

## **Civil Service vs. Public Sector?**

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### **1. A View from “Near Abroad”**

In Russia one hears the newly independent states that were once part of the former Soviet Union spoken of as “near abroad”. The phrase might also be used to characterise those parts of the public sector that lie beyond the civil service. They are not part of the civil service, but they are not distant from it either. Those of us who work in the “near abroad” of the public sector recognise—how could we not?—the huge and proper role of government, and therefore of the civil service, in determining what we may and may not do, what we must do, and how well we are funded. In many respects we are fortunate—unlike counterparts in certain other countries—in that we can take for granted that civil servants in the UK will act with propriety, and that we will not encounter either gross corruption or the demands of nepotists.

We are less sure that the civil service is well placed to tell us how to organise our primary activities. The largest, relatively autonomous public sector institutions provide highly complex and diverse services, in particular education and health care, to huge sections of the public. In these institutions there is a persistent sense that the government, and with it the civil service, regularly –if unintentionally—harm the work that has to be done by requiring that it be organised in ways that are often poorly chosen for the tasks at hand. This unease is often expressed piecemeal in grumbles about red tape or about excessive demands for recording and providing information that is poorly related to tasks; in resentment of change, of too much change, or of too rapid change; in comments on underfunding, or on terms and conditions of work. But for many who work in public sector institutions these are not the central concerns. The underlying worry is that government, acting through the civil service, too often imposes policies that damage or compromise the possibility of doing primary tasks well, and thereby the likelihood of delivering a good service to members of the public.

Of course, those who make the charge may be self-serving or reluctant to be held to account—at least this accusation is common enough, and I have often heard it made by those who defend government policies, and by civil servants. They suggest that the grumbles and the unease cloak nostalgic and illegitimate hankerings for a (perhaps mythical) world in which hospitals were run for the convenience of consultants, universities for the convenience of dons and schools for the convenience of teachers, and so on.

If this sort of self-interest were the sole explanation of persistent unease, it could be quickly dismissed. Since the public sector is funded by public money and delivers services to the public, accountability for the use of funds and for quality of provision is uncontroversial. But I do not think this is the typical reason, and it is certainly not a good reason, for misgivings where demands are poorly connected to, and sometimes destructive of, the work that actually has to be done in the various parts of the public sector. Chagrin about being held accountable by ill-designed methods, that in the worst cases damage the work that has to be done, is not a matter of resistance to being held to account. What is needed in the “near abroad” of the public sector is not removal of accountability, but a shift to more intelligent forms of accountability.

## **2. Managing or Holding to Account?**

The civil service—rightly in my view—takes management seriously. Its focus on delivery of services, on value for money and on communicating information to the public is not in itself controversial. Where the civil service manages delivery of services, a commitment to managing them well is important: here discussions of targets and effective and efficient delivery is in place. But where the civil service does not in fact manage or deliver services to the public, and the task of managing them falls on others, and the civil service’s task is to hold those others to account for their use of public funds and for the quality of the services they deliver.

In the corporate sector there is a clear understanding that management is not the same as accountability. First, management is downwards, but accountability is upwards. The CEO of a company manages the company and its employees, but is accountable upwards to the board and with them to shareholders (and sometimes to regulators: another topic). Second, management is first-order and focussed on performance of primary tasks,

but accountability is second-order and focused on judging (reports of) performance or non-performance of primary tasks. Management addresses primary tasks, in particular the delivery of products or services, and is typically done by setting targets that are relevant to the tasks to be achieved, and by rewarding good and penalising poor performance. Accountability is a matter of holding those who carry primary tasks to account by judging what has been done—or not done!—relying on independent auditors, inspectors, and examiners where required or relevant. Third, and consequently, management is prospective, but accountability is retrospective. Fourth, the sanctions used in managing and holding to account differ. Sanction for failure to manage performance well may include loss of employment and falling revenue. At a later stage when those who carried—or failed to carry—the primary tasks are held to account a second range of sanctions may follow: failure may lead to falling share prices, changes in the boardroom, even take-over or bankruptcy; success may lead to rising share prices, company growth (and personal rewards for managers).

