Right-touch regulation in practice
international perspectives

About the Professional Standards Authority

We are an independent body, accountable to the UK Parliament. We exist to protect the public by improving regulation and registration of health and care professionals.

We ensure that our values are at the core of our work: they are at the heart of who we are and how we would like to be seen by our partners. We are committed to being:
- focused on public interest
- independent
- fair
- transparent
- proportionate.

There are three main areas to our work:
- reviewing the work of the regulators of health and care professionals
- accrediting organisations that register health and care practitioners
- giving policy advice to ministers and others and encouraging research to improve regulation.

Find out more about our work at **www.professionalstandards.org.uk**.

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Right-touch regulation

Right-touch regulation means understanding the problem before jumping to the solution. It makes sure that the level of regulation is proportionate to the level of risk to the public. It builds upon the principles of good regulation, identified by the Better Regulation Executive to which we added 'agility'. This means looking forward to anticipate change.

The principles state that regulation should aim to be:

Proportionate: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

Consistent: Rules and standards must be joined up and implemented fairly.

Targeted: Regulation should be focused on the problem, and minimise side effects.

Transparent: Regulators should be open, and keep regulations simple and user-friendly.

Accountable: Regulators must be able to justify decisions, and be subject to public scrutiny.

Agile: Regulation must look forward and be able to adapt to anticipate change.

There are eight elements that sit at the heart of **right-touch regulation**:
1. Identify the problem before the solution
2. Quantify and qualify the risks
3. Get as close to the problem as possible
4. Focus on the outcome
5. Use regulation only when necessary
6. Keep it simple
7. Check for unintended consequences
8. Review and respond to change.

Find out more details about right-touch regulation,
including the Authority's publications, at:
www.professionalstandards.org.uk/right-touch-regulation

Introduction

Harry Cayton | Chief Executive
Professional Standards Authority

Harry Cayton CBE was formerly National Director for Patients and the Public at the Department of Health. From 1992 to 2003 he was Chief Executive of the Alzheimer's Society and from 1981-1992 Director of the National Deaf Children's Society. He has served on many public and voluntary committees and chaired independent reviews for the Department of Health.

One early morning in September 2009 I scribbled down on a single piece of paper the principles of what was to become right-touch regulation. It was after a discussion by our Board the day before about what good regulation should look like. Over the next few months, with our great staff team, we debated and expanded and refined our ideas. I've always liked clear thinking and clear language and apart from its genuine usefulness I think it's the clarity and simplicity of right-touch regulation that has contributed most to its success.

We published *Right-touch regulation* in 2010 without much of a fuss. Not making a fuss is part of our way of working. We think that the quality of our work should speak for itself; if it's good

enough other people will read it and use it. If it's not good enough it's best forgotten. Quite quickly people did start referring to right-touch regulation, asking us about it and trying to apply it to their regulatory tasks. By 2015 it was widely influential and we revised our original paper to take account of what people had told us about their experience of putting the principles into practice.
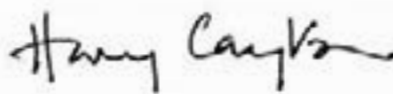
Now it seems timely to learn again from others' experiences of using right-touch regulation. The varied and interesting papers in this publication set out the interesting and varied ways in which different regulators in different sectors, in different jurisdictions have applied right-touch regulation to their particular problems and challenges.

A common theme in these papers is that it is an adaptable approach, flexible enough to be useful in different regulatory regimes, clear enough to provide a consistent framework for problem-solving. Another is that it has helped regulators think through the noise that surrounds them to achieve clarity of process and outcome and a third that recognising the unintended consequences of regulatory intervention helps us be more targeted and effective. Right-touch regulation is not a prescription but a way of thinking about regulatory problems, it requires us to challenge our assumptions, to identify the superfluous and to focus on the necessary.

We learn from our authors that right-touch regulation is complementary to other values-based approaches, such as a just culture and that it can act as a catalyst for organisational change within regulators. At the Professional Standards Authority, it has encouraged us to direct our research towards human behaviour, to what it means to be a member of a liberal profession, and to the moral basis of our role in society.

I should like to thank all the colleagues from around the world who so generously and enthusiastically responded to my invitation to contribute to this publication. My colleagues at the Authority over several years have enriched, challenged and improved our thinking about how regulation should contribute to the public good.

Finally, of course there are all the people at all the conferences, seminars and workshops from Brisbane to Barcelona, from Dublin to Vancouver who have debated, argued, questioned and embraced right-touch regulation. They too have contributed and helped to shape what is still a work in progress.

Right-touch regulation in practice | international perspectives

Health practitioner regulation in Australia: using the right touch

Martin Fletcher | AHPRA
Luisa Interligi | AHPRA
Chris Robertson | AHPRA

Martin Fletcher started with AHPRA in December 2009 as the inaugural Chief Executive. Before joining AHPRA, Martin was Chief Executive of the National Patient Safety Agency, the leading National Health Service body for patient safety in England and Wales. From 2004 to 2007 Martin worked with the World Health Organisation in Geneva to establish a global programme of work on patient safety.

Luisa Interligi is Strategic Policy Advisor for AHPRA. Before joining AHPRA, she was the Deputy Health Services Commissioner for Victoria. Luisa has over 15 years' experience in health workforce policy, planning and reform and also has experience in strategic policy and planning in the tertiary education sector.

Chris Robertson is AHPRA's Executive Director, Strategy and Policy. He has held senior leadership roles for over 15 years in health policy and regulatory reform, as well as workforce planning and innovation. He is an authority in the design and application of the National Law across 15 health profession boards, establishing a single national regulatory scheme for what is now over 670,000 registered health practitioners in Australia.

Background

In 2010 Australian state and territory governments passed legislation, the *Health Practitioner Regulation National Law* (the *National Law*), to establish a single National Registration and Accreditation Scheme (the Scheme) for registered health practitioners. As Australian state and territory governments have constitutional responsibilities for health, the legislation required national agreement between the states and territories. The Scheme's objectives are to:

- help keep the public safe by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered

- facilitate workforce mobility for health practitioners

- facilitate provision of high quality education and training for practitioners

- facilitate the assessment of overseas qualified practitioners

- facilitate access to services provided by health practitioners, and

- enable the continuous development of a flexible Australian health workforce.

The Scheme regulates 16 health profession groups across Australia[1] with more than 700,000 registered practitioners and 150,000 registered students. The 15 National Boards[2] work in partnership with the Australian Health Practitioner Regulation Agency (AHPRA) to implement the National Scheme. Scheme Accreditation Authorities work to accredit over 740 programmes of study delivered by over 330 education providers leading to registration.

Our primary role is public protection and we aim to do this through a risk-based approach to regulation, taking action proportionate to the identified risks to public health and safety.

Risk and the legislation

Our work is governed by the *National Law*. It seeks to reduce the risk of harm to the public associated with the practice of regulated health professions and ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. Our work is organised around the following five core regulatory functions:

- establish accreditation and professional standards for entry to the profession, initial and continuing registration

- register health practitioners with the skills and qualifications to provide competent and ethical care

- ensure practitioners are safe to practise by managing complaints and concerns raised about the health, performance and conduct of individual health practitioners and using regulatory force where necessary

- through compliance we monitor and audit practitioners to make sure they are complying with Board requirements

- work with accreditation authorities and committees to ensure graduating students are suitably qualified and skilled to register as a health practitioner.

The Professional Standards Authority[3] published the first version of *Right-touch regulation*[4] in 2010, the same year the National Scheme was established. The concept of right-touch regulation has helped inform the Scheme's implementation since then, with

our governing legislation providing a regulatory framework consistent with the principles of best practice regulation. We are fortunate to benefit from modern legislation that is consistent with many of the ideas and innovations progressively proposed in *Regulation rethought*[5] and *Right-touch reform*[6] and provides a flexible platform for implementing risk-based approaches – it therefore inherently aligns with the approach that right-touch regulation advocates. One of the guiding principles in our legislation is that regulatory interventions through accreditation, registration, notifications or compliance are only imposed if necessary to ensure health services are provided safely and are of an appropriate quality. This sets a high threshold for regulatory intervention, applying regulatory force only where there is an unmanaged risk to public safety.

Implementing the scheme

The concept of right-touch regulation, in particular the Authority's eight elements at its heart, are embedded throughout the Scheme. They are reflected in our regulatory principles which are highly visible within the Scheme – in operations, policy and strategy. The decision-making process outlined by Harry Cayton when he presented 'Right-touch questions' to all Boards in 2011, helped us adopt the elements and integrate them in strategic policy-making and in operational decision-making.

Together with the right-touch questions, the elements have guided and informed Australia's approach to professional regulation since the Scheme's inception in 2010.

Our regulatory principles were developed with reference to the principles of right-touch regulation, early in the Scheme's implementation. They underpin our work and shape our thinking about regulatory decision-making to encourage a responsive, risk-based approach to regulation across all professions. They are (see page 9, overleaf):

Regulatory principles
for the National Scheme

AHPRA
Australian Health Practitioner Regulation Agency

These regulatory principles underpin the work of the Boards and AHPRA in regulating Australia's health practitioners, in the public interest. They shape our thinking about regulatory decision-making and have been designed to encourage a responsive, risk-based approach to regulation across all professions.

1 The Boards and AHPRA **administer and comply with the Health Practitioner Regulation National Law**, as in force in each state and territory. The scope of our work is defined by the National Law.

2 We protect the **health and safety of the public** by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.

3 While we balance all the objectives of the National Registration and Accreditation Scheme, **our primary consideration is to protect the public.**

4 When we are considering an application for registration, or when we become aware of concerns about a health practitioner, **we protect the public by taking timely and necessary action under the National Law**.

5 In all areas of our work we:
- **identify the risks** that we are obliged to respond to
- **assess the likelihood and possible consequences** of the risks, and
- **respond in ways that are proportionate and manage risks** so we can adequately protect the public.

This does not only apply to the way in which we manage individual practitioners but in all of our regulatory decision-making, including in the development of standards, policies, codes and guidelines.

6 When we take action about practitioners, **we use the minimum regulatory force appropriate to manage the risk** posed by their practice, to protect the public. Our **actions are designed to protect the public and not to punish practitioners**.

While our actions are not intended to punish, we acknowledge that practitioners will sometimes feel that our actions are punitive.

7 Community confidence in health practitioner regulation is important. Our response to risk considers the need to uphold professional standards and maintain public confidence in the regulated health professions.

8 **We work with our stakeholders**, including the public and professional associations, to achieve good and protective outcomes. **We do not represent the health professions or health practitioners**. However, we will work with practitioners and their representatives to achieve outcomes that protect the public.

We identify the problem before the solution

Our legislation clearly provides for us to commence court proceedings when a breach of the advertising provisions has occurred. Initially, our approach was to consider all advertising breaches from a prosecution perspective. When this approach was challenged by the growing volume of low risk matters, not suitable for prosecution, we applied a right-touch regulatory lens and gained greater clarity about the problem – advertisers did not fully understand the law. We therefore considered a more targeted, proportionate approach and adopted a multifaceted strategy, focusing on support and education. This has been effective in achieving our goal.

We quantify and qualify the risks

Upon receipt of a notification about the health, performance or conduct of a registered health practitioner, we assess the likelihood and severity of future risk of harm to the public. This informs evidentiary requirements, resource allocation and whether any immediate regulatory action is necessary and whether the risk is currently unmanaged.

