

Chapter 6

Common Themes

356. This chapter identifies and discusses a number of points emerging from the individual chapters which have force in more than one of the areas covered in this study.

The Voluntary Principle

357. We considered in some detail the role of voluntary board members, and we have already commented on the valuable work done, and the high level of commitment shown, by many thousands of committed volunteers.

Payments and expenses

358. We received a certain amount of evidence arguing that there should be provision for payment of board members, either by way of a salary or honorarium, or of fixed rate allowances, or of loss of earnings payments, perhaps on a basis similar to that which operates for members of juries.

359. In our first report we considered the issue of payment to members of boards of non-departmental public bodies (quangos). These board members are appointed by Ministers; 37% of members are paid, 63% are not. We did not disagree with the principle of payment, but observed that 'levels of pay should be strictly controlled and consistent with the responsibilities involved'. We also noted that 'we accept that on some boards, particularly in the NHS, these responsibilities are now much heavier than they may have been in the recent past', and that 'many people give valuable service either without recompense or at a much lower rate of pay than their skills would attract elsewhere'.

360. Against this background, and bearing in mind the wholly voluntary nature of the boards in the sectors considered in this study, we asked a great many of our witnesses about the question of pay. The virtually unanimous advice we received was that payment of salaries or allowances would undermine the voluntary principle, which was seen as crucial to the success and credibility of most of these bodies. It was also suggested that many existing board members would be unwilling to give the same commitment to a paid post as they were prepared to give to voluntary community service, particularly as any salary or allowance was unlikely to match that of a non-executive director in a commercial organisation of equivalent size, while some indicated that they would feel offended by the implication that they needed a salary to motivate them.

361. In respect of local public spending bodies, our conclusions are that the case for continuing to rely on the principle of voluntary service is overwhelming, and that individual bodies should not be given discretion to offer payment.

362. We felt the position was less clear-cut as regards compensation for loss of earnings or benefits. It can be argued with some plausibility that such compensation might widen the potential membership of boards by making it easier for people to serve who could not secure time off without loss of earnings. However, we have reached the view that this should not be introduced at this stage. A distinction can be made between compulsory jury service at fixed times and on a continuing basis, and voluntary membership of bodies which have considerable scope for flexibility over their meeting arrangements both for main boards and sub-committees. There would also be disadvantages in creating what might be awkward distinctions between those members who were in effect being compensated for attendance and those who were not. A retired person, for example, might have a lower annual income than someone who was receiving loss of earnings compensation. We are influenced in our conclusion by the absence of any evidence that there is significant difficulty in finding people to serve on boards, but we recognise that this issue may have to be kept under review in the various sectors.

363. However, we strongly support provision for the payment of actual out-of-pocket travel and subsistence claims. While we recognise that many board members do not claim these, we consider it important that no moral pressure should be put on other members not to do so. We also believe that the scope of eligible expenses should always be widely drawn to include, for example, extra expense incurred for child care and additional travel costs incurred by disabled people and that regulators should make this clear. Such an approach would help to widen the range of people who could undertake service on voluntary boards.

R44. The principle of unpaid voluntary service by board members of local public spending bodies should be retained, but the scope of eligibility for out of pocket expenses should be widely drawn.

Personal liability

364. Many witnesses and correspondents, particularly those who were members of governing bodies of further education colleges and grant-maintained schools, raised with us the question of their personal liability for losses incurred by their institutions, including claims for damages. This is particularly relevant in the event of the institution becoming insolvent. The legal firm Eversheds told us that, “members of college governing bodies do not enjoy the right to claim relief from the Court against personal liability in circumstances analogous to those set out in section 61 of the Trustee Act 1925 and section 727 of the Companies Act 1985”. This means that governors of these bodies are in a position of greater liability than others performing similar functions.

365. Although DfEE has issued advice, intended to be reassuring, on this issue, the consensus of opinion appears to be that while board members are unlikely to incur personal financial liabilities if they act honestly, reasonably, in good faith and without negligence, the possibility of incurring such liabilities cannot be excluded.

366. The government has recently altered its position on this issue in respect of board members of non-departmental public bodies by authorising the indemnification of board members in the following terms:

“The Government has indicated that an individual Board member who has acted honestly, reasonably, in good faith and without negligence will not have to meet out of his own personal resources any personal civil liability which is incurred in execution or purported execution of his Board function.” (Treasury advice to Accounting Officers)

Although this is not explicitly stated, we understand that in practice this indemnity extends to cover reasonable legal costs incurred.

