

The Accountability Debate: Next Steps Agencies

Research Paper 97/4

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This Paper looks at the background to the creation of Next Steps Agencies in the civil service and the response of the Treasury and Civil Service Select Committee to the development of the initiative. The Paper also examines the mechanics of Next Steps, such as the Framework Agreements, and the treatment of Parliamentary Questions, before examining the debate on the accountability of Next Steps Agencies to Parliament. This Paper replaces Background Paper 239, *Next Steps: Executive Agencies*.

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Summary

The hiving off of areas of Civil Service work into separate boards or agencies was originally recommended by the 1968 Fulton Report. Real change came with *Improving Management in Government: The Next Steps*, which was published in February 1988 (the Ibbes report), which recommended the creation of agencies to 'carry out the executive functions of Government within a policy and resources framework set up by a department' (para 19). If the main agency programme is completed at the end of 1997, three quarters of Civil Service staff will be working for agencies.

The rapid pace of change has brought a number of issues into focus, and one of the most pressing has been accountability to Parliament. The Treasury and Civil Service Committee and, subsequently the Public Service Committee, have monitored the development of Next Steps and commented on the implications for Parliamentary accountability since its inception. The Government response to the Public Service Committee Report, given in November 1996, restates its traditional view that Ministerial accountability is not diluted by the operation of Next Steps Agencies. The debate about the need or otherwise for direct accountability of Next Steps chief executives to Select Committees for matters delegated to them in the Framework Document shows no sign of abating.

Current thinking on the doctrine of ministerial responsibility, a related topic, is examined in Research Paper 97/6 *The Accountability Debate: ministerial responsibility*. A related Research Paper 97/5 *The Accountability Debate: QPM and Code of Conduct* may also be consulted.

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I Next Steps Agencies

A. Background

The 1968 Fulton Report on the civil service¹ examined the structure of Government departments, concluding that the work of departments could be organised to enable responsibility and authority to be more clearly defined:

145. To function efficiently large organisations including government departments, need a structure in which units and individual members have authority that is clearly defined and responsibilities for which they can be held accountable. There should be recognised methods of assessing their success in achieving specified objectives.

146. The organisation of a government department today usually defines with great clarity the area of a civil servant's responsibility; his position within his hierarchy is also clearly established. But it is not easy in the Civil Service clearly and distinctly to allocate to individuals or units the authority to take decisions. There are two reasons for this. Decisions often have to be referred to a higher level than their intrinsic difficulty or apparent importance merits; this is because they involve the responsibility of the Minister to Parliament and may be questioned there. At the same time, many problems overlap departments, they often involve wide consultations at many different levels both between Departments and with a variety of interests outside the Service. Decisions therefore are frequently collective decisions achieved through a sequence of committees - culminating, if need be, in the collective responsibility of the Cabinet.

147. For these reasons clear delegation of authority is particularly difficult in the Civil Service. This has led well-informed observers including some who have given evidence to us to conclude that large-scale executive operations cannot be effectively run by government departments, and that they should be "hived off" wherever possible to independent boards. We discussed this suggestion in the concluding section of this chapter. We believe however that the work of departments can be so organised as to enable responsibility and authority to be defined and allocated more clearly than they often are at present. Individuals and units could then be called to account for performance which is measured as objectively as possible. In our view this is true in different ways of many sides of a department's work. We consider this principle of organisation to be a necessary condition for achieving maximum departmental efficiency and for enabling men and women to get the greatest satisfaction from their work.

¹ Cmnd 3638

It considered in some detail the concept of 'hiving off', based, to some extent, on the Swedish model, recommending the examination of the merits of major change:

THE DELEGATION OF RESPONSIBILITY TO AUTONOMOUS PUBLIC BOARDS

188. We return now to the question referred to in paragraph 145, whether there are areas of Civil Service work that should be "hived off" from the central government machine and entrusted to autonomous public boards or corporations. It has been put to us that accountable management is most effectively introduced when an activity is separately established outside any government department, and that this solution should be adopted for many executive activities, especially the provision of services to the community. These boards or corporations would be wholly responsible in their own fields within the powers delegated to them. Although they would be outside the day-to-day control of Ministers and the scrutiny of Parliament, Ministers would retain powers to give them directions when necessary. There are a number of commercial enterprises within the public sector that are already run on this principle, and it is also shortly to be applied to part of the Civil Service by "hiving off" the Post Office. There are also non-commercial activities in the public sector that are similarly organised, for example, the Atomic Energy Authority.

189. We have seen such a system operating in Sweden where the principle of "hiving off" is much more widely applied than has so far been attempted here. In Sweden central departments deal in the main with policy-making; they are quite small and are predominantly staffed by younger men. The task of managing and operating policies is hived off to autonomous agencies, whose senior staff are mainly older men of mature experience. This system is used not only for activities of a commercial kind, but also for public services in social fields. We were much impressed by it. On the other hand, we are aware that in the United States the application of the "hiving-off" principle as evidenced in the work of the independent regulatory commissions has attracted a good deal of criticism.

190. Much new policy is a development of that which already exists and springs from practical experience in its operation. Any complete separation of policy-making from execution could therefore be harmful. However this does not appear to happen in Sweden and we see no reason why the risk should not be provided against. There is indeed a wide variety of activities to which it might be able to apply the principle of "hiving off". They range from the work of the Royal Mint and air traffic control to parts of the social service. We have not been able to make the detailed study which would be needed to identify particular cases; but we see no reason to believe that the dividing line between activities for which are directly responsible, and those for which they are not, is necessarily drawn in the right place today. The creation of further autonomous bodies and the drawing of the line between them and central government, would raise parliamentary and constitutional issues, especially if they affected the answerability for

sensitive matters such as the social and education services. These issues and the related questions of machinery of government are, beyond our terms of reference. We think however that the possibility of a considerable extension of "hiving off" should be examined, and we therefore recommend an early and thorough review of the whole question.

191. Meanwhile, we believe that the other recommendations in this Chapter should make it possible to gain some of the benefits that could arise from "hiving off", even where activities and services remain the direct responsibility of Ministers, by making it possible to allocate responsibility and authority more clearly. In this connection, we attach particular importance to our proposals:-

- (a) to distinguish those within departments whose primary responsibility is planning for the future, from those whose main concern is the operation of existing policies or the provision of services;
- (b) to establish in departments form of organisation and principles of accountable management, by which individuals and can be held responsible for objectively measured performance.

The post-Fulton history of 'hiving off' appears to be one of piecemeal change involving reorganisation within departments rather than the creation of autonomous boards. The 1977 Expenditure Committee² was not enthusiastic about 'hiving off', considering that it was only viable in limited areas of Government, and that "hiving off necessarily involves a diminution in the area of ministerial control".³ John Garrett, who had been a member of a consultancy team which prepared research for the Fulton Committee, noted ten years after Fulton that publicity about quangos had damaged proposals for 'hiving off'.⁴

On the questions of hiving off functions of government to bodies outside departments and of creating accountable units within them, the Civil Service produced a variety of responses in the ten years after Fulton. Most of the developments were very modest and few of them went far in the directions proposed by Fulton. Hiving off had the attraction to Ministers of appearing to reduce the number of civil servants, always a sensitive issue. The creation of the Manpower Services Commission, for example, appeared to reduce the Civil Service by some 18,000 posts and obscured its growth elsewhere. Some functions of central government were placed in such agencies as the Civil Aviation Authority, the Health and Safety Commission and the Advisory, Conciliation and Arbitration Service. On the other hand, the Prices and Incomes Board and the Industrial Reconstruction

² HC 535 *The Civil Service* 1976/77

³ para 91

⁴ *Managing the Civil Service*, 1980 pp.69-70. See also Leo Pliatsky in *Public Administration* 1992, 'Quango and Agencies', where he notes the similarities between agencies and quangos.

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Corporation were abolished, many think mistakenly. The CSD told the Expenditure Committee that extensive consideration had been given to hiving off. The idea was found to have limited application because there were few commercial or self-financing activities in central government and in other areas the requirements of public financial control limited managerial independence. There were difficulties in removing from Ministerial responsibility work which had a high policy content or significant discretionary authority in relation to individual citizens.

Hiving off was strongly opposed by the Civil Service clerical and executive unions, on the grounds of its adverse effect on staff morale. They said to the Expenditure Committee that the threat of hiving off caused feelings of insecurity in the staff concerned and the action itself caused dislocation, and, most important, the loss of career opportunities. Promotion prospects were invariably poorer in a small hived-off body than in a large department. Even the Manpower Services Commission, employing 18,000, could not provide the promotion and development structure of its parent department (Employment). Staff in it regarded the withdrawal of their Civil Service status as an act of bad faith since they had joined the Service as a career (they regained their Civil Service status in 1975).

Apart from the creation of 'agencies', a number of new government functions were given to hived-off organizations which in former times would probably have been taken on by departments, e.g. the Countryside Commission and the Equal Opportunities Commission. The failure to persevere with hiving off was, however, probably due more to a change in political attitudes than to any intrinsic difficulty in constructing them. After 1969 more and more criticism became heard of the growth, and the lack of public accountability of 'quasi-autonomous non-governmental organizations', Quangos, of which about two thousand appear to exist. These are public bodies, usually carrying out functions under legislation, usually in receipt of public funds and invariably outside direct Parliamentary scrutiny. From the middle 1970s MPs frequently complained about the proliferation of these bodies. The tide of Parliamentary opinion had swung away from the emphasis on managerial efficiency which hiving off was supposed to bring and towards an emphasis on surveillance and scrutiny.

Mrs Thatcher came to power in 1979 with three major policies for the civil service: to cut service manpower, to attack 'waste' (following Leslie Chapman's campaign in the 1970s) and to inject business management principles into public departments.

One of Mrs Thatcher's first acts was to appoint Sir Derek Rayner from Marks and Spencer to advise on the promotion of efficiency and the elimination of waste in

Government departments. The Rayner scrutinies⁵ led to the Financial Management Initiative, itself a product of Michael Heseltine's MINIS⁶ at the DoE. Full accounts of the FMI policy are contained in an NAO Report in 1986⁷ and the PAC's follow-up Report.⁸ A summary is provided by Robert Pyper:⁹

There was no FMI blueprint, to be imposed on all departments of state. Instead, departments were encouraged to develop their own FMI, within a broad framework established by the Treasury and the Cabinet Office (the imprint of Rayner could be discerned in this approach, embodying as it does a concern for decentralisation and departmental 'ownership' of the initiative). Each department developed its own FMI vocabulary, working arrangements and culture. Viewed generally, the common characteristics of the departmental FMIs were as follows:

- MINIS-style management information systems for senior civil servants and ministers.
- Financial information systems designed to allow ministers, senior civil servants and line managers to differentiate between programme expenditure (i.e. spending on services, policies) and administrative expenditure.
- Devolved budgeting, achieved through the setting up of cost centres and the identification of accountable line managers with considerable delegated authority over budgets.
- Rational budgeting techniques, which allow fundamental questions to be raised about the basic principles underpinning spending priorities.
- Value for money testing on a regular basis.
- Performance indicators and output measures, designed to evaluate relative success in achieving specific objectives.

It now seems clear that, although it rolled on into the restructured civil service of the 1990s (it had been designed as just that type of rolling programme which would probably develop in different ways and at different rates in the various departments), the early phase of the FMI was something of a disappointment to the government. The adoption of rational budgetary systems was problematic (Whitehall was not unique in encountering practical difficulties with such schemes!), devolved budgets were introduced patchily, theoretical and practical problems were encountered with performance measurement.

Observers had different views about the causes of these problems. For some, parts of the FMI, like other elements of the new managerialism, were simply irrelevant to the challenges of management in government but were being wielded by a government keen to cut 'bureaucracy' rather than

⁵ These were searching studies of individual areas of Civil Service activities which led to the Financial Management Initiative [FMI] -: *Efficiency and Effectiveness in the Civil Service* Cmnd 8616 (1982)

⁶ MINIS was a management information system geared towards providing ministers and civil servants with detailed information about the cost and effectiveness of departmental programmes

⁷ HC 588 1985/86

⁸ 13th Report of 1986/87 HC 61. See *The Treasury and Whitehall; the planning control of public expenditure 1976-93*, by Colin Thain and Maurice Wright for further background

⁹ *The British Civil Service*, 1995, pp63-64

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modernise the civil service (Ponting, 1989: 69). Others, while not denying the negative impact of the Thatcher Government's confrontational style, attributed the lacklustre results to the mode of managing the initiative and to the 'impoverished concept of management' (as a discipline with limited application and relevance in the civil service) which permeates Whitehall (Metcalf and Richards, 1990).