In short, management in the private sector is indeed a matter of command and control, and comes in harder or softer versions; but accountability is a matter of corporate governance, and is not managerially structured. The structures needed for managerial grip are not the same as those needed to ensure accountability, and accountability is not achieved by imposing, a second layer of distance management.

Yet across the last twenty years the distinction between management and accountability has been increasingly blurred for those working in the public sector. The blurring is particularly evident in the big public sector institutions such as the NHS, schools and universities. All are assured that they must manage themselves, and that they are not managed from, but are rather accountable to, Whitehall. Yet the ways in which funding is provided, in which targets are set, in which information is required, in which performance is measured and monitored in abstraction from primary tasks, and sanctions are organised, often converge with and become indistinguishable from management from afar.

The big public sector institutions employ very many people and produce complex and differentiated ranges of services for large numbers of patients, pupils, students and other 'clients'. Many of their structures are complex, many of their tasks are long term and intricate, many of their objectives and outputs are incommensurable (there is no common 'unit of value', as there is in the corporate sector). The governance of these institutions is typically designed to take account of the long term

balancing of multiple tasks and the retention and motivation of highly specialised employees. Most of the workforce is not mainly engaged in administration or management, and must be protected from the excessive clerical and managerial demands that tend to proliferate when the aim is management at a distance. The systems needed to hold these institutions and those who run them to account need an informed and substantive focus on the tasks to be done. It cannot be done by concentrating on selected 'indicators' of performance that are devised primarily for managerial purposes.

Both health and education offer vivid—indeed notorious— examples of the ill effects of managing from afar rather than holding to account. For example, secondary school examinations have been distorted over many years by creating excessive incentives to ensure that more and more pupils obtain the magic 5 GCSE passes with grades of C or better. This creates pressing reasons to enter pupils for examination in the subjects in which they are most likely to get A to C grades. The bizarre, yet I think predictable, result of schools and pupils 'gaming' the system has been that while half of the age cohort now obtain the 5 desired passes, only a third obtain them in the three required subjects of English, Maths and Science. The A to C grades are easier to get in subjects that are judged less central—and that matter less to future employers. Here conflating management with accountability has distorted education.

Meanwhile—in other rooms in the same Department of State— somebody set a target for 50% of the age cohort to go to University, without apparently noting that two thirds of the age cohort do not reach a satisfactory standard in English, Maths and Science at age 16. At a later date— perhaps in yet another room in the same Department— the circle was squared by putting forward legislation that gives universities an additional regulator to ensure that they improve 'access' for underrepresented groups in order to achieve this target.<sup>1</sup> Nobody has yet explained to the Universities how they are to bring the approximately 16% of the age cohort who did not even get C's in the core subjects at GCSE to degree standard in *any* subject, traditional or modern, academic or vocational.<sup>2</sup>

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<sup>1</sup> The Regulator is the *Office of Fair Access* (OFFA), established under the *Higher Education Act 2004*.

<sup>2</sup> The received answer to those who voice this wonder is that it is not a problem since the target is for 50% to get there *by age thirty*—whether by endless retakes or by dropping standards remains unclear.

