or Associa. However, this is likely to cost a minimum of £20,000 a year.

Adopting this approach means that the Association has no fixed costs and no commitments. The need for trade association services will change rapidly as a new regulatory regime is put in place. It might be appropriate after a few years for the new association to be absorbed into a larger one, to merge with another, to expand rapidly or even to close down. This approach allows such developments to take place at minimal cost.

Leadership of the Association

A new association, particularly one that has to deal with a major new regulatory regime, needs exceptional leadership, which has the necessary experience and standing to “hit the ground running”. This can be provided only by an experienced trade association professional or someone else with the necessary public affairs experience. Generally, the position can be part time – one or two days a week, and a rate of between £500 and £1,000 a day is reasonable.

Such a person can be the director with the chairman coming from a member – but only if there is such a person who can command the respect of the whole industry and who will be an effective chairman. Increasingly, the director role is combined with that of chairman, particularly where there is no ideal candidate from within the industry. The association is therefore run by an executive chairman. This model has worked well in the Accident Management Association (chaired by Tony Baker, former Deputy Director General of the Association of British Insurers), the Council of Property Search Organisations (chaired by Fiona Hoyle, former Senior Legal Adviser to the Council of Mortgage Lenders) and the Association of Labour Providers (chaired by Mark Boleat, former Director General of Association of British Insurers).

There is a third model, an independent chairman combined with a professional director. This can work only if the two people get on and the necessary funding is available – although there may be some people willing to do the chairmanship on a pro bono basis.

How government can help a newly established association

The first question for government or a regulator is whether there is a need for a strong trade association to help ensure that public policy objectives are achieved. This is a judgment call.

If there is a need the next question is how can the association be established or strengthened. This requires some knowledge of the industry and the people in it. The necessary work can be done in-house or through a modest consultancy exercise (£5,000 - £10,000 depending on the sector).

Based on this exercise officials or ministers can adopt one of four courses of action –

- Persuade an existing association in a related field to take on the task.
- Where the industry is relatively concentrated persuade the chief executives of the large companies of the importance of having a strong trade association and ask them to commit the necessary resources, including funds.
- Where there are significant customers or suppliers persuade them to provide the funding.
- If neither of the above is feasible provide the necessary start-up funding on the basis of a scoping report (which should be an extended version of the report mentioned in the previous paragraph).

Officials may also be able to help by pointing the industry towards suitable consultants or potential chairmen where an external chairman is necessary.

When an association has been established there is some concrete help that can be given to help “sell” the association to its actual and potential membership and to convince the executive committee members that they are involved in an important organisation –

- Making available meeting rooms free of charge.
- Officials offering to attend part of executive committee meetings to brief the committee on developments and discuss issues.

- The Minister offering to meet the Association or speak at any meeting it may organise.
- Appropriate mentions of the association in speeches and policy documents.
- Providing as much help as possible on a day-to-day basis to the director of the association.
- Ensuring that other government departments and stakeholders are aware of the new association and that it can be of help to them.

There is a chicken and egg problem here. This sort of help can be given only if the association is effective – but such help may well be essential in order to make the association effective. Judgment is needed here.

Concluding comments

The good trade association makes a vital contribution to the policy-making process and should be seen by officials as a valuable resource. They are particularly needed in areas being subject to major policy or regulatory actions, but in such areas any trade associations are likely to be weak and ineffective.

A good association does not materialise because there is a need for it, even if the industry wants it and is willing to pay for it. There is a need for leadership and a role for government at least as acting as a catalyst and possibly taking a more interventionist role. The benefits to the policy-making process should be substantial and the costs modest if not minimal.

Appendix

Case study – Association of Labour Providers

This case study previously explains how, with the support of Defra, the Association of Labour Providers developed from nothing to a fully effective trade association within a few months in 2004.

The need for an association

For some years there has been extensive malpractice in the provision of contract labour to the food industry. Beginning in 2003 attempts were made to deal with the issue through an industry coalition under the auspices of the Ethical Trading Initiative and driven to a large extent by the trades unions. The chosen policy measures were a binding code of practice, enforced through the supermarkets, and pressure for legislation through a private member's bill. In fact, the Morecambe Bay tragedy led to the private member's bill becoming law. The labour providers, at whom such measures were aimed, were scarcely involved in the process, just one labour provider participating in the policy debate.