367. We consider it essential that sponsoring departments, funding bodies, or regulatory bodies, as appropriate, should ensure at the very least both that the local bodies operating in their areas of responsibility have the powers to take insurance for board members to provide equivalent comfort, and that such insurance charges are classed as legitimate expenditure for funding purposes. We understand that one reason why this problem does not arise within housing associations, where risk management is an important issue, is that the National Federation of Housing Associations already subscribes to an insurance policy which covers all NFHA member associations, and that some of the larger associations obtain their own insurance to top-up the level of cover.

368. We note that within government itself a policy of non-insurance generally applies, so that any liabilities would be met from government funds, except where taking out insurance offers better value for money. We would, of course, have no objection if government chose to provide or arrange for indemnities itself. But there may well be a case for a broader examination of the state of the law in this area as it affects governing bodies with varying legal status.

369. We have been told by Professor Nicholas Deakin, who chairs the Commission on the Future of the Voluntary Sector — an independent non-statutory body — that one of the issues raised with it is that the personal liability of trustees of charitable bodies in particular is unduly onerous in some respects, and this view has been confirmed to us by others. If this is so, it is a matter of some concern and should be addressed by government alongside the other questions raised here. As a number of different departments and sectors are involved, a useful first step might be to commission a comprehensive paper setting out the existing position.

370. We note too that in response to an earlier recommendation of ours the government in its consultation paper *Spending Public Money: Governance and Audit Issues*¹, has committed itself to reviewing the question of surcharge in local government in the light of experience of current cases. This is another area where the question of personal liability arises.

R45. The government should seek to ensure broad consistency and adequate protection in respect of the personal liability of all appointed or elected members, directors, trustees or others responsible for bodies providing public services.

Local Accountability

371. A consistent theme across the sectors we have been studying is the question of local accountability. We have established that in many of the new bodies providing local services accountability, in the strict sense of the term, runs exclusively upwards towards government and Parliament.

372. We have noted the strenuous efforts made in the different sectors to supplement upward accountability with various consultative measures, including nomination to boards of councillors and others who represent a range of community interests, the creation of advisory bodies of various kinds, the organisation of consultation meetings and forums, and the publication of newsletters and discussion papers. We believe that such measures are effective only if the body concerned takes steps to ensure that it acts in response to the results of such consultations.

373. We also note here, generally, that regulators and funders need to have regard for the costs to the regulated organisations of the provision of information. In particular, other than in the most exceptional circumstances regulators should not change their information requirements without giving at least 15 months notice. It is very inconvenient and expensive for smaller organisations, particularly with computer based systems, to collect information which is not built into their systems before the start of the financial year and therefore has to be manually extracted. We feel there would be some advantage in regulators and funders agreeing with the bodies in their field some kind of mutual charter or service agreement under which the regulator just as much as the regulated agrees to meet certain performance standards in addition to giving undertakings about notice periods over the collection of information. Such standards could include, for example, timescales for the provision of responses, and for the publication of aggregated data gathered from individual returns.

R46. Regulators and funders should seek to reduce detailed monitoring and collection of information; to make fewer changes in their requirements and to give adequate notice of such changes; and to place more reliance on audit reports.

374. One of the weaknesses of arrangements which provide central finance for local bodies is their tendency to be driven into wholly centralised control by the important need to safeguard public money. That in turn weakens local responsibility and accountability. Giving local bodies the freedom to run themselves, and within reasonable limits to exercise their own good judgement, is an essential component of local accountability. That is why we have stressed the need to set strong frameworks for accountability, and clear guidelines on regularity and propriety, policed through wide-ranging audit, combined with a readiness to intervene swiftly when serious problems actually emerge.

375. We are also very much aware of the concerns which arise about the relationships between these bodies and elected authorities. To some extent these relationships are still in a state of flux following the recent changes, and new ways of working have not yet been fully developed. Yet, even though it may no longer be directly running the services, the views of the local authority, as the only local elected body, must be of significance.

