

**REVIEW OF PUBLIC  
ADMINISTRATION IN NORTHERN  
IRELAND**

**BRIEFING PAPER:  
ACCOUNTABILITY**

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## **Executive Summary**

1. The problem of accountability arises from a desire to control a process of delegation. Citizens delegate power and resources to government organisations and wish to *receive* an account from those to whom the power and resources are delegated and also *hold them to account*. A framework for looking at these problems is provided by principal-agent theory. In this framework, citizens are the principals and government organisations the agents.
2. A problem with delegation from principal to agent is that the agent generally has better information on the delegated task – as a by-product of actually doing it – than the principal. A danger is that the agent may use this informational advantage to pursue his or her own objectives at the expense of the principal.
3. In the public sector, with the citizen/taxpayer as the principal and the government as the agent, the problem for the citizen is to limit the scope for the government to pursue its own objectives at his or her expense. In a dictatorship the problem is largely unsolved, but with modern “good government” institutions the problem is much more under control.
4. The over-arching principal-agent delegation is between citizen and front-line government service supplier. If bad service is received there is likely to be a problem of accountability. However to get from citizen to front line there is generally a long chain of principal-agent relations, delegations, and accountability mechanisms. As a consequence, locating the particular problem with accountability may not be straightforward.
5. Accountability can be discussed with specific reference to all these delegations, and can also be approached from a range of viewpoints. This paper places the resulting multiplicity of accountabilities under some broad headings: political accountability, public accountability for service delivery, professional accountability, managerial accountability, legal accountability and accountability in local government and health.
6. Political accountability in the Assembly and local government begins with elections which delegate authority to members and who will be held to account in the next election. The Assembly delegates power to an executive comprising the First Minister and deputy First Minister and ministers. Ministers must make a pledge that requires a high standard of behaviour, and can be excluded from office on a cross-community basis for shortcomings in this respect but not for other failings. Ministers’ departments are scrutinised by Assembly Committees.
7. An important mechanism of accountability for the executive’s stewardship of resources is that of financial accountability, involving accounting officers, the Northern Ireland Comptroller and Auditor General and the Northern Ireland Public Accounts Committee. Where short-term political accountability conflicts with a need for a longer-term view, arm’s length organisations (Quangos) can be set up.
8. Public accountability for the delivery of services has traditionally been concerned with the appropriate stewardship of inputs, but more recently attention has extended towards a greater interest in outcomes. Outcomes, though often harder to measure, are directly relevant to what the principal is seeking to obtain.

9. Where outputs or outcomes are particularly difficult to judge, the public has often made a deal with professionals to accept the professionals' view of what is in the public interest. The danger is that professionals may abuse this trust in order to pursue their own objectives, so there is current interest in supplementing these mechanisms.
10. A series of managerial reforms in the 1980s and 1990s led to the formation of executive agencies in the public sector. Success has been mixed in an environment where ministerial accountability often dominates managerial accountability.
11. An important mechanism of legal accountability in the UK is judicial review. Judicial review tends to concentrate on the way decision makers have exercised their delegated power, rather than on the content of the decisions they have made, which is addressed by political accountability.
12. The *ultra vires* principle provides a basis for legal accountability. However, the "general competence" convention elsewhere in Western Europe provides greater opportunity for policy solutions to meet specific needs.
13. Local government accountability is to the local electorate and depends upon a good proportion of funding coming from this local electorate. In this respect, the mechanisms of local accountability in Northern Ireland can be seen to be better designed than the rest of the UK.
14. In the health service, there has been an over-reliance on professional accountability, and efforts have been made over the last twenty years to increase managerial and political accountability. In practice, it has been difficult to move away from professional accountability because of the difficult information and decision-making issues involved.

## WHAT IS ACCOUNTABILITY?

### The Nature of Accountability

In broad terms the issue of accountability arises as part of the process of delegation. There is a need for accountability when a *principal* seeks to get an *agent* to do something for him or her (Ross, 1973, Jensen and Meckling, 1976, Sappington, 1991). The principal gives the agent resources or delegates power for a purpose and wishes to constrain or incentivise the agent to provide value-for-money in the use of those resources or that power. The flow of resources from principal to agent therefore creates a desire in the principal for a flow of accountability in the opposite direction<sup>1</sup>.

