

Act One – The Prologue

*“Admit me, Chorus, to this history;
Who prologue-like your humble patience pray,
Gently to hear, kindly to judge, our play.”*

Henry V I.i.p

Overview

- Act One – Prologue
 - Introductions and scene setting
- Act Two – The Hollow Crown
 - Learning from the past – and from the future
- Act Three – The Tempest
 - Recent history – the ‘perfect storm’
- Act Four – All’s Well That Ends Well?
 - Recommendations – and elephant traps ...
- Act Five – Epilogue
 - Review

Act Two – The Hollow Crown

*“... within the hollow crown
That rounds the mortal temples of a king”*

Richard II III.ii

Characteristics of professions

- Specialised knowledge and training that enable professionals
 - to know what to do in particular circumstances
 - to be able to give a rational explanation for those actions
 - to undertake the actions safely
- Socially-approved and legally-sanctioned self-governance and control over this body of knowledge
- Commitment to service and devotion to the public good


Characteristics of regulation

- Purposes of regulation
 - Protect integrity of underpinning knowledge, skills and ethics
 - Maintain competence in members and teach it in aspiring members
 - Protect the consumer ('public good')
 - Ensure fair operation of the market eg avoidance of monopolies
- Criteria for selection as a regulated activity
 - Activity founded on principles and practice opaque or obscure to society
 - Oversight impractical or unreasonable through market forces and / or through a legal code managed by the civil or criminal courts
- *Modus operandi* of regulatory bodies
 - A set of rules alongside (and in the context of) the law and the courts
 - Enforcement follows similar procedures to the law

Systems for assuring governance

**Management
systems**
'fit for purpose'

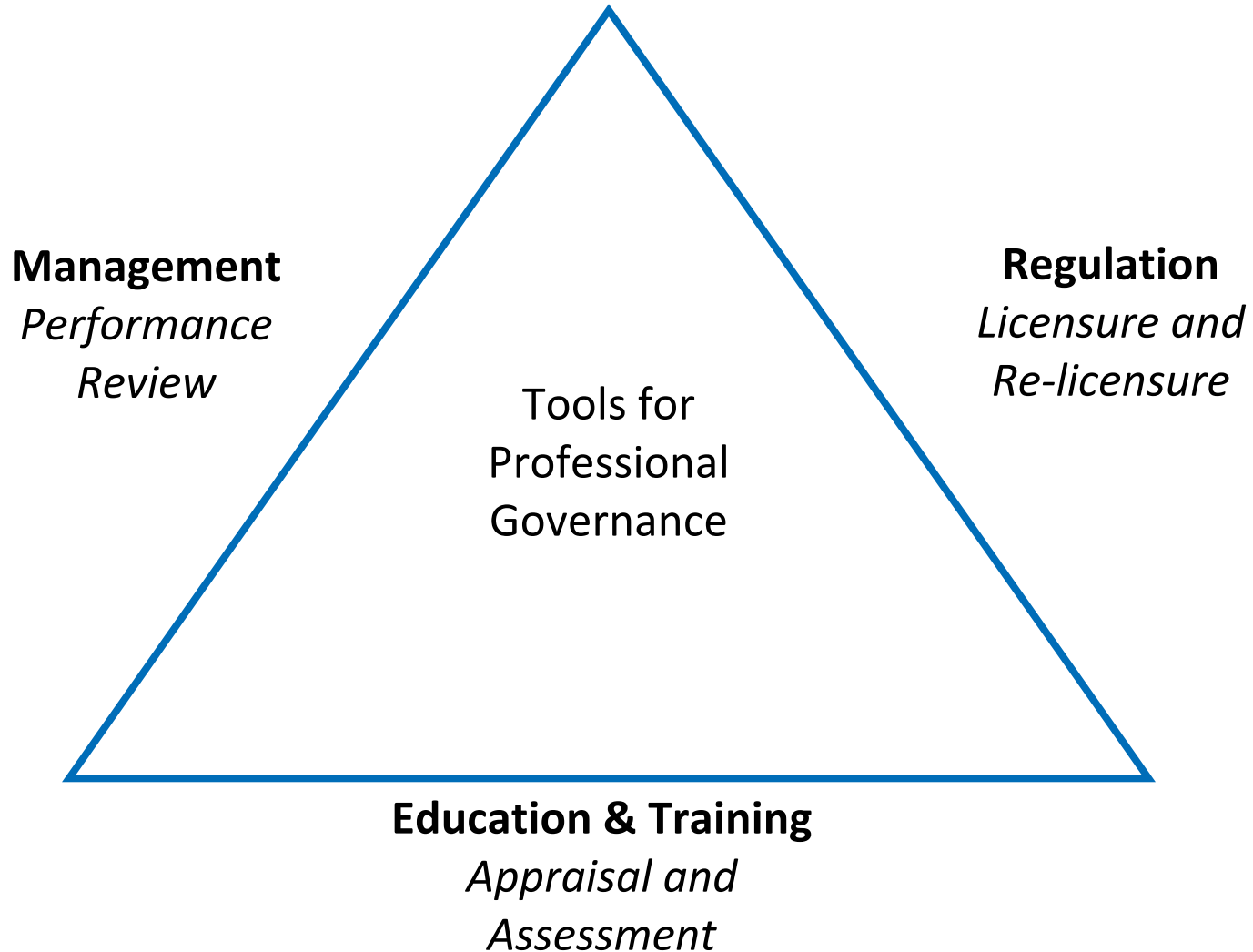
**Professional
Regulation systems**
'fit to practise'