In the future, we want to improve the way we use risk assessments to further concentrate resources on the areas of greatest risk, having identified and defined the risks and harms. This is a priority for the Scheme's Research Framework. We will establish criteria for low, medium and high-risk issues and apply different regulatory approaches accordingly. This will enable us to expedite how we respond to lower risk issues, including through more delegated decision-making, and focus more attention on higher risk issues.
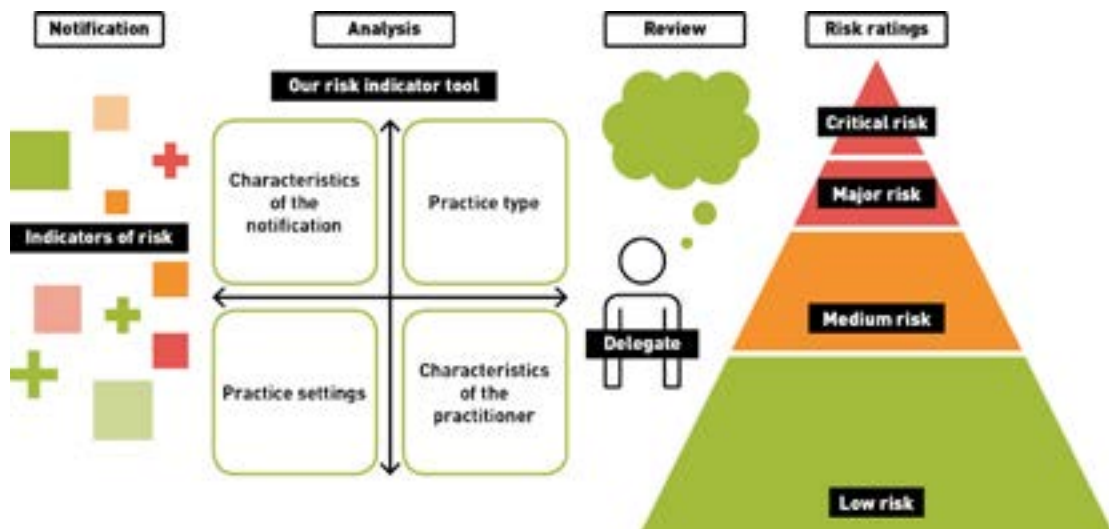
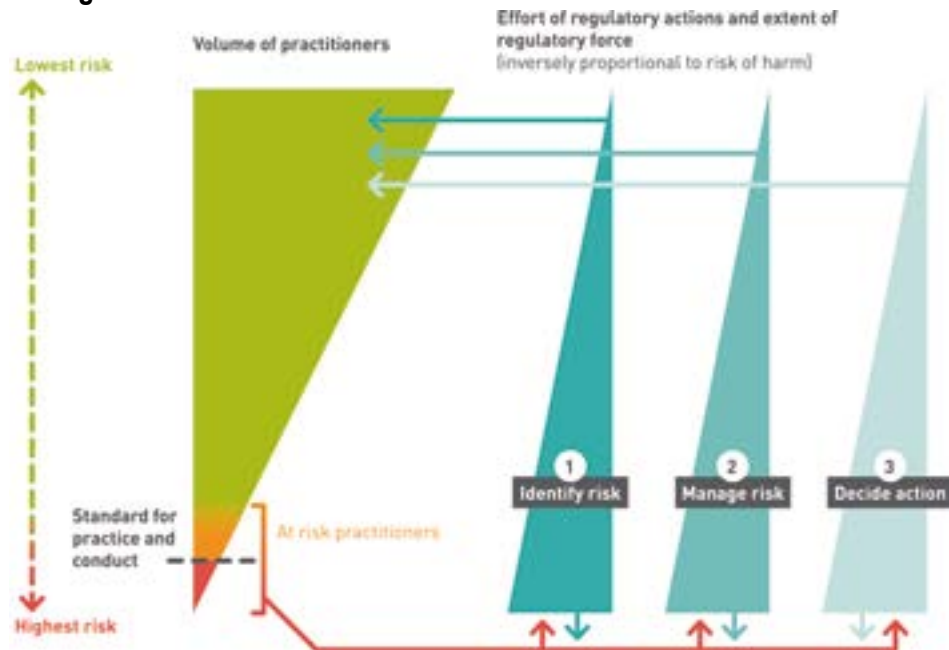## We look for solutions that are close to the problem

In 2013, soon after the Scheme was established, we engaged Professor Malcolm Sparrow to help us explore how to use available intelligence to identify problems causing significant harm, then to use the right solution to prevent harm. He encouraged us to think about how we might draw on the discipline of epidemiology to analyse data to identify concentrations of significant harm which might be amenable to regulatory action. Specifically, this led to the establishment in 2014 of our own Risk-based Regulation Unit (now the AHPRA Research Unit), with a specialised skill set including epidemiology and research methods to, amongst other things, access and analyse our regulatory data for the risks of harm.

We have since focused on maximising the use of internal and external data to identify, analyse and address significant harms to the public. Understanding when and where risk is more likely to present informs when and how we should intervene in a practitioner's professional life-cycle. It can enable more preventative approaches that identify the likelihood of risk before it eventuates (as a notification for example) so we can act proportionally to assess the future risk, and then support professional practice to prevent future harm, which may include using non-regulatory measures.

The Authority's further development and application of the concept of right-touch regulation in documents such as *Approach to assuring continuing fitness to practise based on right-touch principles*,[7] has also influenced our evolving model and approach to regulation. An important recent example is the Medical Board of Australia's (MBA) development of a Professional Performance Framework (PPF). The PPF, comprising five core pillars,[8] will support doctors to take responsibility for their own performance and encourage the profession collectively to raise professional standards and build a positive, respectful culture in medicine that benefits patients and doctors.

The MBA has used data to identify a number of risk factors for poor performance to inform where targeted screening of medical practitioners with these risk factors might occur. Screening will identify individuals who have markers of poor performance and will enable practical, proportionate and supportive interventions to keep patients safe, when and where these are needed. This work is designed to ensure that all doctors providing clinical care continue to provide safe care throughout their working lives. (See the diagram on page 12.)

A professional performance framework would assist to actively identify and manage risk

Volume of practitioners

Effort of regulatory actions and extent of regulatory force
(inversely proportional to risk of harm)

Lowest risk

Standard for practice and conduct

At risk practitioners

Highest risk

1 Identify risk

2 Manage risk

3 Decide action

We focus on the outcome

The Scheme's strategy is an outcome-focused plan. As a risk-based regulator, our strategic outcomes all align with our vision, which is to protect the public by regulating health practitioners effectively and efficiently in the public interest to facilitate access to safer healthcare. In support of our strategic outcome to reduce harm to the public we develop, implement and embed processes, infrastructure and capabilities that are informed by data driven evaluation, research and best practice initiatives. This supports risk-based regulation approaches across all Scheme entities and in everything we do and is often in contrast to our previous reliance on more time-based, compliance-focused activities.

We use regulatory force only where necessary

When we take action, we use the minimum regulatory force appropriate to manage the risk posed by practice, to protect the public. Informed by our regulatory principles, our regulatory responses are proportional to the assessed level of risk. Where risk is low, the extent of regulatory intervention used to minimise the harm and manage the future risk is also low. For example, a harmful event that may have been the result of a single error, with causative factors remedied, is unlikely to attract a restriction on practice, as future risk of harm is low.

AHPRA and the Boards are working together to explore how we can extend the concept of right-touch regulation further, and use preventative non-regulatory approaches, especially in notifications. Where future risk of harm to the public is assessed as low, responses might be less formal in nature and instead attempt to engage the practitioner in how to improve professional practice to reduce the risk of their practice falling below threshold standards in the future. We want to explore new approaches that could involve using behavioural insights to change behaviour and practice. These approaches may be helpful where a registrant's practice or behaviour is not so serious as to warrant formal regulatory action, but where an effective remedy would involve practitioner reflection on the concerns raised regarding their practice and enabling them to improve practice or conduct to prevent future harm. (See the diagram below.)

Aligning notifications management and outcomes to risk

We keep it simple

The notion that risk is core to effective regulation was foremost in the early days of the Scheme, with the development of a risk appetite statement to provide direction on the risk parameters within which the Scheme would operate. However, as a regulator embracing agile practices, we are reviewing our risk statement, and recalibrating it to move further toward decision-making that is differentiated by risk. We have followed the Authority's work about risk and the role it plays in regulation, particularly the development of risk ideas in public and regulatory policy and the benefits, challenges and limitations of designing regulatory regimes on the basis of risk.[9] This has informed our revised risk statement, which will be streamlined and provide a strong and clear foundation to articulate our risk capacity, profile and appetite – that is:

- the maximum level of risk at which we can operate

- the entire risk landscape – reflecting the nature and scale of risk exposure, aggregated across and within each category

- the risk we consider appropriate to take in achieving our core objective – public protection.

Our risk appetite statement will be more nuanced to differentiate between the type and level of risk and how we respond to different types and level of risk in a way that is sensitive to the risk assessed. We will subsequently communicate the change in the way we identify risk and manage risk and work with all our partners and stakeholders to explain how we will behave differently with new risk models so there is a clearer, simpler and shared understanding of risk types and approaches to manage them.

We check for unintended consequences

In 2017, we developed a multifaceted *Advertising Compliance and Enforcement Strategy* to enable a more differentiated, risk-based approach to compliance with the advertising provisions under the *National Law*. Central to the strategy was education and capacity-building through communications campaigns to educate practitioners about advertising requirements, evidence and the need to consider advertising from a consumer perspective. While this approach was focused on the outcome – preventing harm from false, misleading or deceptive advertising – we considered whether providing examples of acceptable advertising might drive advertisers to replicate the examples without undertaking the education and self-instruction necessary for understanding and ongoing compliance. This was mitigated by focusing on building practitioner understanding through self-assessment and other tools,

with rationale and explanations embedded in the tools.

We review and respond to change

The National Scheme is committed to continuously improving our regulatory processes and decision-making to more effectively contribute to assuring professional practice. Through our annual cycle of strategic planning, we monitor and review our performance and the external environment and adjust our priorities accordingly. Our continuous improvement occurs within a wider environment of constant change and challenge, which requires flexible, thoughtful and agile responses. For example, changing consumer expectations have prompted us to consider the future of the public register and how it can more effectively align with the objectives of practitioner regulation.

When first published, *Right-touch regulation* encouraged our early development as a risk-based regulator, where the resources used and the regulatory force we apply is proportionate to the quantified and qualified risk of harm to the public.

We have continued to draw on the principles of good regulation and the evolving work of the Authority, creating a collaborative environment for data exchange and collaboration in the public interest to deliver tangible public value. While the elements of right-touch regulation have been effective in helping to shape ourselves as an effective regulator, a future iteration of *Right-touch regulation* could reflect the growing focus on data and analytics. For example, a possible element could address how capacity in assessing data and information is becoming a key element of effective regulation.

The concept of right-touch regulation and the work that has since progressed has played a critical role in the development of the Scheme and will continue to do so as our approach further evolves, inspired and informed by our research, strategy and policy development alongside the work of other regulators, as well as the Professional Standards Authority.

About AHPRA

AHPRA is the Australian Health Practitioner Regulation Agency. It regulates Australia's health practitioners in partnership with 15 National Boards to regulate 700,000 health practitioners in Australia. It is governed by the *Health Practitioner Regulation National Law* which came into effect on 1 July 2010.

Find out more from: **www.ahpra.gov.au**

Banking standards and right-touch regulation

Rick Borges | BSB

Rick Borges is the Head of Assessment (UK and International) at the Banking Standards Board. Rick has a Masters in law and a postgraduate diploma in law in the United Kingdom.

One may wonder what the 2008 financial crisis, banking standards and the right-touch regulation approach, developed by the Professional Standards Authority for Health and Social Care in 2010, could have in common given that right-touch regulation is initially applied in the health and social care sector. This article discusses how some of the elements that the Authority identified at the heart of applying the concept of right-touch regulation in practice can be seen in some of the actions resulting from the 2008 financial crisis that had adverse effects on the UK's and the world's economy. It focuses on the establishment and some aspects of the work of the Banking Standards Board (BSB) in the UK and shows some parallels that demonstrate that right-touch regulation could be a concept applied in other sectors beyond health and social care. In addition, it illustrates how the work

of the BSB is, in a different context, committed to using evidence 'to identify and understand issues, and to draw on the roles and responsibilities of different parts of the system to deliver the best solution' which is a key aspect of the right-touch regulation approach.[10]

Identify the problem before the solution

The financial crisis of 2008 exposed failures of competence, behaviour, management and leadership – as well as breaches of the law – in the banking sector. A succession of serious issues in both retail and investment banking (including, but not confined to, the manipulation of the London inter-bank lending rate and foreign exchange benchmark rates, and the mis-selling of Payment Protection Insurance and interest rate hedging products) have damaged trust and confidence in the banking sector. While some of

these practices stemmed from the period prior to the crisis, others occurred or continued well after it, notwithstanding conduct having risen up the agendas of bank boards and executive teams. The trust and confidence affected was that not only of customers, but also of taxpayers, regulators, public policy makers, investors and banking sector employees themselves.

The UK Parliamentary Commission on Banking Standards (PCBS) undertook an inquiry into the events that precipitated and exacerbated the crisis. While many reforms to regulation were proposed, the PCBS also identified the need to go beyond regulation if the underlying problems which led to such widespread misconduct were going to be addressed. At its root, the problem was not solely how the sector was regulated, but in the culture of banking institutions and the competence and behaviour of some individuals working within them.

Changing an organisation's culture is widely recognised as being one of the most difficult leadership tasks. Changing the culture of an entire sector is even more difficult and not a task that can be achieved without the genuine ownership of the challenge by the organisations within the sector. While acknowledging the importance of regulation, and the need for reform, the PCBS also recognised that the industry itself both had to

want to change and needed help to do so. It recommended that the industry establish an independent body as a demonstration that 'commitment to high standards is expected throughout banking and that individuals are expected to abide by higher standards than those that can be enforced through regulation alone.'[11] Following a careful examination of the options in his 2014 review of banking standards, Sir Richard Lambert concluded that there was 'a strong case for a collective effort to raise standards of behaviour and competence in the banking sector, and that the best way to deliver this [was] by setting up a new and independent body to drive the process forward'.[12]

Regulation cannot solve every problem

The BSB was accordingly established as an independent, non-statutory, membership body in April 2015, with the aim of helping to raise standards of behaviour and competence across the UK banking sector in the interests of employees, customers and wider society.