376. In this context we were interested in the initiative taken by the London Borough of Bromley (and also we understand by Kirklees Metropolitan District) to establish on a pilot basis a Public Affairs Forum. This forum is asked to choose a topic 'which affects significantly the responsibilities of the Council and at least one other...Agency which provides a public service', to hold public meetings to pursue this topic with the other agencies involved, and to produce reports with recommendations directed towards both the council and the agencies concerned.

377. It may be that initiatives of this kind offer a good example of ways in which the local authority, in the government endorsed role of enabler rather than direct deliverer of many local services, can promote increased local accountability for many of these bodies. Such initiatives, carried out in public and on a basis of voluntary co-operation, may well have greater credibility than exercises mounted by individual organisations. This is because, while the results are not binding on the bodies concerned, the exercise will not be wholly managed by the body whose activities are being considered, while the local authority is in a position to bring together various interests and to consider the broad local picture. We cannot emphasise too strongly that such schemes can only work if carried out in a constructive spirit on the part of all concerned, if the local authority avoids the type of hostile approach to local public spending bodies which has marred relations in the past, and if the bodies themselves are less secretive than they have sometimes been.

R47. The government should consider promoting and studying pilot schemes, involving local authorities and others, designed to increase the local accountability of non-elected bodies providing local public services.

Appointments and terms of office

378. In chapter one we noted that as a general principle we expect the bodies covered in this study to adopt the standard of best practice on board appointments which we set out in our first report, subject always to the need, particularly in the case of smaller organisations, to make the recruitment effort proportionate to their size.

379. In this context we note that the government has followed up the observation in our first report that local authorities should be consulted in identifying the field of candidates for appointment by Ministers to local bodies and that this has been incorporated in the guidance issued by the Commissioner for Public Appointments. We believe that the bodies covered in this study should also make a practice of seeking the views of local authorities in appropriate cases.

380. We have noted that appointments to boards should be made on merit, subject to the need for boards to include a balance of skills and backgrounds. As a general principle, we consider that it is better for organisations themselves to consider the mix of skills, backgrounds and interests which they need on the board, rather than to have externally imposed restrictions covering the professions from which members are to be drawn. Ministers and regulatory bodies should keep in mind the need to review restrictions and categories from time to time. We recognise that organisations may need guidance, and sometimes prompting, in this respect and that in some situations specific requirements may be unavoidable.

381. One area where we have identified variations of practice in the different sectors, which do not appear to be justified by different operational needs, is that of terms of office. We believe that all members of boards, whether elected or appointed, should be appointed for fixed terms, and that such terms should not normally exceed four years. We consider it important that regular opportunities should occur for boards collectively, and members individually, to review their requirements and commitment respectively. We commend the widespread practice, which has now been adopted for Ministerial appointments by the Public Appointments Commissioner, to make re-appointment for a third term the exception rather than the rule and for such appointments to be subject to real scrutiny, including the consideration of alternative candidates. We also note that many bodies have a compulsory retirement age for Board members, generally at 70. However we do not suggest imposing an automatic bar on members being reappointed or re-elected for a third term or at any stage. If organisations themselves wish to set a maximum number of terms which a board member can serve, or a maximum age limit, they should be free to do so. An important consideration for any organisation taking decisions on these matters will always be the availability of suitable alternative candidates.

R48. Terms of office, which should be renewable, should not normally exceed four years, and reappointment for third or subsequent terms should be the exception rather than the rule.

Independent review

382. We have noted at various points in the report the advantages of having independent mechanisms to deal with disputes. There are two categories.

383. The first is adjudication on complaints made by customers, users, or potential users. We note that in most areas the regulators or the bodies themselves make provision for independent adjudication in such cases, normally after avenues for complaint within the body itself have been exhausted. There is also generally a requirement to publicise appeal or complaint procedures.

384. We consider that the provision of independent adjudication of customer complaints is now fully established as normal good practice, and that the procedure has to be combined with a statement, publicly available, of the service standards which the user can expect from the body concerned, and against which failure to perform can be measured.

R49. Where mechanisms for external adjudication on customer complaints do not exist, or do not incorporate basic requirements of publicity and access, they should be introduced or improved.

385. The second category is adjudication on matters within the institution itself, involving disputes between staff and management, between senior staff and the board, or within the board itself.

386. We have commented in chapter one about the importance of providing procedures giving adequate routes of action for staff who seek to expose malpractice, and protection for such individuals from reprisals.