

Expectations of regulation

Antony Townsend

The Parliament Act 1911

...whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation

General Dental Council guidance to the profession (1960s)

Which of the following subjects did it cover?

- Patient safety
- Neon signs outside dental surgeries
- Clinical excellence
- Confidentiality
- Bigamy
- Treatment of vegetarians

The drivers for regulation

- Professional status
- Public protection
- Political expediency

Professional status

- The stampede towards “regulated professional” status
- Dental nurses
- What about dental practice administrators?
- Dental technicians DEMAND higher registration fees!
- What about surgeons’ assistants?

Public protection

- Archie Winn – is a child's death ok?
- How bad does a doctor or dentist have to be to get struck off?
- Is amiable incompetence a crime?
- How do we know that the dentist is still competent?

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Which of the following subjects did it cover?

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Political expediency

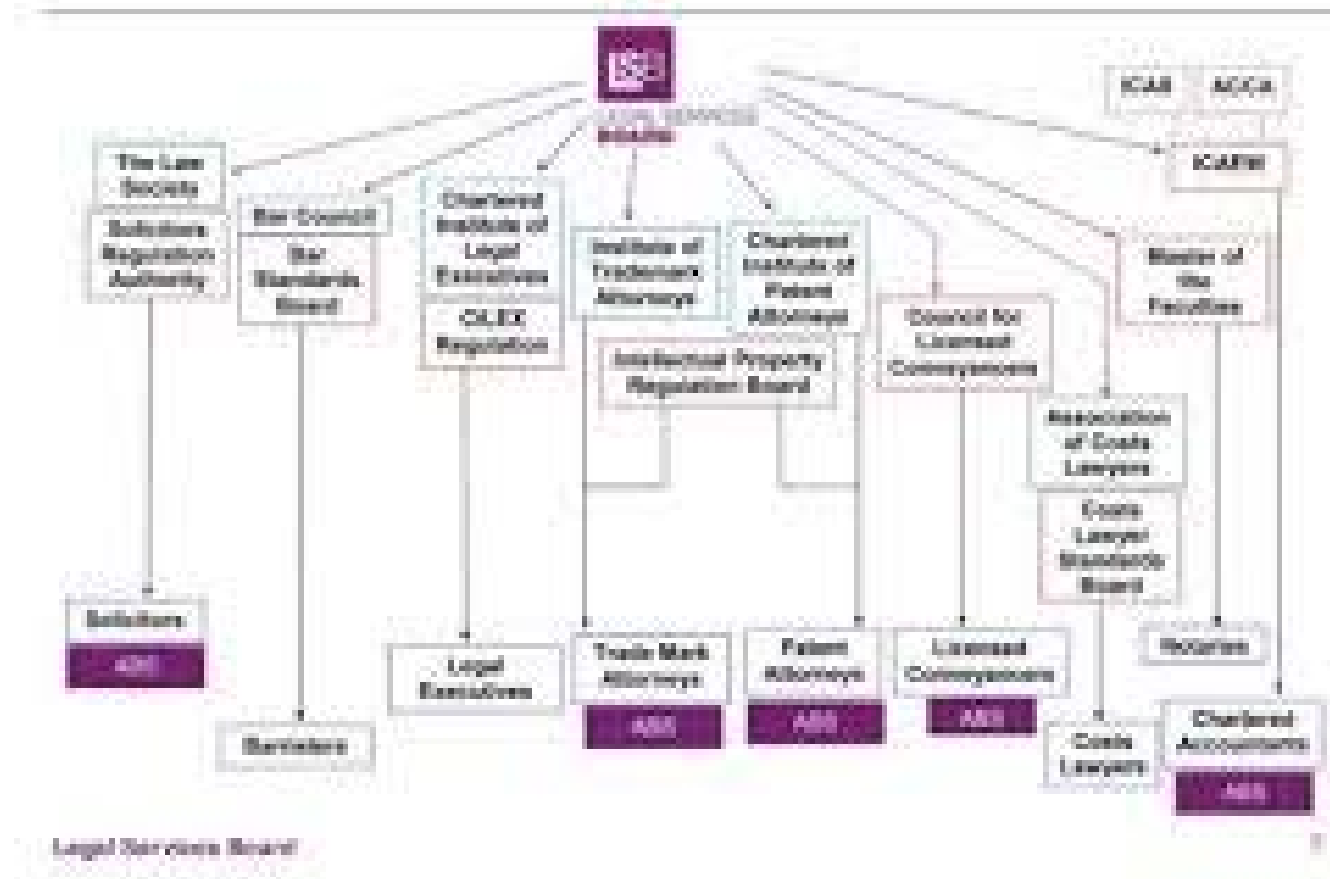
- Blame the regulators!
- Establish new regulators!
- Establish super-regulators!

