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Right Touch / Risk-based Regulation

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Right Touch Approach

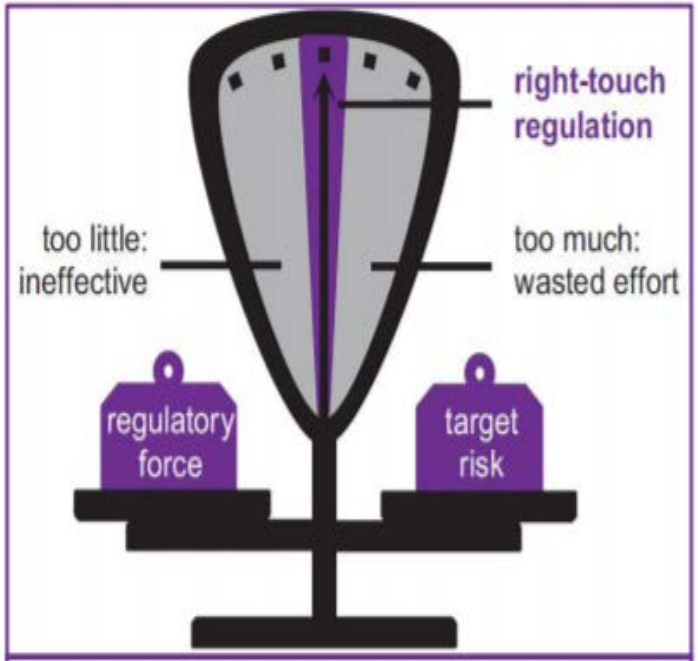

Figure 1. Regulatory force.

"... the minimum regulatory force required to achieve the desired result."

The Professional Standards Authority, UK

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Right Touch Theory

“Right touch regulation is based on a proper evaluation of risk, is proportionate and outcome focussed; it creates a framework in which professionalism can flourish and organisations can be excellent. Excellence is the consistent performance of good practice combined with continuous improvement.”