A full history of the Civil Service since 1979 is beyond the scope of this Paper but it is worth noting the comments of Geoffrey Fry that 'at the end of the second Thatcher Administration it was still the case that the 'old Civil Service' survived, and.. "it remained to be seen whether or not the Conservative Government had sufficient political enthusiasm to move to the next stage which would be to establish something akin to a Swedish-style division between policy Ministries and administrative boards".¹⁰

B. The Ibbs Report and Next Steps

Sir Derek Rayner was succeeded as head of the Efficiency Unit in 1983 by Sir Robin Ibbs. He presented Mrs Thatcher with a report entitled "Improving Management in Government. The Next Steps" just before the 1987 General Election. Professor Peter Hennessy has noted the political sensitivity of the report and its subsequent dilution:¹¹

By May 1987 the report was in the hands of Mrs Thatcher. It is easy to see why she ordered it to be kept secret. An election was imminent and, in so many words, it spelled out how little her much-vaunted Whitehall revolution (itself a prominent feature in the 1987 election manifesto) had achieved in eight years. And its recommendations were scarcely less palatable. *The Next Steps* proposed fundamental change on two levels:

- a real devolution of power over budgets, manpower, pay, hiring and firing to executive agencies in areas of activity embracing the 95 per cent of the Civil Service involved in the delivery of services as opposed to advising ministers or policy;
- a change in the British constitution, by law if necessary, to quash the fiction that ministers can be genuinely responsible for *everything* done by officials in their name.

The report's selling-point was the relief its implementation would bring to overloaded ministers burdened by the tasks the British system of government imposes on them to the point where they are incapable of managing their departments in anything but the most nominal way. The salesmanship failed. The Ibbs report was sat upon for months and then diluted liberally.

When it appeared it was instantly clear that Treasury power was intact. The Ibbs revolution of 1986 had failed to undermine the Lloyd-George/Warren Fisher revolution of 1920. The centre had not yielded one ounce of real power to the periphery. One suspects that Mrs Thatcher,

¹⁰ G.Fry, *Policy and Management in the British Civil Service*, (1995) p98

¹¹ *Whitehall* 1989, pp.620-21

under whom the Treasury had enjoyed a purple patch of imperial power, did not want it to.

Her announcement in the Commons of the Government's response to *The Next Steps* on 18 February 1988, and the press conference given immediately afterwards by Richard Luce, Minister for the Civil Service, and Sir Robin Butler the new Head of the Home Civil Service, made it plain that constitutional changes in ministerial responsibility were out as were any attempts to end Treasury control over budgets, manpower and national pay bargaining. Furthermore, the initial list of candidates for executive agency treatment left the big tax-raising and benefit-paying empires intact, though there were a few substantial chunks of work included, most notably the Employment Service, HMSO, and the Driver and Vehicle Licensing Centre in Swansea. A Treasury lifer, the formidable Peter Kemp, was transferred to the Cabinet Office to become project manager.

Nigel Lawson, a former Chancellor, has recorded in his memoirs Ministerial opposition to the Ibbs Report in:¹²

With this background, I was inevitably suspicious when, towards the end of 1987, I and other Cabinet colleagues were informed by Number 10, out of the blue, of a new Ibbs initiative, which apparently had Margaret's enthusiastic support. It seems that in May of that year, the Efficiency Unit had submitted to her a report entitled *Improving Management in Government - The Next Steps*, the main burden of which was a recommendation that the executive functions of Government should be hived off into separate executive agencies, to be run like businesses by chief executives, some of them appointed from outside the Civil Service.

It was clear that Ibbs had not addressed either of the two principal problems involved in a change of this kind, however sensible the concept may have been. The first was the question of parliamentary accountability. Members of Parliament would not take kindly to the idea of a Minister being able to shrug off a constituent's complaint as being nothing to do with him, since the wrong suffered by the constituent had been inflicted by an autonomous executive agency, whose head was, according to the original Ibbs blueprint, effectively accountable to no-one.

But even when this was solved there remained the second problem, that of maintaining effective control of the agencies' expenditure, in which Ibbs showed no interest. Having persuaded Margaret that this had to be addressed, a long battle ensued, resulting in a lengthy written concordat negotiated by Peter Middleton on behalf of the Treasury and Robin Butler on behalf of Number 10.

This achieved two things. First, an understanding that agency status would always be seen as a second best to privatization, which would have to be explored first. Second, that the chief executive of the agency, and his 'board' would be set stiff financial targets which would have to be agreed with the Treasury in the first place and monitored by the Treasury thereafter. This agreement made the proposal acceptable, and the public interest was further secured by the appointment of a senior Treasury official, Peter

¹² *The view from No. 11*, 1992, pp391-393

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Kemp, as the manager of the 'Next Steps' project, with the rank of Second Permanent Secretary.

Kemp was an unusual official, an accountant by training who had joined the Treasury from the private sector. He was to do a remarkable job. By 1991 he had created fifty-one free-standing executive agencies covering 200,000 Civil Servants, or one third of the entire Civil Service. Only the Foreign Office escaped his attentions altogether. An enthusiast for the project, Kemp set himself the aim of converting half the Civil Service into agencies by June 1993, and three quarters of it by the mid 1990s. I myself, early on, volunteered three of my outlying Departments, the Stationery Office (HMSO), the Royal Mint and the Central Office of Information, as executive agencies.

I did not, however, support Kemp's desire to convert the Inland Revenue and the Customs and Excise into agencies. These politically sensitive Departments, with a small but important policy role, had long enjoyed a high degree of autonomy from political control so far as their executive functions were concerned, and converting them into agencies would have created no discernible advantage. Moreover, the only way in which it could have been achieved would have been to transfer their policy role to the Treasury, leaving them as purely tax collecting agencies. This was something to which the Chairmen of the two Revenue Departments were implacably opposed, arguing with some plausibility that policy advice was improved if it was informed by practical experience on the ground.

Agency status has undoubtedly reversed some of the negative effects on Civil Service morale of the economies of the early 1980s, by giving the staff a sense of ownership. But most of the chief executives are still drawn from the Civil Service and the agencies inevitably lack the ultimate sanction of financial failure. The main practical advantage I see is that by creating accounts, boards of directors and saleable assets, future privatization may prove less difficult.

The official history of Next Steps¹³ presented Next Steps as a natural development from FMI:

The Agency concept was attractively straightforward. The underlying principle, of a 'bargain' between the Minister and the Chief Executive, with benefits for both parties as well as the customer, the taxpayer and staff, was readily understood. It also seemed to follow on naturally from previous initiatives, such as those stemming from the Fulton report, and the more recent FMI. Agencies were the logical next step in the trend from a monolithic, centrally controlled Civil Service to a more federal, varied structure.

Like the best tunes, the idea seemed familiar on first hearing. At the same time, it offered a genuinely fresh and imaginative approach for those delivering services. The role of the silent and often apparently invisible majority of civil servants seemed at last to have been recognised and, unlike previous reforms, it therefore seemed likely to be driven 'bottom up' rather than imposed 'top down'.

¹³ *Setting up Next Steps. A short account of the origins, launch and implementation of the Next Steps Project in the British Civil Service*, Diana Goldsworthy May 1991

On 18 February 1988 the Next Steps report was published.¹⁴ It found a shortage of management skills and insufficient focus on a service delivery within the Civil Service. Its central recommendation was that 'agencies' "be established to carry out the executive functions of Government within a policy and resources framework set by a department" [para.19]:

An 'agency' of this kind may be part of government and the public service, or it may be more effective outside government. We use the term 'agency' not in its technical sense but to describe any executive unit that delivers a service for government. The choice and definition of suitable agencies is primarily for Ministers and senior management in departments to decide. In some instances very large blocks of work comprising virtually a whole department will be suitable to be managed in this way. In other instances, where the scale of activity is too small for an entirely separate organisation, it may be better to have one or even several smaller agencies within departments.

20. These units, large or small, need to be given a well defined framework in which to operate, which sets out the policy, the budget, specific targets and the results to be achieved. It must also specify how politically sensitive issues are to be dealt with and the extent of the delegated authority of management. The management of the agency must be held rigorously to account by their department for the results they achieve.

21. The framework will need to be set and updated as part of a formal annual review with the responsible Minister, based on a long-term plan and an annual report. The main strategic control must be with the Minister and Permanent Secretary. But once the policy objectives and budgets within the framework are set, the management of the agency should then have as much independence as possible in deciding how those objectives are met. A crucial element in the relationship would be a formal understanding with Ministers about the handling of sensitive issues and the fines of accountability in a crisis. The presumption must be that, provided management is operating within the strategic direction set by Ministers, it must be left as free as possible to manage within that framework. To strengthen operational effectiveness, there must be freedom to recruit, pay, grade and structure in the most effective way as the framework becomes sufficiently robust and there is confidence in the capacity of management to handle the task.

22. Once the framework had been set the head of the agency would be given personal responsibility to achieve the best possible results within it. He or she must be seen to be accountable for doing so. In due course formal accountability, before the Public Accounts Committee for example, might develop so that for significant agencies the Permanent Secretary would normally be accompanied by the head of the agency. The Permanent

¹⁴ *Improving Management in Government: The Next Steps*

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Secretary's role would be to justify and defend the framework; the manager would have to answer for his or her performance within that framework.

23. Placing responsibility for performance squarely on the shoulders of the manager of an agency also has implications for the way in which Ministers answer to Parliament on operational issues. Clearly Ministers have to be wholly responsible for policy, but it is unrealistic to suppose that they can actually have knowledge in depth about every operational question. The convention that they do is in part the cause of the overload we observed. We believe it is possible for Parliament, through Ministers, to regard managers as directly responsible for operational matters and that there are precedents for this and precisely defined ways in which it can be handled. If management in the Civil Service is truly to be improved this aspect cannot be ignored. In view of its importance it is considered in more detail in Annex A, where it is suggested that to achieve changes in the arrangements for formal accountability would generally require legislation and that in suitable instances this should be considered.

24. The detailed nature of the relationship between a department and an agency will vary with the job to be done or the service to be delivered. The agency structure could be used to cover a substantial proportion of the activities of the Civil Service. It is clear from our discussions with Permanent Secretaries that some departments are already moving towards this concept. What is needed is a substantial acceleration and broadening of this trend through a major initiative. Ultimately some agencies could be in a position where they are no longer inside the Civil Service in the sense they are today. Any decision of this kind should be taken pragmatically - the test must always be adopting the structure which best fits the job to be done.

The Report recommended that a Permanent Secretary be appointed as Project Manager (para. 41), so that within two years departments should have completed identification of areas where agencies would be the most effective way of managing and should have changed their own internal structures to implement this change (para. 46). Its vision of the future was set out as follows:

44. The aim should be to establish a quite different way of conducting the business of government. The central Civil Service should consist of a relatively small core engaged in the function of servicing Ministers and managing departments, who will be the 'sponsors' of particular government policies and services. Responding to these departments will be a range of agencies employing their own staff, who may or may not have the status of Crown servants, and concentrating on the delivery of their particular service, with clearly defined responsibilities between the Secretary of State and the Permanent Secretary on the one hand and the Chairmen or Chief Executives of the agencies on the other. Both departments and their agencies should, have a more open and simplified structure.

The Report was enthusiastic about the financial benefits of its recommendations:

48. It is difficult to put a figure on the benefits which should become available from our recommendations but the potential is obvious. Five per

cent of Civil Service running costs amounted to £630 million in 1986-87, and experience elsewhere certainly indicates that when good management has the opportunity to perform well, percentage improvements larger than this are achieved. Where accountability on the lines we suggest is in place, substantial and quantifiable benefits are coming through. But a primary aim of the recommended changes is to improve the delivery of services both to the public and to Ministers. With total programme expenditure of £128 billion (1985-86), there is an immense opportunity to go for substantial improvement in outputs, with better delivery of services and reduced delays as an alternative to savings.

An Annex on accountability to Ministers and Parliament on operational matters noted as follows:

2. In paragraph 23 we point out that if the concept of agencies developed in the report is to succeed, some extension of this pattern of accountability is likely to be necessary. The principal reasons are, first, that the management of an agency is unlikely in practice to be given a realistically specified framework within which there is freedom to manage if a Minister remains immediately answerable for every operational detail that may be questioned; and second, that acceptance of individual responsibility for performance cannot be expected if repeated ministerial intervention is there as a ready-made excuse.