Stewart (1984 and 1992) has made some important clarifications to the concept of accountability. He sees accountability as involving

giving an account for actions taken;

and

being held to account for those actions. (Stewart, 1992, p. 4)

Stewart's discussion fits into the principal-agent framework although he uses different terminology. In his discussion, the principal is "the one who holds to account" and the agent is the one who "accounts and is held to account".

"The relationship of accountability, involving both the account and the holding to account, can be analysed as a bond linking the one who accounts and is held to account, to the one who holds to account". (Stewart, 1984, p.16)

Stewart therefore stresses that accountability consists not just of the giving and receiving of information, although this is an important part, but also the action of holding to account. Similar thinking lies in the distinction that can sometimes be made between accountability and responsibility, where accountability is associated with giving an account and responsibility is associated with being blamed for failure. (Flinders *et al*, 1999).

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<sup>1</sup> Day and Klien (1987) provide an account of the historical development of the concept of accountability and Laughlin (1990) and Broadbent et al. (1996)) provide clear discussions of accountability set within the principal-agent framework

## **Issues in Accountability**

The need to obtain an account, and have means of holding the agent to account arises because the principal cannot be sure that the agent will act with the principal's interests at heart. Obtaining the desired actions from the agent, or, as it might be put, obtaining value for money from them, is unlikely to be straightforward. In particular it will be a problem if the agent is opportunistic (Williamson, 1975, p. 26). Two important forms of opportunism are *moral hazard* and *adverse selection*. Moral hazard arises for an agent if the principal has poor information on the effort the agent is making. The agent may then be tempted to shirk. Adverse selection applies if the principal has difficulty in judging how suitable the agent is for the task. Agents may then be tempted to pass themselves off as suitable when they are not.

Scope for the agent to behave opportunistically is provided by *information asymmetry* between the principal and agent. Information asymmetry arises because it is usually more costly for the principal to obtain information about the agent's performance or suitability than it is for the agent.

Michael Power (1997) sets out the principal-agent analysis of accountability in his discussion of the need for audit.

“First there must be a relation of accountability, i.e. the requirement for one party (the agent) to give an account of his actions to another party (the principal). Second, the relation of accountability must be complex such that principals are distant from the actions of agents and are unable to personally verify them. On this view audit is a form of checking which is demanded when agents expose principals to ‘moral hazards’ because they may act against the principals’ interests and to ‘information asymmetries’, because they know more than the principals.” (Power, 1997, p.5)

The transfer of resources from principal to agent motivates the desire to hear and control how those resources have been used that constitutes accountability. What methods are available for delivering it?

## **Approaches to Accountability**

Two differing but related approaches are those of *ex post* and *ex ante* accountability. Receiving an account will necessarily occur after the event, but control mechanisms

will usually need to be in place in advance. (Heald, 1983, p. 156, Laughlin, 1990, p. 96). However, in practice the distinction may not always be clear – the expectation of having to render an account ex post is likely to work to control behaviour ex ante. Stewart (1984) argues that there are a number dimensions to accountability that can be set out in a “ladder of accountability” running from accountability by standards to accountability by judgement.

- Accountability for probity and legality
- Process accountability
- Performance accountability
- Programme accountability
- Policy accountability (Stewart, 1984, pp. 17-18).

### **Accountability and the Public Sector**

Applying the principal-agent model to public sector accountability, it can be seen that the principals that supply resources are the taxpayers and the government is the agent. The principals require an account of the uses to which their taxes have been put and are able to exert a certain amount of control on the agents through elections<sup>2</sup>. For reasons of equity, the definition of the principal is generally broadened to that of the citizen because enfranchisement has made citizenship rather than taxpaying the relevant electoral definition<sup>3</sup>.

Within this broad principal-agent structure there is a series of subsidiary principal-agent problems. Thus, voters delegate decisions to the legislature, and the legislature delegates to party leaders who delegate to ministers. There is also a process of delegation from politicians to permanent officials, and within the bureaucracy there is also a process of delegation through the hierarchy, and also from departments to NDPBs.

