

The governance gap: quangos and accountability

The numbers of quangos delivering services locally have increased rapidly in the last ten years. Local control of services has been replaced by central appointment, combined with stricter rules on performance indicators and audit. However, research by John Plummer finds that there is great variety and inconsistency in the ways in which quangos are governed, and a remarkable lack of clarity about how they should be governed and to whom they are accountable. A survey of, and interviews with, four types of locally-based quangos: TECs, LECs, Housing Associations and NHS Trusts found:

- f** **Quangos view accountability largely in terms of obligations to Government rather than to customers or citizens.**
- f** **There are inexplicable inconsistencies in governance. Directors of TECs, LECs and Housing Associations bear personal fiduciary liability. Board members of NHS Trusts do not. Board members of TECs, LECs and Housing Associations receive no payments. All directors of NHS Trusts are paid. 90% of TEC and LEC boards and 100% of Housing Association boards are non-executives. Only 55% of NHS Trust boards are non-executives.**
- f** **The recruitment of TEC, LEC and Housing Association board members is informal, without job specifications or public advertising. Appointment to NHS Trust boards is controlled by the Secretary of State.**
- f** **Approaches to membership, as one form of accountability, vary widely and are developed with little guidance from funding authorities.**
- f** **The language of independence contrasts awkwardly with minutely detailed control mechanisms.**
- f** **There is unevenness about the use of regulatory authorities. The function is either held by the funding authority or absent.**
- f** **There is no consistent approach to the use of Ombudsmen to adjudicate upon complaints.**

The growth of quangos

The last ten years have seen a very rapid growth in the numbers of quangos delivering services locally. Estimates of the numbers vary, as do the definitions of what constitutes a quango. For example the NHS Trusts are not included in the Government's list which totals 1,389 quangos. In contrast, the 'Democratic Audit' from Charter 88 claims that there are 5,521 quangos which are responsible for almost every aspect of life in Britain, spending £46 billion of taxpayers' money.

What is not in doubt is that a very substantial part of the public sector is now run by quangos, appointed either directly or indirectly by central government. The growth in their number has been driven by government perceptions of the inadequacies of local authority provision and by a belief that the importation of private sector practices would sharply improve performance. Local control was replaced by central appointment combined with stricter rules on performance indicators and audit.

But while the reforms were being implemented much less attention was given to how quangos should be accountable and to whom. Governance structures were created without clear and consistent principles or methods.

Several years on, the results of this oversight are becoming apparent. Poll evidence shows that there is deep public unease about the legitimacy of many of the quangos, both amongst the general public and amongst those working in them (although there is also relatively little support for local authority provision).

Focus of the research

The study focussed on this 'governance gap' and was based on extensive interviews and questionnaires with representative organisations from four types of quangos, all of which have local responsibilities:

- the Training & Enterprise Councils (TECs) which are responsible for purchasing vocational training and for enterprise development in England and Wales;
- the Local Enterprise Companies (LECs), the wider ranging equivalent of the TECs in Scotland;
- the Housing Associations which provide and manage social housing;
- the NHS Trusts which provide services to the internal market of the NHS.

These organisation types are very different with wide variations of scale and style within each category. They have different histories and were shaped by different Government Departments. The relationships with funding Departments and with suppliers, purchasers or customers differ. Nevertheless, they share some significant common features:

- contracting with a Government Department or intermediate body to deliver a range of services largely specified by that Department;
- receiving and managing substantial Government funds as either purchasers or providers of services;
- the Government has a strategic interest in the outcomes of the organisations and in their governance and accountability.

The key finding of the research was that there is great variety and inconsistency in the ways in which quangos are governed, and a remarkable lack of clarity about how they should be governed and to whom they are accountable.

Most view their accountability entirely in terms of obligations to Whitehall and Westminster rather than to their users or local population. For this government must bear some responsibility: the research clearly shows that the quangos have not been provided with clear and workable frameworks of accountability.

Accountability

The quangos' answers to most questions about accountability focus first upon 'upline' accountability to the funding and/ or regulatory authority and thence to the Public Accounts Committee and Parliament. The funding authorities usually impose a minimum duty in terms of accountability to the wider public - to publish an annual report or hold one open meeting. Otherwise initiatives are left to the TEC, LEC, Housing Association or NHS Trust. Despite the lack of clear guidelines some are implementing imaginative measures, such as the "Accountability through Openness" approach developed by the LECs within the Highlands and Islands Enterprise network. This involves public disclosure of a mass of information about LEC activities, interests, grants and investments other than those which are of a commercially confidential nature. But most do not provide adequate information to those in their area.

A very frequent complaint by TECs and (to a lesser extent) LECs and Housing Associations is the excessively onerous upline reporting requirements and the multiplicity of separate audits which are not related to performance or outcomes. These are seen as unnecessary hangovers of older bureaucratic models of control

Much of the language used to describe the organisations, especially in respect of the LECs, is more akin to that expected between a parent company and a wholly owned subsidiary, than to that of an independent private organisation.