Let's obsess about governance

- Professional or lay majority?
- Professional or lay chair
- Elected or appointed professionals?
- Independent – of the profession, of government, of what?

Simplifying legal services regulation

The regulatory architecture



Regulating lawyers: the ultimate in absurd compromise

- The professional associations can be approved regulators so long as they do not regulate
- The approved regulators have (some) involvement in the appointment of the regulators
- The regulators depend upon the approved regulators for their finances
- The regulators share services with the approved regulators
- Everyone hates each other

In the past thirty years, in the UK we have seen

- Increasing lay involvement in regulation
- Reform of constitutions of regulatory bodies
- Increasing tiers of regulation
- Increasing tools of regulation
- A dawning realisation that it has to stop somewhere (subject to events)

The life line

- Parole Board
- Prisoners' complaints
- Doctors
- Dentists and the dental team
- Public health professionals
- Chartered surveyors
- Solicitors
- Accountants
- Financial services regulators
- All the health and social care regulators

The life line

- Parole Board - **government**
- Prisoners' complaints - **government**
- Doctors – **independent statutory with professional majority**
- Dentists and the dental team - **independent statutory with professional majority**
- Public health professionals – **voluntary body**
- Solicitors – **“independent” regulatory arm with lay majority tied to independent body with professional majority**
- Chartered surveyors – **independent chartered body with professional council and independently led regulator**
- Accountants - **independent chartered body with professional council and independently led regulator**
- Financial services regulators – **independent Complaints Commissioner appointed by the regulators with government approval**
- All the health and social care regulators – **independent statutory authority with no professional members**

Some tentative conclusions about effective regulation

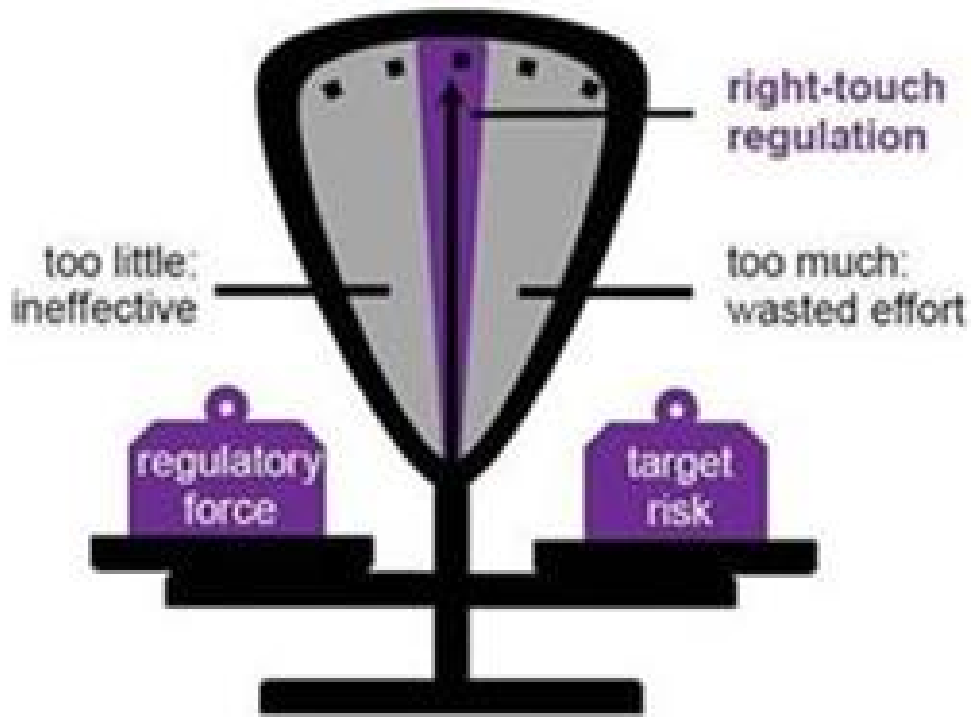
- Significant lay involvement makes a real difference – it changes the dynamic
- Appointing the governing body makes a real difference – it reduces the professional politics
- Small governing bodies make a real difference – they take decisions
- Clear relationships and distinctions between non executives and executives make a real difference