From the above it can be seen that there is a wide range of delegations in the public sector and consequently a wide range of principal-agent relations and corresponding

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<sup>2</sup> Olson (1993) argues that because under democracy the people rule themselves, their governments, appointed and removed by competitive electoral processes, will cost less than autocracy.

forms of accountability<sup>4</sup>. The full chain of delegation from elector to front-line provider can often be very long. Because there is likelihood of attenuation of the principals' intentions at every stage along the chain, there is also a very real possibility that outcomes can be well away from what was intended. The creation of multi-organisational partnerships spending money arriving from multiple sources also adds complexity. The chain of accountability described above is therefore often in need of supplementation by shorter, more direct forms of accountability. For example, an NDPB could be subject not only to accountability via the Assembly and ministers, but also subject to direct accountability through, for example, holding an open general meeting.

In this paper we discuss political accountability, public accountability for the delivery of services, managerial accountability within the public sector, professional accountability and legal accountability.

## **POLITICAL ACCOUNTABILITY**

Political accountability in devolved government in Northern Ireland arises from delegation by the electorate to the Assembly and thence to the First Minister and Executive who, in turn, delegate to the relevant minister and permanent secretary and thence to the public servant. A similar process operates in relation to local government. Accountability mechanisms enable the people to gain information about and control those with delegated authority.

### **Accountability and the Assembly and Executive**

The public, as principals, delegate control to the Assembly using the electoral process. In turn, executive authority is devolved within the Assembly by elections for First Minister and Deputy First Minister who in turn determine the number and functions of ministers subject to a maximum of ten.<sup>5</sup> These Assembly delegations are subject

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<sup>3</sup> Kass (1990) places the concept of stewardship within a principal-agent framework by arguing that stewardship can be seen as acting as a good agent.

<sup>4</sup> For discussions of forms of accountability see Day and Klein (1987), Heald (1983) or Sinclair (1995).

<sup>5</sup> Northern Ireland Act (1998) III 16-17

to cross-community support. The First Minister, Deputy First Minister and ministers form the Executive Committee with responsibility for prioritising business, crosscutting issues and agreeing a budget “linked to policies and programmes, subject to approval by the Assembly, after scrutiny in Assembly Committees, on a cross community basis.”<sup>6</sup> A measure of accountability of Ministers for their conduct is supplied by a compulsory pledge, which includes a code of conduct requiring propriety, regularity and accountability for “stewardship of public funds and the extent to which key performance targets and objectives have been met”. (Northern Ireland Act (1998) Schedule 4)

Acting on a cross-community basis, the Assembly may exclude a minister from office for failure to obey the pledge or not being committed to non-violence, but not for other reasons, such as incompetence. (Northern Ireland Act (1998) 30-1, Wilford and Wilson, 2001, p. 39).

There is also a structure of Assembly Committees for each of the main executive functions, with Chairs and Deputy Chairs allocated proportionally by the d’Hondt system. The powers and functions of Committees are set out under the Northern Ireland Act (1998), citing the Belfast Agreement as follows.

“The Committees will have a scrutiny, policy development and consultation role with respect to the Department with which each is associated, and will have a role in initiation of legislation. They will have the power to:

- consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- call for persons and papers;
- initiate enquiries and make reports;
- consider and advise on matters brought to the Committee by its Minister.”

(Belfast Agreement)

Assembly Committees therefore provide a mechanism of accountability over the work of the Executive.

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<sup>6</sup> Belfast Agreement, Strand 1, 19-20

### **Accountability via the Accounting Officer**

An important route of accountability springs from receipt of resources from the Treasury and lies in the appointment of an Accounting Officer, or in local government a chief financial officer. By convention, the head of an organisation is appointed by the Treasury to be accounting officer. The accounting officer for the Office of the First Minister and Deputy First Minister (OFMDFM) has defined accountabilities for the OFMDFM budget and, like other departments, will be required to appear before the Northern Ireland Public Accounts Committee to account for their responsibilities<sup>7</sup>. Guidance for Accounting Officers is set out in *Government Accounting for Northern Ireland* GANI (1996) "The Responsibilities of an Accounting Officer". All Departments must have an accounting officer. Parts of the role of the accounting officer may be delegated to additional accounting officers, and departments will also appoint the chief executive of an agency, and the chief executive or senior official of an NDPB, as Accounting Officer. The role of the accounting officer is to ensure regularity, propriety and economy, efficiency and effectiveness in the affairs of the organisation.