The key line of accountability is to funders, whether public or private. Some housing associations, for example, said that they needed to 'be more accountable to private funders than to the community we serve'. Many felt that the relationship with the Housing Corporation was often dictatorial. Similarly many working in the TECs and LECs feel the strong hand of the Treasury and Department.

It was particularly striking that in answering questions about local links, networks and organisations with which they sought to communicate, not one of the respondents made a single reference to any of the other types of organisation being considered by the study. In other words there is little evidence of healthy overlaps and common strategies between the various arms of the new public sector.

Governance procedures

There are wide, and generally inexplicable discrepancies in governance procedures. For example the directors of TECs, LECs and Housing Associations bear personal fiduciary liability; the members of the boards of NHS Trusts do not. The non-executive directors of TECs, LECs and Housing Associations receive no payments. The chairman and all directors of NHS Trusts are paid. Between 90-100% of TEC and LEC boards and 100% of Housing Association boards are made up of non-executives while only 55% of NHS Trust boards are non-executives.

The non-executive directors of TEC and LEC boards are appointed by the members of the company but drawn from categories determined by the funding authority. There is no direct control over the appointment of non-executive directors of Housing Associations. 55% of NHS Trust board members are appointed by the Secretary of State or under delegated powers.

At the very basic level there is a lack of clarity about the powers of boards and/or the membership to secure fundamental changes, such as altering the

Memorandum and Articles of Association or Governing Instrument, with respondents giving answers at variance with contractual or statutory stipulations.

Recruiting board members

There are wide inconsistencies in relation to recruitment. NHS Trust board members are recruited in a process controlled by the Secretary of State, who directly appoints the Chairman. Others are appointed by the regional health authority, and from a relevant medical school. By contrast, in principle, TEC boards can control their own appointment of new board members (although most in fact assume that the Secretary of State plays a key role). The principles governing appointment of non-executive board members also vary widely, with a heavy stress on private sector backgrounds for the TECs and no guidelines laid down for NHS Trusts.

TECs and LECs reported only informal approaches to recruiting new non-executive directors. 14% of Housing Associations reported using press advertisements to attract potential candidates. This is not relevant to NHS Trusts as all non-executives are externally appointed. Most induction training programmes for new board members are informal and conducted locally.

Membership

There is wide variation on attitudes to membership. 26% of TECs and 36% of LECs have some form of membership arrangement. For the majority, the only members of the company are the members of the board. 62% of Housing Associations have a form of membership in addition to membership of the board. Such membership schemes as there are range from exclusive arrangements for customers who gain privileged access to services or discounted prices, to open membership for any interested individuals and organisations. Housing associations emphasise that tenants or prospective tenants will derive no benefits from membership.

Independence

Degrees of independence seem to bear no relation to any underlying rationale. The boards of TECs and LECs may appoint a chief executive under a process involving the funding authority and requiring approval. The boards of Housing Associations are not normally so fettered, but the funding authority has an effective veto. The boards of NHS Trusts may appoint under criteria laid down by the funding authority.

One test of independence is to assess the

consequences of the withdrawal of support of the funding and/or regulatory authority.

- A TEC or LEC would continue as a company limited by guarantee, but cease to control assets and not be allowed to trade as a TEC or LEC.
- A Housing Association would cease to exist and have its assets transferred to another at the direction of the regulatory authority.
- A NHS Trust would be absorbed.

Regulation

There is no regulatory body for the TECs and LECs. The main instrument is the contract with the funding authority. The 'support and control' exercised over the LECs indicate a quasi-regulatory authority. The Housing Associations operate under statutory controls and territorial regulatory authorities which are also the funding authorities. The NHS Trusts are subject to statutory controls and direct Departmental instruction.

Complaints

There is no consistent approach to ombudsmen to cope with complaints. There are Ombudsmen to investigate complaints by Housing Association tenants and NHS patients. There is no independent Commissioner or Ombudsman to investigate complaints against TECs and LECs.

Conclusions

The research has shown clearly that in terms of accountability these locally-based quangos are operating with ill-defined, contradictory and opaque principles. Procedures vary widely without obvious reason. The current arrangements for governance are confused and contradictory.

There is a case for policy-makers to think afresh about remaking the structures of accountability: combining democratic legitimation, with consistent approaches to ombudsmen and regulation, with clear obligations on the provision of information.

There is a range of options which could be considered. What is appropriate for a very local housing association may not be appropriate for a large purchasing body like a TEC. But where there are differences the principles need to be clear. This is particularly so when so many non-executives are being brought into powerful roles within the public sector.

About the study

This research is based on questionnaires completed by TECs, LECs, Housing Associations and NHS Trusts. Interviews were conducted to supplement questionnaires, especially in respect of the NHS Trusts where the response rate was very low. In addition, data was obtained and interviews conducted with funding Government Departments, intermediate bodies and professional associations.

Further information

The full report from this study, *The Governance Gap: Quangos and accountability* is published by the Local Government Chronicle in a joint series with the Joseph Rowntree Foundation, priced £8.50.

A summary of the report is published by Demos, and is available, priced £2.00 from Demos, 9 Bridewell Place, London EC4V 6AP, tel 071-353-4479, Fax 071-353-4481.

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