An equally well-known range of examples emanated from another Department of State that identified waiting times for non-urgent surgery as a key performance indicator for the NHS. Excessive stress on one output in a complex system led to inventive scheduling and recording of 'patient journeys', and to other 'unintended' consequences of institutions 'gaming' a system. Yet enthusiasm for distance management has not been extinguished by this experience. The same Department of State recently brought forward legislation to reorganise the management of all human tissues in ways that would have made the work of pathologists virtually impossible. Fortunately the *Human Tissues Act 2004* was massively altered during its passage through Parliament, but Act leaves a confusing and still indeterminate set of requirements for pathology services, and a daunting task for the *Human Tissues Authority* that is to sort matters out. In this case a massively disproportionate response to the careless and offensive (but not criminal) use of tissues at Alder Hey Hospital was taken as reason for detailed rewriting of the rule book in ways that would change the management of all pathology services. There was indeed good reason to legislate to prevent the too casual subsequent research use of the very small number of tissues lawfully removed *post mortem* under Coroner's authority: but this very special case did not provide a good starting point for devising very detailed rules for managing the custody and use of the vastly greater number of tissue specimens taken from the living for the care of the living.

### 3. Better Regulation?

It may be said—in fact, it is very often said—that such examples are either dated or (if recent) anomalous. Supposedly we are now well into an era of 'lighter touch' regulation, and these examples are remnants of a culture of control that was once needed—or at least thought to be needed—but is now on the way out. The glass of regulatory excess is supposedly nearly drained, although the pessimists in the public sector go on complaining irrelevantly that it is overflowing. I think the picture is one of sporadic change, but far from reassuring.

Although there may be some genuine shift in the degree to which schools are managed from afar—assuming that the *Education Bill 2005* is passed—there is a mixed picture of change in the degree to which government and civil service still seek to manage higher education from

afar. On the positive side, the realities of ‘hyper-regulation’<sup>3</sup> have at least been widely noted and documented across the last five years. For example, in 2000 the *Higher Education Funding Council for England* (HEFCE) published a report, *Better Accountability for Higher Education*<sup>4</sup>. It pointed to uncoordinated, duplicated and redundant arrangements, and ascribed this variously to the diversity of University governance and to lack of communication and trust between Universities and ‘stakeholders’. It also noted that the Higher Education sector was one of low risk, so hardly in need of hyper-regulation.

A similar picture emerges from the work of the *Better Regulation Task Force* (BRTF), established in 1997. BRTF bases its work on “five Principles of Good Regulation” (identified as Proportionality, Accountability, Consistency, Transparency, Targeting). It has published a number of trenchant reviews of the impact of excessive and intrusive regulation, including the encouragingly titled *Higher Education: Easing the Burden*,<sup>5</sup> to which Government responded positively.<sup>6</sup> Some welcome changes occurred. Nevertheless, the *Higher Education Act 2004* introduced two new regulators for Universities (the *Office of Fair Access* and the *Office of the Independent Adjudicator*). A small browse of the HEFCE website shows that control remains very detailed. Other examples would show a similarly mixed picture of recognition of the costs of inflating structures for accountability into forms of management from afar, coupled with continued reliance on that approach. Any doubts that managerialism rather than lighter touch approaches to accountability are still the dominant approaches to holding public sector institutions to account can be allayed by visiting the DfES and DoH websites (augmented by a brisk visit to the HEFCE website for those still unconvinced.).

At present there is a wide gap between acknowledgement—by Government, by BRTF, by civil servants— of the impact of hyper-regulation on the public sector, and the realities on the ground. Fortunately BRTF have not given up, and in March 2005 published a report to the Prime Minister, *Regulation - Less is More: Reducing Burdens, Improving Outcomes*, in which they recommend the Dutch

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<sup>3</sup> I adapt the phrase from the title of Michael Moran’s *The British Regulatory State: High Modernism and Hyper-innovation* Oxford University Press, 2003

<sup>4</sup> [http://www.hefce.ac.uk/Pubs/Hefce/2000/00\\_36.pdf](http://www.hefce.ac.uk/Pubs/Hefce/2000/00_36.pdf)

<sup>5</sup> *Higher Education: Easing the Burden*, BRTF, 2003.  
<http://www.brtf.gov.uk/reports/highedentry.asp>