The Northern Ireland Comptroller and Auditor General (NIC&AG) is responsible for audit of Assembly expenditure. In the case of NDPBs there is quite a wide variation in the extent to which income comes from public funds, and the NIC&AG although having wider powers than the Westminster C&AG does not have powers to follow public money "wherever it goes". (Dewar, 1997, p. 326, DFP, 2001, p.17). In such organisations access has historically been negotiated. The Sharman Report (2001) recommended that the C&AG should be appointed as auditor to all NDPBs and the government has accepted this case. (HM Treasury, 2002, p. 6). The Northern Ireland Assembly is currently considering the implications of the Sharman Report.

In England there has been recent conflict between ministers and accounting officers. Although accounting officers take their responsibilities for the correct spending of public money seriously – and particularly the ritualistic ceremonies of Permanent Secretary humiliation which occur when they give evidence to the Public Accounts Committee – we should also recognise that this responsibility exists within a cultural context of a civil service that is designed, as the original Armstrong Memorandum

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<sup>7</sup> See also (Sharman, 2001, p. 19).

and its subsequently amended versions all demonstrate, to serve the elected government of the day. Civil service neutrality is defined as enthusiastically serving whichever government the electorate chooses to put into office, and not behaving, or being seen to behave, in such a way that a civil servant would be unacceptable to a successor government.

In this culture accounting officer memoranda, declaring that certain ministerial decisions do not provide good value for money, are rare beasts. Examples include the Permanent Secretary of the Overseas Development Administration declaring that expenditure on the Pergau dam, undertaken on money voted for overseas aid, did not provide value for money for that purpose, although it may have had beneficial consequences for various interests in the dam constructing industry.

If the accounting officer, under his or her obligations to examine regularity, propriety and economy, efficiency and effectiveness of their organisation's activities finds that a project does not reach the required standards then they will require a direction from the minister in order to proceed (GANI, 1996, Ch 6, annex 1 paras 13 and 14, and Cabinet Office, 2000, pp.32-33). *Government Accounting in Northern Ireland* (GANI, 1996) sets out the actions an accounting officer should take where the minister's plans conflict with the accounting officer's responsibilities.

### **Ministerial accountability, efficiency and effectiveness**

There is a longstanding problem in a politically-driven bureaucracy that there will inevitably be conflicts between the long-term and short-term objectives of ministers. They may want an efficient postal service which invests in new technology to improve its longer term efficiency, but in the short term keeping charges to the public low may seem very attractive, and using the surplus produced by the enterprise rather than raising taxes less 'stealthily' even more attractive. In order to get round this problem, there is a tradition of establishing organisations which are at arm's length from ministerial responsibility. Such organisations work to a statutory remit set by ministers, with defined points at which direction may be set, but with firewalls to prevent such interventions at other times. This is a longstanding feature of public

administration and is dealt with more fully in the briefing paper on semi-state organisations<sup>8</sup>.

These bodies represent an acknowledgement that it is sometimes necessary, in order to further efficiency and effectiveness, to reduce the sway of ministerial responsibility and accountability. Accountability of elected politicians through the electoral process is substituted by accountability to a minister or appointing a body of people with special expertise or special personal qualities who bring ‘independent’ judgement.

Finally, there is an active debate across Europe about accountability to citizens. This takes the form of new democratic processes – including citizens’ juries, citizens’ panels and consultative mechanisms. There has been substantial progress in implementing these reforms in the UK, especially at the local level. However there is also a debate about different forms of electoral systems, designed to meet local circumstances – of which Northern Ireland is one example. There may be a case for considering alternative ways of constructing elected bodies. Elected bodies are typically composed of individuals elected to represent a geographical area. But an alternative model has developed in Hong Kong. There, members of the Legislative Council are elected partly on the basis of geographic constituencies and partly on the basis of functional constituencies reflecting different business and community sectors. This may enable a more effective representation of, and accountability to, the various interests in the community, bringing some of the benefits of an appointed system without compromising the democratic principle.

## **PUBLIC ACCOUNTABILITY FOR THE DELIVERY OF SERVICES**

When resources are transferred to an organisation, there is concern to see that these resources are not wasted. Traditionally this concern has focussed on inputs because of government’s interest in regularity and probity. There may also be concern that the recipients use the “right” techniques of production (where production is seen in the most general sense of producing something that is wanted).