The BSB is neither a trade association nor a regulator. It does not represent the industry, and it has no statutory powers. As a membership body, it takes the regulatory framework as a given and asks firms how they can not only meet the letter and the spirit of that framework, but also voluntarily go

beyond it with respect to the wider issues of organisational culture that regulation either cannot, or is not best placed to, address. As described by Dame Colette Bowe, BSB Chairman, 'the BSB existence reflects the recognition that, while effective regulation is vital for well-functioning markets, regulation is not – and cannot – be the answer to every question.'[13] Although not drawn from right-touch regulation, this approach illustrates the principle that 'there is usually more than one way to solve a problem and regulation is not always the best answer. It may be more proportionate and effective, for instance, to strengthen employment practices or to foster professionalism. New regulations should be introduced only as a last resort.'[14]

Getting as close to the problem as possible

According to right-touch regulation, 'problems are best solved near to where they occur' and 'the regulator is usually furthest removed from the harms it is trying to prevent and as such regulation is a blunt instrument for promoting behaviour change'.[15] The BSB annual assessment of culture, behaviour and competence across its member firms provides evidence to boards and executive teams to help them identify what needs to be done, prioritise competing demands, actions and timescales, and establish a baseline against which progress can be

measured. Its aims are:

a) to help banks and building societies to gauge their performance with respect to culture, behaviour and competence, and thereby better serve their customers, employees and broader society;

b) to build an evidence-based picture of developments across the sector that will facilitate collective efforts to improve customer, employee and societal outcomes by raising standards and sharing good practice.

The BSB assesses how far its member firms demonstrate nine characteristics: honesty, respect, openness, accountability, competence, reliability, responsiveness, personal and organisational resilience and shared purpose. It would expect a firm that strongly exhibited the nine characteristics to be better equipped and more likely to serve its customers, employees and society well, than in one in which these characteristics were lacking.

The assessment contains qualitative and quantitative aspects: the BSB Employee Survey, interviews with Executives and Non-Executive Directors, focus groups with junior and middle ranking staff and questions to the firm's board. These methods allow the BSB, working with participating firms, to collect evidence from those who are closest to the issues that are relevant to gauge their performance with

respect to culture, behaviour and competence. The survey questions explore employees' perceptions, observations and beliefs about their firm's culture, drawing on personal experience. There are 36 core questions that enable firms to track progress year-on-year and to benchmark themselves against the group of BSB member firms participating in the Survey. Additional questions have been added to the survey in 2017 and 2018 to cast light on specific issues identified in the previous year. This allows the BSB to be agile in helping firms to understand these areas in more depth and make relevant changes if required.

This is the third year in which the BSB assessment has been undertaken. Evidence for 2018 is being analysed at the time of writing. The BSB received more than 36,000 responses for the Employee Survey in 2017 (28,000 in 2016).

Focus on the outcome

The BSB can then draw on the evidence gained from the BSB annual assessment of culture to identify themes and issues relevant to some or all firms. Where appropriate, it can work with firms in identifying what 'good' looks like and develop a common understanding of how to achieve it.

As an example of this, the BSB published a *Statement of Principles*[16] to help firms strengthen professionalism in February 2018. The principles were developed in partnership with several stakeholders that formed part of a Professionalism Forum established by the BSB in April 2017. The Forum brought together BSB member firms, professional bodies and qualification providers, other voluntary standards organisations, trade bodies, academics, regulators, trades unions and other relevant organisations from both within and outside the banking sector. This diversity of participation allowed ideas to be aired, challenged and improved from a variety of perspectives. The Forum was supported throughout by a working group drawn from member firms, professional bodies and academics.

Strengthening and promoting professionalism is another area where the work of the BSB interacts with the aims of right-touch regulation as defined by the Authority. According to the Authority, it 'creates a framework in which professionalism can flourish and organisations can be excellent and right-touch regulation supports professionalism by:

- discouraging the use of regulation if the risk can be addressed more effectively by the professionals themselves; and

- encouraging the use of regulatory measures that support positive behaviour change and the exercise of professional judgement, rather than seeking to be overly prescriptive.'[17]

The BSB Professionalism Principles are deliberately high level and provide a way for firms to structure a discussion internally about what they do to help their employees act professionally and how well they do it. They do not attempt to prescribe what firms should do and are intended to complement and support the principles or codes for individuals drawn up by professional bodies or, of course, the regulator.

Conclusion

Although not a product of right-touch thinking, the establishment of the BSB and its work to date illustrate how right-touch regulation could be practised or seen in a different sector and how non-regulatory solutions can complement regulatory objectives. The BSB is not a regulator, but it has a place working alongside firms, regulators, professional bodies, banking professionals, trades unions, investors and civil society organisations to improve behaviour and competence across the banking sector.

Banking is not, of course, unique in having suffered a loss of trust in recent years; examples of poor behaviour and competence are not confined to the banking sector. System-wide issues resulting from poor professional behaviour and competence have been brought to light in many sectors, including health and social care. Different sectors can and are willing to learn from each other to improve and promote high standards of professionalism in the best interest of the users of their services, that being customers, clients, patients or society overall. It would be interesting to see the outcomes if similar work to measure culture was delivered in the health sector. Finally, and consistent with the right-touch regulation principle of agility, the BSB aims in its work to anticipate change, and not solely look back at the issues of the previous crisis. Promoting professionalism and healthy cultures are an important part in doing this.

About the BSB

The Banking Standards Board is an independently led body that promotes high standards of behaviour and competence across the UK banking industry. The BSB began its work in April 2015. It is a private sector body funded by membership subscriptions and open to all banks and building societies operating in the UK. It is neither a regulator nor a trade association; it has no statutory powers, and it will not speak or lobby for the industry. It will, instead, provide challenge, support and scrutiny for firms committed to rebuilding the sector's reputation, and it will provide impartial and objective assessments of the industry's progress.

Find out more from: **www.bankingstandardsboard.org.uk**

Ros Foster | Browne Jacobson LLP

Right-touch regulation: the CIOB – a worked example

Ros Foster is a partner at Browne Jacobson LLP who specialises in regulatory law. Ros acts for a range of regulatory bodies including the Professional Standards Authority for Health and Social Care, the Human Fertilisation and Embryology Authority, NHS England, the Independent Parliamentary Standards Authority and the Royal Institution of Chartered Surveyors.

The Chartered Institute of Building (CIOB) was incorporated by Royal Charter in 1980, but it originates from the Builders' Society which was established in 1834. The CIOB describes itself[18] as the world's largest and most influential professional body for construction management and leadership. It has a Royal Charter to promote the science and practice of building and construction for the benefit of society. Its members work worldwide in the development, conservation and improvement of the built environment.

The CIOB accredits university degrees, educational courses and training. It considers that its professional and vocational qualifications are a mark of the highest levels of competence and professionalism, providing assurance to clients and other professionals procuring built assets. The Bye-laws

that govern the CIOB require there to be a code or codes establishing standards of professional conduct and for there to be a disciplinary scheme to enforce those standards.

In 2015 the CIOB had three documents that contained professional rules: the *Rules and Regulations of Professional Competence and Conduct*, the *Code of Professional Conduct and Rules for Chartered Building Companies*, and the *Code of Professional Conduct and Rules for Chartered Building Consultancies*. All three documents began with a set of rules or core principles which were followed by detailed regulations. It was generally accepted that the three documents were in need of review to achieve a single, coherent and comprehensive set of rules that could apply across the membership of the CIOB. A 'right-touch' regulatory approach was taken to the review of

the standards, as explained below.

In establishing a new set of professional rules, the CIOB faced a number of challenges that it needed to fully understand. It was also keen to quantify and qualify the risks associated with a new, lighter[19] and outcome-focused approach to standards.

The challenges were:

*   the diverse nature of the membership of the CIOB, which ranged from individual student members to sole trader local builders to multi-national construction corporations

*   the international reach of the CIOB, giving rise to the need to take account of cultural norms in various jurisdictions

*   the range of occupation/job types that would need to be able to apply the new rules, from site managers to quantity surveyors and directors of construction companies.

The risks were:

*   over-simplification of the rules such that they ceased to be of universal relevance

*   lack of buy-in from the membership, increasing the risk of non-compliance

*   failure to capture all potential types of misconduct.

The CIOB took the following steps:

*   Established a working group comprising members of the Professional Conduct Committee (PCC), the CIOB's governance lead and a longstanding legal advisor to the Committee;

*   Undertook a consultation across the membership on the new draft rules. These sought to explore issues such as integrity while asking members what their areas of concern were and seeking an indication of members' views to regulation. For example, members were asked:

    o   'To what extent do you agree that 'integrity, honesty and trustworthiness' should be the guiding principles for a construction professional's conduct?'

        This question was designed to gain an understanding of what the membership wanted the focus of regulation to be: was it honesty or practical excellence, ethics or professional conduct?

    o   'Do the draft Rules include all of the main standards and levels of competence you believe should be expected from construction professionals?'

This question was included to address the risk that the new rules would miss their mark, by reason of over-generalisation, obsolescence or otherwise.

o 'Do you think there are any barriers that would prevent a CIOB member from achieving the standards and levels of competence required by the draft Rules?'

This question was included to address the risk that the rules would not be of practical application or relevance.

The consultation generated a significant and overwhelmingly positive response. The questions asked were devised by the Working Group, drawing on their PCC and industry experience.

This approach encapsulated a number of the practical steps envisaged by the Professional Standards Authority in *Right-touch regulation*,[20] namely:

1. Identify the problem before deciding upon a solution

2. Quantify and qualify the risks

3. Get as close to the problem as possible

4. Focus on the outcome.

The Working Group used the response to the consultation to inform further development of the draft rules. In establishing initial parameters for the draft rules, the Working Group had agreed to move away from an approach that involved detailed rules, in line with the 'right-touch' approach of keeping it simple. However, it was agreed that some rules required a degree of amplification/explanation, given members' experience of the industry and knowledge of the cases that had come before the PCC.

So, it was agreed that a requirement simply to have written terms and conditions in place before commencing work was not sufficient; the CIOB needed to give an indication of what, as a minimum, those terms had to include (scope of work, payment terms, procedures to apply in the event of a dispute, complaints-handling procedures etc). Similarly, it had become apparent that there was considerable misunderstanding amongst the membership as to what would qualify as Continuing Professional Development (CPD), and as such the relevant rule did not simply require that CPD be undertaken. It explained what that meant.

The issue of cultural norms was an interesting one. It was accepted that, to be of relevance across the global construction landscape, the rules had to reflect the fact that in some cultures the giving and receiving of

gifts and hospitality was a recognised part of doing business and the awarding and delivery of construction contracts. The relevant rule was worded to apply only to improper activity, so as not to provoke offence nor to bring into the scope of regulation activity that would not be viewed as problematic when viewed in its local context. This met the 'right-touch' objective of checking for unintended consequences.

The principles of better regulation require that regulation is proportionate and properly targeted. Right-touch regulation reinforces that approach with its emphasis on using regulation only when necessary. As noted above, the CIOB's old approach had involved one set of rules for individual members and other sets for corporate members.

Having agreed that a single set of rules was to be developed, the challenge for the CIOB was to ensure that accountability was properly allocated: it would be unfair for an individual employee of a corporate member to be placed in breach of a rule of professional conduct on the part of his employer over which he had no control, but there would be a regulatory gap if the corporate entity itself or those in control of the employer who were themselves members of the CIOB were not required to ensure adherence to the rules within and by the corporate entity. Rules were therefore introduced that applied to corporate

members (to inform their employees of the rules and monitor compliance with them, and to ensure all staff engaged in the construction process were working towards appropriate qualifications) and to the directors and partners of those entities as individuals (imposing individual responsibility for the corporate entities' compliance with the rules, as appropriate to the individual's role).

The new rules were adopted on 1 January 2018 and will be subject to regular review. They can be found on the CIOB's website.[21]

The objective of the CIOB in devising and promulgating the new rules was to introduce a framework that would minimise the risk of harm to clients and to those affected by the work undertaken by its members while enhancing the reputation of the construction profession by the maintenance of realistic professional standards that were of use and relevance across a broad geographical and professional landscape.

The old approach – of imposing diverse and detailed rules that had not been informed by the views of the membership and were not subject to regular review – was not achieving that objective, nor did they enable the CIOB when acting as a regulator to meet the principles identified by the Better Regulation Executive in 2000.[22] A 'right-touch' approach enabled the CIOB to establish a set of rules in collaboration with its

membership that are focused and relevant and that support targeted and proportionate regulation.

The CIOB is not a statutory regulator. It is, at heart, a membership organisation. But it is one that has a wider remit, by virtue of its Royal Charter and charitable status, and which has sought to put ethics at the heart of what it does: Paul Nash, President of the CIOB, at the Members' Forum Governance Review Workshop, July 2016, quoted from the CIOB's 2015 report *Understanding the value of professionals and professional bodies*:[23]

'Ethics and ethical behaviour is a central pillar of professionalism. It does not matter how skilled and experienced a person is or becomes: if they behave dishonestly and without regard for the rights of others, they are not a professional. The message applies both domestically and internationally, irrespective of cultural and behavioural differences.'