<sup>6</sup> [http://www.brtf.gov.uk/responses\\_new/highered.asp](http://www.brtf.gov.uk/responses_new/highered.asp)

system of setting targets for the reduction of administrative burdens on business, and propose a 'one in, one out' process for controlling the tendency of regulation to accumulate. (The Irish used to use a 'one in, two out' – or perhaps 'two in, one out'! —system for reducing the number of licences to sell alcohol: perhaps worth a thought?). It would be encouraging to see this approach used in holding the public sector to account. Yet anybody who watches the massive quantity of new regulation and 'guidance' that is constantly issued, the minimal attention given to reducing existing requirements, and the minimal amount of consolidated legislation, knows that even where intentions are good, change is glacially slow.

#### 4. Some Sources of Hyper-Regulation

Many different views are offered about the emergence of the culture of hyper-regulation – or, as I have argued, of distance management masquerading as accountability—in the UK. One of its sources, it seems to me, may be a persistent confusion of management, accountability and regulation. This conflation is found even in the work of those most committed to improving the current situation. In its discussion of principles the BRTF starts from the thought that “Regulation may widely be defined as any government measure or intervention that seeks to change the behaviour of individuals or groups”.<sup>7</sup> By this generous—not to say sloppy—standard *everything* from central planning to reporting requirements, from legislation to guidance, from direct management to second-order systems of accountability, will count as regulation. Indeed, suitably used forms of encouragement and reliable patterns of corruption would also have to count as regulation! Choices of terminology may not matter much; but obliterating significant distinctions can matter a lot. In taking so generous a view of regulation, many issues and roles are blurred. In my view, a lot of the difficulties faced by the public sector arise from an assumption that since Government, and thereby the civil service, fund the public sector and initiate legislation, thereby writing the basic rules for the “near abroad” parts of the public sector, they must not only hold to account but control and manage its delivery of services.

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<sup>7</sup> <http://www.brtf.gov.uk/docs/pdf/principlesleaflet.pdf>

The experiment of managing the public sector from the centre has of course been tried in many states; its pure form is central planning. But this is not ostensibly what is aimed at in the UK. Ostensibly the civil service manages delivery of services only when it does so directly, or through an agency – for example the payment of benefits, issuing passports or driving licences. But in other areas public services are managed and delivered by other relatively autonomous institutions, such as NHS Trusts, Schools or Universities. There would be little disagreement that these public sector institutions should be accountable to government, and through them to the public, and that the civil service should play a crucial role in implementing accountability. But there would be a great deal of disagreement with the thought that this is best done by micro-management from afar. Intelligent accountability is not a matter of micro-management from afar, but of ensuring informed and independent scrutiny of performance.

## **5. Some Limits of Transparency**

The relationship of the executive—ministers and civil servants alike – to the more autonomous parts of the public sector has traditionally not been seen as managerial. Traditionally Governments and civil servants draft the rulebooks for the public sector, which are then amended and enacted by Parliament. Since they also provide funding, they subsequently hold to account both for expenditure of public funds and for compliance with the rulebook. But they have not traditionally managed in detail. It is not immediately obvious why they should wish to do so, or why they should not find it preferable to hold rigorously to account.

Indeed, the present system has created large difficulties for government and for the civil servants. By taking increasing control of the delivery of public services, governments come to see themselves and are seen by others as being accountable to the electorate for delivery of those services. A poor school cannot then be blamed on a dysfunctional LEA or an aberrant head teacher. Every failure in a school or hospital is liable to be seen as a case of government failure, of government missing its targets, or failing to improve public services. Both opposition parties and the media are quick to point the finger. Government is hoist by its own petard. It is now blamed for crowded waiting rooms, poor school



discipline (and meals!) and for delayed operations. The system may not be one of central planning, but it has become one in which failure *at any point* in the public services is blamed on government—although they ostensibly do not manage the services that failed. No wonder that those who take the blame seek to reduce the problem by constantly altering and adding to the ways in which they control those who actually deliver services. There is some irony in this outcome.