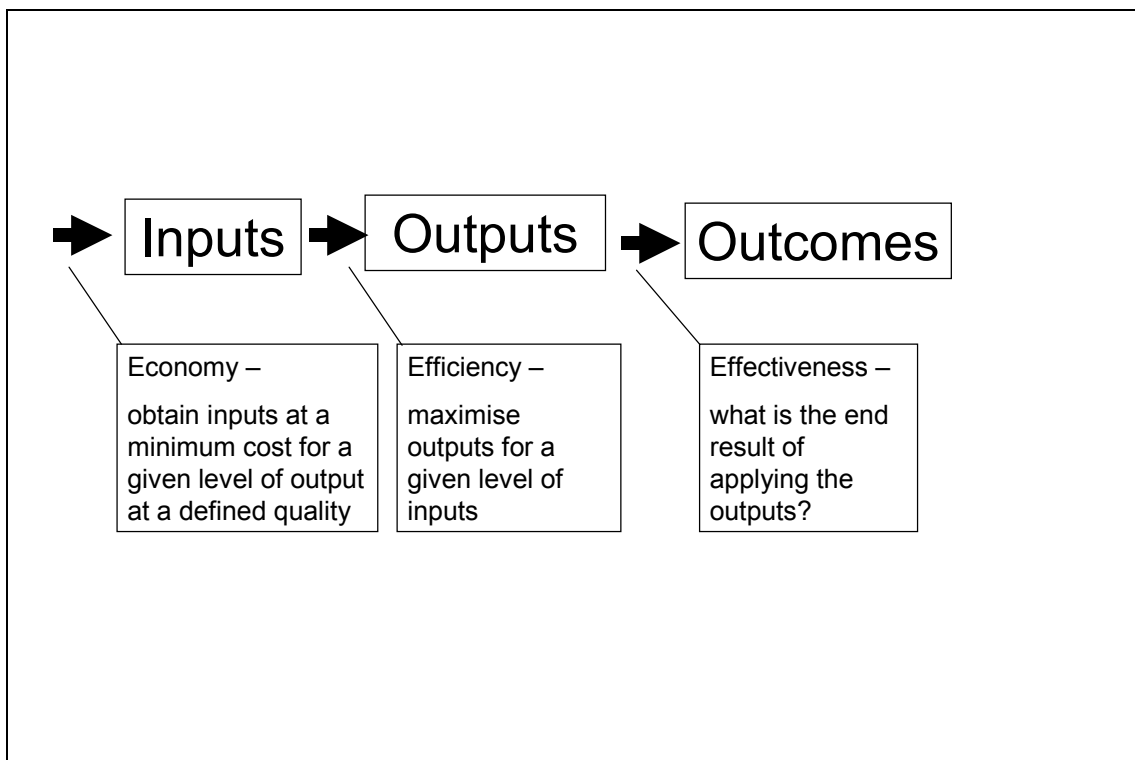
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<sup>8</sup> Watt and Delay (2000, pp. 14-15) discuss such arguments for the arm’s length operation of the Audit Commission, and Watt (2001, pp. 30-31) discusses such arguments for the National Museums and Galleries of Wales.

Figure 1 shows the overall production process in a schematic form, where inputs are transformed into outputs and these outputs lead to outcomes. Increasingly there has been a realisation that fundamentally it is the *outcome* that the principal seeks, and, further that the outcome is the best that is achievable given the resources.

Because inputs and processes are often easier to observe and monitor than outputs and outcomes, the control side of accountability tends to focus on these. But inputs, processes and even outputs are only a means to an end in arriving at the *outcome* the principal wants, and therefore it is likely to be attractive for the principal to delegate all of these except the last to the agent<sup>9</sup>. This is the basis of the thinking that leads to output accountability.

**Figure 1: Economy, efficiency and effectiveness relationships**



Mechanisms for securing output accountability include quinquennial reviews, public service agreements (PSAs) and service delivery agreements, the use of performance indicators and service review processes such as best value or market testing. In England the motivation for the best value regime in local government derives from central government providing 75% of local authorities' revenue expenditure. The

<sup>9</sup> Occasionally, the inputs, processes or outputs are seen as an end in themselves, and if this is indeed the case, rather than being the result of confusion by the principal, the arguments used here will not apply.

logic for best value may be weaker in Northern Ireland, where a much higher proportion of local authority finance is raised locally.