A 'right-touch' approach to regulation has assisted the CIOB in achieving its ethical and regulatory objectives, in the manner described above. The new rules meet the Authority's definition of right-touch regulation: they are based on a proper evaluation of risk, they are proportionate and outcome-focused, and they create a framework in which professionalism can flourish and individual and corporate members of the CIOB can achieve excellence.

About the CIOB

The Chartered Institute of Building is the world's largest and most influential professional body for construction management and leadership. It has a Royal Charter to promote the science and practice of building and construction for the benefit of society, and has been doing that since 1834. Its members work worldwide in the development, conservation and improvement of the built environment.

Find out more from: **www.ciob.org**

Right-touch regulation – our touchstone

Cynthia Johansen | CRNBC

Cynthia Johansen has served as the Registrar/ Chief Executive of the College of Registered Nurses of British Columbia. CRNBC is one of the three legacy nursing regulatory agencies that amalgamated to form the British Columbia College of Nursing Professionals (BCCNP). Cynthia has extensive experience in investigating and reporting on issues of public safety and access to care, and working with government, the public and stakeholders on improving professional practice standards and health profession regulation.

In writing this paper, I had a chance to reflect on how far my organisation, the College of Registered Nurses of British Columbia (CRNBC), has come in the past decade as it has adopted the persona of a right-touch regulator. We experience right-touch regulation as a concept that we are continuously putting to the test in our daily efforts to regulate nurses – our sole mandate being protection of the public.

Back in 2005, my organisation shed its professional association past, and evolved into a regulatory college in service of the public. This shift was significant, in itself: nurses were shocked by the change and grieved the loss of their professional association. It was also hard on the staff, board and committee members of the College who felt that in some way, we were letting the profession down. And over the last

few years, it has been a significant uphill battle to shift our mental model away from advocating for the profession of nursing, to regulating focusing solely on protection of the public. The challenge isn't because we collectively resisted the change, in fact we embraced it! Rather, the challenge has been in shifting our philosophical approach from advocacy to regulatory and supporting our stakeholders and ourselves through this transition.

As a result of this evolution, there is no denying that CRNBC's strategic orientation (Burke et al, 2009)[24] has gone through a change in the past decade. CRNBC's core beliefs and values have altered, resulting in changes to the organisation's structures, the work of its employees and even the products and services we offer to our registrants and the public.

CRNBC's Board and management team recognised that to manage this change successfully, a new foundation of understanding would be required – a touchstone for ensuring that staff, the board and stakeholders could understand and recognise that its core function had changed. To support this, the Board asked that staff undertake an exercise to develop a regulatory philosophy. After months researching, analysing and discussing regulatory concepts, practices and approaches, staff recommended, and the Board agreed, to its own philosophy of 'relational regulation'.

Relational regulation is comprised of five key concepts:

- right-touch regulation
- a just culture
- collaborative self-regulation
- principle-based approach
- continuing professional development.

The concept of right-touch regulation – the use of regulatory forces proportionate to the desired outcome – is the bedrock of CRNBC's regulatory philosophy. The concept underscores everything we do – from our approach to investigating complaints about nurses, to how we have developed and launched our quality assurance programme. Right-touch regulation is now a part of our organisational culture and

has provided a foundation for our evolution away from professional advocacy to regulatory practices that are modern and effective.

So, how has this shown up in our day-to-day practices? I will share a reflection on how I experienced CRNBC's approach to complaints when I joined the organisation in 2006.

At that time, complaints about nursing practice were not considered along a continuum of risk to the same sophisticated extent that they are today. In fact, most complaints were investigated by looking at a nurse's past practice and an employer's assessment of that practice. It was through this lens, mostly the nurses' lens, that we reviewed and considered concerns reported to the College. Most were therefore dismissed without due consideration.

Today, it is a very different story. Despite experiencing a marginal increase in the number of nurses registered in our province, (roughly 10 per cent over the past 12 years), we have increased our complaints staffing by seven-times (from four to 29 full-time equivalents). In doing so, we have better managed the complaints we receive, giving the right amount of attention (a lot) to issues of significant risk to the public, and triaging those complaints that are at the lower end of the risk continuum in new and more efficient ways. The result? A significant

increase in disciplinary hearings (the most serious of possible outcomes) – from zero in 2006 to 10 in 2018 (so far); more targeted remedial actions for nurses needing a course correction; and the expedient dismissal of frivolous and vexatious complaints deemed to be low-to-zero risk to the public.

In 2015, CRNBC invited the Professional Standards Authority to complete a review of the College.

This step opened the College up to an external third-party review which could, thanks to the Authority's expertise, assess how well CRNBC was meeting its public protection mandate. We were pleased with the outcome. We received feedback for improvement as well as confirmation that we were on the right trajectory.

Notably, the Authority recognised our efforts to adopt and integrate right-touch regulation into our work and products. The Authority singled out our Quality Assurance Program (My Professional Plan) for registrants.

The programme is the embodiment of a right-touch regulatory approach. Its purpose is to support good things happening (providing a programme for nurses to continuously develop), while identifying and then acting along a continuum of activities, when standards are not being met (from a self-administered learning plan for nurses to the delivery of concerns to our complaints process).

Although a new programme for our College, the concepts underpinning CRNBC's quality assurance programme are not novel. There is evidence in the literature that competence can be directly linked to an individual's engagement in their own ongoing development in their chosen profession (Austin & Gregory, 2018).[25]

As a regulator, CRNBC recognises its role in providing a framework to support nurses linking regulatory requirements to ongoing professional development. Finding the balance between enforcing a standard while at the same time encouraging and recommending engagement in a specific programme is challenging at the best of times.

The concept of right-touch regulation helps CRNBC to manage this balance – to know where we find the hard edges of regulatory requirements, versus the best or better practices for encouraging and supporting nurses to, on their own volition, engage in professional development activities that help them remain current, competent and engaged in ongoing learning.

CRNBC's journey to becoming a right-touch regulator has been important and valuable, and challenging. Like any shift in perspective, the heart often wins over the head. CRNBC's staff and Board have had to work hard to bring emotional attachment to the transition to assure ourselves that the concept will be more than a

theoretical construct – we have made right-touch regulation a key component of our organisational culture.

On 4 September 2018, CRNBC will cease to exist and will, along with two other nursing regulatory bodies (the College of Licensed Practical Nurses of BC and the College of Registered Psychiatric Nurses of BC) amalgamate to become the new British Columbia College of Nursing Professionals (BCCNP).

It is my great wish that the concept of right-touch regulation will live on in the new regulatory body and that much of the work borne by the Board and staff of CRNBC will be built upon by those taking on the next phase of nursing regulatory practice in British Columbia.

We have had a long and challenging journey. I believe that these efforts have made CRNBC a more effective and engaged regulator. It is my hope that BCCNP can carry that torch and contribute even more to the understanding of what it means to be a right-touch regulator in the 21st century.

About the CRNBC

Nursing in British Columbia has been a self-governing profession since 1918. Under provincial legislation (*Health Professions Act*), it is the duty of CRNBC to protect the public through regulation of registered nurses, nurse practitioners, and licensed graduate nurses. This includes registering nurses, setting standards of practice, assessing nursing education programs in British Columbia and addressing complaints about CRNBC registrants.

As of 4 September 2018, the CRNBC, together with the College of Licensed Practical Nurses of British Columbia and the College of Registered Psychiatric Nurses of British Columbia, came together to become the British Columbia College of Nursing Professionals (BCCNP).

Find out more from: **www.bccnp.ca**

Right-touch regulation: the art of simplicy

Jan Robinson | College of Veterinarians of Ontario

Jan Robinson is a leader in profession-based regulation in Ontario, Canada. She is a well-known teacher, advisor, and thought-influencer in regulatory communities internationally, and is currently the Registrar and Chief Executive of the College of Veterinarians of Ontario.

Regulation in Ontario, Canada has been the recipient of multiple spotlights over the years that of course have influenced legislation and organisational behavior. While initially reviews and resulting change were more locally focused, the impact of discourse on professional regulation around the globe has increasingly become important to understand as an influence of change.

In the 1980s healthcare regulation in Ontario faced a major review known as the *Health Professionals Legislative Review*. The driver was agility in public policy. The 1990s in Canada saw trade in services, both local and global, rise to the forefront. How are the skills of internationally educated professionals appropriately utilised? Why can licensed professionals not move easily across provincial borders? The driver was the economy and, for the first time, profession-based

regulators viewed themselves in the middle of economic decision-making. The 2000s on a more global stage brought Enron and Nortel; disasters which shed a spotlight on governance and accountability, and the early days of the decline of the public trust of regulated professions gained momentum.

At home in Ontario, the pressure to demonstrate performance against metrics was also beginning. While certainly an increasing mainstay within the hospital system, this conversation on metrics related to regulators began with the licensing of international applicants. The result of this push was the Ontario Fairness Commission, an oversight agency of all profession-based regulators focused on registration practices that are fair, objective, impartial, and transparent.

I have had the privilege of leading three regulatory bodies for over 25 years. My thoughts in this

paper are shaped by Canadian and international debate and challenges in striving toward achieving regulatory excellence. My organisations were early adopters of audits and the use of various metrics to measure performance, inclusive of an adapted Balanced Scorecard.[26] Our view has always been a 'heads up' approach to a thoughtful analysis of broad regulatory trends:

- The Lisbon Convention (before it the Bologna Agreement)

- The Centre for Quality Assurance and International Education (Washington, DC)

- The work of the Organisation for Economic Cooperation and Development (the OECD)

- The interests of Canadian foreign affairs and trade (now provincial trade aspirations as well), and

- The developing field of regulatory research, and so on.

The formation of the Council for Healthcare Regulatory Excellence – now known as the Professional Standards Authority – one result of the Kennedy Inquiry and the Dame Janet Smith report – was a wake-up call to the international regulatory community. Its mandate, beyond oversight, to research and influence the practice of profession-based regulation – at least in healthcare – was something to pay attention to. With that in mind, the 2010 publication of the document discussing an approach called right-touch regulation had impact.

While fundamentally our community knows that regulation exists to manage risk, never before had this concept so simply and straightforwardly been placed before us. It gave words to existing processes and initiatives. It brought, at the very least, validity to our work in an increasingly challenging environment of criticism.

My organisation of the day snapped it up. The right-touch approach – what is the problem, what is the risk posed to the public, does the problem need a regulatory solution and if so, what is the least invasive level of tool in the tool-chest to use to mitigate the problem and risk – was enormously helpful. It strengthened policy-analysis activities, council debates, and orientation programmes to ensure organisation alignment (staff and volunteers) with the public interest mandate. And it was a wonderful tool to help a council with mid-course corrections on topics potentially fuelled by professional self-interest.

The advancements and ongoing iterative tweaking of the right-touch thinking and approach, published seemingly regularly by the Professional Standards Authority, have held significant and continued interest. The concept of agility in decision-making and in solutions was a value-added perspective. As was the analysis that right-touch alone was perhaps a too-funneled

approach. Broader thinking and questioning related to risks in professional practice and public safety was needed.

And so, for me, the right-touch platform launched further exploration and cast a wider net to other influencers:

- Malcolm Sparrow[27] – the concept of harm

- Simon Sinek[28] – explaining why we do what we do

- Onora O'Neill[29] – the concept of trustworthiness

as examples.

In my organisation, practical examples of bold moves forward linked to the right-touch regulation paradigm include:

- Utilising it as an underlying fundamental principle to a thorough review of existing legislation and resulting recommendations to the Minister to consider modernisation of the Act

- Setting a framework on regulatory effectiveness that better publicly explains why we do what we do as a profession-based regulator

- Establishing an iterative risk analysis and mitigation process based on identified leading risks and emerging strategic risks

- Linking our aim for governance excellence with the work of the OECD on regulatory risk and effectiveness[30]

- Focusing our complaints and discipline processes on at risk and reckless behavior, bolstering our remediation activities and setting the stage for the crafting of better outcomes-based decisions and reasons.

One of the challenges put forward for consideration in writing this article, was how the right-touch approach might be improved – a daunting question based on the excellence of the work. I would offer the following that may be of use in future thinking.

While the Professional Standards Authority does speak often in its writings of public confidence, I wonder if it might turn its mind to the links between the right-touch principles and the elements of trustworthiness as articulated by Onora O'Neill. She speaks of trustworthiness as broken into the components of competence, reliability and honesty. If competence in our role as a regulator is based on a strong focus on solving risk-based problems relevant to our role and in collaboration with other relevant stakeholders, how might steadfastness to this duty be extended to the concepts of reliability and honesty?

Further I ponder on the matter of who gets to decide the problem and the risk. While our community increasingly is mining its data better to facilitate informed discussions, how do we manage potential bias, discerning the right collaborations for harm mitigation, etc.