3. The precise form of accountability for each agency would need to be established as part of drawing up the framework for agencies. Any change from present practice in accountability would, of course, have to be acceptable to Ministers and to Parliament. It is axiomatic that Ministers should remain fully and clearly accountable for policy. For agencies which are government departments or parts of departments ultimate accountability for operations must also rest with Ministers. What is needed is the establishment of a convention that heads of executive agencies would have delegated authority from their Ministers for operations of the agencies within the framework of policy directives and resource allocations prescribed by Ministers. Heads of agencies would be accountable to Ministers for the operations of their agencies, but could be called - as indeed they can now - to give evidence to Select Committees as to the manner in which their delegated authority had been used and their functions discharged within that authority. In the case of agencies established outside departments, appropriate forms of accountability to Ministers and to Parliament would need to be established according to the particular circumstances.

The Prime Minister made a statement on the Ibbs Report on the day of publication. In response to Questions from Terence Higgins and Alan Beith, Mrs Thatcher confirmed that there would be no change in the arrangements for accountability:

Mr. Terence L Higgins (Worthing): In view of earlier reports of the Treasury and Civil Service Committee on the accountability of Ministers and civil servants, can my right hon. Friend confirm that it is not in her mind that there should be any

change in the relationship between Ministers, civil servants and Select Committees?

The Prime Minister: There will be no change in the arrangements for accountability. Ministers

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will continue to account to Parliament for all the work of their Departments, including the work of the agencies. Departmental Select Committees will be able to examine departmental agencies' activities and agency staff in the same way as they examine Departments now. The new approach does not affect the work of the Parliamentary Commissioner for Administration. The establishment of departmental agencies will not affect the powers and responsibilities of the Public Accounts Committee. It is expected that when the permanent secretary, who is usually the accounting officer, goes to such a committee he will take with him the executive chairman of the agency and they will, therefore, both be available to answer questions.

Mr. Alan Beith (Berwick-upon-Tweed): Does the Prime Minister accept that, whereas we would welcome any developments in organisation that allowed civil servants to exercise more personal responsibility, we would be strongly-opposed to any attempt to prevent Members of the House from tabling questions on matters dealt with in the agencies that affected the fundamental rights of their constituents?

Does the right hon. Lady realise that both her reference to the performance of the agencies rather than to the matters with which they deal and suggestions in the yellow book carry the implication that the rights of Members on behalf of their constituents will be diminished? Is it not likely that, if that aspect of the matter is not corrected we shall end up with Ministers continuing to exercise power but not being answerable to the House for what they are doing?

The Prime Minister: I do not think that the hon. Gentleman can have listened to the answer to the last question, which covered his point. I repeat: there will be no change in the arrangements for accountability. Ministers will continue to account to Parliament for all the work of their Departments including the work of the agencies.

Immediately after publication there remained some doubt as to the impact of the Next Steps initiative. Professor Peter Hennessy noted that the initial list of candidates for executive agency treatment left the big tax-raising and benefit-paying empires intact, though there were a few substantial areas of work included, most notably the Employment Service, HMSO and the Driver and Vehicle Licensing Centre in Swansea.¹⁵ Attention focused on Mrs Thatcher's

¹⁵ *Whitehall* 1989 p.621

comments during her February 18 statement that agencies would "generally" remain within the Civil Service.¹⁶

The subsequent speed and scale of the Next Steps programme took commentators rather by surprise. The Office of the Minister for the Civil Service had estimated that the process might take 10 years.¹⁷ By the end of 1993, 90 agencies had been established and a further 64 executive units had been set up within the Customs and Excise and Inland Revenue so that more than sixty per cent of the Civil Service had been subjected to the agency process. As at October 1996 there were 125 agencies, and 71 per cent of Civil Servants worked in agencies or in departments operating along Next Steps lines (HM Customs and Excise and Inland Revenue).¹⁸ If the main agency programme is completed at the end of 1997 three quarters of the Civil Service are expected to be in agencies.¹⁹ Most of the remaining new agencies are within the MoD and Northern Ireland Civil Service.²⁰

C. A Chronology of Next Steps Reports

The Treasury and Civil Service Committee produced a Report on the Next Steps policy in the summer of 1988²¹ to which the Government responded in November 1988.²² The Select Committee returned to the subject in 1989²³ with a Government response in October 1989.²⁴ The National Audit Office issued a Report in June 1989²⁵ and this led to a Public Accounts Committee Report.²⁶ Finally, there was a White Paper in December 1989 - *Financing and Accountability of Next Steps Agencies* (Cm 914).

The *Government Trading Act 1990* gave effect to the White Paper proposals. The original *Trading Funds Act 1973* provided a financial framework covering operating costs and receipts, capital expenditure borrowing and net cash flow. A trading fund is required to break even, taking one year with another, and to make a return on capital. It has powers to borrow to meet capital expenditure and working capital requirements and to establish reserves out of surpluses. Within this framework it can meet outgoings without detailed cash flows passing through Parliamentary Vote accounting arrangements. The accounts of a trading fund are

¹⁶ HC Deb c.1149-51

¹⁷ HC 420 Session 1988/89, para. 7

¹⁸ Next Steps Briefing Note, October 1996

¹⁹ OPS evidence to Public Service Committee HC 313-III, Session 1995/96

²⁰ Cabinet Office Press Notice 18/6/96 "Deputy Prime Minister announces benchmarking for executive agencies"
²¹ 8th Report of 1987/88 HC 494

²² Cm 524

²³ 5th Report of 1988/89, HC 348

²⁴ Cm 841

²⁵ HC 410 of 1988-89

²⁶ 38th Report of 1988-89, HC 420

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audited by the Comptroller and Auditor General and laid before Parliament. Some agencies, such as the Vehicle Inspectorate, were outside the 1973 powers, and the 1990 Act added a wider enabling power to establish a trading fund for a body (including an agency) all or most of whose revenue derived from receipts from internal supply transactions, or trading transactions in external markets, or other services to users outside Government financed directly by receipts from charges. The Next Steps agencies do not need to become trading funds to be established as agencies.

The Fraser Report 1991²⁷ examined the relationships emerging between the Departments and agencies, and considered how Departments ought to be adapting their size structure and methods of working. The Report identified four broad groups into which agencies fell:

- Agencies which are fundamental to the mainstream policy and operations of their Departments: for instance, the Employment Service or the Social Security Benefits Agency.
- Agencies which execute, in a highly delegated way, statutory (usually regulatory) functions derived from the main aims of the Department: for instance, the Vehicle Inspectorate, the Patent Office or Companies House.
- Agencies which provide services to Departments (or other Agencies) using particular specialist skills: for instance, Government Research Establishments or the Information Technology Services Agency in DSS.
- Agencies which are not linked to any of the main aims of a Department but none the less report to its Minister: for instance, HMSO or Historic Royal Palaces.

The Fraser Report expected a major redefinition in the role of departments once agencies had been established:

The Role and Organisation of the Central Departments

2.15 The application of Next Steps to a large part of the Civil Service has consequences, not only for the organisation and management of sponsor Departments, but also for the Treasury and Office of the Minister for the Civil Service (OMCS). They will need to examine what their role will be once the pressure of the work associated with the launch of Agencies has eased. The practical support of OMCS and the Treasury will be crucial if the programme for change set out in this report is to be implemented effectively. In part this involves encouraging the process of change and building on the experience already gained. The ongoing simplification of central rules in the

²⁷ *Making the Most of Next Steps: the Management of Ministers' Departments and their Agencies*, HMSO. Sir Angus Fraser was the Prime Minister's Adviser on Efficiency

personnel and industrial relations areas offers a good basis on which to build. As the emphasis changes from establishing Agencies to refining targets and monitoring performance, the Treasury and OMCS, like other Departments, will need to redefine their role and size. In particular, as decisions on most aspects of staff management are delegated to Departments and Agencies, the functions and staff of the relevant divisions in the central Departments should be proportionately reduced. The public expenditure side of the Treasury should focus increasingly on key measures of outcome as it moves to a more strategic style of control of the public sector. The detailed management of resources to achieve those outcomes should be left to Agencies and information gathering should be limited accordingly.

The Report recommended that "there should be a progressive move towards the widest measure of delegated management" for Agency Chief Executives (para. 2.6) and that Ministers should set clear policy objectives and robust performance targets. It also considered that there needed to be a "focal point within the Department both for challenging the performance of the Chief Executive and facilitating his work in meeting his objectives and key targets". Such a person came to be known as a "Fraser Figure", whose role was to be a senior figure respected by Department and Agency.

The Civil Service (Management Functions) Act 1992 provided for the delegation of management functions so that managers in Next Steps agencies could take decisions previously only open to a Minister to take. Departments and agencies may therefore regulate inter alia the pay and personnel policies for their civil servants. Previously, transfers of functions orders [which are Orders in Council] could only be used to transfer functions between Ministers and not to permanent heads of departments or agency chief executives.

However, by February 1994 when the Trosa Report was published²⁸ concerns about the non-implementation of the Fraser recommendations were being expressed. Trosa concluded that the cultural gap between departments and agencies posed dangers for the future of Next Steps:

2.15 The essence of this argument is that Agencies are a compromise; they are semi autonomous bodies within a Department. As long as they are part of a Department, it will be difficult to make a success of Next Steps (which means that everybody shares the values of output oriented activities, a more customer related attitude, greater responsibility and accountability) without extending the values of Next Steps to the whole Department by:

more interchange of staff through mobility [still minimal], common training, networking etc.;

and

²⁸ *Next Steps: Moving On: an examination of the progress to date of the Next Steps Reform against a background of recommendations made on the Fraser Report (1991)* by Sylvie Trosa. (A French Civil Servant on secondment to the Office of Public Service and Science)

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the extension of Next Steps principles to the remaining parts of a Department (probably fewer financial targets but more quality and improvement targets).

2.16 Otherwise the fact of having two categories of staff (Ibbs Report) and two completely different ways of working can only create resistance and inertia (to go back to Trevelyan, the intellectual and the executive functions will remain separate).

2.17 Another issue relates to the question of what will remain a common currency within the Civil Service? Financial, management and personnel rules will become more and more different; the only element of unity which will be left, besides ethical standards, will be the uniform tag of being a civil servant. This means, of course, that if a more liberal attitude is necessary on financial and management issues, more action could be pursued on training and career developments. The private sector, on the whole, now takes seriously the problem of keeping its valuable staff and often tries to plan for the future. The Government could try to devote more effort to its best management staff by implementing coherent career plans.

2.18 All countries which are trying to pursue public sector reform by giving more autonomy to Agencies (whatever name may be used) experience the same difficulty, which is the growing gap between centres of Departments and Agencies. Nobody seems to have found a perfect answer to this problem. However, some solutions could be explored to enhance relationships between centres of Departments and Agencies:

the first condition is to have the most clear financial delegations (this should cover such questions as global budgets, in what circumstances money can be varied from one heading to another, when efficiency gains can be retained etc.);

second, the remaining divisions of the Department should have a clear statement of their role (what is a central personnel division supposed to do? what are the tasks of a central finance division?) and the same principles (such as setting targets, personal accountability) should be applied to everyone;

third, a Fraser Figure and a small team in charge of promoting the reform, being a consultancy task-force for modernisation, is of great help; and

finally, having a significant degree of mobility between the Agency and the Department and the Department and the Agency is the only way to show that the same value is attributed to both levels of management.

2.19 The gap in cultures will not be resolved by new rules but only by a better common understanding between people which can be achieved through shared experiences, such as mobility, networking and training. Little is being done at present to develop this common understanding between centres of Departments and Agencies.

Trosa also found that the Fraser Figure concept was not working well in practice, with little evidence of close working relations with Chief Executives.²⁹ The Report concluded that very little progress had been made on the Fraser recommendations:

7.2 Some General Conclusions

²⁹ paras 3.3.3-3.3.10

7.2.1 There is little point in attempting to draw too many general conclusions from this study, given the diverse range of subjects it has addressed. Nevertheless, some observations can be made. *Inter alia*, Fraser concluded that there was a need to make certain changes to the current arrangements, such as:

- avoiding day-to-day interference in management issues;
- defining a clear role for the Centres of Departments;
- enabling mobility of staff between the Agencies and the Departments; and
- planning the evolution of the human resources of the Departments.

7.2.2 Those recommendations are as relevant now as they were when the report was issued. That raises the question of why very little progress has been made on these issues since the report was published. Several hypotheses might be made but what seems clear is that one of the major reasons that relatively little has happened is that Departments have not felt that it was in their interests to implement the changes. Given that part of the Fraser recommendations was for a 25% reduction in Departmental staff dealing with central functions, perhaps this is not too surprising.