A problem with output accountability is the general difficulty of measuring outcomes, and the possible operation of Goodhart's Law (Goodhart, 1975) whereby "any observed statistical regularity will tend to collapse once pressure is placed upon it for control purposes." In other words, there is a danger that outcomes may be "faked".

The inspection of *processes* under best value represents another method of accountability. An issue here, which does not arise under outcome accountability, is the question of whether the inspectors or those actually carrying out the process know better which process is best. If the inspectors succeed in imposing less efficient processes, accusations of "micro-management" are likely to arise.

## **PROFESSIONAL ACCOUNTABILITY**

Principals who employ agents who are professionals confront difficult problems in obtaining true information about the need for and quality of the services provided. Principals are usually not themselves knowledgeable enough to make a good assessment of the services of professionals. One solution is to accept the professionals' invitation to trust them.

"The professions 'strike a bargain with society' in which they exchange competence and integrity against the trust of client and community, relative freedom from lay supervision and interference, protection against unqualified competition as well as substantial remuneration and higher social status."

(Rueschemeyer, 1983, p 41)

This self-regulation model, as Rueschemeyer points out, has 'coincided to a large extent with the interpretations advanced by these privileged occupations themselves', which 'stirred doubts' about its validity – doubts shared in George Bernard Shaw's line that 'all professions are conspiracies against the laity' (Shaw, 1906, Act 1; Corfield, 1995).

Economists have also suspected the self-regulation model, arguing that the main effects of professional bodies are to restrict entry into the profession and consequently

drive up members' remuneration (Friedman and Kuznets, 1945; Friedman, 1962; Kessel, 1958).

Although cynicism about professionals' motivation is likely to be appropriate, other solutions to professional accountability, involving, for instance, extensive checking mechanisms may be too costly, so the bargain discussed above is often accepted by principals and for many years there has been an unspoken agreement that certain occupational groups will be self regulating and distant from the responsibility and accountability of elected politicians. The system applies to doctors and lawyers, but also many other groups who have emerged in the services developed in the post-war welfare state.

The NHS has a series of Professions Allied to Medicine (PAMs) which include skills which might not be thought to be quite so complex, such as chiropody. This last example illustrates the fact that occupational groups seek professional status because it gives them some defence against politicians' views about what might be in the public interest. The question of who should define the public interest – elected politicians or self regulating professionals – has been a major feature of concern over the last 50 years, with a world of professional autonomy and self regulation giving way to a significant extent to ministerial dominance. This is clearly the case with many public service professionals, notably teachers, social workers, probation officers, and others.

The medical profession, because of its high legitimacy in the eyes of the public, has been much more successful in retaining its autonomy. Heald (1983, p.158) remarks

“The British Medical association (BMA) has consistently disputed the role of outsiders in the management of the NHS. Indeed the organisational structure of the NHS, from its origins in 1947 through the reorganisations of 1974 and 1982, owes much to the effective veto of the BMA over its integration into the broader framework of local government.”

Recently the medical professions hold over autonomy is likely to have been weakened by the twin disasters of the events at the Bristol children's heart surgery unit and the long, uninterrupted career of Harold Shipman as a medically qualified mass murderer.

## **MANAGERIAL ACCOUNTABILITY**

The conventions that govern the relationship between elected politicians and public officials were established before the days when the state became a major service delivery agent. While it was possible to create public corporations or executive non-departmental public bodies whose staff were not civil servants, some services remained under direct government control, and continued to do so right through the period when privatisation was politically favoured. The analysis provided to the new Thatcher government in 1979 led to a situation where senior civil servants concentrated on what they saw as their core task – advising ministers – but neglected the task of leading and managing the public services for which they were responsible.

This analysis led to a number of reforms designed to reinforce managerial responsibility and accountability for performance. The first stage of these reforms in the early 1980s, the Financial Management Initiative, focused on the construction of a devolved budgeting system – no mean feat in a highly centralised system where responsibility for service delivery and for control of resources typically combined only in the person at the top of the organisation.