Harry Cayton CHRE Review, 2009

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Foundational Principles

- Proportionate
- Consistent
- Targeted
- Transparent
- Accountable
- Agile

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Supporting Professionalism

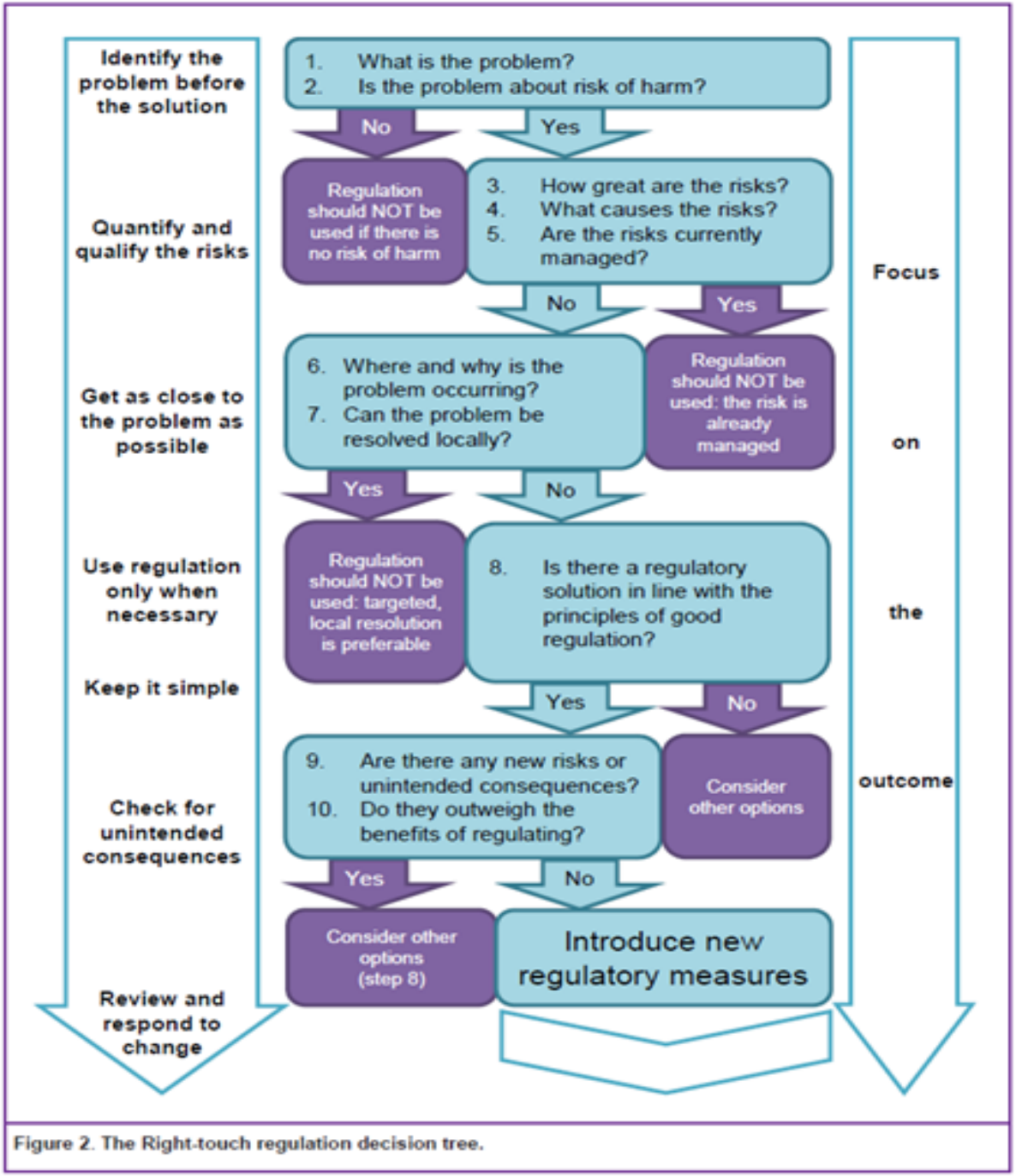

Figure 2. The Right-touch regulation decision tree.