7.2.3 Perhaps some general recommendations can be made:

- (i) a greater attention should be given to incentives for staff in order to continue the efficiency efforts;
- (ii) the success of the reform can only be guaranteed by the establishment of common values for civil servants and if the objectives of Next Steps are shared both by staff in the centres of Departments as well as in Agencies. This culture can only come from shared experiences, which means *inter alia* that there needs to be mobility between Agencies and the Departments and that common qualifying training should be organised;
- (iii) centres of Departments will have a tendency for inertia as long as their own role has not been defined in a positive way;
- (iv) financial and personnel flexibilities should be clarified. Central Departments are working on this issue and the study shows that this effort is necessary;
- (v) doubts about the efficiency gains achieved by Agencies should be avoided by the setting up of adequate information systems (with the advice of the centres of Departments); and
- (vi) the contribution of Agencies in policy formulation should be recognised and Agencies should be encouraged to participate more actively in this process.

The 1994 White Paper on the Civil Service³⁰ noted that the "development of a more structured relationship between those at the centres of departments and those in agencies has increasingly focused attention on the nature of headquarters tasks and how they can best be discharged, whether in policy making or the strategic management of agencies" [para. 2.21]. The Report, however, did not envisage extending the formal establishment of agencies into areas of the Civil Service primarily concerned with policy [para. 2.22], and therefore a key

³⁰ *The Civil Service: Continuity and Change Cm 2627*, July 1994

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task for the mid 1990s was to complete the Next Steps programme. The White Paper of 1995³¹ noted that an increasing emphasis would be placed on extending Next Steps principles:

- an increasing emphasis will be placed on extending, throughout the Civil Service, many of the principles of Next Steps, including maximum clarity about objectives and targets, delegation of management responsibility and a clear focus on outputs and outcomes. The Government believes that these principles can and should be extended to executive functions within departments where agency status has, for various reasons, been ruled out, and it also agrees that they can, as recommended by the Select Committee, be extended to aspects of the policy process in core departments. In carrying out reviews of their senior organisation and staffing, departments will be looking for structures which reflect these principles.

The White Papers did not explicitly address the concerns of Chief Executives given in the Trosa Report about alleged interference from the centre, and the threat of privatisation which acted as a distraction to achieving performance targets. However, the 1995 White Paper did consider the future shape of departments, and promised to institute senior management reviews to reduce layers of management (para. 4.7).

Following the Trosa Report the Next Steps Team in the OPSS issued an Action Plan for taking forward her work. The plan, however, expressed reservations about some of the Trosa recommendations, and saw no useful purpose in changing arrangements for advising Ministers, such as an Advisory Board, where current arrangements were satisfactory. It also doubted whether the Fraser Figure could ever become fully independent of the Government department.

As recommended in the Trosa report, a consortium was launched in 1995 to develop guidelines on best practice in the strategic management of agencies, led by the Next Steps Team with support from Price Waterhouse. Two reports were published in 1995: *The Strategic Management of Agencies: consortium project full report and case studies*, and *The Strategic Management of Agencies: models for management*.³² These reports considered the role of the Fraser Figure, and the Ministerial Advisory Boards (found in a majority of agencies), concluding that in assessing the current system of advice to Ministers, departments should be able to justify the current position, or identify the need for change. They also assessed the customer/contractor relationship in Agencies and Departments and the process of target-setting and monitoring. The reports described elements of good practice and suggested how they might be spread more widely.

The publication of the Learmont Report on 16 October 1995³³ emphasised the potential difficulties of the relationship between agency, chief executive and Secretary of State, when Michael Howard, the Home Secretary, announced the dismissal of Derek Lewis, the Director General of the Prison Service.³⁴ Mr Lewis was critical of the extent of the day-to-day

³¹ *The Civil Service : Taking Forward Continuity and Change Cm 2748*, January 1995

³² Next Steps Team Office of Public Service September 1995

³³ *The Escape from Whitemoor Prison on Friday*, 19 September 1994, Cm 2741

³⁴ HC Deb vol. 264 c.33

monitoring of the Home Office.³⁵ Michael Howard said in the ensuing Commons debate that "I am personally accountable to the House for all matters concerning the Prison Service. I am accountable and responsible for all policy decisions relating to the service. The Director General is responsible for day-to-day operations".³⁶ He also referred back to the Maze Prison escape of 1983.³⁷ The Public Service Committee inquiry examined the implications of this distinction (see below).

³⁵ *Guardian*, 17.10.96, 'Disloyal' Howard under fire'

³⁶ HC Deb. Vol. 264, 19.10.95.

³⁷ discussed in Research Paper No 96/27, *The Individual Responsibility of Ministers: Outlines of the issues*

II Select Committee response to the Next Steps initiative

The Treasury and Civil Service Select Committee appointed a sub-committee to inquire into Next Steps following the Prime Minister's statement of 18 February 1988, "in view of the important implications for the Civil Service and for democratic control and accountability".³⁸ Their first report³⁹ was generally supportive of the Next Steps initiative, as a development from the FMI, whilst noting that there should not be confusion between privatisation and creating an agency. "If the organisation is to be privatised it should be made clear at the outset that this is so" (para. 33). It recommended that the Framework Agreements should be regarded as contracts, and a Minister would only be able to overrule the Chief Executive by way of a formal note by an extension of the Accounting Officer principle (para. 38). It argued in a lengthy section on accountability, that "the Chief Executive should give evidence on his own behalf about what he has done as the head of an agency" to a Select Committee (para. 46). It also argued that the Chief Executive should be made the Agency's Accounting Officer (para. 49).⁴⁰

The Government reply⁴¹ emphasised that before an Agency was established alternative options, including contracting out the work and privatisation, would be examined. It noted that the framework would provide a clear statement of management responsibility, and a Ministerial decision which changed the understanding set out in the framework document would require a further instruction to the Chief Executive. It also accepted that Framework Documents should be published. On accountability the response noted "The further delegation of authority to managers inherent in the Next Steps concept concerns internal accountability within departments and does not conflict with the external accountability of Ministers to Parliament"... Chief Executives' authority is delegated to them by Ministers who are and will remain accountable to Parliament as a whole (and its Select Committees). The Government therefore believes that "the general rule must continue to be that civil servants who give evidence to Select Committees do so on behalf of their Ministers".

The generally supportive stance of the sub-committee helped to ensure that the Next Steps initiative did not become enmeshed in party political differences. The sub-committee was chaired by a senior Labour MP, Giles Radice, who noted in the first Commons debate on the Next Steps initiative in May 1991 that he "thought that the Next Steps changes were too important to be left to the executive alone, and that there should be a Parliamentary input".⁴² The Sub-Committee held annual hearings in the development of the initiative and issued six reports.⁴³ The Government welcomed the involvement of the Select Committee; Tim Renton, then Minister of State at the Privy Council Office, said in the May 1991 debate that "it is fair

³⁸ HC 494, 1987/88 para. 1

³⁹ *Civil Service Management Reform: The Next Steps* HC 494 1987/88

⁴⁰ This recommendation was later accepted in a Written Answer 10/11/88 c.249-250W. On accountability generally see Research Papers 97/6 and 96/27

⁴¹ Cm 524 November 1988

⁴² HC Deb 20/5/91 c.683

⁴³ HC 494 1987/88, HC 348 Session 1988/89, HC 481 1989/90, HC 496 1990/91, HC 390 1992/93, HC 27 1993/94

to say that the development of next steps has been a team effort between the Select Committee and the Government".⁴⁴ The Sub-Committee Report of 1990/91 [HC 496] noted that the then Shadow Chancellor of the Exchequer, John Smith, had indicated that a future Labour Government would not attempt to reverse Next Steps [para. 13].

Dr Philip Giddings has examined the themes of the various Sub-Committee reports⁴⁵ and identified concerns with accountability to Parliament, the future of a unified Civil Service, the role of the Treasury and the values of performance indicators and targets.⁴⁶ The report for 1990/91 published in July 1991 warned of a number of concerns about the future shape of the initiative:

15. Although the Committee has generally supported the aims of the initiative in our successive reports, we have expressed a number of concerns, which may be summarised as follows

- the establishment of Agencies should not undermine a Minister's accountability to Parliament;
- recognition of the diversity of the Civil Service's functions and the introduction of pay and grading regimes to reflect that diversity should not lead to loss of the national character of the Civil Service;
- we have consistently considered that the systems for choosing and setting targets for agencies should be improved, that those targets should include measures of quality of service and that the workforce should be consulted about appropriate measures of quality of service;
- we have been concerned about the long-term role of the central departments, the Treasury and the OMCS;
- we have been concerned about the establishment of the largest agencies.

However, the report remained supportive of the initiative:

CONCLUSIONS

101. Substantial progress has been made in the Next Steps initiative since we last reported. Now that it involves such a significant part of the Civil Service and covers such a wide variety of functions it is not surprising that questions about the direction of Next Steps have arisen. In the course of this Report we have indicated various areas where the Treasury and OMCS should play a stronger part than they seem to do at present. This is not to say that the central departments should increase their intervention in the detail of the relationship between the core department and its agencies. We stress, as we have in past Reports, that central intervention in such matters as the extent of the personnel and financial delegations given to a particular Chief Executive, or the measures on which an agency's targets are based should be kept to a minimum. However, the centre has a role in defining clearly the strategic framework within which departments and agencies should exercise their freedoms. For example, it is reasonable for the central departments to consider what should be the general

⁴⁴ HC Deb 20/5/91 c.669

⁴⁵ with the exception of HC 27 1993/94

⁴⁶ "The Treasury Committee and Next Steps Agencies" in *Parliamentary Accountability* ed Philip Giddings [1995]

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limits to departments' ability to delegate powers, and it would be reasonable for them to prescribe that targets should be set to cover particular areas such as quality of service, efficiency and financial effectiveness, although they should not set the targets themselves. The centre also has a role, as we indicated in our Fifth Report of this Session, in ensuring that when public bodies report on their activities they do so to certain standards.

102. Above all, the Treasury and the Cabinet Office (OMCS) are responsible for the strategic decisions about the Civil Service, both in defining the correct structure for departments and agencies and in advising Ministers on the wider questions about the future direction of the service as a whole. Agencies and departments engage in a wide variety of activities (which have not substantially changed since Next Steps was launched), which means there can be no universal pattern for the establishment of agencies, but there are important areas in which common standards need to be applied, such as accountability to Parliament. We also expect that with the extension of the agency principle to over half the Civil Service there will be a wide debate about the future of the service and where the balance should be struck between the diversity that agencies may need and the common features that the Civil Service should retain.

Following the 1992 General Election a new Sub-Committee⁴⁷ returned to the task of scrutiny and published a general report on the Civil Service in November 1994⁴⁸ which displayed more concern about the danger of erosion of the traditional Civil Service values:

4. It is our conviction that the values of impartiality, integrity, objectivity, selection and promotion on merit and accountability should act as unifying features of the British Civil Service. They are as important today as in the last century; their importance should not diminish in the next century. We believe that the case for a permanent, politically impartial Civil Service is as compelling now as it has been for well over a century. The principle of selection and promotion on merit must represent the bedrock of such a Civil Service. The importance of the values of integrity, impartiality, objectivity and accountability is rooted in the characteristics of the tasks which the Civil Service is called upon to perform. These values reflect rather than inhibit the jobs to be done. They are relevant to civil servants serving the public as well as to those serving Ministers directly. They can and should act as a unifying force for the whole Civil Service (paragraph 72).

5. We share the Government's view that the Next Steps reforms are in principle compatible with the maintenance of the traditional values of the Civil Service. However, the devolution of authority within the Civil Service and the disappearance of traditional structures of control reinforce the need for greater vigilance about standards throughout the Civil Service. The disappearance of many tangible common features of careers in different parts of the Civil Service reinforce the importance of the less tangible shared values, and emphasises the need to make those shared characteristics better known and understood throughout the service (paragraph 84).

As a response, it recommended a new Civil Service Code of Ethics. This was accepted by the Government and a Code was issued on 1 January 1996⁴⁹. The report noted, however, the "wide level of support for and acceptance of the Next Steps programme and the common view that it has facilitated a genuine improvement in the quality of some public services", and the Sub-Committee itself considered that Next Steps represented a significant improvement in the organisation of government. (para. 168).