The next steps in the reform process were to establish a new governmental form, the executive agency, to be used for service delivery aspects of government. What was different about executive agencies was that ministers agreed to a self-denying ordinance, keeping them from detailed intervention into the workings of the agency, contenting themselves with setting the strategic policy and resources framework for the agency, and holding the agency chief executive to account for the achievement of the objectives set out in the framework.

This notionally simple idea proved attractive to those who looked for improvements in efficiency and effectiveness, and particularly quality of service, but unfortunately was too counter-cultural to work – or rather, the next steps initiative sought to change the culture, but succeeded in doing so only at the margins. The notion of ministerial responsibility and accountability was too powerful a driver of behaviour to be held back. The most notable example of the failure of the model to stick is the dispute

between the then Home Secretary Michael Howard, and Derek Lewis, Director General of the Prison Service. Ministerial action in sacking a governor was clearly not permitted in the framework document, but Michael Howard did it anyway, and retained the support of Parliament for his actions.

Currently, the executive agency model is being quietly dismantled. Some would argue that it served a purpose in causing an improvement in the managerial skills and competencies available within the civil service, and such structural inflexibilities now seem out of place in a government devoted to 'joining up'. Others see this as the core culture reverting to type after a diversion into difficult territory. They would question whether the kind of leadership necessary to bring about and sustain major service improvement can be provided within a system where ministerial accountability so dominates managerial accountability.

## **LEGAL ACCOUNTABILITY**

One of the key differences between the public administration systems of the UK and most other nations in western Europe is that the latter have a tradition of administrative law. This difference derives from a fundamental divergence of views about the nature of 'the state'. The UK model is based on the sovereignty of the monarchy and an unwritten constitution with strong common law rights for individuals. This enables a degree of flexibility in approach and the capacity of legal interpretations and judgements to change in accordance with the context. Nations elsewhere in Western Europe typically have a written constitution, which gives specific powers and duties to the state and to entities within the state (e.g. local and regional governments) (see, for example, Siedentop 2000).

The issue of accountability arises when individuals or organisations wish to mount a legal challenge to the actions of a public body. Legal challenge in the UK is exercised by judicial review, which can be taken on the grounds of illegality, irrationality or procedural impropriety. The challenge is to the basis or way in which ministers, councillors, quango board members or public officials exercise discretion – it is not about the content of that decision (unless it is proved to be illegal) (Stone 1995). The courts have been active in hearing judicial review cases in recent decades,

leading to the notion that public policy is becoming ‘juridified’ – i.e. shaped by the anticipation or reality of legal judgement. In Western European states with a written constitution and a public law tradition, the rules guiding the actions of the executive and the administration are laid down and the exercise of these rules may be challenged through administrative or constitutional courts. This provides a stronger method of redress for citizens, but one that is also less flexible to changing circumstances (since the process of constitutional change is generally lengthy and complex). The development of European-wide institutions opens up new routes for aggrieved citizens, for example in relation to human rights issues.

It is important to comment on the *ultra vires* principle, which is central to decision-making by public bodies in the UK. This requires actions to be justified with reference to a legal power or duty. Actions outwith this are *ultra vires*. The contrast with much of Western Europe is stark. There, the constitutional allocation of competencies to public bodies promotes the alternative principle that any action in pursuit of the organisation’s purpose is legal except those that are specifically prohibited to it or are the responsibility of another public body. The general competence power has long been debated in the context of UK local government, and in England and Wales the Local Government Act 2000 has moved some way towards this through the ‘power of well-being’ (s2) – although this is subject to a number of constraints (Leigh 2000). Nevertheless it established the principle that general competence may be applicable to sub-national levels of government.

This question links to that of the legal position of local government. The Council of Europe’s Charter of Local Self-Government provides a benchmark for strong local government, and one of its provisions relates to the constitutional position of local government. Written constitutions typically allocate authority to levels of government, and thus those forms of government have a constitutional protection. This is not the case in the UK, where government at national and in some cases regional level is able to reshape the local government map. A recent analysis of the Charter indicated three main areas where the position of local government in England was weak, namely:

1. the absence of constitutional or legal foundation
2. over-detailed legislation and central guidance

3. excessive supervision and regulation by central government  
(Commission on Local Governance 2002, appx 3).