And then, how does all of this link to professionalism and professional identity? It is known that professions have different cultures or personas. Successful mitigation strategies are tied to understanding these more fully. Perhaps shining a light on this linkage would be helpful.

Lastly, the right-touch model is question – not answer – oriented. While this is helpful, these questions tend to be 'what' questions. Might the use of 'why' questions potentially change the value proposition for the right-touch approach into the future?

The right-touch regulation framework and its varied aspects have, in my opinion, done a great service to the regulatory community worldwide. The concept is widely known and understood.

I hear the words 'what is the problem we are trying to solve' or 'what is the risk that requires mitigating', regularly in policy conversations. And while fundamental, we also need to keep in mind, it is but one tool in an ever-evolving conversation on excellence, leadership and evidence in strong, public focused, profession-based regulation.

About the College of Veterinarians of Ontario

The College of Veterinarians of Ontario regulates the delivery of veterinary medicine in Ontario. All veterinarians who practise in Ontario must be licensed by the College. In serving the public interest, the College seeks to understand the risks involved in the practice of veterinary medicine and collaborates with partners to develop solutions which reduce the potential for harm to animals and people. The College licenses approximately 4,700 veterinarians and accredits over 2,300 veterinary facilities in Ontario. The role and authority of the College is set out in the *Veterinarians Act* and regulations made under this legislation. The veterinary profession in Ontario has been regulated since 1877.

Find out more from: **www.cvo.org**

Starting statutory regulation with the right-touch approach

Ginny Hanrahan | CORU

Ginny Hanrahan, is the Inaugural Chief Executive/ Regulator of CORU (Council and Registration Boards), regulating health and social care professionals in Ireland since 2008 following 25 years working in health and social care services.
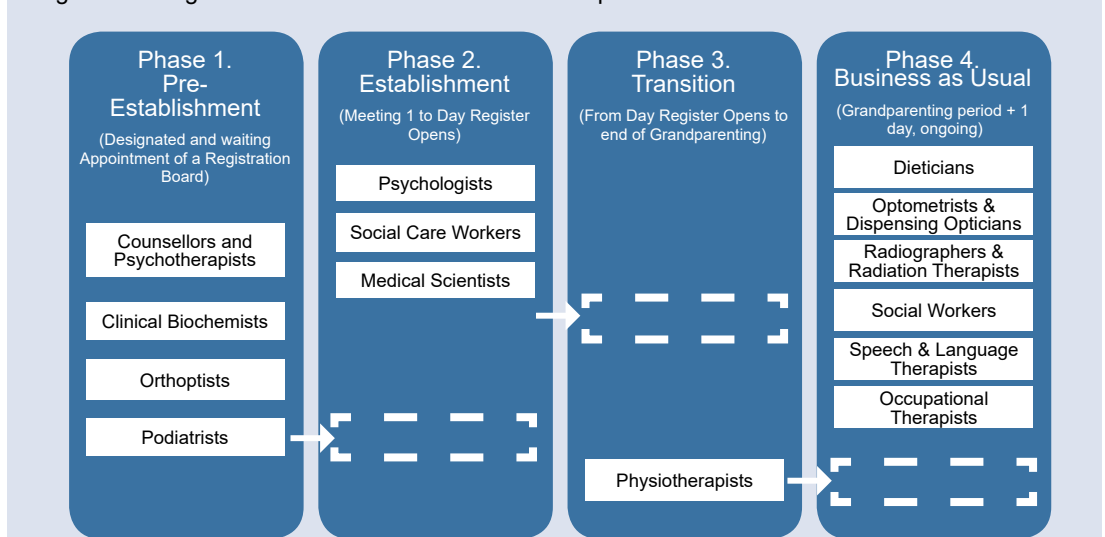
On 12 May 2008, I arrived in a borrowed office, with my own laptop and the *Health and Social Care Professionals Act 2005*[31] (the *Act*) under my arm, to implement statutory regulation for health and social care professionals in the Republic of Ireland for the first time.

We worked to establish statutory regulation for social workers, radiographers, radiation therapists, dietitians, speech and language therapists, occupational therapists, physiotherapists, psychologists, social care workers, medical scientists, podiatrists, orthoptists and clinical biochemists. Regulation of optometrists and dispensing opticians transferred to CORU in 2015. In July 2018, counsellors and psychotherapists were also designated under the legislation.

Progress on Registration of Professions in Ireland - September 2018

Phase 1. Pre-Establishment (Designated and waiting Appointment of a Registration Board)	Phase 2. Establishment (Meeting 1 to Day Register Opens)	Phase 3. Transition (From Day Register Opens to end of Grandparenting)	Phase 4. Business as Usual (Grandparenting period + 1 day, ongoing)
Counsellors and Psychotherapists	Psychologists		Dieticians
Clinical Biochemists	Social Care Workers		Optometrists & Dispensing Opticians
Orthoptists	Medical Scientists		Radiographers & Radiation Therapists
Podiatrists			Social Workers
		Physiotherapists	Speech & Language Therapists
			Occupational Therapists

CORU's Health and Social Care Council (Council) has a lay/public majority of members on its governing body – more members representing the public than members of the professions to be regulated.

There is one representative of each of the regulated or to be regulated professions and a matching opposite number plus one, representing employers, educators, experts and service users. Our Council's Chairperson must be a member of the public. This does have an impact on the culture of the organisation, 'how is this protecting the public?' is asked at every meeting.

The *Act* states Council must

'Protect the public by promoting high standards of professional conduct and professional education, training and competence among registrants of the designated professions.' (*The Act, Part 2, Section 7*)[32]

and

'To oversee and co-ordinate the activities of registration boards.' (*The Act, Part 2, Section 8 (2) (a)*)[33]

Council also holds responsibility for setting strategy, corporate governance and managing fitness to practise requirements.

Governance Structure at CORU, Ireland

Council and Registration Boards

CORU

COUNCIL
27 members
Lay majority

- Co-ordinate and oversee Registration Boards
- Fitness to Practise
- Corporate Functions

REGISTRATION BOARDS
x 13
Lay majority

- Registration
- Education
- Recognition of qualifications
- Continuing Professional Development

Consistency of approach in the implementation of Council frameworks and policies is something that we work hard to achieve.

The Social Workers Registration Board commenced its work in August 2010; opening its register on 31 May 2011. We subsequently opened nine registration boards, regulating 11 professions, with 10 registers open at the end of 2018.

The Registration Boards set the standards for registration, education, recognition of international qualifications and continuing professional development for the profession they regulate and advise on ethical issues.

Council sets framework guidelines, meaning that there has been more consistency in the work, with the Boards identifying and addressing the unique requirements for their profession – for social workers, social justice is at the centre of their work, for radiographers and radiation therapists, radiation safety is crucial, etc.

We looked internationally to see what we could learn from others regulating health and/or social care professions. The Health Professionals Council, UK[34] (now the Health and Care Professions Council, UK (HCPC)) regulates similar professions to CORU and kindly shared their learning and knowledge with us as novices.

This has been key to our success. The Northern Ireland Social Care Council (NISCC) regulates social workers and shared its learning and knowledge with us. These two agencies influenced our work in the early days, including their approach to right-touch regulation. Council for Licence, Enforcement and Regulation (CLEAR) an international body for regulators of professions also influenced our thinking.

The Better Regulation Task Force (UK) – *Principles of good Governance* (2003) (1)[35] states that the government must:

> 'Get the balance right, providing proper protection and making sure that the impact on those being regulated is proportionate'.

The principles were also supported by the European Commission in its *Action Plan on Better Regulation*.[36]

The principles were further explored and enhanced by the Council for Health Regulatory Excellence (CHRE), (now the Professional Standards Authority) in the UK at the time, describing them as 'right-touch regulation',[37] but adding a sixth dimension, which is critical for successful regulators – being agile.

- Proportionate – only intervene when necessary; appropriate remedies to risks posed; costs identified and minimised

- Accountable – justify decisions and be subject to public scrutiny

- Consistent – rules and standards are fair

- Transparent – be open, keep regulation simple and user friendly

- Targeted – focused on problems and minimise side effects

- Agile – must look forward and be able to adapt to anticipate change.

Throughout our work, we consider the Authority's right-touch regulation in practice:

1. Identify the problem before the solution

2. Quantify and qualify the risks

3. Get as close to the problem as possible

4. Focus on the outcome

5. Use regulation only when necessary

6. Keep it simple

7. Check for unintended consequences

8. Review and respond to change.

In all of this planning, we kept in mind, George Bernard Shaw's declaration about professions in 1906: 'All professions are conspiracies against the laity'.[38]

Whatever mechanisms we were using to implement this legislation, had to be cognisant of the principle of protecting the public, of ensuring that we set the correct threshold

standards for education, a code of professional conduct and ethics, to advise registrants, but also used for fitness to practise complaints; giving clarity to the professions, and the public, as to what was expected of the future registrants.

Economic climate

The year 2008 could not have been a worse time to set up regulation of health and social care professionals in Ireland. Following the global financial downturn, the Irish economy went into meltdown and Ireland lost its financial independence for a number of years.

'Light-touch regulation' culture was evident in the banking culture, which was seen as a major contributing factor to Ireland's financial calamity. Ajai Chopra, Deputy Director of the European Department, in the International Monetary Fund team, who supervised Ireland's progress in dealing with the financial situation, stated in October 2011:

> 'Mechanisms of self-regulation and market discipline – such as corporate governance, internal risk management, private audits and discipline by creditors, failed to prevent the build-up of risk.'[39]

This background helped CORU to focus on what type and standard of regulation should be used with health and social care professions working in high risk situations. The Authority's 'right-touch regulation' approach made sense.

Proportionate – only intervene when necessary; appropriate remedies to risks posed; costs identified and minimised

Statutory registration delivering public safety, while giving professions clarity about what was require, was essential.

One example was setting the framework *Code of Professional Conduct and Ethics* (the *Code*) – a principle-based document, to be used as a guide to registrants, but also by the public to make complaints against registrants. We identified that there would be a problem, if there was too much variation in the codes for the different professions. Devising Council's framework *Code*, following extensive consultation with representatives of the professions to be regulated – unions, professional bodies and employers; allowed for proportionality and consistency and is the starting document for all of the registration boards.

This approach quantified the risks and focused on the outcome, thinking about how the *Code* would work in the future management of disciplinary cases. It also kept the process simple, and was a good way to get the individual registration boards to start their journey towards regulating their professions. The *Code* has recently been reviewed and continues to have the same approach with only unique requirements for the professions now

set separately from the main *Code of conduct* which applies to all of our registrants.

Accountable – justify decisions and be subject to public scrutiny

CORU publishes an annual report every year and outlines what progress we have made and our costs, also how we review our work and respond to change. This has to go before the Houses of the Oireachtas (Irish Parliament) every year and is on the public record. We also emphasise the importance of giving reasons for the decisions being made.

CORU believes that every decision made, must be done so correctly and in an accountable manner. We are mindful that any of our decisions can be judicially reviewed and are keen to ensure that CORU is not found wanting in its work.

Consistent – rules and standards are fair

In setting the framework *Criteria and Standards of Proficiency* for all of the regulated courses, producing graduates who can apply to become registrants; we considered the challenges of having differing standards for professions.

By addressing the problem of a lack of consistency in the requirements for registrants, entering the workforce; the framework criteria and standards of proficiency, gave our educators a consistent approach

to our requirements, setting the threshold levels required, while allowing creativity in delivering the training.

Consistency in such important issues as confidentiality, communication was focusing on the outcome for the service users of our future registrants. The practice placement requirements and the profession specific skills are set by the relevant registration board.

Transparent – be open, keep regulation simple and user-friendly

Every student entering a course which results in potential registration has to aware that they may not be suitable for the profession. Under our criteria, each course is required to have a mechanism for assisting students, who may have met the requirements of the course academically, but in their practice, did not work well with the service users, or found it difficult to do the work required. Our criteria requires that this student has to complete the course with a different qualification, which would acknowledge the work they had done, but they would not be eligible to apply for registration.

In this approach, we initially thought of the problems and the risks that could arise, if these provisions were not in place and any potential unintended consequences. It is outlined at the beginning of the course for the potential students in a very clear and simple way.

Targeted – focused on problems and minimise side effects

We worked to refine the registration requirements details, based on a risk-based approach. In 2011, we asked anyone who had worked abroad for over six months to get police clearance, as part of the application process. In 2014, we reviewed the process having learned from the implementation and considered the limited information generated with the old requirements; we decided to change this to one year and one day, as many professionals do take a year out of work to travel. This worked within the risk boundaries that we could accept as a regulator and simplified the process, while responding to the issues that arose for applicants, but all the time keeping the impact on public protection in mind.