In fact there was an existing association that should have been representing the interests of labour providers. The Recruitment and Employment Confederation (REC) is a large national trade association whose members include labour providers. However, the REC chose to ignore the issue, partly because it did not want to be seen to be involved in the "gangmaster" issue and partly because it failed to understand the importance of the issue to its members. The REC was invited to get involved by a number of parties but declined – until very late in the day and then only half-heartedly.

The establishment of the Association

Defra was conscious of the need to involve the industry in the policy debate and took the initiative by arranging meetings of labour providers in East Anglia. This was done with the assistance of Dr Jennifer Frances, the leading academic on the subject. Dr Frances in turn took the initiative to invite Mark Boleat, a trade association consultant, to attend a meeting of labour providers in Cambridge in January 2004 and to outline the steps that would have to be taken to establish a trade association. Mark Boleat saw the need and potential for a trade association and offered to establish one and run it for a limited period as executive chairman, working at risk.

The Association was duly established by 18 companies. It adopted the standard constitution for a new association, acquired an accommodation address and telephone answering service and established a website. It was up and running and reasonably effective within two weeks of the decision being made to establish it. However, the 18 companies contributed under £10,000 in subscription income and no financial support was forthcoming from the supply chain or Defra. The Association needed to increase membership rapidly in order to become viable. It failed to do this, partly because potential members did not understand the need for an association, partly because no

resources were available for marketing and partly because of concern about the activities of some of the members of the initial Executive Committee.

However, the need for an association was growing as the industry coalition was finalising the code of practice and, as a result of the Morecambe Bay tragedy, the government's decision to adopt the private member's bill to regulate labour providers. The Association quickly and effectively became involved in the policy debate by drawing on the practical experience of the members, the knowledge of Dr Frances (who served as an unpaid adviser to the Executive Committee) and the trade association experience of the executive chairman.

Support for the Association

Defra gave as much practical support as possible –

- Meeting rooms were made available free of charge for Executive Committee meetings.
- Defra officials attended meetings of the Executive Committee and freely joined in the discussion on the major issues.
- Defra ministers made themselves available to meet the Chairman and the Executive Committee.
- Defra officials readily responded to any requests for information and advice from the Association.
- Defra effectively promoted the association to other government departments and stakeholders.

The Association failed to attract the critical mass of members needed to make it viable, raising just £17,000 of subscription income in the first year. It was kept afloat by the Chairman working on a pro bono basis.

The fortunes of the Association improved early in 2005 due to further Defra support and also support from the supply chain. Defra was able to use funding available to implement the Gangmasters (Licensing) Act to give financial support to the Association for two projects –

- A greatly enhanced website including a member only section.
- A membership campaign run by a consultancy.

By this stage the Association had published a useful series of briefs for its members on topical subjects and also provided a limited range of services such as insurance and a stakeholder pension scheme. It was seen to be an effective and efficient association.

At this time supply chain support also materialised. A number of the major supermarket groups strongly encouraged their suppliers to use only labour providers that were members of the Association.

The combination of these factors led to the number of members increasing from 46 at the beginning of 2005 to 112 by the end of June, with subscription income running at a little under £50,000.

Some lessons

The Alp was established and has been effective because of a combination of factors each of which was essential –

- The clear need for an association because of the imposition of a new regulatory regime and the failure of the existing association, the Recruitment and Employment Confederation, to be involved.
- Support by Defra – in getting labour providers together and providing concrete support to the Association.
- A group of labour providers who saw the need for the Association and who were willing to become involved in the Executive Committee.
- The role of Dr Jennifer Frances in helping to get labour providers together, providing expert advice on the issues and involving Mark Boleat.
- Mark Boleat for providing the necessary trade association skills and also for bearing the financial risk.
- The supermarkets for encouraging labour providers to join.

What could have been done better? Had the Association been established with start-up funding of £50,000 it would have been able to become fully effective more rapidly. Resources could have been devoted to a marketing campaign and the development of services which would have led to increased membership at an earlier stage.

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