Mixed Advice – The Strategic Use of Guidance by Inspectors

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Abstract

The project aims to explore and expand the regulatory curriculum and promote the inclusion of home-based tutors (located in Scotland) into scholarly activity.

The presentation will examine our application of discourse analysis to the day-to-day reality of delivering a blended programme. It reveals the tensions between work organisations and the University sector and suggests ways in which these might be resolved.

The Fellowship supports a second project examining the use of ‘Direction’ in the regulatory interaction – in effect the use of advice and guidance. This is an important curriculum area and the presentation reveals the types of advice and guidance used and their different applications.

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Inspectors in health and social care often give guidance to regulatees. This piece of research, supported by a fellowship award, was designed to explore the kinds of guidance inspectors might use and the context in which it was offered.¹

The Regulation of Care Award (Scotland) (ROCA) is a national qualification for Scottish inspectors of health and social care. Anglia Ruskin University is the provider of the award and the blended work-based programme is delivered in conjunction with the Scottish Commission for the Regulation of Care (the Care Commission).

Why Explore This?
Inspection and regulation have been the focus of intense international study, much of which has reported and analysed the work of regulatory inspectors (for example, see Braithwaite et al., 2007). There are estimated to be around 12000 inspection staff active in the UK (Better Regulation Executive, 2006). However, although there have been attempts to devise a teaching curriculum for inspectors, these have been characterised by their emphasis on legal detail and administrative procedure (General Social Care Council and Wales, 2002) rather than the process whereby a regulatory judgement is made. At the same time, the focus on inspectors has tended to reflect concerns such as the locus of decision making – whether that is at the agency or at the street (inspector) level (May & Burby, 1998), the extent to which inspectors use discretion (Lange, 1999; Black, 2001), consistency between inspector decisions, and the degree to which the views of the regulatee are taken into account in regulatory decision making (Ayres & Braithwaite, 1992). While these are important issues the process of inspection has, with notable exceptions, been neglected.

Direct, Detect and Effect
One of the few studies to attempt to theorise the inspection process was by Boyne et al (2002), who drew on a model of cybernetic controls. To describe something as a cybernetic control means that if there is a movement in the control variable then there is a corresponding response from the dependent variable. A steam governor is a good example; when the speed of the engine reaches a certain number of revolutions a mechanical valve decreases the amount of steam entering the pistons and consequently the speed drops. When the desired speed is reached the valve is opened again.

It is doubtful whether regulation is such a linked control, but nevertheless the model is a useful analogy to illustrate the process of regulation and the consequent use of feedback and the control of the inputs and outputs of the system.

To summarise the process, the initial activity of the inspector(s) in the regulated setting would include a Director, a means of setting out what was desired, as in a set of outcome standards. The next stage is called a Detector, that is, a way of detecting variance from the standards within the regulated setting. The final stage is called an Effector – this refers to the strategies and techniques that are capable of influencing the organisation and its management in order to deliver the desired outcomes standards. For teaching purposes, this cycle is summarised as ‘Direct, Detect and Effect’ (See Figure 1). As one inspection cycle ends it forms the beginning of the next.
While teaching materials are available derived from research methods and from investigative work that are relevant to the ‘Detect’ stage, the ‘Direct’ and ‘Effect’ parts of the model are not so well covered in any relevant literature. This study was set up to look more closely at the ‘Direct’ stage.

The Respondent Group and Methodology
The model of the inspection process above has been a central theoretical element of the ROCA course from its inception. With over 200 graduates of the course working in inspection, there was an opportunity to use their feedback and experiences to inform our understanding of the model.

Volunteers were sought from the ROCA graduates and 10 came forward. The first part of the study started in September 2008, with respondents supplying to the researcher accounts of how ‘Direct’ had been used in practice, that is, in inspections. The second stage of the research involved observations of a small number of inspections. The written-up observations were then discussed with the inspectors involved, firstly to verify any conclusions, and secondly to add to the understanding of the use of ‘Direct’.

Discussion
‘Direct’ is described as a feedback or communication that suggests a direction, and the obvious example is that of the use of standards. For example, the Quality Assurance Agency subjects benchmarks are standards which influence the activities of universities. ‘Direct’ is perhaps best summed up in the phrase ‘steering not rowing’ (Osborne & Gaebler, 1992), suggesting a steersman or guide but one who is not involved in the provision of the propulsive activity. In ROCA teaching ‘Direct’ was interpreted to mean guidance, advice or information-giving. It might direct to the meanings of regulations, the availability of best practice guidance or an explanation of how a process worked or what an instruction meant. It is up to the provider to implement this information.