Agile – must look forward and be able to adapt to anticipate change

Since 2008, the world of regulation has changed, so that while we must have Fitness to Practise (discipline procedures) to deal with the small number who are not fit to practise; we make every effort to support registrants to be engaged in their work and to be resilient; serving the public in a better manner. This focus on supporting registrants to be the best they can, is working to lessen the problems that can arise for registrants, despite problems within a service – the registrant has to take responsibility for their own

actions. We want regulation to focus on the outcome of public safety by regulating to the correct level and ensuring registrants are fully aware of their responsibilities.

Research carried out by Bulbulia,[40] identified the need for registrants to be aware of when issues were creating a challenge for them – being aware of personal triggers – to take action. One social work registrant talked of seeing an old man in the park with a child at a weekend and immediately worrying that the child might be in danger as opposed to seeing a grandfather with his grandchild. This triggered a realisation that she needed a break from her work in the profession.

When meeting our registrants, we address this issue regularly; discussing the need for Continuing Professional Development to support a registrant's engagement in their work and being mindful of how their work/life balance is important to monitor over a career.

There is a need for the community to acknowledge that there are times when one may not be able to work at the top of their game, when life is challenging – death, birth, marriage, divorce; but equally to acknowledge that work standards cannot fall below acceptable levels during these times.

Conclusion

Right-touch regulation helps CORU to successfully regulate our professions. We constantly seek to improve our work – these principles and practices, are a sound basis on which to continue our journey.

About CORU

CORU is Ireland's multi-profession health regulator. Its role is to protect the public by promoting high standards of professional conduct, education, training and competence through statutory registration of health and social care professionals. CORU was set up under the *Health and Social Care Professionals Act* 2005 (as amended). It is made up of the Health and Social Care Professionals Council and the Registration Boards, one for each profession named in its Act.

Find out more from: **www.coru.ie**

Duncan Rudkin | GPhC

A framework in which professionalism can flourish

Duncan Rudkin was appointed by the Privy Council as the founding Chief Executive and Registrar of the General Pharmaceutical Council and has been with the organisation since its inception in 2010. Prior to that, Duncan had worked for the General Dental Council, including a period as Chief Executive there. His original professional background was as a commercial solicitor.

'A framework in which professionalism can flourish': how right-touch regulation can help in developing professional standards and revalidation

A woman walks into a pharmacy towards the end of the day on a Saturday afternoon. She asks to speak to the pharmacist and requests emergency hormonal contraception, explaining that she had unprotected sex the previous day. Supplying emergency hormonal contraception conflicts with the pharmacist's religious beliefs. But the pharmacist is aware that they are the only pharmacist working in the pharmacy that day, and the nearest pharmacy is over five miles away, and might be closed for the rest of the weekend by the time the woman gets there.

Is there a rulebook telling the health professional what they must do in a situation like this? No. But there are standards for professional practice that provide a framework for health professionals to help them navigate the challenging situations they face every day. The standards act as a tool to help the health professional use their professional judgement to decide what to do, rather than being a manual that tells them exactly what they must do.

All of the health professional regulators in the United Kingdom are responsible for setting standards for professional practice. These standards sit at the heart of regulating health professionals, as they set out what is expected of a health professional and have a bearing on every regulatory decision we make. Having the right standards in place is therefore vitally important.

There have been standards for health professionals since at least the time of the Hippocratic Oath, but just as healthcare doesn't stand still,

neither do professional standards. They need regular review and revision to make sure they continue to reflect what patients and the public expect from the people who care for them.

Reviewing our standards for pharmacy professionals

In 2014, we began a major programme of work to review and update our standards for pharmacists and pharmacy technicians, which had been in place for five years. And right-touch regulation provided a useful framework for the review of these standards. The principles that sit at the centre of right-touch regulation helped us to frame some of the questions we asked when developing the standards and to test and refine our approach.

The Professional Standards Authority has said of right-touch regulation that it 'creates a framework in which professionalism can flourish and organisations can be excellent.'[41] And this closely mirrors the purpose of the standards we set for pharmacy professionals; we want the standards we set to support professionalism and to help professionals to provide high-quality care for their patients.

When we began work on reviewing the standards, we weren't starting with an obvious 'problem'. There wasn't really any significant evidence to suggest the previous standards weren't working. But at the same time we knew that we wanted to

radically change them, particularly in terms of reducing them in number, to make sure they were more focused on the outcomes we wanted to achieve for patients and the public.

'Keep it simple' was a key principle behind the new standards. We wanted to concentrate the minds of professionals on what really matters to patients and the public. These standards cover topics of crucial importance in upholding public confidence, such as patient confidentiality. But if you only talk about patient confidentiality once in 57 standards (as in the previous version) it loses its importance. In contrast, if you make it one of nine standards (as we did in the new standards for pharmacy professionals)[42] then its importance is emphasised.

We wanted to develop core standards that would apply to all pharmacy professionals wherever they worked. We know that pharmacy professionals are increasingly working in a diverse range of roles and these standards needed to work for everybody.

When you have such a diversity of practice as you see among pharmacy professionals, a prescriptive approach to standards wouldn't have worked. Prescriptive standards would take away professional autonomy and undermine decision-making. We wanted to empower professionals to use their professional judgement in the best interests of patients. And

agility was another key concept. You can't be agile with prescriptive standards; they quickly go out of date because of changes in practice, advances in technology and changes in what the public and other health professionals expect.

We wanted to get a better understanding of what these expectations might be, so we decided to hold a national conversation on patient-centred professionalism[43] with the public and with health professionals to 'get close to the problem' as such. We asked a range of questions during this conversation to help us identify what really mattered to people; what behaving professionally and providing person-centred care really meant to them.

What we learnt through this conversation, which we summarised in a report,[44] helped us to draft the new standards. One of the key things we heard is that it is the attitudes and behaviours of pharmacy professionals in their day-to-day work which make the most significant contributions to the quality and safety of care. We therefore drafted standards that describe how safe and effective care is delivered through 'person-centred' professionalism, and what attitudes and behaviours are part of that, and then held a major public consultation on the draft standards[45] to seek views on whether we had got them right.

The nine standards we developed cover person-centred care, partnership working, effective communication, professional knowledge and skills, professional judgement, professional behaviour, confidentiality and privacy, speaking up about concerns and leadership. We think these are fundamental elements of the relationship between patient and health professional; and so by focusing the standards on these essential elements we have as far as possible tried to 'future-proof' the standards.

The consultation was invaluable in helping us to check for unintended consequences of the new standards. One of the areas we had to consider was potential unintended consequences for decision-making in our fitness to practise processes. Part of the work we did was to revise our decision-making guidance for our committees, to align this with the new standards. As an example, candour and confidentiality are two key areas that are highlighted in the new standards, and so they have been emphasised within the new guidance for decision-makers.[46]

We also had to carefully consider the standards from the perspective of revalidation, as we knew we wanted the standards to sit at the heart of the new process we were developing for assuring that pharmacy professionals remained up-to-date and fit to practise throughout their careers.

We've designed revalidation so that it makes pharmacy professionals engage with the standards and reflect on them in relation to their own practice. This will be particularly helpful in evaluating the impact of the standards. It is notoriously difficult to evaluate the impact on standards on practice, but the way in which we have integrated the standards within revalidation enables us to evaluate their impact through our evaluation of revalidation.

Developing our framework for revalidation

The principles of right-touch regulation again proved a valuable framework in developing our approach to revalidation. With revalidation, we spent a long time working out what the problem was. What was revalidation being introduced to solve? Without developing this understanding of the problem, we could have introduced something that was disproportionate and burdensome.

A key challenge for us was considering how to deal with the significant variance in risk across the different roles and tasks within pharmacy. Some pharmacy professionals are working in incredibly high-risk roles; for many others the risk to patients is much less. We had to be careful not to treat the professions we regulate as homogenous in terms of risk; you can go too far in regulation by

trying to regulate everyone at the level needed by the most high-risk group working in the most complex roles. We therefore decided to build a flexible model to take into account the different levels and types of risk in different roles.

And we wanted to make sure we developed an approach that worked for pharmacy and the approach we have gone for is very different to that developed for doctors or nurses. Our approach, set out in the revalidation framework,[47] doesn't intend to assess the personal competency of everyone on the register. This would be a disproportionate endeavour and its complexity would almost certainly mean it would be impossible for a regulator to achieve in reality. Instead it is about encouraging reflection, behavioural change and improvement in practice.

Enabling improvement

Through the work we do, we aim to promote professionalism, support continuous improvement and assure the quality and safety of pharmacy. We believe regulation is not just there to reduce risk of harm, but to encourage improvement.

When it comes to regulating individual pharmacy professionals, we want to help everybody to continuously improve; enabling and encouraging them to demonstrate the behaviours and attitudes that lead to excellent care.

The new standards and revalidation are not just there for the pharmacy professionals who may fall below the line and create a significant risk or problem. They are for everybody.

And what we've learnt in developing our new standards and our approach to revalidation is that the principles of right-touch regulation not only work when trying to reduce the risk of harm, but also work if you're trying to encourage and drive continuous improvement. They don't just help to deal with a problem, they can help you to avoid a problem in the first place and help to raise the standards of care for everyone.

About the GPhC

The General Pharmaceutical Council regulates pharmacists, pharmacy technicians and pharmacies in Great Britain. It works to assure and improve standards of care for people using pharmacy services. Its role is to protect the public and give them assurance that they will receive safe and effective care when using pharmacy services.

Find out more from: **www.pharmacyregulation.org**

Right-touch regulation: a New Zealand example

Andrew Charnock |
Occupational Therapy Board

Andrew Charnock is the Chief Executive and Registrar for the Occupational Therapy Board of New Zealand, a position he has held for the last eight years. Andrew originally trained as nurse in the UK where he was involved with regulation at the Nursing and Midwifery Council (formally the UKCC). He moved to New Zealand 16 years ago and held positions in the Nursing Council and Osteopathic Council.

Since reading and discussing the publications, *Right-touch regulation revised*,[48] *Rethinking regulation*,[49] and *Regulation rethought*,[50] the Board and its staff have slowly incorporated the language and philosophies outlined in the publications. It is now our practice to use the words 'right touch' in the office and around the board-table.

We would like to offer the following illustrations of how right-touch regulation is evident within our work.

Language and actions

When the Board and its staff receive a notification about conduct, competence or health, we apply a broad 'lens' to our assessment and triaging processes.

Our first approach is to fully understand the problem/s and identify the level of seriousness, or risk of harm. This part is crucial and will dictate the level and speed of our response. Added to this, we pose the following questions:

- What is the level of risk we are dealing with?

- Do we have enough information to understand the problem/s?

- Who is close to this problem/ situation?

- Where does the person work?

- What is the most appropriate action/s we need to take?

- Who is best placed to take the appropriate action/s?

These questions are posed from a position which is based on enquiry, while being non-confrontational and non-punitive in nature.

Knowing where the person works helps us to understand the nature of support or supervision that may be available to the practitioner.

A practitioner working in a large hospital could, arguably, have more supports than a practitioner working privately, or working for a small non-government organisation.

In the past we would turn directly to the legislation (*Health Practitioners Competence Assurance Act*),[51] to guide and often dictate our practice. We had two lawyers on staff to help us to do that.

Now we take a more enquiry-based approach and early engagement is sought with the complainant or employer, and practitioner. This approach takes into consideration the context and supporting structure that may be in place that are relevant to the problem. We still have work to do in this area as often people take a defensive attitude when discussing notifications. Contacting people by phone in the first instance is preferable. This is then followed by email confirmation of discussions and potential next steps.

We also consider who is best placed to deal with the issues. This may be the employer, who is local and can see, and potentially manage, the issues first hand.

For example, if the employer has a performance improvement plan in place for the practitioners, it would be counterproductive for the Board to place additional requirements on the practitioner just to satisfy our legislative requirements. We have, therefore, moved from a policing role to a facilitating, supportive role.

Our engagement with senior professional staff is important in facilitating good communications. We support and are present at the association's conferences each year. This allows us to meet practitioners face-to-face and explain our role and functions.

The language we use to describe what we are doing has also changed. The Board members now make reference to a 'right-touch' approach. To facilitate understanding of this, we have developed a flowchart to help us work through the stages of a 'right-touch' approach (see page 50).

We are also mindful of the notifications that require a swift and more authoritative response. In such cases we consider the proportion of the response to the level of risk. A maxim we often apply is 'what would the public think of our actions'? Or what does this look like from the outside, and could we present a reasoned argument for our actions?

All staff have undertaken a plain English course to reduce the complexity of the language used in our communications. This is perhaps another aspect of keeping it simple, described in one of the elements of 'right touch'.

Our plain English approach is still a work in progress as regulation and bureaucratic administration tends to lend itself to a more defensive practice in all forms of communication.

Like others, we have tended to rely on template letters which we tweak to match the circumstances. We need to move away from this and personalise our communications. It is a leap of faith when an organisation moves from the safety net of statutory requirements to the principles and processes described in the work of *Right-touch regulation*. We believe the 'leap' has been quick and successful for the Board. Some of the reasons for this are described in the next section.