⁴⁷ still chaired by Giles Radice

⁴⁸ HC 27, *The Role of the Civil Service*, Fifth Report of the Treasury and Civil Service Committee, Session 1993/94

⁴⁹ see Research Paper No *The Accountability Debate: Codes of Guidance and Questions of Procedure for Ministers* forthcoming

169. However, the success in establishing Agencies is only a means to an end. We believe that the cultural change which lies at the heart of the Next Steps programme must be secured and reinforced. In order to achieve this, changes will be required in the framework within which Agencies are required to operate, although such changes should continue to take account of the immense diversity of Agencies in terms of size and function. Two crucial issues have been raised about Agencies during this inquiry: relations between Departments and Agencies and accountability and responsibility. These two matters are intimately connected. We consider that the delegation of freedom to manage to Executive Agencies has not been as thorough and as complete as is desirable, and that this reflects real uncertainties about the division of responsibilities between Ministers and parent Departments on the one hand and Agencies and their Chief Executives on the other, uncertainties which arise in part from difficulties in identifying and agreeing upon the dividing line between policy and operations. As a solution to these difficulties, it is necessary to base the accountability of Executive Agencies on a distinction which is more tangible: that between decisions made by the Agency and decisions made by the Minister or parent Department. To this end, **we recommend that the process of target-setting is replaced by annual performance agreements between Ministers and Agency Chief Executives.** The new performance agreements would be different in character from the current target setting process and would have the following characteristics: they would arise from a process of formal negotiation and require the active agreement of the Agency Chief Executive as well as the Minister; they would prescribe a minimum of financial controls, ideally setting a single financial target or laying down unit costs for Agency services; they would be subject to an evaluation at the end of the year to be undertaken by a body outside the Department, Where a Minister or parent Department wished to give an instruction to an Agency on a matter within the terms of the performance agreement, or to request the Agency to carry out work outside the terms of the performance agreement, this should be done in writing and with financial terms specified as appropriate. It would be for the Agency Chief Executive to determine whether such a written instruction was necessary. Although the scope for Ministerial and departmental intervention would not be subject to any enforceable restraint, we believe that this requirement, coupled with proposals below relating to accountability, would represent important restraints on unnecessary interference. We do not think that the introduction of legislation need be necessary for such annual performance agreements. They should be made under the terms of revised framework documents.

170. **We support the arrangements for Parliamentary questions on operational matters within the ambit of an Executive Agency to be referred in the first instance to Agency Chief Executives and we welcome the fact that their answers are now published in the Official Report.** The extent to which Chief Executives provide answers should, by and large, be seen as a welcome sign of the extent of their devolved responsibilities and need not of itself be a cause for concern. We nevertheless regard it as important that Ministers maintain an engagement with individual cases raised by way of Parliamentary questions. We suspect that the scope for active Ministerial involvement in individual cases raised in this manner under the previous arrangements would not be universally regarded as "a fiction". We believe that Ministerial intervention will sometimes be desirable, particularly in individual cases, and is a necessary part of a Minister's role. **Ministers should always respond where Members of Parliament consider the response by an Agency Chief Executive to be unsatisfactory.**

171. We do not believe that Ministerial power to intervene in the actions and decisions of Agencies justifies the retention of Ministerial accountability for the actions and decisions of Agencies for which Chief Executives are responsible. The theoretical separation of accountability and responsibility is nowhere more untenable than in the operation of Agencies; continued adherence to the theory behind such a separation might jeopardise the durability of the delegation at the heart of Next Steps. The delegation of responsibility should be accompanied by a commensurate delegation of accountability. **We recommend that Agency Chief Executives should be directly and personally accountable to Select Committees in relation to their annual performance agreements. Ministers should remain accountable for the framework documents and for their part in negotiating the annual performance**

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agreement, as well as for all instructions given to Agency Chief Executives by them subsequent to the annual performance agreement. To this end, we recommend that all such instructions should be published in Agency Annual Reports, subject only to a requirement to preserve the personal confidentiality or anonymity of individual clients.

The report also noted the comments of the Trosa Report that most Chief Executives of Agencies found that privatisation was seen as a constant threat which prevented them from doing their job properly. The report concluded: "It would be ironic if the single most successful Civil Service reform programme of recent decades came to be regarded by the Government which initiated it simply as a transitional phase. We believe that the values of Agency status as an instrument for improving efficiency and quality of service in the Civil Service would be considerably reduced if agency status came to be seen principally as a staging post to the private sector" (para. 179).

The Government response contained in its 1995 White Paper⁵⁰ did not accept that agency Chief Executives should be personally accountable to Select Committees in relation to annual performance agreements, and noted that agency status was not necessarily a staging post to privatisation.

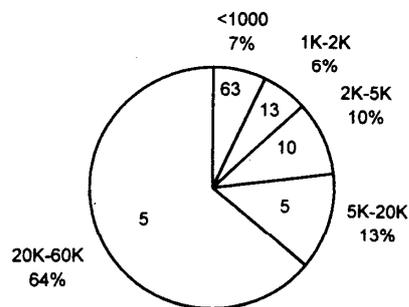
⁵⁰ The Civil Service: Taking Forward Continuity and Change Cm 2748

III The Mechanics of Next Steps

This section provides a basic guide to the key aspects of the Next Steps Initiative.

Next Steps agencies have no separate constitutional or legal status; they are an administrative method of arranging departmental business and functions. The distinction between an agency and a NDPB is thus clear; NDPBs are legally separate from the sponsoring department. Agencies do not have any legally enforceable guarantees of autonomy, but are dependent on the terms of the Framework Document. Even the Framework Document may not comprehensively reflect the extent of Ministerial involvement. The sector is extremely diverse and although there are high profile agencies such as the Prison Service, the majority of agencies are quite small, with five agencies (Social Security Benefits, Prison Service, Employment Service, Customs and Excise and Inland Revenue) accounting for nearly two-thirds of all staff working in agencies. Another five agencies account for a further 13 per cent of staff as illustrated in an extract from evidence by Professor Colin Talbot to the Public Service Committee.⁵¹

Figure 1 Distribution of Staff by Agency Size (as percentage of all Agency staff)



Total Staffing: 345,343 (in 96 Agencies). Note: excluding NI Civil Service; including Inland Revenue & Customs and Excise as single agencies. Source: calculated from Civil Service Statistics, 1995

⁵¹ HC 313-II 1995/96 p.40

A. Framework Documents or Agreements

The concept of the framework document was evident in the original Ibbs Report, but it was not until the Government response to the first Treasury and Civil Service Committee Report that it was established that the documents would be published. The official guide to the launch of Next Steps⁵² gave the following description of the framework document:⁵³

Framework Documents

Framework documents are a key component of the Next Steps approach and a great deal of time and effort is spent in getting them right. They are the tangible sign of the Agency's status and of the Chief Executive's independence. They reflect, in style and substance, the individual nature and tasks of the organisation concerned. They are published, for the information of Parliament, staff, customers and the wider public. They make an important contribution to more open government and to making quite clear where responsibilities lie. Although not legal documents they contain certain durable elements which underline the two-sided nature of the relationship between the Chief Executive and the Minister. These include:

- the Chief Executive's responsibility to Ministers
- the Agency's aims and objectives
- the services provided
- the financial arrangements, including financial objectives, planning, reporting and accounting
- pay and personnel arrangements

The documents are reviewed at regular 3-year intervals and more frequently if policy or other changes require it.

Writing the framework document has become the instrument for devising and negotiating the Agency's management arrangements, and calls for much hard thinking about the nature and role of the organisation. In principle, Agencies should have the maximum possible freedom to manage. Some Chief Executives develop 'wish lists', drawn up in consultation with their staff, of the changes they believe they need to improve their businesses and therefore 'wish' to see introduced. Items on these lists range from the freedom for the Agency to purchase its own reprographic equipment, to providing additional services on Saturdays; from group productivity schemes to a completely new pay and staffing structure.

NB Framework documents are now reviewed on a five yearly basis.

⁵² *Setting Up Next Steps* by Diana Goldworthy, May 1991

⁵³ pp26-27

Framework documents are deposited in the Commons Library and are also publicly available.⁵⁴ They vary in content and style. As originally conceived in the 1989 White Paper⁵⁵ the documents were "a new and key element in the accountability process. They are essential to Next Steps as they define clearly the tools that [Agencies and Ministers] will have and the measures for assessing Agency performance; and they make transparent the resulting accountabilities within Government and to Parliament". (para. 5.8). The Trosa Report (*Next Steps "Moving on"*) found that Agencies were usually much more constrained than the Framework Document implied.⁵⁶

Recently, the Office of Public Service evidence to the Public Service Committee was more cautious about the clarity of Framework Documents:

Framework Documents

16. Because Ministers must account to Parliament they must retain the right to look into, question and even intervene in the operations of their agencies. This does not in any way cut across Next Steps policy. Agency status does not and cannot mean that the Minister has concede the right to intervene and give directions. After all, the agency is delivering the public services for which the Minister is accountable to Parliament.

17. The introduction of Next Steps has not changed the framework of accountability to Parliament, it has enhanced the exercise of that accountability through clearer public definition of roles. The Agency Chief Executive takes personal responsibility for the management and performance of the executive activity. The form and extent of the delegation of responsibility is determined case by case in published agency Framework Documents.

18. This personal responsibility is also reflected in the designation of Chief Executives, where they are not departmental Accounting Officers, as agency Accounting Officers, answerable to the Committee of Public Accounts for the use of public money, as set out in the Accounting Officer Memorandum. This Memorandum also describes the role of the Permanent Secretary of a department as its Principal Accounting Officer; and how the Permanent Secretary, as Head of the Department as a whole, "carries full responsibility under the Minister for the organisation and management of the department as a whole".

19. One of the major achievements of Next Steps has been the identification and so far as possible, the separation of previously entwined roles in Civil Service management: e.g., customer; supplier; regulator. Still more can be done to secure greater clarity and separation. The Framework Document is an important tool for clarifying the different roles. It is not a legal document, but it describes the nature of the relationship between the Minister setting up the agency and the Chief Executive who reports to him or her together with the agency's aims and objectives, the services to be provided, the performance indicators and the extent of managerial devolution to the Chief Executive. The Framework Document should make clear matters on which the Minister expects to be consulted.

20. There is a range of agency models and relationships which means that uniformity would be impracticable and indeed undesirable. However, the clarity of the division of

⁵⁴ Agencies also produce corporate or business plans but many of these are not available for reasons of commercial confidentiality. Publication is a decision for the relevant Ministers after consultation with the Chief Executive (Cm. 1761 *Response to Conclusions* (xxv) and (xxvi))

⁵⁵ *The financing and accountability of Next Steps agencies* Cm 914 December 1989

⁵⁶ paras. 4.2.3-4 and 4.2.14-15). See also Patricia Greer "*Transforming Central Government: The Next Steps initiative*" (1994)

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responsibilities between the Minister and Chief Executive is something that should be considered carefully in initially setting up an agency and subsequently in reviewing its Framework Document as part of the quinquennial review. It is, however, important to recognise that no Framework Document could spell out in precise terms the division of responsibility in every theoretical set of circumstances.⁵⁷

A number of witnesses to the Public Service Committee recommended that the Framework Document should have a clear contractual status. The Committee's report has some sympathy with this view for certain Agencies:

122. Sir Robin Butler argued that such a contractual approach would be too formal for many of the functions which agencies perform'. His opposition reflects the resistance to introducing law into the machinery of Government to which Professor Lewis referred. Introducing legal rules as the way in which the relationship between Ministers and Chief Executives were determined would, undoubtedly, be one way of increasing accountability, particularly if such rules were statutory instruments, subject to Parliamentary procedure. But such formalism is not essential; what is essential is openness in the relationship. Mr Mottram told us that 'the great benefit' of agencies was 'that someone is in charge, they have a clear set of responsibilities, they must define who they are doing something for, and when we under-pin all that with resource budgeting and accounting, as we will be doing by the end of the decade, we will have these advantages even more'. This greater definition and greater clarity is the central benefit of the Next Steps initiative, and we believe that it needs to be enhanced, and enhanced openly. Therefore, we **recommend that Framework Documents should specify more precisely the respective roles of Ministers and Chief Executives**. We believe that there could well be a number of Agencies that could be more effectively run under detailed statutory provision or a contractual relationship. This is a subject which requires further attention. Agencies are very different in their roles and their responsibilities and it would be impossible to provide a general prescription for all of them. But statutory status or a contractual relationship should be options that are at least considered. **We recommend that at each Agency review, the Government consider whether the Agency in question should be converted into a statutory body**. This is an issue to which we intend to give further attention, and **we recommend that other Committees when they consider the Framework Documents of Agencies falling within their remit should also consider whether a contractual or legislative framework would better serve the public interest than the Agency's present status**.

