Rethinking Regulation in the UK

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Last month, a United Kingdom agency released a major report entitled "Rethinking Regulation". The Professional Standards Authority (PSA) oversees statutory bodies that regulate health and social care professionals in the UK. The PSA developed the widely respected concept of "right touch regulation" in 2010. The report should be mandatory reading for regulators of all professions everywhere.

In the words of Harry Cayton, CEO of the PSA:

> Regulation is asked to do too much - and to do things it should not do. We need to understand that we cannot regulate risk out of healthcare and to use regulation only where we have evidence that it actually works. Ironically, the regulations that are meant to protect patients and service users are distracting professionals from this very task.

The opening words of the report give a good indication of what the reader should expect:

> The regulatory framework for health and care is rapidly becoming unfit for purpose.

Without reading the sources cited in its many footnotes, the report comes across as an opinion piece or guest editorial. Only a few examples are given to illustrate the assertions made, but many of the assertions will resonate with those involved in the regulation of professions.

For example, many readers will be able to relate to the report's description of the evolution of professional regulation:

> Each new organisation, and each new regulatory intervention, has been created in response to specific stimuli without the benefit of an overarching design, a controlling intelligence, or a coherent set of principles. Regulation, which under the current system is an instrument of law, is dependent on detailed primary legislation and therefore parliamentary timetables and legislative resources. It is slow and generally behind the trend, neither keeping pace with current changes nor anticipating future needs. It has led to a vastly complicated and incoherent regulatory system where the costs and benefits are unquantified and unclear.

Role of Regulators

The report's first major discussion related to identifying the role of regulators, as well as the risks regulators are addressing. It discussed the evolution of professionalism shifting from the concept of autonomous, self-managing experts to the concept of a set of values, behaviours and relationships that underpin the trust the public has in the profession. As such, the regulator needs to clarify its focus and role and avoid "regulatory mission creep". Regulators need to:

> …redefine the outcomes that they are seeking to achieve, and rethink how they will do so, based on evidence of what works, and drawing on a wide range of research and data.

The report also states:

> We should also be careful not to perpetuate the idea that the business of regulation is the elimination of risk as opposed to the reduction of harms. … To eliminate all risk would probably also eliminate the possibility of any benefit for the patient ... [and] prevent beneficial innovation…

The report paraphrases Professor Malcolm Sparrow as saying "that the focus of regulation should move away from the efficient completion of process to a focus on the prevention of specific types of harm."

Relationship between Professional and System Regulation

The next portion of the report contains an intriguing discussion of how the practice context and environment often influence the behaviour and competence of practitioners more so than professional standards promulgated and enforced by regulators. The report states: "It seems strange to us therefore that people are regulated separately from the systems and places in which they work."

The report discusses some of the challenges of regulating both professions and systems and how such regulation works together. Controversially, the PSA suggested that while regulators should develop and promote compliance with professional standards, it was a mistake for regulators to take over the responsibility from practitioners and the workplace to achieve those standards or to become involved in pursuing continuous quality improvement:

Once a regulator becomes too intimately involved in putting improvement into effect it loses its objective and impartial advantage, ends up marking its own homework and being blamed more deeply for continuing problems. It also obscures achievement by pursuing continuous improvement rather than consistently measuring against a benchmark. It loses sight of the progress that has been made and becomes demoralised by the rediscovery of failure.

Supporting Professional Conduct

Another interesting section of the report addresses how regulators could creatively achieve their identified goals by such means as:

- Exploring preventative approaches to fulfilling professional standards;
- Using engagement techniques to help practitioners fulfill standards;
- Targeted regulation where feasible given human rights concerns (e.g., older workers);
- Transparent publication of data by or from practitioners (e.g., surgical outcomes); and
- Mobilizing others (e.g., other practitioners) to help achieve the regulator's purposes.

Governance

The report also contains a brief description of governance strategies that the PSA found helpful including:

- Smaller sized Councils / Boards;
- Equal numbers of professional and public members on Councils / Boards; and

- Transparency of the appointment process (which assumes that they are not elected by members of the profession).

Conclusion

The report ends with a summary of principles and a list of recommendations. The summary of principles includes:

> Some important principles are becoming well established: these are the antiseptic power of transparency, a commitment to both personal and shared responsibility and a renewed engagement with patients and the public.

The recommendations include the following:

- A shared 'theory of regulation' based on right-touch thinking
- Shared objectives for system and professional regulators, and greater clarity on respective roles and duties
- Transparent benchmarking to set standards
- A rebuilding of trust between professionals, the public and regulators
- A reduced scope of regulation so it focuses on what works (evidence based regulation) …
- A drive for efficiency and reduced cost which may lead to mergers and deregulation
- To place real responsibility where it lies with the people who manage and deliver care

Whether one agrees or disagrees, the report provides a fascinating discussion of the direction of professional regulation. In addition, it is full of pithy statements that will be quoted liberally by regulators for years to come.

The Rethinking Regulation report can be found at: www.professionalstandards.org.uk.