Systems for
Professional
Governance

**Education & Training
systems**
'equipped for practice'

Tools for assuring governance



Mechanisms for identifying underperformance

- Governance systems – The ‘Three Estates’
 - *Education* – equipped for practice [educational appraisal and CPD]
 - *Management* – fit for purpose [management appraisal and IPR]
 - *Regulation* – fit to practise [licensure and re-licensure]
- Regulatory mechanisms – the four-layer model
 - *Self-regulation* – staying within the boundaries of competence
 - *Team regulation* – peers as critical friends
 - *Organisational regulation* – professional and general management
 - *Statutory regulation* – within each jurisdiction
- Sources of concern
 - *Self* – ‘that small voice that tells you someone may be looking’
 - *Consumers* – our duty to listen to them
 - *Colleagues* – the duty to speak up ... and stick with it

Act Three – The Tempest

*“If by your art ... you have
Put the wild waters in this roar, allay them.”*

The Tempest I.ii

The governance challenge

- Medical scandals
 - Was poor performance tolerated more than it should have been?
- Repeated common features in service and individual failures
 - Was health care in the UK able to learn from its own mistakes?
- Systems for responding to these failures not fit for purpose
 - Outdated, unwieldy and bureaucratic
 - Excessively legalistic, adversarial and court-like
- Media response focused on blame
 - Difficult or impossible to separate out individual failure, system failure and untoward incidents which were no-one's fault

The response – a three phase approach to reform

- Moving accountability centre stage, underpinned by new central governance bodies
 - System and market governance – CHI-HCC-CQC / Monitor / QIS-HIS / RQIA / HIW, NICE, NPSA, NHSLA, CSCI etc
 - Professional governance – CHRE, NCAA-NCAS
- Modernising employment and HR practice
 - Contracts of employment and for provision of service
 - Education, training and career structures
 - Disciplinary and other professional governance systems for employed and contracted practitioners
- Reforming professional regulation for all clinical staff groups
 - *Trust, Assurance and Safety*, responsible officers, revalidation etc

BUT – how the quality arena can feel

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How have we done?

- Headline success measures should relate to primary purpose
- Public assurance
 - Is there evidence of improved public confidence?
- Underlying problems
 - Is there evidence of lessening?
- Value for money
 - Is it being achieved to an acceptable level?

Professional governance – what was the evidence?

- Modified rapture ...
 - Professional performance failure rare but heavy impact on confidence
 - Impact of professional governance support clear (published figures)
 - Earlier intervention, lower suspension rates (80% down), higher practice restoration rates (70% return rate)
 - Reduction in high profile cases and ‘scandals’ – focus of public and press debate no longer on the failing practitioner
 - Cost of professional governance support (eg NCAS costs less than the estimated annual saving on reduced inappropriate suspensions)
 - Systems have developed to a recognised international standard, with the UK seen as a focus of international leadership
- BUT – the fault lines are still there
 - Lack of integration within and across the worlds of governance

Systems governance – what was the evidence?

- Not such a happy story ...
 - Untoward events are common and the causes are well-known
 - Repeated failure has a heavy impact on public confidence
 - Impact of system governance support much less clear
 - High profile cases and inquiries continue – Maidstone, Winterbourne, Mid-Staffordshire, Ash Court
 - Repeated reconfiguring of the landscape – CHI→HCC →CQC ... and next?
 - Major effort into learning what we already knew – NPSA / NRLS
 - But there are still beacons of success – NICE and QIS-HIS
- AND – the fault lines are still there
 - Poor integration across the worlds of governance leads, for example, to poor handling of whistleblowing
 - Do the dogs bark? If they do, what happens?
 - Are they punished? Does anyone listen?
- In Mid-Staffs, the dogs barked, but no-one seemed to listen...

So what went wrong?