It also recommended that the Government invite Select Committees to comment on Framework Documents and agency Corporate Plans before they are published and when they are reviewed (para. 123).

The Public Service Committee was therefore repeating an earlier recommendation from its predecessor, the Treasury and Civil Service Select Committee, in 1988, that the Framework Document be regarded as a contract and that Chief Executives should give evidence to Select Committees on their own behalf.⁵⁸ The 1993/94 TCSC Report had recommended formal annual performance agreements between Ministers and Agencies, but did not consider that

⁵⁷ See also OPS evidence entitled 'Delegation from Ministers and referral of decisions to Ministers', June 1996, HC 313-III 1995/96

⁵⁸ HC 1987/88 494 paras. 38, 46, 47

legislation would be necessary to achieve this, since it could be made under the terms of revised framework documents.⁵⁹

B. Chief Executives

In order to emphasise the managerial nature of the task, heads of agencies are designated Chief Executives, are appointed for a fixed period and with an individual remuneration package with a substantial element of performance-related pay. Posts are advertised openly but only a minority of Chief Executives have come from outside the Civil Service. The OPS evidence to the Public Service Committee noted that 71 (65 per cent) had been appointed through open competition and 29 of these (26%) had come from outside.⁶⁰ All Chief Executives are set targets to achieve. A *Handbook for Chief Executives* has been prepared which advises on service-wide rules on propriety and conduct and is available in the Commons Library.⁶¹

Chief Executives are Accounting Officers for the purposes of the National Audit Office (NAO) and Public Accounts Committee (PAC). However, they are normally additional Accounting Officers formally subordinate to the permanent head of the Department.⁶²

The Trosa Report⁶³ found that Chief Executives' relationships with their Ministers were diverse, ranging from regular weekly meetings to once a year encounters (para. 3.2.1).⁶⁴ A continuing point of dispute between the TCSC and the Government was the accountability of Chief Executives to Select Committees. In 1988 the Committee recommended⁶⁵ that Chief Executives should give evidence on their own behalf on operational matters to Select Committees, and Sir Peter Kemp argued for this in Government but was not successful.⁶⁶ The TCSC argued in its 1993/94 Report for direct accountability:

171. We do not believe that Ministerial power to intervene in the actions and decisions of Agencies justifies the retention of Ministerial accountability for the actions and decisions of Agencies for which Chief Executives are responsible. The theoretical separation of accountability and responsibility is nowhere more untenable than in the operation of Agencies; continued adherence to the theory behind such a separation might jeopardise the durability of the delegation at the heart of Next Steps. The delegation of responsibility should be accompanied by a commensurate delegation of accountability. **We recommend that Agency Chief Executives should be directly and personally accountable to Select Committees in relation to their annual performance agreements. Ministers should remain accountable for the framework documents and for their part in negotiating the annual performance**

⁵⁹ HC 27 para. 169

⁶⁰ para. 4 313-I OPS evidence

⁶¹ March 1996 OPS, Cabinet Office. The Handbook covers accountability, conduct, financial management, personnel management and agency reviews

⁶² They are additional AOs where their agency is part of a department but has Trading Fund status or has its own vote; otherwise where an agency is funded from the departmental vote the departmental AO designates the Chief Executive as agency AO. Agencies which are separate Government departments have AOs in the normal way

⁶³ *Next Steps: Moving On* February 1994

⁶⁴ See p.21 above for the potential difficulties of close contact between Chief Executive and Minister as described in the Learmont Report [Cm 2741]

⁶⁵ 1987/88 HC 494 paras. 46-47

⁶⁶ He maintains this point of view in his evidence to the Public Service Committee HC 313-III para.14

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agreement, as well as for all instructions given to Agency Chief Executives by them subsequent to the annual performance agreement. To this end, we recommend that all such instructions should be published in Agency Annual Reports, subject only to a requirement to preserve the personal confidentiality or anonymity of individual clients.

The Government response did not accept this recommendation, drawing attention to the TCSC's arguments in favour of Ministerial responsibility for Parliamentary Questions.⁶⁷

The Government does not accept this recommendation, which is inconsistent with the Committee's approach to the role of Ministers in relation to Parliamentary questions in its recommendation 23.

The Minister is accountable to Parliament for the arrangements he or she puts in place for the discharge of his or her responsibilities. This includes the Framework Document of the agency, which expresses the administrative arrangements by which the Minister has chosen to delegate managerial responsibilities to the Chief Executive, and the announced targets and resource allocation. The Chief Executive accounts to the Minister, from whom his or her authority is derived; and the Minister accounts to Parliament. Within the framework of Ministerial accountability, Chief Executives regularly appear before Select Committees and, on behalf of the Minister, answer enquiries about the discharge of their duties.

As in the case of Parliamentary questions answered by Chief Executives, the Government believes that Next Steps arrangements have enhanced openness. A Select Committee has available the Framework Document; the targets or Annual Performance Agreement, together with details of any changes announced by the Minister during the course of the year: the Business Plan; the agency's annual report and accounts; and access to the Chief Executive, whom the Minister has identified as responsible to him for the activities

The Public Service Committee report recommended two changes in the Osmotherly rules⁶⁸ firstly to indicate a presumption that Ministers would agree to requests by Select Committees for agency Chief Executives to give evidence, and secondly to "indicate that agency Chief Executives should give evidence to Select Committees on matters which are delegated to them in the Framework Document" (paras. 113-114). The report emphasised that Chief Executives would not be able to speak on policy matters without Ministerial approval since policy matters were not delegated (para. 114). The government response⁶⁹ accepted the first but not the second recommendation.

C. Financial arrangements

⁶⁷ *The Civil Service: Taking Forward Continuity and Change* Cm 2748: response to recommendation 24

⁶⁸ *Departmental Evidence and Response to Select Committee*, Dec 1994, named after the official who first drafted them. The guidelines have never been sanctioned by Parliament itself (Public Service Committee HC 313, *Session 1995/96*, para 92). It gives guidance to officials who are called on to give evidence or memoranda to Select Committees. See *The Accountability Debate: Codes of Guidance and Questions of Procedure for Ministers*, Library Research Paper 97/5

⁶⁹ Public Service Committee First Special Report HC, 67 Session 1996/97

It was envisaged in the origins of Next Steps that all agencies should have full cost income/expenditure accounts, and that activities which were, or aimed to be, self-financing should operate as trading funds. *The Government Trading Act 1990* broadened the original concept as set out in the *Trading Funds Act 1973* so enabling more agencies to escape the detailed cash flows passing through Parliamentary Vote account arrangements. Parliamentary control is retained through the requirement that each fund be established by affirmative order, by scrutiny of statutory annual accounts, and the power to examine the Fund by the National Audit Office. By 1993, 12 agencies were operating as Trading Funds.⁷⁰ In addition all agencies were required to publish commercial-style reports and accounts at the end of each financial year. A 1995 efficiency scrutiny⁷¹ found that agencies generally had more sophisticated management information systems than departments, but recommended that should be a greater move towards resource accounting and budgeting across Government.

D. Prior Options

The prior options test is applied to both prospective and existing agencies to establish whether a particular function could be abolished, privatised or contracted-out. Initially agencies were reviewed every three years, but reviews now take place at five yearly intervals.⁷² *The Next Steps Review 1995*⁷³ described the process of review as follows:

Each Department is responsible, on behalf of its Minister(s), for conducting a review of the performance and operations of its Agencies, normally at five yearly intervals. (This also applies to HM Customs and Excise Executive Units and Inland Revenue Executive Offices.)

Each review covers:

- an evaluation of the arrangements under which the Agency operates as set out in the Framework Document and of the Agency's performance;
- a reconsideration of the "prior options" for the functions that were first examined when the Agency was launched, ie the options of abolition, privatisation, and contracting out the whole of the Agency's function; and, assuming that Ministers agree that Agency status remains appropriate
- a revision of the Framework Document to reflect the Agency's agreed objectives and managerial arrangements and any increased flexibilities.

The Trosa Report found that some agencies considered themselves as under constant threat of privatisation (paras. 3.2.6-3.2.11). The TCSC commented on its 1993/94 Report (HC 27) that the process of prior options had been criticised for its impact on agencies and warned "we believe that the value of Agency status as an instrument for improving efficiency and quality of service in the Civil Service would be considerably reduced if Agency status came to be seen principally as a staging post to the private sector" (para. 179). The Government

⁷⁰ *Next Steps Review 1993* Cm 2430 December 1993. There are now 14 [Next Steps Briefing Note, October 1996]

⁷¹ *Resource Management Systems* HMSO

⁷² Cm 2627 *The Civil Service: Continuity and Change* July 1994. In 1993 (Next Steps Review 1993) it was announced that Ministers had decided that reviews should be publicly announced

⁷³ Cm 3164 February 1996

response did not accept that interpretation, but recent privatisations of Cabinet Office agencies such as the Recruitment and Assessment Service (RAS), the Chessington Computer Centre and the sale of HMSO have led to renewed criticism from the Labour Party. Details of the sales are given in a recent Parliamentary Answer.⁷⁴ Professor Gavin Drewry and Dr Philip Giddings gave evidence to the TCSC in 1993/94, on the wider impact on agencies of privatisation.⁷⁵

E. Performance Targets

Each year performance indicators or targets are set or reviewed, and a business plan produced, giving indicators by which the performance of the agency is to be measured. Initial surveys of targets by the Trosa Report⁷⁶ raised concerns that the setting of targets appeared to be a crude bargaining process between Agency and Department, while acknowledging that many Departments had managed the process effectively. The TCSC 1993/94 report (HC 27) recommended that the process of target-setting be replaced by annual performance agreements between Ministers and Agency Chief Executives arising from a process of formal negotiation(para. 169).

In evidence to the Public Service Committee, Professor Colin Talbot found that, although a plethora of information on targets aims and objectives was available, it was difficult to derive a coherent view of an Agency's performance:

5. REPORTING AGENCY PERFORMANCE

For Parliament and public to have useful and understandable, information about the performance of "Next Steps" agencies is a prerequisite for both Ministers and agencies themselves to be held to account. While there has been an undoubted, and welcome, increase in the amount of information available it does not yet meet the requirements of presenting a "balanced and understandable assessment of the company's position" as is advocated as best practice in the private sector.¹

To meet this requirement would require that agency Annual Reports include performance indicators, and related narrative, which provide a balanced set of information covering all aspects of the performance of the organisation, including:

- a clear translation of all objectives into KPIs. All too often (as in the cases such as the Royal Mint or Prisons) some objectives are entirely missing from the KPIs;
- a clear statement of resources allocated to achieving these objectives, preferably broken down, at least indicatively, between different objectives. This requires a much greater integration of financial information into the "Report" part of Annual Reports and not merely relegating it to the "Accounts" section;
- a clear statement of, at least, outputs related to objectives and to inputs. While there are many output indicators, of both a qualitative and quantitative nature, there is not

⁷⁴ HC Deb vol 282, 15.10.96, c.851-52w

⁷⁵ HC 27-III 1993/94, pp.97-101

⁷⁶ *Next Steps: Moving On*, paras. 5.1.3

always a clear link between these measure and objectives. Outcomes are far more difficult to both measure and to relate to directly to inputs;

- a clear statement of the relationship between inputs and outputs related to the objectives. The key issue in relation to efficiency is not whether some abstract measure of efficiency is increasing but whether efficiency in delivering key objectives is increasing. Again, efficiency measures are all too often not related to objectives.

Very few agency Annual Reports, on our initial scan, would meet all of these very crude criteria. These are an absolutely minimum set measures which an intelligent citizen or Parliamentarian could use to judge performance. The absence of this basic data means that it is almost impossible to derive really meaningful information about "performance" from agency Annual Reports or from anywhere else.

A further point needs to be made here about the difference between the use of Key Performance Indicators *as measures* and *as targets*. Measuring, for example, the density of prisoner populations (the ratio of inmates to cells) gives an absolute measure which can be compared year-on-year to gain a longitudinal view of performance. Setting a specific target for prisoner density which is varied year-on-year provides information on an annual basis about performance that year (which is perfectly valid) but makes monitoring trends very difficult. In many cases Agency KPIs concentrate on the latter (and indeed judging from comments in the Annual "Next Steps" Review this is policy) which provides data in a format which makes tracking performance over longer periods than an individual year impossible.