There are also a number of administrative mechanisms open to the citizen, principally the various Ombudsmen and the audit service. Again, these enable investigation and challenge of the process of decision-making and administration but not the content of the decision – which is reserved to the process of political administration.

Finally there may be statutory rights for citizens to access information or to attend meetings. In general, these are stronger in relation to local government than UK or devolved government, with quangos and partnerships having an even more limited regime.

Overall, Flinders (2001) argues that the lack of a public law tradition in the UK has placed too great a burden on mechanisms of political accountability (e.g. the Parliamentary or Assembly process). He argues for a greater role for legal accountability:

“Judicial mechanisms are powerful because they can elucidate wider notions of accountability by empowering the public with formal rights and clarifying procedures.... (T)he courts can deliver explanatory, informative and amendatory accountability; they can compel public bodies to perform certain duties, release information or refrain from acting in a certain way.” (Flinders 2001: 55)

However the implications of his analysis go back to the fundamental debate about the nature of the state in the UK context.

## **ACCOUNTABILITY IN LOCAL GOVERNMENT AND HEALTH**

There are particular issues of accountability that come into play in local government and health, and which are different from the ministerial model discussed above.

### **Local Government**

In local government, the doctrine of *ultra vires* means that elected politicians are not in the same position with regard to their officers as are ministers and civil servants.

The constraints upon them are many, their powers are few and such statutory powers as are awarded to local government are sometimes allocated to officers. The convention exists that officers serve the council as a whole, and not just the political administration, and this creates a different kind of relationship from that within UK government or the devolved bodies. Managerial leadership has been much more a feature of local government than of central government. It has arisen in part because of the operation of powerful professional groups, but compounded with the weaknesses of political leadership where it has been difficult to recruit people to political office and the poor financial rewards for occupying political office. In England, however, a new remuneration regime and substantial investment in member development is designed to stimulate a more active local political leadership.

The statutory duties of certain local government officers inevitably impact on their accountability to elected members, as they serve an agenda set at central government level as well as their local authority. There is a certain amount of professional autonomy linked to this. Outside Northern Ireland, for example, this is particularly the case in education and social services. In England the central determination of policy and service frameworks and aggressive forms of inspection have increased centralisation.

An important debate about local government accountability revolves around the “balance of finance” between central and local sources in funding local government (DTLR, 2001). In England central government supplies 75% of funding for local government revenue expenditure, and there is therefore a strong motivation for a line of accountability through the centre, although the efficacy of such arrangements is open to doubt. At the same time local authorities are more or less 100% accountable for any changes in their expenditure, so it is also argued that on account of this full accountability at the margin there is no need to cap their expenditure (Watt and Fender, 1999, Fender and Watt, 2002).

### **Health Service Accountability**

In the health service, professional autonomy has been the order of the day. While in theory the Minister for Health, Social Services and Public Safety is accountable to the Assembly for its operation, in practice the dominant professionals have significant

power and autonomy, whether as general practitioners where they retain the status of independent contractors and thus cannot be managerially driven, or as organised members of the various Royal Colleges, which serve professional interests and are intimately involved in the process of policy making. Efforts have been made over the last twenty years to bring the health service more under the control of elected ministers, not least through the attempt to establish and empower general managers who would be capable at each level of the health service of bringing doctors into the management process, ensuring that they take responsibility for the quality of service and the use of resources. But it is an unfinished agenda, and holding doctors fully to account for their actions is still not in place, not least because as conflicts between politicians, managers and doctors occur, the public make it clear that they prefer doctors to either of the other two sets of actors.

## **KEY ISSUES FOR THE REVIEW**

A number of issues arise from this briefing paper:

1. Systems of accountability need to address outputs and outcomes as well as inputs. Input accountability is to do with the proper use of resources. But that for outputs and outcomes is about the delivery of the community's preferences as mediated by the political system.
2. There are new models for developing stronger form of accountability to citizens and specific groupings within the community.
3. The accountability of arm's length bodies is problematic and requires careful consideration. An important principle is to design multiple but complementary accountability systems that are not purely top-down.
4. There are a number of significant public service professions with their own professional accountability structures. There needs to be a match between these and other accountability systems to which they are subject.
5. Attempts to impose excessive regulation and inspection systems can prove counterproductive due to organisational resistance and the transaction costs involved in responding to external demands for information.

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