Finding a balance between autonomy and accountability in the governance of organisations in the Irish Social Care sector.

Dilemmas and challenges from an Irish Service Perspective

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Background

- Personal case experience of 30 years in Health and Social Care Services

  – Considerable variation in standards

  – Considerable variation in governance and leadership

  – Considerable variation in organisational cultures and sub-cultures

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Context

- Additional service funding was provided each year from 2001-2007

- Recession in 2008 – commencement of cuts in funding – From 2008 to 2013 GDP fell by 17.9% and Government expenditure on healthcare fell by 17.3% or €2.8 billion to €12.8 billion over the same period.

- Increase in numbers of people requiring services and in demands for additional services (8% growth in population with increasing associated needs during this time)

- Increase in complexity of needs and in ageing population

- Introduction of Stringent Regulation

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The Growth of the Regulatory State

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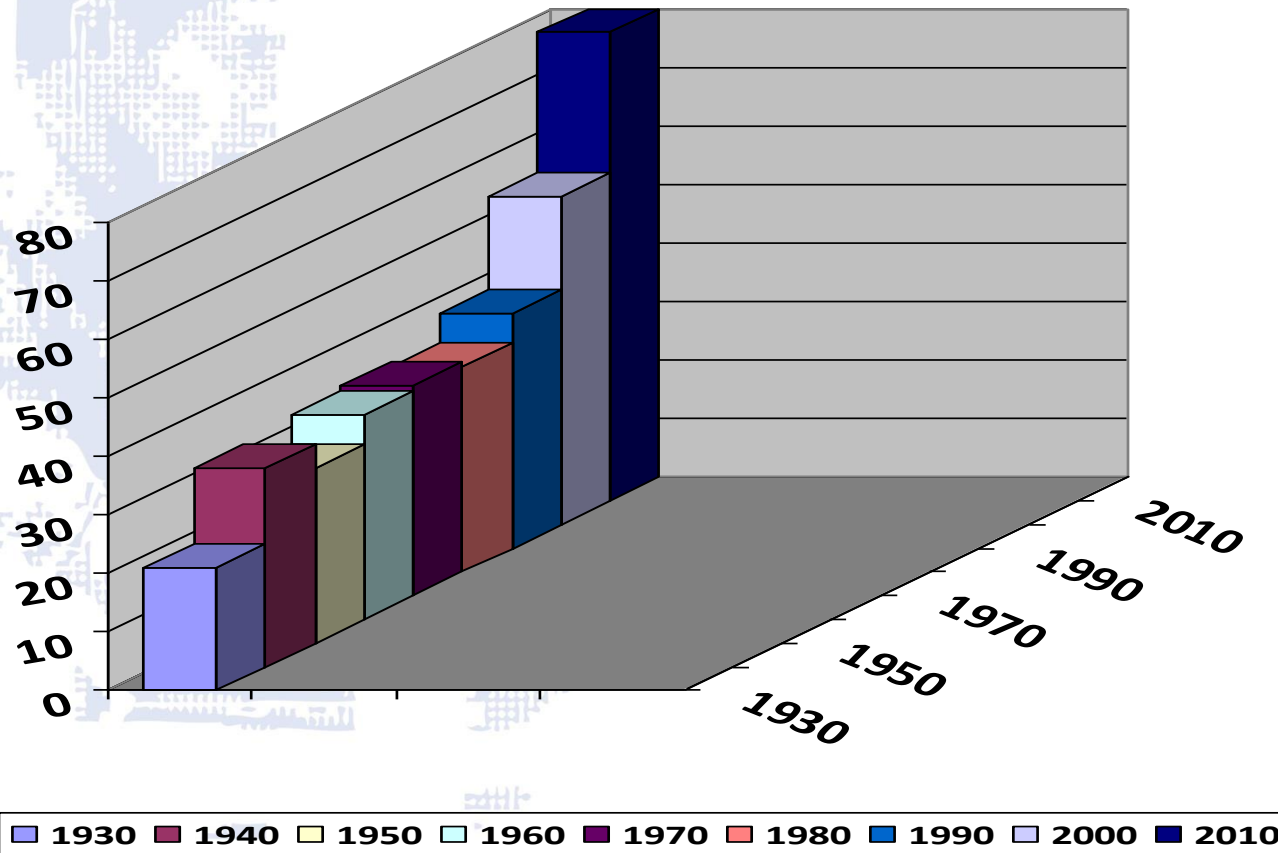
The Growth of the Regulatory State

- What is clear today is that we have seen a significant increase in the numbers of regulators since 2000.

- Despite criticism of the number of regulators in place; the overlap of functions of various regulators – what is referred to in the literature as "mission creep" - and a government commitment to reduce the number of regulators in place (Regulating Better: Department of An Taoiseach. 2004); there has been no noticeable decrease in the number of regulatory bodies.

- If anything, numbers have increased with at least 13 new bodies created since then.