Right Touch Model

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Risk of Harm

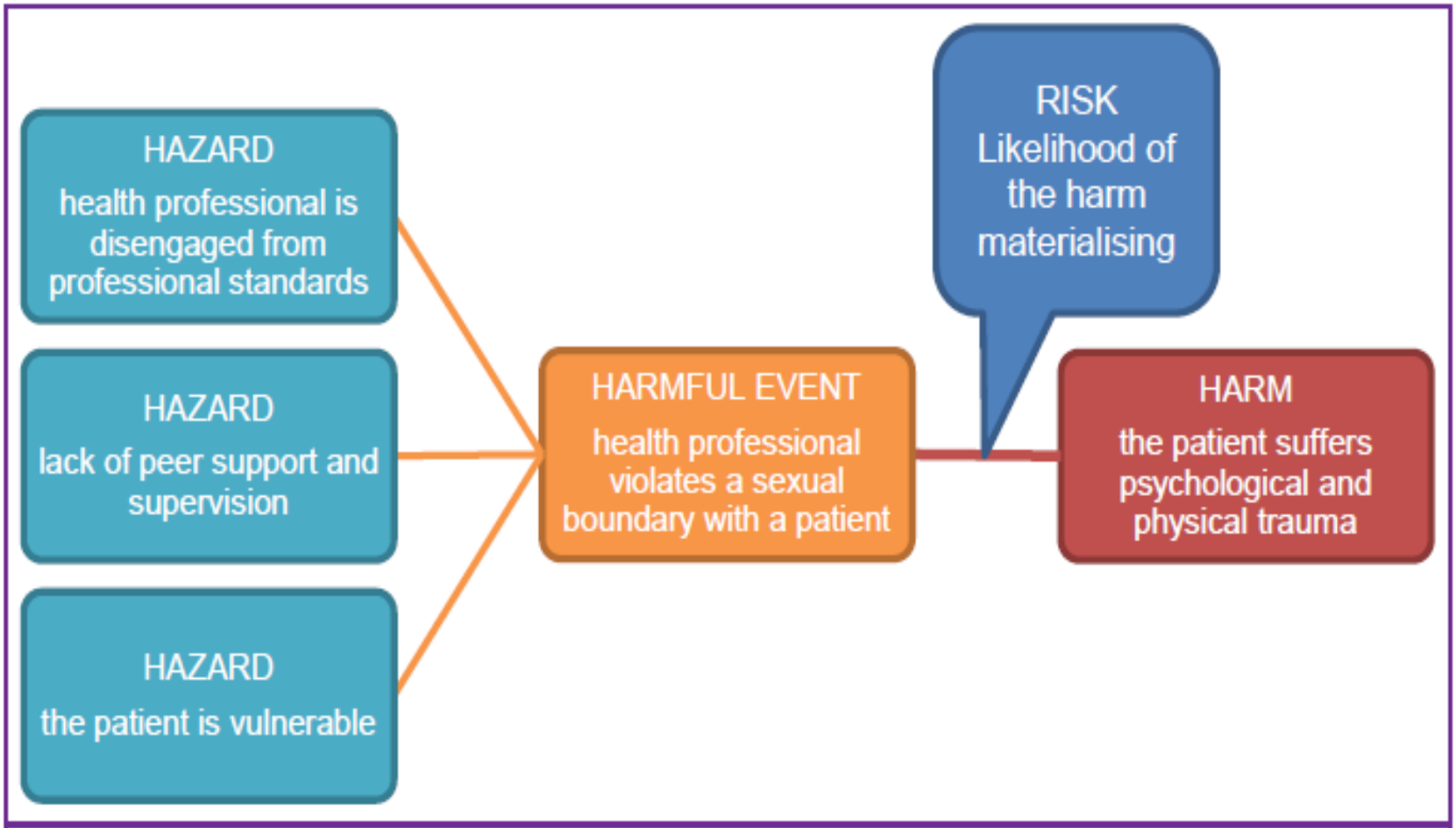

Figure 4. How hazards create the risk of harm – an example from healthcare.

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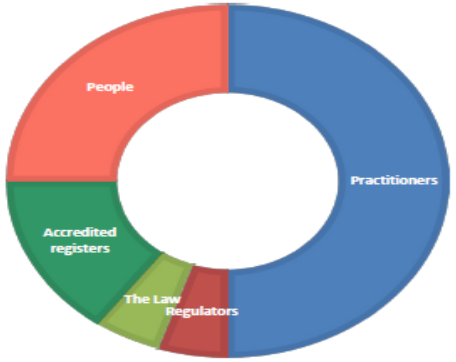
Risk of Harm

Paramedics

Paramedics practise in the relatively controlled environment of the NHS. Practitioners still bear a large share of the responsibility, but employers, commissioners, and regulators (both service and professional) between them play an important part in preventing harm. As paramedics work in emergency care, people do not have any significant control over the care a paramedic provides them.

Acupuncturists



The vast majority of acupuncturists work in private practices, and they are usually self-employed. Both practitioners and patients can therefore be expected to bear a larger share of the responsibility for preventing harm than in the previous example. Their premises are nevertheless inspected by local authorities and the products they use are subject to controls. Some are on registers accredited by the Authority, which are also responsible for preventing harm.

Figure 3. Indicative illustration of how different agents might share the responsibility for mitigating the risk of harm for two occupations in healthcare.

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Risk-based Regulation

- Another way to look at effective regulation
- Significant overlap with right-touch approach

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Risk-based Regulation

"The risk-based approach calls for a regulator that is not solely focussed on technical compliance and enforcement, but rather a more purpose-driven and agile approach in which the regulator exercises choices about the issues to focus on and employs a range of instruments to address harms that impede the achievement of outcomes, and thus influence or ensure the delivery of public value."

