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Opinion

The Unintended Consequence of Regulation

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As the forensic healthcare services moves further into regulation under the Forensic Science Regulator, and in 2023 sharing responsibility with the Care Quality Commission. (CQC), it is perhaps time to consider what conditions could make the provider\regulator relationship thrive. We wish to draw perspectives from Cognitive Science and apply them to regulatory visits and relationships with the aim of suggesting a potentially more productive approach recognising a recommendation from a Kings Fund and Manchester Business School research study [1] to build relationships with providers. A visit by a regulator, roughly speaking, could be defined as an examination of how a provider's practice relates to guidance. If guidance is not followed by a provider, then this is likely viewed as a transgression which requires correction and scrutiny. The temptation then, following notification of a regulatory visit, is to make practice "look like" guidance. We'll examine the point we make above from two theoretical perspectives, drawing ideas inspired by Relevance Realization [2,3] and Four Ps of Knowing [4]. Relevance Realization, simply put, is a theory of how cognitive agents make sense of the world on a continuous basis. The proposition is that any given situation contains infinite complexity and to gain a grip we zero in on what is most relevant at any given time.

In practice, for example, a situation presents itself to a practitioner, and the practitioner focuses on what is most salient. Imagine a spectrum, with guidance-based procedures and processes occupying one end of the spectrum, and intuition and imagination occupying the other. If the situation presents as routine, then a solution drawn from guidance can be enacted. If the situation presents a degree of novelty and exceeds the limits of guidance, then the practitioner will need to draw from their reservoir of experience, with intuition and imagination playing a bigger role. However, the latter example, paradoxically, is a breach of guidance, it was the practitioner's own creation, which was enacted, even if the outcome was positive. To illustrate, forensic samples may be declined, or a non-forensic environment must be adapted due to circumstances. Both examples would represent a breach of guidance but a good outcome.

However, if performance is judged, or believed to be judged, practitioners will limit solutions to guidance regardless of understanding of its effectiveness to this situation. If we are to truly understand how guidance, provider and practitioner interact in practice, then a broader perspective is required, and this is where regulatory authorities sometimes experience difficulty. Our Regulators need to be able to consider how practitioners identify what is most relevant, recognize situations as non-routine and produce effective novel solutions to complex problems. Equally, there needs to honest reflection on where a novel solution is applied and did not produce the desired outcome [5]. A broader range of examples needs to be encouraged and shared. This would enable guidance to be updated as effective

and non-effective solutions emerge from non-routine situations. In other words, guidance should organically reflect what is most relevant to good outcomes across the full spectrum of options and not be limited to that which is published. However, examples must be collected without being overly constrained by fear of punishment. To put this into practice, regulators should explore in partnership with providers how four types of knowing are being applied to practice. To illustrate we draw from the four P's of knowing-Propositional, Procedural, Perspectival, and Participatory [2]. We shall briefly outline each of the types below.

Propositional knowing refers to facts and beliefs about the world, such as Locards principles – every contact leaves a trace or the time of day. Procedural knowing refers to how to do something, how to label forensic samples or undertake phlebotomy as a process. Perspectival knowing refers to a vantage point which is applied to a situation, such as recognizing a situation as routine or novel and being able to embrace the perspectives of others. Participatory knowing has links to self-awareness; for example, is there a sense that things are going right or going wrong? To put this into context, a regulatory visit could be structured around covering the four types of knowing. This would cover, in addition to the traditional quality assurance frameworks and currently applicable ISO standards, that a provider should be asked about situations in which guidelines did not fit or explore why criteria were not met. Regulators should explore what was the propositional situation, what was going on concerning the facts of the matter? What procedures were enacted? What perspective was taken (the application of guidance or using judgement for example) and did these choices work (effective participation)? The four types of knowing construct a picture of relevance realisation to create a richer and operationally more effective picture. The focus should also include the regulatory experiences and identify a co-produced shared perspective. We believe the current approach is too focused on matching what actually happened to guidance-based procedures. As a result, learning is frozen at propositions and procedures. Sharing perspectival and participatory knowledge is almost discouraged out of concern of contravening guidance. A richer picture of real frontline experience needs to emerge. Although regulatory activity is traditionally by the regulator conferring punishment or reward to the regulated, we believe that a co-produced product with ongoing improvement rather than comparison would significantly enhance the process.

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