The assumption of the research was that it would support the teaching definition and add detail to that definition. Our findings confirmed these meanings for ‘Direct’ but they added others, as can be seen from the table of detailed findings below.
### Table 1: Categories of ‘Direct’

| Connecting – | Connecting providers to information | External bodies’ guidance, good practice, National Care Standards, newsletters, Internet resources, practice frameworks, referring to professional adviser, Scottish Govt. Guidance and directions, wider legal framework |
| Explaining – | Explaining to providers, possibly interpreting | Explaining standards and methodology |
| Illustrating – | Using examples | Using examples from other providers or practice elsewhere, evidence-based studies, to suggest how an outcome might be achieved |
| Persuading | Identifying responsibilities | Outlining the responsibilities and role of the provider |
| Reassuring | Offering a green light | Confirming and reinforcing the means by which providers will meet outcomes. Considering their proposals and offering agreement |
| Revealing | The use of information and data revealed through the inspection | Using information generated by the inspection to cross check motivation and commitment |
| | | Revealing the unknown and the invisible – interviews reveal that not all staff are aware of the required guidance to be used in a day nursery; this contradicts the claim made by the provider |
| | | Revealing the organisational culture – potential of staff for change – challenging management to manage the culture |
| | | Information gained from triangulation to inform, reveal or contradict |
| Supporting | The ‘direction’ is designed to support the registered service | Enabling providers’ strengths through information, guidance on the methodology process, guidance to support understanding of regulatory responsibilities, procedures and the enforcement process. Reminding, easing administrative tasks by explaining what is required – reflecting the positive value of the registered person |

‘Direct’ Project, May 2009, John Brady
The results both confirmed and contradicted the research assumption. 'Direct' was used to give information and guidance but at the same time the information generated through the 'Detect' activities was used to inform, reveal or contradict claims made by the provider, either in documentation or at the inspection. Of course, this confused the boundaries of what was 'Direct' and what was 'Detect', but in our teaching we had already encountered suggestions from students that these were not separate processes. Indeed, the observations supported the view that the 'Direct' function was returned to again and again as more was revealed in the inspection.

This appears to conflict with the cybernetic model, but if, instead, we see the model as mini-spirals of 'Direct, Detect, Effect', then there is not a contradiction of the principle. Going back to the analogy of the steam governor, we can see that the cybernetic cycle may happen many times in as many minutes. Our interpretation of the model is possibly too static, but in transferring to a multi-spiral view we run the risk of students no longer seeing the principle of the model.

Conclusion
This exploratory research suggests that the use of 'Direct' in inspection is complex. Thus, in our teaching, 'Direct' has more often than not been interpreted as information-giving, as a function of assisting the regulated provider in understanding the purpose and scope of regulation. However, the research recorded instances where the information was used as part of the 'Detect and Effect' process in order to either contradict the events as seen by the provider or to provide a different view of the providers' organisational environment. It is important to note that in most instances where 'Direct' was used to contradict or reveal, the inspectors then took the opportunity to give further constructive guidance to the regulatee.

With the limited number of observations made it is not possible to extend the analysis without further observations of the use of 'Direct' in inspections. Nevertheless, the research has confirmed the usefulness of the cybernetic model and has provided a deeper understanding of how information-giving, advice and persuasion work within the inspection. We have created a typology (see table above) that is a potentially useful discussion tool for students in understanding the 'Direct, Detect, Effect' model and in developing our own understanding of the complexities of the inspection interaction.

The next step is to extend the number of observations, and hopefully the Care Commission will assist with this. A copy of this report will be provided to the Care Commission and the research will become the basis of a proposal to a regulatory governance conference (EPCR, Dublin, 2010).

Notes
1 The fellowship award also supported the development of a presentation to the Universities Council for Vocational Awards and a subsequent article to be published by UVAC: Brady, J. et al., 2009. Tensions on the front line: reflecting on work-based learning through binary discourse. Universities Vocational Awards Council.

References
Better Regulation Executive, 2006. Implementing Hampton: from enforcement to compliance. HMSO.