BUT

Regulatory governance

- No one knows
- No one cares

The most important thing is regulatory culture

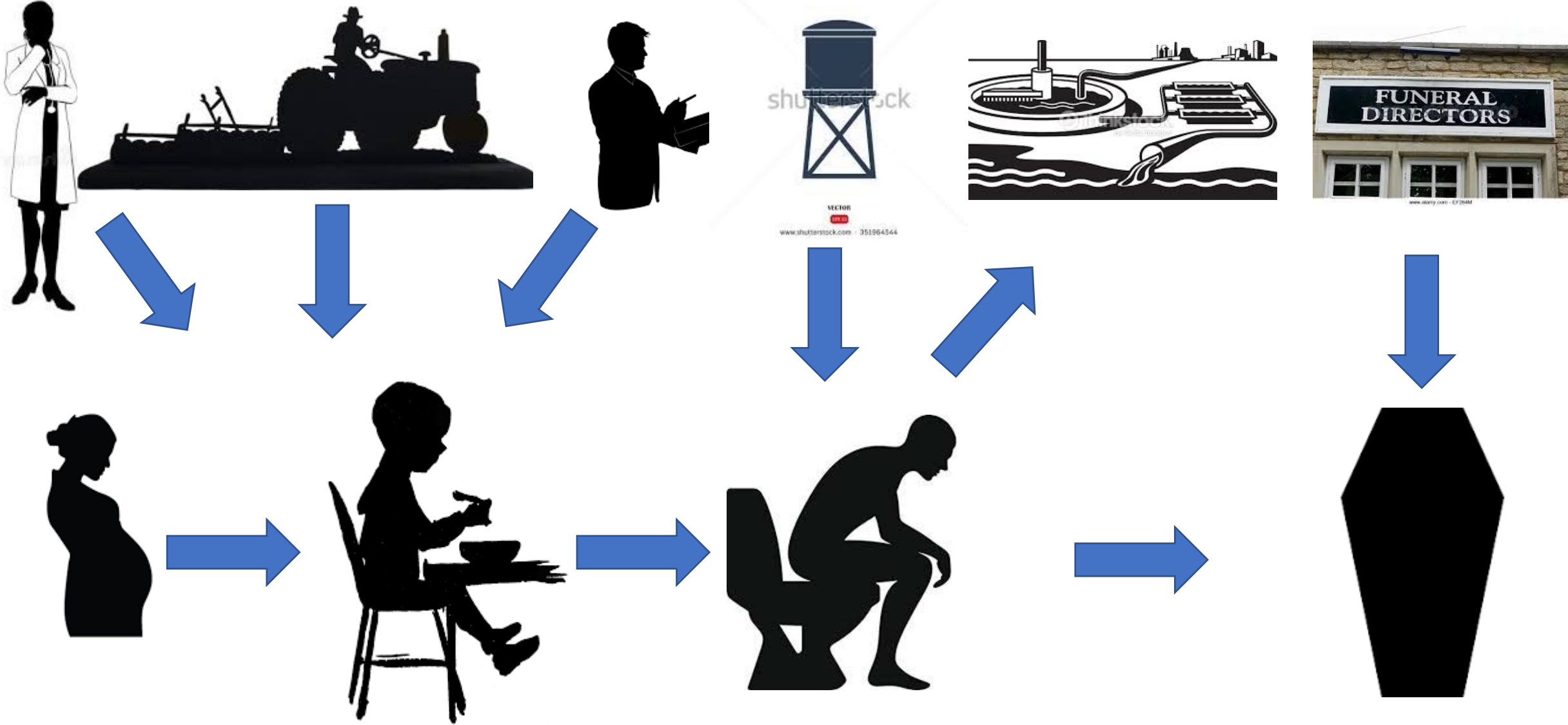


- Identify the problem before the solution
- Quantify and qualify the risks
- Get as close to the problem as possible
- Focus on the outcome
- Use regulation only when necessary
- Keep it simple
- Check for unintended consequences
- Review and respond to change