The culture of occupational therapy practice

It has been suggested that the practice and philosophies of occupational therapy fit with the concept and principles of right-touch regulation. This may be part of the reason why the Board (six practitioners, two lay people) have accepted the concept so well.

The ideas of inclusion and social justice, a rehabilitative approach, and maintenance of occupation required in the practice of occupational therapy, enables the proportionality of actions, identified in *Right-touch regulation*, to be observed. The principles of social justice are also part of the ethics of occupational therapy practice in New Zealand.

Recently I had a discussion with a practitioner who felt our regulatory approach should mirror the philosophical approach of the profession. In essence, this would mean the importance of occupation, equity and social justice. This is an interesting observation and one which may encourage further engagement and understanding of our role by the profession.

The advent of a 'right-touch' approach to the work of the Board, has allowed the Board to move from a reactive position to a more proactive position. This in turn will change our Board meeting agendas. It will give us time to 'look out' (horizon-gazing) and so gain a deeper understanding of the profession and the issues of practice.

One mechanism the Board has used to identify the issues in practice, is to meet frequently with the profession. Face-to-face meetings help practitioners to understand the work of the Board, while allowing the Board to understand practice. The Board holds symposiums throughout the country to facilitate such meetings.

Understanding practice provides insight into the issues facing practitioners. This in turn provides an opportunity for the Board to develop guidelines and policies to support practice. This assists the Board to be seen as proactive and accessible in its work.

It also allows the Board to be agile in responding to changes in practice. At the same time, the Board obtains a view of practice which provides context and understanding when considering risk factors. Too often

regulation takes place in a vacuum without clear understanding of the practice context and the various support systems available to the practitioner. An area for future development will be discussions on the ability to offer welfare support for practitioners who are facing problems. Having a welfare service may provide support to practitioners and so avoid the development of problems.

Maori cultural connection and beliefs

Maori make up 15 per cent of the population of New Zealand. Just over 3 per cent of occupational therapists identify as Maori. New Zealand has a unique piece of legislation[52] which requires recognition of Maori.

The approach Maori prefer to take on addressing issues is kanohi ke ti kanohi or face-to-face. We believe, from our experience, that this fits with the concept of right-touch regulation. Being able to get close to the practitioner and any problems that present, leads to a better understanding. It also cuts down on the formality of written legalese and jargon, and encourages meaningful and lasting engagement. A by-product of this approach is the learning that can take place.
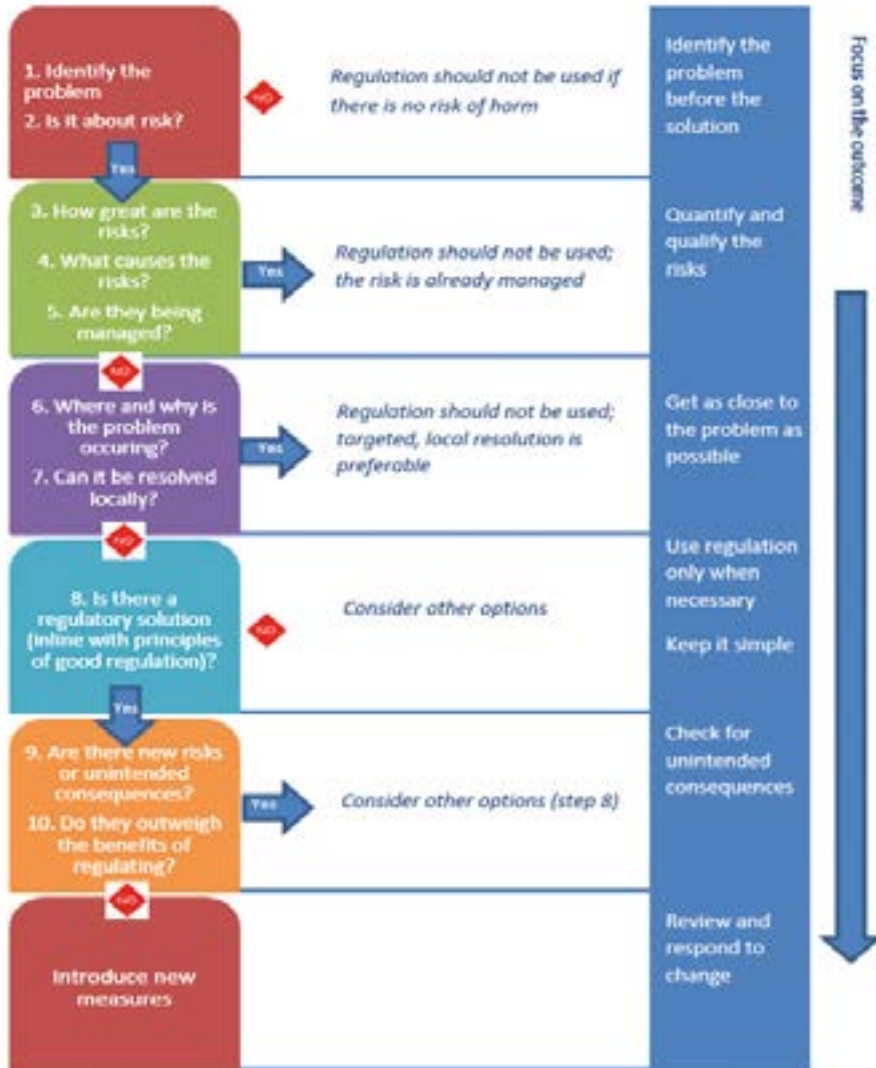
Facilitated Resolution Policy

We have developed a *Facilitated Resolution Policy*.[53] We believe this policy supports many of the

principles of right-touch regulation. It provides the Board with another mechanism to deal with concerns and complaints.

The purpose of the policy is to provide a facilitated resolution process for complaints and concerns brought to the attention of the Board. It involves the complainant, the health practitioner and other relevant stakeholders, without the need for a statutory response, unless required, under the provisions of the *Health Practitioners Competence Assurance Act* 2003 (HPCAA).

This policy allows for a variety of resolution processes to be used, depending on the circumstances. These include negotiation, mediation, tangata whenua tikanga and restorative resolution processes. It clarifies the procedures to be followed when the option is chosen. Our legislation is currently under review and we have promoted the inclusion of the policy.

Dated: 1 June 2016

1. Identify the problem 2. Is it about risk?	**NO** → Regulation should not be used if there is no risk of harm	Identify the problem before the solution
3. How great are the risks? 4. What causes the risks? 5. Are they being managed?	**Yes** → Regulation should not be used; the risk is already managed	Quantify and qualify the risks
6. Where and why is the problem occuring? 7. Can it be resolved locally?	**Yes** → Regulation should not be used; targeted, local resolution is preferable	Get as close to the problem as possible
8. Is there a regulatory solution (inline with principles of good regulation)?	**NO** → Consider other options	Use regulation only when necessary Keep it simple
9. Are there new risks or unintended consequences? 10. Do they outweigh the benefits of regulating?	**Yes** → Consider other options (step 8)	Check for unintended consequences
Introduce new measures		Review and respond to change

Focus on the outcome

About the OTBNZ

The Occupational Therapy Board of New Zealand is a health regulatory authority. It ensures the safety of consumers using occupational therapy services. It does this by making sure all occupational therapists meet the specifications of the *Health Practitioners Competence Assurance Act* 2003.

Find out more from: **www.otboard.org.nz**

Irwin Fefergrad | RCDSO

Right-touch regulation in practice

Irwin Fefergrad, CS, BA, BCL, LLB, is Registrar of the Royal College of Dental Surgeons of Ontario. Appointed in 2000, he is the first Ontario lawyer to receive a specialty in the practice of health law. He is also Executive Director of the International Society of Dental Regulators, Chair of the Advisory Group for Regulatory Excellence (AGRE) in Ontario, and Assistant Professor (adjunct) at the University of Toronto, Faculty of Dentistry.

Sometimes the very best ideas are the simple ones.

As a lawyer with a deep interest and history in health law, I know all too much about complexity and nuance in regulation. As the first-ever non-dentist Registrar for the dental regulator in Ontario, Canada, I have learned to ask, 'What is the problem we're trying to solve?' and 'How do we make this simpler?'.

After about 10 years in the Registrar's chair, I had an opportunity to start looking more closely at what was going on around the globe in regulation. The timing was good; there was much to learn, digest, see and hear.

In Ontario, our once-cherished model of profession-led 'self-regulation' was under tremendous scrutiny – and rightly so. At that point we were one of the few jurisdictions in the world still holding on to a 'pure' version of that regulatory model.

When our governing legislation, the *Regulated Health Professions Act*, became law in 1991, it was ground-breaking. Two decades later, the world was a completely different place. We began to hear stakeholders, consumers and governments around the world calling for more accountability, accessibility and transparency.

Our College supported (and still holds dear) those very same values. We made every effort to put them into action. And we believed that we were pretty successful at doing that within the framework of profession-led self-regulation.

Perhaps we were. But that had not been the experience of a significant number of major regulators in Australia, New Zealand, the UK and even elsewhere in Canada.

As we looked a little closer, we began to see countries where profession-elected governance models in

regulation had been modified and, in some cases, discarded, where governments had imposed a new way of doing business. Those governments decided that healthcare regulation was much too important to be left exclusively to the professionals who elect governing councils.

In Ontario, and at our College, we began to examine how we could assure greater competencies on committees and how we could have the majority on our Council not be elected.

The more I looked, the more it seemed that all forward-thinking in regulatory roads were leading to the Council for the Regulation of Health Professionals in the UK (soon to become the Professional Standards Authority). In 2011, I attended a conference with our then College president, Dr Peter Trainor, to hear Harry Cayton speak.

What we heard was simple – and a revelation. Here was a model that would help keep us on the path towards accountability, accessibility and transparency, but that also seemed to offer a lot more. We felt confident we were already doing many things well; the eight key elements at the heart of right-touch regulation would point to where and how we could improve and perhaps suggest how we might meet new challenges as they appeared.

Our Council thought it would be fabulous if we could engage Harry Cayton himself to measure our regulatory performance based on the international standards that he had developed. We approached him, and it was agreed that the Professional Standards Authority would conduct a full review of the Royal College of Dental Surgeons of Ontario (RCDSO) and measure us against the international standards that the Authority had created. There was one binding condition that, of course, exemplified the right-touch approach to transparency; we had to agree that the Authority's final report, good or bad, would be made public.

The review process started in early January 2013. College staff prepared volumes of material and shipped it off by air express to London. Meetings were held to consider detailed questions from the Authority and to review how the College did its work. In mid-April Harry Cayton and Douglas Bilton, the Authority's then Research and Knowledge Manager, came to observe and review our processes in practice. They met with external stakeholders, some Council members, and College staff.

When the report landed in June of that year, with great anticipation we read it carefully. Harry wrote to me to say, 'We consider that the College meets all the relevant standards of good regulation and that it demonstrates best practice in a number of areas. We make a small number of recommendations with the aim of assisting you in

improving some internal processes or enhancing the quality of the work you already do.'

For some, this would be the end of the story – standards reached, recommendations addressed, and a pat on the back – done.

For the RCDSO, it was the beginning of a new chapter.

The model of right-touch regulation genuinely spoke to all that we did (and continue to do). The impact of answering the questions, of looking more closely at our processes and approaches in general, was felt across the College. From our perspective, it began to change business behaviours. Here are but a few examples.

We asked important questions around transparency: what information does the public need to have to make informed choices of their healthcare providers and how can we facilitate the delivery of that information?

In 2014/15 our Council passed by-laws with sweeping changes on what was easily available on our website for all to see. We continue to evaluate how we can do better on transparency.

More focus came in early 2015 when the Government of Ontario launched a new phase in its plan for healthcare – *Patients First*. That mantra reflected our mandate and became, at one stroke, a rallying cry and a test for all our activities: 'does this activity/programme/policy put patients first?' If the answer was no, we knew we had work to do.

This period of self-assessment also helped us understand the need to approach all our work in a much more evidence-based and data-driven way.

For example, one of our keys duties at the College is to receive written complaints from members of the public regarding dental care. In 2016, the RCDSO received 712 letters of complaint or inquiry; 525 of those became formal complaints.

The complaints contain a lot of information, but we have not done much work looking at categories or themes in complaints. We had great data at the decision-making level, but we did not really appreciate what the public was telling us through the vehicle of the complaint. So, the College engaged an epidemiologist to study patterns and to understand what they reflect about public thinking, regardless of outcome.

The data analysis team did a pilot study to create a taxonomy and is applying those categories to a much broader sample of complaints data. We hope to gain insights on how to conduct better education and to drive more effective communications.

Similar data analysis was done on patterns of opioid prescribing in Ontario and brought us more useful information – and even some good news.

The College had requested and received narcotics monitoring system data for 2015 and 2016. This data, along with that received for 2014, was provided to an epidemiologist for analysis.

The results are encouraging. They strongly suggest that dental patients in Ontario are getting the right drug, in the right amount and only once. Even better – over a relatively short time span, the data shows a statistically significant decrease in opioid prescriptions and the number of drugs made available via dentists in Ontario since 2014 – about 4.4 per cent over two years.