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The Growth of the Regulatory State

- Estimated cost of regulation – 3.5% of EU GDP is spent on regulation – Estimated at €4.5 Billion per annum in Ireland (EPS Consulting 2014)

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Increasing Compliance Burden

Health, Safety and Welfare at Work Act (2005)

Companies Acts (1963-2014)

Specific responsibilities in relation to the Office of the Director of Corporate Enforcement

Financial governance in line with the requirements of the Revenue Commissioners and the Companies Registration Office

Compliance with the Nursing and Midwifery Board Requirements

Food Safety Legislation

Fire Safety Legislation

Environmental Health

Workplace Relations Commission requirements re: Workplace Relations Act (2015): -

Organisation of Working Time Act (1997)

Payment of Wages Act (1991)

Protection of Young Persons Act (1996)

National Minimum Wages Act (2000)

Parental Leave Acts (1998 and 2006)

Redundancy Payments Act (1971)

Employment Agency Act (1971)

Protection of Employment Act (1977-2007)

Protection of Employees Acts (1984-2003)

Carer's Leave Act (2001)
Employees (Provision of Information and Consultation) Act (2006)
Employment Permits Acts (2003-2014)

Compliance with the Charities Act (2009)

Compliance with public procurement law, regulations and guidelines as set out in the HSE Service Level Agreement

Compliance with the General Data Protection Regulation (2016)

Reporting requirements to the State Claims Agency

Reporting requirements to HSE Safeguarding Teams

Section 38 and Section 39 Compliance Statements to the HSE

Reporting of Serious Reportable Offences

Reporting of Complaints data

Infection Control

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Increasing Compliance Burden

Compliance with the Health Act 2007 (Regulations S.I. 366 and 367)

– Registration process

– Registration and monitoring inspections

– Reporting notifiable events – 3 Day notifiable events and quarterly returns

– Notification of changes to the Registered Provider Representative

– Provider Assessment Visits / Audits

– Annual Review of Quality Audits

– Other essential audits

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Increasing Compliance Burden / Audits

- An Organisation with 30 Designated Centres has, in each year

  – 60 provider visits / audits,

  – 30 annual reviews of quality,

  – 30 restrictive practice audits,

  – 30 audits of service user accounts,

  – 30 health and safety at work audits,

  – 60 fire drills,

  – 30 medication management practice audits,

  – 30 safeguarding audits,

  – Other audits,

  – In addition to registration inspections and monitoring inspections

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Some Questions

1. Is regulation required?

2. Has regulation made a difference?

3. Is the demonstration of effective governance through compliance required?

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The Complexities / Challenges

1. Clash between **funding available** and the cost of meeting some regulatory & compliance requirements

2. The number of centres to be registered and inspected and the **administrative burden** of this on the regulator and the regulated

3. **Multiple** regulators / regulations / **compliance requirements**

4. **Multiple reporting requirements** to different bodies / agencies / regulators

   – Resource implications
   – Duplication
   – Systems inadequate
   – Unsustainable

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The Complexities / Challenges

5. Implications and pressures on Voluntary Boards

6. Implications and pressures on Managers

7. Implications and pressures on staff

8. "One-Size-Fits all" – when it clearly does not

9. Pressures on Organisations that are facing substantial enforcement action

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Sustainability of the Current Compliance Burden?

So…….

We are rapidly moving into a regulatory / compliance sphere which

- Places considerable, increasing, regulatory and compliance burden on services

- While beneficial in terms of some of the outcomes; is not (and should not be, on it's own) sufficient to address the underlying core causes / features of poor services

- Is excessive (when one considers all of the regulations and compliance requirements in totality)

- Requires substantial resources from an organisational, regulatory and funding perspective

- Is unsustainable (from a financial and human cost perspective)

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What is Needed?

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There has been no Significant SECTOR-WIDE Development in

- **Culture Change** – Some of the institutional, poor cultures still exist

- **Board and Director Competence** – Remains a challenge with some Boards

- **Management Competence** / Shaping and Mentoring – Remains a challenge for some services – in many instances people are not being shaped / mentored on how to manage

- **Lean Governance Systems** – In many instances organisations are struggling with this and it is posing considerable challenges

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What is Needed? At a National Level

- Fund the de-congregation required.

- If registration of the remaining campus-based services is absolutely necessary, then register them with time-bound conditions – aligned to actual release of necessary funding from Department / Governmental level

- Re-introduce the smarter regulation concept with 1 overall Government Department responsible for this and develop lean regulation for the sector

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At a National Level

Develop a balanced, tiered approach to regulation and compliance;

- Proportionate to the level of organisational governance competence

- Streamlined and non-repetitive in terms of meeting demands of various regulators / actors

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At a National Level

Notwithstanding the different roles of the different stakeholders; there must be a **shared approach** to improving things

- Need a more balanced / sophisticated and tiered approach to accountability

- Regulators and funders should test governance first and foremost at Board and Operational level – Sophisticated testing by skilled and experienced governance specialists

- "Traffic light" and tier the regulatory / compliance approach in accordance with findings of this testing

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At a National Level

- Reduce the regulatory burden by registering the full Organisation (not individual Designated Centres)

- Invest in culture change initiatives; in mentoring & in competence development

- Seriously reconsider the approach to attracting and retaining talented people at Board and Management level at a National level

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At the Organisational Level

- Invest in culture change and culture development

- Develop effective oversight arrangements from Board level down – invest in Director competence and Board system and process competence

- Implement rigorous shaping and mentoring processes for all management grades – invest in developing management competence

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At the Organisational Level

- Implement lean systems

- Implement lean quality and audit processes

- Implement lean documentation processes

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Summary

From our experience in services nationally, what is emerging is that:-

- Regulation has been beneficial and services are safer for people

- But the combined regulatory / compliance burden is considerable, is increasing and is not sustainable

- Regulation on it's own does not fundamentally address culture or the development of competence

- There is a need for a tiered, smarter, more sophisticated approach to regulation and compliance

- There is a need to significantly invest in the underlying issues – culture, governance and competence.

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