Nicholls 2015, p. 2, emphasis added

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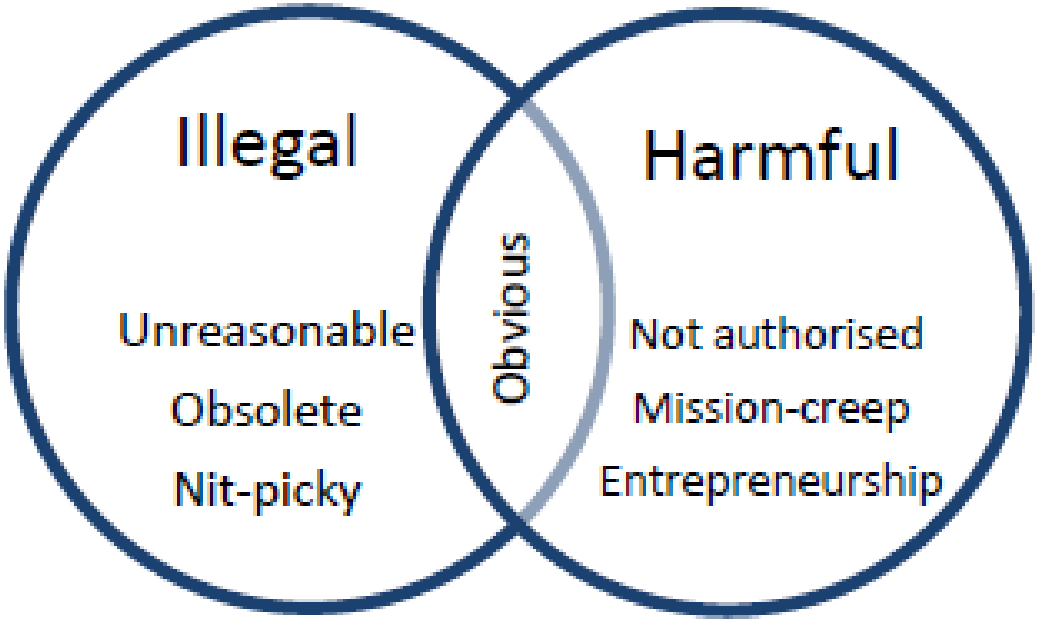
Illegal vs Harmful



Nicholls 2015, p. 2, citing Sparrow

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Illegal vs Harmful

Examples of "hard" regulation
•investigations and enforcement (penalties) •auditing •licencing •monitoring/reporting/name and shame •approvals/authorisation

Examples of "soft" regulation
•education programs •consumer information •industry advisory and guidance •standards •funding and contracting •industry research and development •Collaborative problem solving/ •conversations

Figure 2: Different instrumental choices for regulators

Nicholls 2015, p. 3, citing Sparrow 2011

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Example 1

- Hypothetical scenario
- Analyze data, identify greatest risks, collaborate with stakeholders

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Example 2

- *LMK v MF*, 2015 HPARB case
- Board ordered CPSO's ICRC to remove in-person caution and replace with written caution
- Complaint made on marketing-related issues, including website content (e.g. testimonials, before & after photos, product endorsements)
- ICRC concerned member would not comply with Advertising Regulations
- Member argued this is wrong, pointing to extensive changes made to website
- Board found decision unreasonable as ICRC ignored substantial changes to website

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Example 2

"Of the range of remedial actions that the Committee has in its disposal, a caution in person indicates a high degree of risk to the public and a high need for remediation. In view of the totality of the circumstances of this case, including all the steps already undertaken by the Applicant to substantially change her website in order to comply with the Advertising Regulation, the Board is of the view that the Record does not support the issuance of a caution in person to the Applicant and the Committee's decision is therefore unreasonable."

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Example 3

- CRPO QA Program PD Requirement
- Experience from other regulators indicate risk of private practice setting
- PD requirement, experiential component introduces outside perspective, can to address lack of network

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Why consider a Right Touch / Risk Based approach?

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Questions / Comments?