We believe that this reflects a growing awareness on the part of prescribers, supported by the publication of the College's guidelines on the topic. Of course, we will continue to monitor opioid provider practices in the dental community and promote appropriate prescribing through the use of our guidelines. Further study of the data may suggest where more education is needed, and the College will work with others to help develop appropriate programmes across Ontario.

The point of these two examples is that more knowledge and analysis is critical to some of the elements of right-touch regulation:

• Identify the problem before the solution

• Quantify and qualify the risks

• Get as close to the problem as possible.

We even found, in the case of the opioid report, that there was an effective solution – education – that did not rely on regulation. As right touch says:

• Use regulation only when necessary.

'Focusing on the outcome' has led us to much more analysis and planning. Developing and using criteria in decision-making has been a huge step forward for us. For example, we built a new *Risk Assessment Framework* and Tool for use by our Inquiries, Complaints and Reports Committee, including a separate tool for interim orders. Assessing risk through a 'patients first' lens helps establish better priorities and assigns resources where they are most needed.

We also created a staff working group on Process Mapping to improve efficiency in the complaints process and to identify and reduce processes that do not actually add value. This is helping to streamline processes and move cases through the system more efficiently.

If the desired outcome is excellent patient safety and care, then helping our members maintain and improve their skills and protocols makes sense. Lately we have extensively revised our *Standards on Infection Prevention and Control* (IPAC), and our *Sedation and General Anesthesia*

Standard. Both documents benefitted from broadly-based working groups of experts, clinical and regulatory. Our IPAC work was further strengthened through a new collaborative relationship with local public health units. We helped them to understand how their principles could be best applied in the dental office; one result was new checklists for inspectors that also help dentists self-assess their IPAC protocols. Another staff working group does future-planning on issues related to IPAC. In all areas of dental practice, continuous education is in play through our quality assurance work.

While we do not control all aspects of our governance, we can make it better. Our Council spent a day brainstorming with staff, developing new ideas to bolster competencies and tighten eligibility requirements. Now, prospective Council and committee members must complete an online eligibility training course, so they understand their responsibilities before they throw their hat in the ring. Our statutory committees have their own competencies to ensure people with the rights skills are matched to the right jobs.

A critically important element of our governance is the role of public (non-dentist) members. Many of our committees are chaired by public members who bring the public interest to their decision-making. But more and more, we find that the need to put patients first is trumping self-interest among all governance groups.

Patients need the best information too. That is why we have completely revamped our website to make it more accessible, informative and engaging. We worked with other leading colleges in the health sector to improve shared transparency principles. That same group also focused on better consistency among regulators so patients can better navigate the system. We made more information available to the public through our by-laws before being required to do so by the government. We strengthened communications to the public and membership around sexual abuse prevention and dentist-patient boundaries, again anticipating legislative change and proving leadership across the sector.

We are trying to live the eight elements of right-touch regulation. Despite the temptations of legal and clinical nuance, we are trying to keep it simple. We are checking for unintended consequences with better metrics, more analysis and reaching out to a wider community to help us understand the ramifications of our actions.

And then, we do it all again. Review and responding to change is not the last step; it is the direction to renew and revitalise. We know that in the coming years there will be new statutory imperatives, new clinical information, new awareness among patients.

We are working now to be ready. Right-touch regulation is guiding our organisation in ways that we did not anticipate when I heard Harry Cayton speak in 2011. His work has helped take the long-practised strengths of our organisation and bring improved focus to all that we do. And where there is an 'unintended consequence' we did not foresee; we are happy to face that consequence.

About the RCDSO

The Royal College of Dental Surgeons of Ontario is the governing body for dentists in Ontario. Its mission is to protect the public's right to quality dental services by providing leadership to the dental profession in regulation.

Find out more from: **www.rcdso.org**

Jonathan Gorvin | RICS

Right-touch regulation at RICS

Jonathan Gorvin is RICS' Head of Regulatory Policy and Development. He is a trustee of the Science Council, and regularly provides advice to governments on approaches to professional regulation. Jonathan was previously Head of Regulatory Affairs at the Press Recognition Panel, where, following the Leveson Inquiry, he developed the regulatory approach to recognising and monitoring press self-regulators.

Introduction

The Royal Institution of Chartered Surveyors (RICS) is a global professional body, which sets and enforces international standards in the valuation, management and development of land, real estate, construction and infrastructure. Working in the public interest, we regulate over 125,000 individuals and 10,000 businesses across nearly 150 countries. As a non-statutory regulator, our regulatory powers are derived through contracts with those we regulate. Individuals and businesses choose to be part of our regulatory regime because the market, the profession and the public recognise the value of it.

Like many other sectors, the professional services sector is increasingly transboundary. Not only are the largest suppliers based in multiple markets, but the services they offer, and clients they work for, are also global in nature. This globalisation has led to market demand for the development of international standards, underpinned by regulation, to ensure key technical activities and behaviours are globally consistent.

When implemented correctly, international standards and regulation can play an important role in the development of economies and societies.[54] By increasing transparency and technical and behavioural consistency in professional services, particularly financial audit and asset valuation, regulation can help to build confidence in markets, which in turn helps promote inward investment and economic growth.[55] Implemented poorly, regulation can increase burdens on businesses, stifle innovation and ignore consumer detriment; leading to a lack of confidence and trust in the regulator, and the activities that it safeguards.[56]

Right-touch regulation in practice | international perspectives

This loss of confidence is particularly important for professional self-regulatory bodies like RICS, where there is no compulsion for the profession to join, and whose value is derived from the confidence its brand imparts. It is therefore imperative that RICS has an approach to regulation that effectively controls the key risks posed in a targeted and proportionate way.

For the past two years, we have been establishing right-touch regulation as the foundation of our regulatory approach. In this short paper, we share three examples of how we have used right-touch regulation in our work. Firstly, in our process for identifying regulatory risks[57] and appropriate controls; secondly, in how we use our direct connection to the market to engage with stakeholders and get as close to the problem as possible; and, thirdly, in focusing on the outcome by establishing alternative decision-making processes in our disciplinary function.

Example 1 - Identifying the problem before the solution

I once worked with a consultancy that described itself as solutions-focused. They were true to their word, providing multiple solutions to unclear problems. Given the number of solutions provided, some certainly helped mitigate the problem originally put forward in the brief, but this was by chance, rather than design, and the process lacked efficiency, as their bill showed.

Until two years ago, RICS operated in a similar way. Committees of professionals, along with other stakeholders, would consider the need for regulatory change, but the reason for this change – the problem – was not clearly defined or understood.[58] This led to a plethora of standards, rules, guidance documents and schemes being created, which required an enormous amount of resource to develop and maintain, were confusing for the profession to follow, and did not effectively target regulatory risks.

Using the principles of right-touch regulation, RICS changed this way of working to better target its resources. A new framework was established requiring standards and policy setters to profile and assess risks before proposing proportionate and targeted solutions (both regulatory or non-regulatory). The framework requires individuals to draw on internal and external information to substantiate the problem posed and consider a wide spectrum of tools to control that risk.

To set the baseline for this risk analysis, we commissioned Ipsos MORI to undertake a global review of risks in the surveying profession. Using a wide variety of sources and research techniques, including interviews with services users, members of the public and the profession, this review assisted us

in understanding key areas of focus and prioritisation for our activities.

While this approach is still new, we have already seen positive outcomes. The number of new controls being put forward has reduced considerably as people are now better at considering risks, allowing us to prioritise our resources in better ways.

This approach to standard and regulatory development has also increased engagement in consultations. The sheer number of activities taking place previously had led to consultation fatigue, but with fewer, well timed and better targeted activities, we are seeing increased engagement, leading to a better understanding of impacts and unintended consequences in proposed approaches.

Example 2 – Getting as close to the problem as possible

As a transnational regulator, covering a wide range of professional activities, we need to ensure we get as close to the problem as possible, in order to properly consider the geographical and sectoral scope of a particular risk. A risk in one market, may not be replicated in others, or globally.

In line with the principles of right-touch regulation, when identifying the risk using the framework discussed above, we require policy makers to work closely with, and involve, stakeholders that are closest to the

risk identified; as insights gained from the market and/or sector allow us to better tackle a problem at its source. Similarly, when developing our approach to controlling a risk, we ensure that those closest to that problem are engaged with developing the control.

This process ensures that we, as regulators, do not become detached or distant from the problem in question, as solutions are developed with a clear understanding of the context and concerns of those most affected in mind. This understanding, and appreciation, also helps us in considering the impacts and unintended consequences of introducing new regulatory measures, where they are required.

A recent example of this approach is demonstrated in the development of RICS' requirements on conflicts of interest. A risk within the profession of not acting impartially, or in the best interest of a client, was identified and assessed by working closely with service users, the regulated population and other stakeholders. Following this assessment of risk, a control was proposed in the form of a new global mandatory requirement on conflicts of interest.

Through the process of consulting on this requirement, an additional risk was highlighted in the United Kingdom (UK), which was not dealt with as part of the global requirement. RICS got as close to this problem as possible, by working

with stakeholders in key markets, to assess whether this risk was isolated to the UK or replicated elsewhere.

Following this assessment, it was considered that the risk identified in the consultation was localised to the UK, and therefore the original wording in the proposed control did not need amending; instead, an additional requirement was put forward on those in the UK to manage that specific market risk.

The process we undertook in this example, using right-touch regulation, ensured our response to the problem identified was proportionate and targeted.

Example 3 - Focusing on the outcome

Professional disciplinary tribunals are costly, time-consuming, and not always in the best interests of the parties involved. Using right-touch regulation, RICS has reviewed alternative approaches to disciplinary decision-making, which focus on the outcome, rather than being concerned with the process.

RICS already has options to use consent orders in which to agree conditions and fines on less serious cases, we also have powers to hold disciplinary panel hearings solely on the papers. However, these are only available for certain types of allegation, or where the regulated individual or business makes full admissions. We therefore wanted to develop an additional decision-

making option to allow us to take the most proportionate approach to cases.

Under our new approach to alternative disciplinary decision-making, we intend to allow for decisions on all but the most serious and contentious of cases to be made on the papers by a single decision-maker, drawn from RICS' independent disciplinary tribunal. The decision-maker will be able to make findings of fact and impose most of the sanctions available to the tribunal; however, the regulated individual or business will retain the right to have an oral hearing before a tribunal where they do not agree with the decision made by the single decision-maker.

We believe this proposal provides us, as the regulator, with greater flexibility to focus on a more goal-based outcome underpinned by a set of principles, rather than a prescriptive disciplinary approach, and gives us the ability to use the most proportionate decision-making option, without removing any rights from those being disciplined.

While this initiative has yet to be formally approved and implemented, we have received positive feedback during consultation and engagement on the approach.

Conclusion

I include a copy of *Right-touch regulation* as part of the induction pack for all new starters in my

team. Right-touch regulation provides an effective foundation in which to approach our work, and a useful tool in communicating this work. It is more accessible than similar frameworks produced by others, such as the OECD, and it is particularly useful for RICS, as a global body covering a disparate sector, because it encourages policy-makers to get as close to the problem as possible. A risk posed in one region or sector, is not always replicated in others.

I also believe that being a non-statutory regulator allows us to support right-touch regulation in more diverse ways than our peers, as we have greater flexibility, and a wider regulatory toolkit to use, than statutory regulators.

If there were to be a criticism, it would be less of right-touch regulation, and more of regulators. Right-touch regulation requires us to review and respond. However, while as regulators we have become better at understanding and assessing risks, and putting in place appropriate controls to manage these, we have a tendency – not to reflect on the effectiveness of those controls after implementation. As regulators, we need to reflect back, further down the line, on whether the intervention has been successful, and if not, how can it be developed in the future.

It would be valuable for right-touch regulation to consider the process of reflection in further iterations.

About RICS

The Royal Institution of Chartered Surveyors is the global professional body promoting and enforcing the highest international standards in the valuation, management and development of land, real estate, construction and infrastructure.

Find out more from: **www.rics.org**

Notes

1 The professions regulated are: Aboriginal and Torres Strait Islander health practice, Chinese medicine practice, chiropractic, dental, medical, medical radiation practice, nursing, midwifery, occupational therapy, optometry, osteopathy, pharmacy, physiotherapy, podiatry, and psychology. Paramedicine is scheduled to join the National Scheme as a regulated profession from late 2018.

2 One for each health profession group that is part of the National Scheme, except nursing and midwifery which are considered distinct professions, regulated by the one Board.

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1. Strengthened continuing professional development (CPD) requirements.
2. Active assurance of safe practice.
3. Strengthened assessment and management of medical practitioners with multiple substantiated complaints.
4. Guidance to support practitioners – regularly updated professional standards that support good medical practice.
5. Collaborations to foster a culture of medicine that is focused on patient safety, based on respect and encourages doctors to take care of their own health and wellbeing.

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