The sets of KPIs reported in "Next Steps" Review and the conclusions drawn about Agency performance are extremely difficult to sustain. Firstly, the KPIs in their totality, and for most individual agencies, clearly provide insufficient and lop-sided (with an emphasis on outputs) information. Secondly, year-on year variations in the KPIs as *target* levels (some have gone down as targets as well as up) makes meaningful longitudinal comparisons impossible. Thirdly, even the individual KPIs have been changing as to what they actually *measure* (some have been dropped, others added and still others amended), which again makes long-term comparisons meaningless. While some change as to what is measured is inevitable as agencies try to develop a meaningful "basket" of KPIs (and indeed we would advocate, in the short term, greater change as outlined above) making claims based on these shifting sands is not justifiable.

The Public Service Committee Report recommended that the Government provide comparative analyses, and issue published guidance to agencies on standards of reporting, enabling meaningful comparisons to be made.⁷⁷ In response the Government said that it would continue the process of improving reporting on agency performance and commented that the Resource Accounting and Budgeting initiative would provide more consistent and comparable financial data.⁷⁸

F. Delegation of pay and personnel issues

In her statement to the House on Next Steps in February 1988 the then Prime Minister, Margaret Thatcher noted that "it is intended that there should be more flexibility in pay in the agencies and that also there should be performance-related pay".⁷⁹ Agencies commonly seek

⁷⁷ HC 313 1995/96 para. 108

⁷⁸ HC 67 Session 1996/97, Response to recommendations 16-18

⁷⁹ HC Deb vol 127 18/2/88 c.1153

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and are given delegated authority for personnel and pay matters. The TCSC report of 1993/94 reviewed progress since 1988:

256. In the late 1980s agreements were reached with the Civil Service unions which allowed for greater pay flexibility. The first Agency to introduce a radical new pay regime was HMSO. Under its new agreement, introduced following consultation with trade union representatives, grades were replaced with overlapping pay bands, with progression dependent upon performance in relation to agreed objectives. In July 1992 the Inland Revenue was given responsibility for determining its own pay and grading structure for all staff below Grade 3. A new pay and grading structure was introduced with five broad pay bands, with progression linked to performance, replacing more than 120 separate grades. From April 1994, all Agencies with over 2,000 staff were given responsibility for their own pay bargaining and smaller Agencies were encouraged to follow suit. Michael Bichard said that the Benefits Agency, which had already developed a personal appraisal system designed specifically to meet the business needs of the Agency, would be seeking a pay structure which moved away from what he viewed as "an unhealthy obsession with grading". This trend to separate pay arrangements in Agencies was seen by some as largely irreversible. The Civil Service White Paper takes these developments one step further, proposing the further delegation of responsibility for pay and grading below senior levels to all Departments and Agencies by 1 April 1996, replacing existing national pay arrangements. Coupled with the proposed changes in the structures of the senior levels of the Civil Service, this is likely to mean that the Civil Service grading system will have virtually disappeared by the end of this century.

From 1 April 1996 all responsibility for pay bargaining was delegated from the Treasury to departments, so the trend is expected to accelerate. Departments and Agencies have had autonomy in recruitment for those below the former Grade 7⁸⁰ (Principal level) since April 1994 with discretion to use private sector recruitment agents. This autonomy was extended to all grades below the new Senior Civil Service, apart from fast stream recruitment, following proposals in the White Paper⁸¹ that the Civil Service Commissioners were made responsible for interpreting the principles of fair and open competition on merit for all Civil Service recruitment. The Commissioners have issued a recruitment code⁸² and will audit recruitment policies. The Commissioners are directly involved in approving posts for the Senior Civil Service (Grade 5 and upwards).

⁸⁰ No central civil service grading exists since April 1996 when responsibility was delegated to departments and agencies

⁸¹ *Taking Forward Continuity and Change*, Cm 2748 January 1995

⁸² *The Civil Service Commissioners Recruitment Code* (1996)

IV Parliamentary Questions

Most of the concern about the Parliamentary accountability of Next Steps agencies has stemmed from the issue of Parliamentary Questions, and more particularly the form of publication of the answers. At first the procedure was that Ministers would arrange for Chief Executives to write to MPs on matters delegated to them under the Framework Agreement. This arrangement proved unpopular with a number of MPs and the TCSC who were concerned that this would limit Parliamentary and public access to information on the work of Agencies.⁸³ The Government undertook to place letters from Chief Executives in the Public Information Office of the Commons Library, where they would be available to the public on request.⁸⁴ Paul Flynn, together with the academic Tony Lynes, then produced their own edited version of the letters entitled *Open Lines*, as part of a campaign by Mr Flynn against what he depicted as an evasion of accountability and an undermining of the role of Parliamentary Questions. A Procedure Committee Report in 1991⁸⁵ recommended, however, that such questions should be printed in the Official Report. At first the Government responded by proposing a separate weekly official publication of the answers⁸⁶ but there were practical difficulties over copyright and application of parliamentary privilege and the Administration Committee eventually decided that letters would be printed in the Official Report. With Cabinet agreement the new system came into operation in November 1992.⁸⁷ Paul Evans notes "the words of someone other than a formal witness before a Committee of the House or one of its Members have now become proceedings in Parliament on an everyday basis".⁸⁸

Concerns remain about the passing of PQs to Ministers for answer by Chief Executives. The TCSC report in 1994⁸⁹ noted the criticism of Gerald Kaufman and others that the practice eroded the rights of MPs to take up constituency cases directly with Ministers. On the other hand some academic witnesses considered that the replies from Chief Executives were more informative than Ministerial answers.⁹⁰ The extent of Ministerial involvement in the preparation of Parliamentary Answers by Chief Executives varies from Department to Department. The Public Service Committee found that "the practice in some agencies is for agency Chief Executives to correspond with Members of Parliament in their own authority; but the answers to Parliamentary Questions, though delegated by Ministers to the Chief Executive, may sometimes still be approved or amended by the Minister". It recommended that the Government clarify Ministers' practice and inform Parliament of the results (para. 93). Some of the witnesses to the Committee, including Michael Heseltine and Derek Lewis, the former head of the Prison Service, appeared to argue that the activity of answering PQs impacted adversely on the need for efficiency.

⁸³ HC 481 1989/90 paras. 68, 70, HC 496 1990/91 paras. 74-83

⁸⁴ HC Deb vol 178 c.586W

⁸⁵ HC 178 1990/91

⁸⁶ HC Deb. vol 198 c.558-9W

⁸⁷ A full account is given in Paul Evans' chapter "Members of Parliament and Agencies: Parliamentary Questions" in *Parliamentary Accountability. A Study of Parliament and Executive Agencies* (1985), ed. Philip Giddings

⁸⁸ 'Members of Parliament and Agencies: Parliamentary Questions' in *Parliamentary Accountability: A study of Parliament and Executive Agencies* (1995), ed. Philip Giddings

⁸⁹ HC 27 Session 1993/94

⁹⁰ HC 27-III p.100 Professor Gavin Drewry and Dr Philip Giddings

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The Government response to this recommendation was as follows:⁹¹

When a Parliamentary Question is about a matter assigned to an agency under the terms of its Framework Document, the Government's policy is that the Minister will normally ask the Chief Executive to provide the substantive response to the MP. The aim of this policy is to provide a fuller and more directly informed response and to relieve Ministers of the need to involve themselves in the detail of matters for which Chief Executives have day-to-day management responsibility. As the Treasury and Civil Service Committee recognised (Fifth Report 1994) MPs retain the option to seek a Ministerial response if they are dissatisfied with a Chief Executive's reply, thereby preserving Ministerial accountability. However, a Chief Executive may conclude that a particular issue requires discussion with the Minister, or a Ministerial answer; and it is open to Ministers to arrange to be consulted on a more regular or routine basis if they consider it necessary.

⁹¹ Recommendation 14 HC 67 1996/97 1st Special Report of Public Service Committee

V Accountability⁹²

The debate on the nature of accountability of Next Steps agencies to Parliament has been increasing in intensity in the 1990s. At first the debate seemed to crystallise around the answering of PQs (see above) but more recently concern has moved towards a perceived 'accountability gap' where a Minister is seen as responsible for policy and the agency for implementation or for operational matters. The accountability gap has been described as follows by Professor Gavin Drewry and Professor Dawn Oliver in evidence to the Public Service Committee:⁹³

ACCOUNTABILITY AND RESPONSIBILITY

A sharper distinction is evolving between *accountability*, which we define as the duty to explain or justify, and then the duty to make amends to anyone who has suffered loss or injustice if something has gone wrong *and responsibility*, which we define as having a job to do, and being liable to take the blame when things go wrong. A variant of this distinction has been expounded by Sir Robin Butler, most recently in his evidence to the Scott Inquiry. In the British system, accountability for public services is broadly reserved to Ministers; the latter may have to bear responsibility as well, but in practice—particularly in an agency context—civil servants often have to carry all or part of the responsibility.

Some observers, particularly the more cynical ones, may argue that there is nothing very novel about this and that it has long been the case that Ministers are only too happy to take responsibility, as well as being accountable, for successes, but are quick to attribute any blame to their officials. But the gap between theory and practice has been widened by the development of the Next Steps programme. When that programme was launched, in 1988, it was explicitly stated that the conventions of Ministerial responsibility would remain in place, and, according to those conventions, Ministers have the exclusive right to explain and justify what has happened in their departments, and officials have no right or duty or do so without authority. Hence the effectiveness of both accountability and responsibility are undermined in the British system.

It is this weakness that has produced calls for officials to be directly accountable to Select Committees of the House of Commons, and for the development of alternative mechanisms of accountability such as the use of Charters (which expose public servants to pressures from "empowered" citizen-consumers), tribunals and the courts (providing various kinds of legal redress) and the Parliamentary Commissioner for Administration (who can hold officials to account for maladministration).

Three aspects of mechanisms of accountability and responsibility are important:

- the release of information, whether through a duty to explain and justify or public rights of access to relevant information (the British arrangements for officials' responsibility prevents them from unauthorised disclosure and does not impose on them any positive duty to disclose information);
- the existence of clarity of criteria for evaluating conduct, which is lacking, for instance, in relation to the accountability of Ministers to Parliament; and

⁹² The general issue of Parliamentary accountability is considered in the companion Research Paper 97/6

⁹³ HC 313-II. See also Drewry and Oliver's *Public Service Reforms: Issues of Accountability and Public Law* (1996)

- the availability of sanctions or remedies if fault is found. The British arrangements, again, are ambivalent, since the person in control, the Minister, will not be liable to punishment if things have gone wrong, only to a weak and unpredictable, political, duty to make amends.

Professor Philip Giddings' evidence to the Public Service Committee noted that 'generally speaking agencies have been incorporated within the existing arrangements for accountability', instancing the continuing jurisdiction of the *Parliamentary Commissioner Act 1967* and the remit and practices of select committees:⁹⁴

4.4 Executive agencies are part of the Government's programme for enhancing the efficiency and effectiveness of the public service. One undoubted consequence of the agency programme has been that a great deal more information about the workings of the public service has come into the public domain. The publication of Framework Documents, performance indicators and Annual Reports; the much fuller answers to MPs' questions which Chief Executives give; and the increased visibility of Chief Executives, all provide much potential material for scrutiny by departmental Select Committees.

4.5 Some commentators, indeed some Chief Executives, have thought the Committees have been slow to exploit the opportunities created by the agency format to investigate the way departments are managed - but that raises wider issues about the way in which the Committees, individual and collectively, construct their programme of work. Notwithstanding some important early work by the National Audit Office and the Public Accounts Committee' and growing interest by some departmental Committees, it remains the case that the work of Committees as a whole has not yet taken on the character of a sustained and systematic performance audit of agencies which some would like to see.

4.6 The SPG study of departments and agencies underlines the need for sustained scrutiny. Whilst it is true that quite a number of agencies are dealing with matters which are peripheral to the main work of departments and to the interests of most MPs and their constituents, there can be no doubt that others are of the highest political profile e.g., the Benefits Agency; the Child Support Agency; the Employment Service Agency; the Prison Service. The efficiency and effectiveness of these agencies is a matter of the high public interest. The difficulty of differentiating between policy and operational matters remains, however, a fundamental issue, as the parliamentary debates on the CSA and the Prison Service have demonstrated.

4.7 With the less visible agencies, such as those in the Department of the Environment, agency status had led to a decline in *Ministerial* accountability to Parliament for the work of the Civil Service, largely because of the practice of referring PQs to Chief Executives.' But the greater openness about targets and objectives has provided the opportunity for greater accountability to Parliament for both Ministers and senior civil servants since what is publicly announced is more easily scrutinised and monitored - if MPs wish to do that. This is also true of the Department of Social Security's agencies.