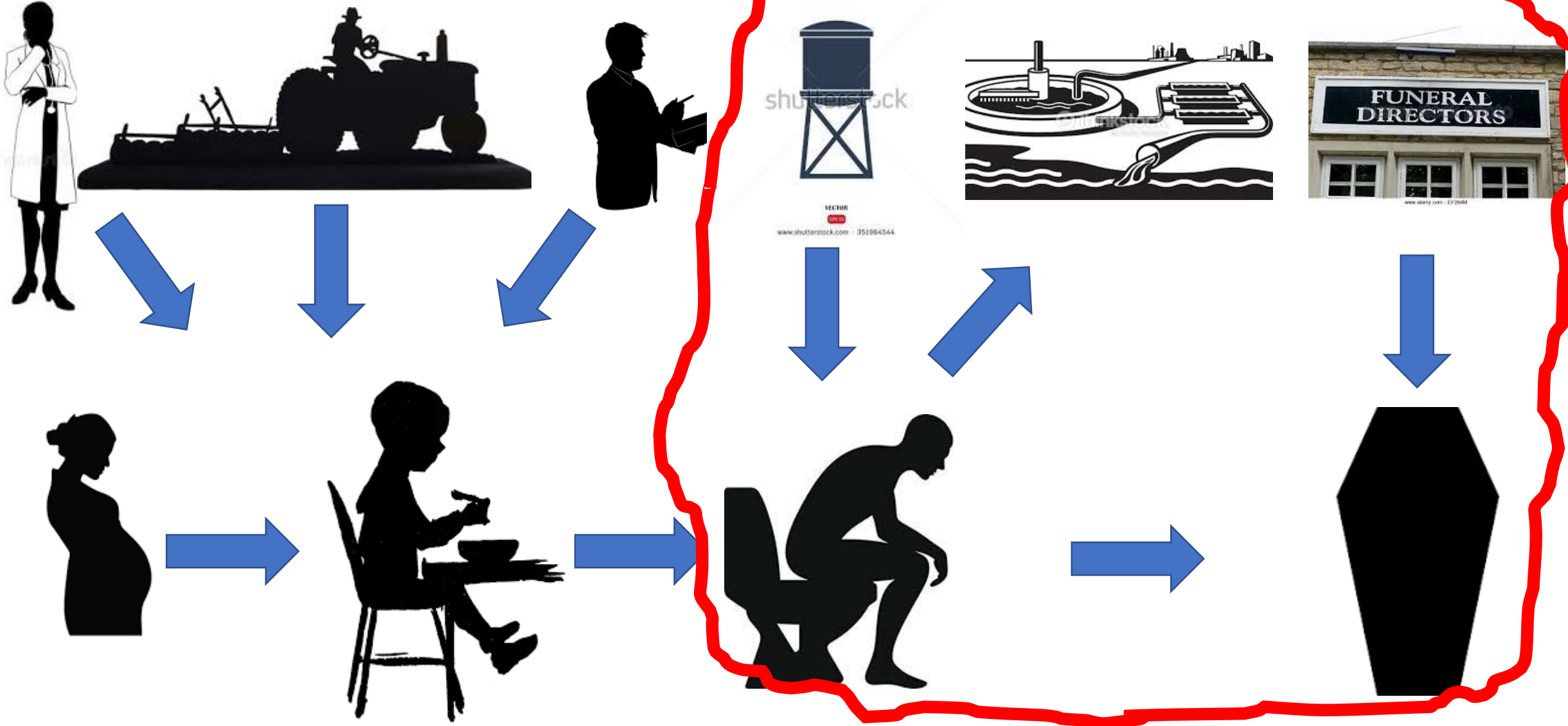
Regulation must ensure

- Public confidence
- Professional confidence
- Current fitness to practise

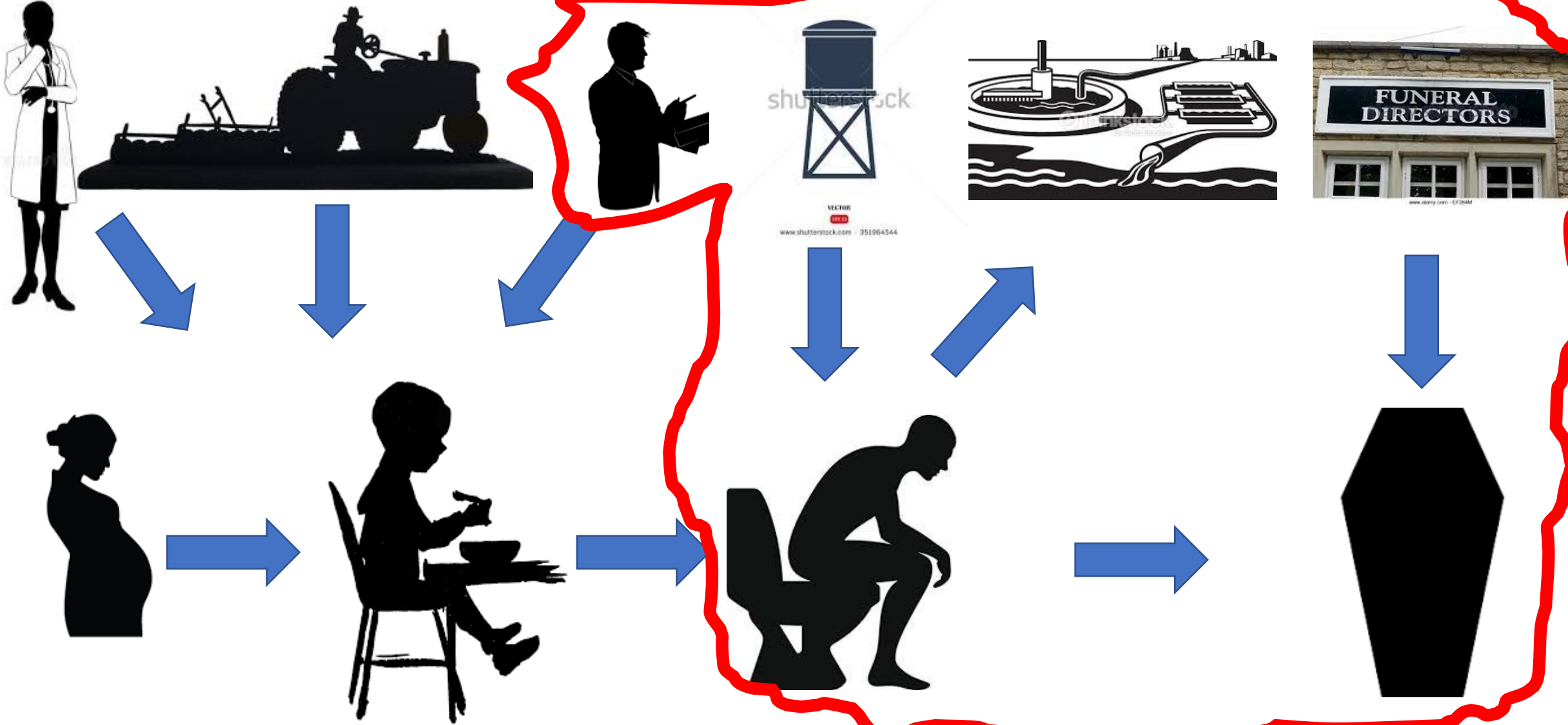
The life cycle



The life cycle



The life cycle



No need for shame

- Society needs
 - Water companies
 - Sewage farms
 - Undertakers
- Regulation is (principally) about
 - Minimum standards
 - Safety nets

The UK health and social care system is a mess, but

- We have gradually resolved the governance issues
- There is a broad consensus (at least in theory) on right-touch principles
- We have established accredited registers to stem the tide of new statutory regulators
- We are beginning to see the regulation of professional groups as a co-operative continuum, rather than as a binary choice

Regulators

- Be brave!
- Be honest!
- Be modest!
- Be realistic

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Passionate about regulation?

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Lukewarm about regulation!

(while reluctantly recognising that, on balance, it's better than the alternative)

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