These changes have many sources, but one is evidently the increasing demand for transparency, which is intended to ensure that the public can judge the services, they receive. Transparency is now enshrined not merely in Freedom of Information legislation, but in the Nolan Principles for Conduct in Public life and in the BRTF's five principles of better regulation. It is said to be the key to making information, including information about quality of services delivered, about financial probity and about value for money available not only to those who understand the details, but to those who do not. Transparency is the antitheses of secrecy or obscurity, a matter of bringing information out into the open where anybody may judge it.

There are not many critics of transparency these days. I think this is a pity, since it is a defective ideal. Transparency requires information be made available, which may be better than secrecy in many cases. But it does not require that information be communicated in ways that are accessible to and useful for particular audiences. Good communication has to be audience sensitive: mere transparency can shirk this demand. Like the other one-sided communicative ideals of disclosure, dissemination and self-expression, transparency does not demand good or honest communication with specific audiences—or indeed with any audience. It is generally achieved by two methods. The first is to put government documents (often long and prolix; seldom thrilling) onto Departmental websites, which is useful for specialists. The second is to disseminate limited tabular information that looks disarmingly simple, yet cannot be properly interpreted without considerable expertise for the wider public.

Many of the managerial demands placed on the public sector have the secondary purpose of securing transparency by generating information that can be published for the public at large, or for groups of 'stakeholders'. 'Simplified' comparative information about the performance of hospitals, schools and universities is compiled and published in the tabular form, usually in the form of league tables.

Anybody can see who comes top or bottom, and the need for communicating information to wider audiences is supposedly satisfied.

However, not everybody can see behind these simplified tables and rankings, or interpret their significance. Evaluating the performance of a pupil or a school in the round is quite difficult. School reports on individual pupils and Inspectors' reports on schools are generally more useful for this task. Equally, judging the quality of a university course or of a hospital, or the performance of an individual doctor, nurse or student, is not best achieved by league tables. For league tables are not designed to reveal quality of performance, but at most to compare and rank quality of performances. In some cases even those who come top may be performing at a mediocre level; in others those who come bottom may be doing satisfactory work. All of this is well known, and those who deal with league tables are conscious of the pitfalls. However, the wider public with less time and less expertise may be misled.

Communication with the public and with 'stakeholders' is important in democracies, but it is very unlikely that transparency alone will ensure high quality communication. The limitations of the forms of quasi communication that are enough for transparency are to some extent recognised in the *Education Bill* now before Parliament. It sets out a simpler inspection regime to secure accountability, and relies on a 'single conversation' rather than a portfolio of initiatives to drive school improvement.<sup>8</sup> Conversation and narrative reports, written in plain English and directed to specific audiences for specific purposes, is better for honest communication both with 'stakeholders', and with the wider public. So there are signs of hope. But there are also grounds for worry: too often the word from Whitehall is that changes are now agreed, but the experience in the public sector is that they are not in sight.

The current emphasis on transparency creates an illusion that communication is a simple matter, even something that can be handed over to expert communication strategists with little experience of the content to be communicated. In fact it is always hard to communicate well about complex matters. In another paper in this volume, John Lloyd reminds us that providing information for the public at large used to be a task for the media:

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<sup>8</sup> The Bill reflects *A New Relationship with Schools*, published jointly by the Government and Ofsted in June 2004; see <http://www.ofsted.gov.uk/publications/>

In a genuinely free society, the media's civic role should rather be to assist the people of that society to understand all kinds of powers – state, corporate, associative, cultural, foreign – so they, the people, can hold them to account through their actions, chief among which must be voting and other participation in civic life.

Unfortunately large parts of the UK media have abandoned this role, and the contribution to democracy that it can make. Where the media do not report systematically to citizens, it is tempting for government to insist that the civil service take over the task. But if they are to take on this task, it cannot be reduced to transparency, any more than holding to account can be conflated with quasi-management from afar.