- Modern health care is high-impact, highly effective, highly demanding – and high-risk
- Pattern of response to perceived failures
 - Regulatory or quasi-regulatory ALBs created as one-off actions
 - When expected improvement does not occur – reconfigured or abolished with little analysis of cause
- Why?
 - Quality landscape busy and fragmented
 - Lack of recognition that modern health care is a team effort – not just the ‘sum of the parts’
 - ‘Organisational snobbery’ – working only with ‘equals or seniors’
 - Without duties of co-operation and candour, they cannot be relied on
 - Repeated assertions of (p)olitical interference and inappropriate influence

Act Four – All's Well That Ends Well?

*“The king's a beggar, now the play is done:
All is well ended, if this suit be won”*

All's Well That Ends Well V.iii

Regulation – the sharp end of governance

- Why?
 - Maintain knowledge and teach it in existing and new members
 - Market regulation and consumer protection
- Where?
 - Activity founded on principles and practices obscure to society
 - Not practicable or reasonable to put in place relevant legal code or to use market forces
- What?
 - A set of rules alongside (and in the context of) the law
 - Enforcement follows many apparently similar procedures to the law
- How?
 - Three estates – education, management and regulation
 - Four levels – self, team, organisation and statutory
 - Three sources – self, colleagues and consumers

Challenges – perceptions of failure

- Social contract compromised
 - Weakened relationship between professions or agencies and those they serve
 - Diverging perceptions of effectiveness
- Regulatory landscape ineffective
 - Oppressive, fragmented and failing to reflect the reality of service delivery
 - Lack of effective co-operation between regulators – professional, system and market
 - Poor or absent collaboration with non-regulatory governance support
- The ‘political football’
 - Repeated assertions of inappropriate external influence and (p)olitical interference

So what is needed?

- Simpler regulatory landscape with clear rules, audited for use
 - Bespoke regulation distinct from the law or market forces should exist only where justified
 - Creating ‘knee-jerk’ regulatory structures makes a mockery of the law and devalues market operation

So what is needed?

- Simpler regulatory landscape with clear rules, audited for use
 - Bespoke regulation distinct from the law or market forces should exist only where justified
 - Creating ‘knee-jerk’ regulatory structures devalues market operation and makes a mockery of the law
 - Regulatory and governance support structures must reflect the reality of day-to-day practice and service delivery
 - Or the contract between society and the service or profession will not function properly
 - For example – do we need ten regulatory bodies for health professions?
- A properly integrated approach to regulation and governance
 - Legally-binding duty of co-operation across all agencies in regulation and governance support
 - ‘Blind’ to the status of the agencies involved
 - Include an explicit duty of ‘pro-active’ candour

And an 'elephant trap'

- Opportunities exist for inappropriate external influence and interference – if
 - The purposes, criteria for selection and *modus operandi* of regulatory working are not properly observed
 - Governance support (non-regulatory) agencies are set up without clear justification – and focus
 - Critical mass
 - Concentration of expertise
 - And these two groups fail to work effectively together
- And minimising the chance of inappropriate influence or interference?
 - Constructive collaboration is vital
 - But their roles and their work must not become entangled

Act Five – Epilogue

*“Thus far, with rough and all-unable pen,
Our bending author hath pursued the story”*

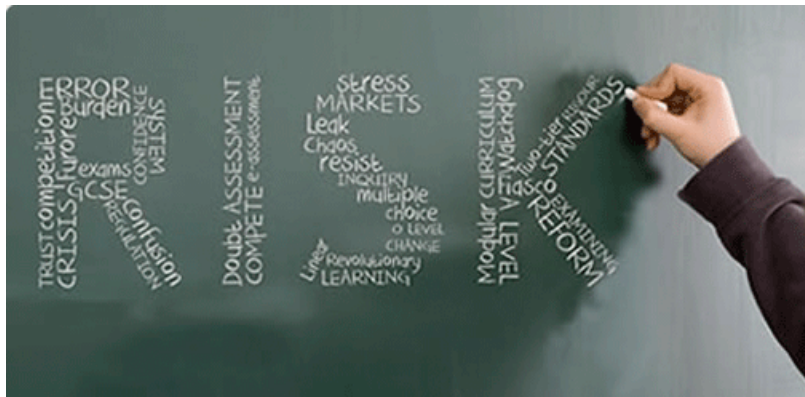
Henry V V.ii.e

Review

- A simpler, clearer, more effective and more accountable regulatory landscape
 - Professional regulation must be much more integrated than the current system in the UK permits or achieves
 - Effective market and systems regulation in the context of financial constraint needs a much more integrated approach
 - Much better co-ordination across all governance agencies
- ‘Moving upstream’ in modern, high-impact, high-risk services
 - Sensitive and specific systems needed to identify risk or failure early
 - Identifying failure early means it may not yet breach published standards – front-line standards are higher than regulatory standards
- ‘Light touch delivery’
 - High-level rules enabling freedom to operate
 - But within a clear duty to collaborate honestly and openly

GOVERNANCE and REGULATION past, present and future

– A DRAMA IN FIVE ACTS



CAMBRIDGE ASSESSMENT

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