The proposed abandonment of the convention of Ministerial responsibility for agencies would not however seem to improve their accountability. Giddings notes that reducing ambiguity by transferring agencies to a statutory basis is akin to the approach followed with the public corporations which ran nationalised industries:

⁹⁴ HC 313-II

"The evidence from that experience does not suggest that the arrangements for Parliamentary accountability were considered unambiguous or particularly effective. The problem of how to distinguish 'policy' from 'administration' or 'management' was at times acute. Moreover, moving to a statutory basis seems more likely to increase rigidity and inflexibility in the operation of public services rather than the flexible adaptive management modern public administration requires".⁹⁵

Other commentators believe, however, that accountability would improve if there was greater clarity in roles between Chief Executive and Ministers and that agencies would benefit from decreased political interference.⁹⁶ The corollary to this would be improved mechanisms for the redress of grievances which would not involve Ministerial intervention in matters of day-to-day administration, such as the Inland Revenue Adjudicator or the Parliamentary Commissioner for Administration. Dr Diana Woodhouse argued in evidence to the Public Service Committee that "where Chief Executives are concerned the benefit in the Minister-civil service relationship is all one-way, Chief Executives remain bound by the traditional requirements of civil service loyalty and confidentiality, yet, unlike the traditional civil servants, they are not longer anonymous and protected from public blame. There is therefore, a danger that they will be held culpable for failures within their agencies without being able fully to defend Ministers or to bring to public attention, the part played by Ministerial policies and intervention in such failures. Such Civil Service culpability is inconsistent with the convention of Ministerial responsibility and in this respect it would seem that the convention has been subverted to protect Ministers rather than officials, enabling Ministers to control the information made available to Select Committees whilst at the same time distancing themselves from culpability".⁹⁷

On the other hand, Philip Norton believed that "the existence of Next Steps agencies might be argued to make Ministers less able to blame officials who are not able to answer back. Chief Executives are more visible than the normal run of civil servants, whereas the tradition of established civil servants is to go quietly, the inclination of Chief Executives recruited from outside the Civil Service may not coincide with that tradition and, given that they serve on fixed term contracts, may sue for wrongful dismissal. A greater willingness of Chief Executives to defend their actions if dismissed may contribute to greater knowledge on the part of the House in judging the extent to which the relevant Minister was or was not blameless".⁹⁸

The TCSC in the previous Parliament maintained that Chief Executives should be accountable to Select Committees for matters delegated to them in the Framework Document, but this has always been resisted by the Government.⁹⁹ The Government

⁹⁵ para 5.8

⁹⁶ See evidence from Alan Page to Public Service Committee, HC 313-II, Session 1995.96

⁹⁷ para 3.7 HC 313-II

⁹⁸ p.74 HC 313-II

position has also remained consistent, and is conveniently set out in the Office of Public Service memorandum to the Public Service Committee:¹⁰⁰

Accountability of Ministers

9. The introduction of Next Steps has not changed the accepted framework of Ministerial accountability to Parliament—neither in Great Britain nor in Northern Ireland, although the position there remains somewhat different. In Great Britain, with the exception of a number of statutory office holders, Parliament confers functions upon Ministers and not civil servants. Save where the relevant legislation specifically indicates otherwise, in order practically to deliver public services, the functions of a Minister are performed by civil servants. Departmental instructions (including Framework Documents) and practice govern how those functions are exercised. This arrangement, however, involves no change in accountability. The use of the word "delegate", in Framework Documents and other Next Steps material, in relation to functions to be performed by an agency, is in the sense of the Minister assigning the task to those civil servants he wishes to carry out those tasks for him. There is no sense of delegation of power to a separate individual or body. The Minister remains accountable to Parliament whether the functions are carried out on his behalf by civil servants within the department of which the Minister is head or by civil servants assigned to an agency of his department.

10. Underlying the accountability of civil servants to Ministers alone is the principle that the Civil Service has no separate constitutional personality, a principle of fundamental importance in sustaining the Service's permanent and impartial nature.

11. Ministers must rely on the Civil Service to assist them, and it is therefore essential that the Civil Service should command the confidence of present and potential future Ministers. The foundation stone of that confidence is the knowledge that the Civil Service has no independent personality or agenda, and accounts to nobody else for the discharge of Ministerial instructions.

12. Since Ministers and civil servants cannot both be directly accountable to Parliament for the same thing, direct accountability of civil servants could only be at the price of reduced Ministerial accountability. The Government is opposed to reducing Parliament's power to hold Ministers to account in this way.

Select Committees

13. This position does not of course preclude MPs and Select Committees from investigating facts and questioning civil servants (including agency Chief Executives). But the civil servants concerned would be giving evidence on behalf of their Ministers. From the earliest stages of Next Steps, Ministers accepted that Chief Executives had an important role in providing more open government and the usual expectation is that they will assist Select Committees by giving evidence on how their responsibilities under the Framework Document have been discharged.

¹⁰⁰ *The Next Steps Programme*, February 1996

Lord Nolan has also contributed to the debate in November 1996.¹⁰¹ He argued that Ministerial accountability as set out by the Government was in danger of leading to over-centralisation:

But we should not overlook the very centralist nature of this position. It brings the accountability of the Executive down to one very narrow point - the answerability of a hundred Ministers, or twenty Secretaries of State, to Parliament and its Committees. And given that Ministers must, by definition, command a majority in Parliament, the accountability which this provides is not necessarily very strong.

A major purpose of the creation of Next Steps agencies is to free Ministers from the detail of operational matters. Ministers rightly seek to concentrate on major issues of policy and resources. But if accountability is only through Ministers, in respect of an agency with hundreds of offices and thousands of clients, the chain is too long, the person who should be answerable - perhaps at local level - remains shielded from public view, and true accountability is weakened.

I have argued before that Ministerial accountability to Parliament was long used by the British civil service as an excuse for secrecy. Officials could not reveal anything before Ministers revealed it to Parliament, so little or nothing could be revealed.

Ministerial accountability is now in danger of being used to slow down the growth in accountability of public servants. We all know that in recent years many services which used to be the responsibility of elected local authorities have been removed, often for good management reasons, into the hands of specialist bodies which are not elected but either are appointed by Ministers or are self-appointed. These bodies are usually funded from central funds. Their chain of accountability, which used to go via the local authority to the local electorate, now goes via government departments and Ministers to Parliament. In a parallel development, activities which were formerly under direct Ministerial control have been devolved, again for good management reasons, into the hands of numerous appointed statutory bodies. These changes have happened in addition to the creation of Next Steps agencies.

My Committee has said clearly, and I say it again today, that this is a much more complex public service than ever before, and that it demands greater attention to accountability. Such accountability can only be achieved through openness, and through requiring the people who run these services on our behalf to be openly answerable. That cannot be achieved by a chain of accountability that runs upwards from literally thousands of independent or quasi-independent bodies, of varying size, structure and legal status, to a handful of Ministers, laden with half a dozen or more red boxes of paperwork to take home each weekend.

Public pressure for the public services to be accountable has never been greater. The press, for all its failings, is a very powerful instrument of scrutiny, which increasingly opens up to view the public service at all levels. Problems can seldom be hushed up. Action is sought. But the right people have to be accountable. For example once again in recent weeks we have seen the Secretary of State for Education and Employment placed in the position of having to involve herself directly in the local difficulties of one or two problem schools, because the chain of accountability only links up at Ministerial level. Eventually, the framework of accountability will have to change, and to follow the new management and organisational structure.

The Public Service Committee Report concluded that although the formal delegation of responsibility to agency Chief Executives had made more transparent the relationship between

¹⁰¹ Second Radcliffe Lecture, 21.11.96

Minister and Civil Servant, thus strengthening accountability; this had reduced the coherence of the convention of Ministerial responsibility:

89. While it has done much to promote the extent to which Parliament and the public can discover what is going on inside Government, the increased transparency of the relationship has done more than anything to reduce the coherence of the convention of Ministerial responsibility. It has led, indeed, to suggestions that it renders the traditional convention of Ministerial responsibility unworkable in agencies. To those who designed the system, and to many since, it has seemed reasonable to build on this quasi-contractual relationship, in order to create a rather different type of accountability by the executive to Parliament. The Efficiency Unit argued that "Placing responsibility for performance squarely on the shoulders of the manager of an agency ... has implications for the way in which Ministers answer to Parliament on operational issues ... We believe it is possible for Parliament, through Ministers, to regard managers as directly responsible for operational matters and that there are precedents for this and precisely defined ways in which it can be handled". In an Annex, they explained the need for this exception to the ordinary convention. The management of an agency was unlikely to be given a realistically specified framework within which there is freedom to manage if a Minister remains immediately answerable for every operational detail; and "acceptance of individual responsibility for performance cannot be expected if repeated Ministerial intervention is there as a ready-made excuse". They noted how some functions of central government were already carried out at arm's length from Ministers - such as decisions on individual tax or social security cases, or quasi-judicial or regulatory functions. They pointed out how agencies outside departments normally operate within a statutory framework, and did not rule out such a framework for the agencies. They therefore proposed that agency Chief Executives should give evidence to the Public Accounts Committee and Select Committees, and that they should answer Parliamentary Questions themselves (rather than through Ministers).

90. These specific proposals on Parliamentary accountability have all, gradually, been accepted in some form or another. But the Government has still preferred to retain agencies within departments, and to keep to the formal position on Ministerial responsibility. Agency Chief Executives are still civil servants; they still act on behalf of, and under the authority of Ministers, and are not directly accountable to Parliament. Agency Chief Executives are now Accounting Officers for the Agency, but they are normally additional Accounting Officers, formally subordinate to the permanent head of the department. As the Accounting Officers' memorandum says: "the permanent head, in addition to the responsibilities for the assigned votes and accounts, remains in overall charge of the department ... It is within that framework that any additional Accounting Officers, including those who are Chief Executives of 'Next Steps' Agencies, are responsible for the votes and accounts assigned to them". This position has been contested in a series of Treasury and Civil Service Committee reports, but the Government has maintained its position firmly: the recommendation of the Committee in 1994 that agency Chief Executives should be 'directly and personally accountable to Select Committees in relation to their annual performance agreements' was, it said, inconsistent with the Committee's desire to retain the right of Members of Parliament to appeal to a Minister if a Chief Executive's answer to a Parliamentary Question is unsatisfactory.

91. The Government's position reflects the belief that delegating functions further away from Ministers risks making traditional Parliamentary accountability less effective. The more formal delegation of powers, it may be said, means that a Minister can with much greater reason than before disclaim responsibility or accountability for a good deal of the work of his department. Many have expressed great concern that opportunities to approach and influence a Minister about important issues of operational policy are lost if a Minister refers inquiries to the person in charge of the operational policy, the Chief Executive. One of the principal meanings of accountability to Parliament is, as we have described above (para. 32) the responsiveness of the executive to concerns raised, on behalf of constituents, by Members of Parliament through pressure on Ministers in Parliament. If Ministers formally delegate their

functions it might be argued that they make public services unaccountable, at least in Parliamentary terms.

The report examined the history of the Prison Agency since its agency status began on 1 April 1993, noting the conflict between increasing managerial efficiency and responding effectively to political concerns (paras. 96-102). It noted that the Learmont Report¹⁰² had recommended a review of the relationship between the Home Office and the Agency "with a view to giving the Prison Service the greater operational independence that agency status was meant to confer" (para. 387). The Select Committee did not commit itself on the proper relationship, however, beyond recommending that the Government 'systematically reviews the roles of Ministers and agency Chief Executives and reports its conclusions to Parliament in the Next Steps Agency Review" (para. 102) and calling for greater definition and greater openness in the relationship between Minister and Chief Executive. It saw three key areas to be addressed: publication of useful information, clarity in specifying responsibilities and maintenance of a dialogue with Parliament through Select Committees (para 104). In particular it recommended changes in the Osmotherly Rules.¹⁰³

112. This does not mean that Ministers should relinquish their overall responsibility to Parliament for the agencies. But we accepted earlier that there were two different sides to the obligation of Ministers to Parliament for those matters which come within their responsibility: the obligation to give an account - to provide full information about the actions of the Government; and the liability to be held to account - to respond to criticism and to concerns raised in Parliament. The second of these aspects of responsibility cannot be delegated. If an activity remains within a department, Ministers must always retain the ability and duty to make investigations in response to concerns raised with them, where things have gone wrong, to ensure that if mistakes have been made, those responsible for making them are duly disciplined, even, if something has gone wrong which they might have been able to prevent, to take some of the blame themselves. But the other side of the obligation to Parliament - the obligation to give an account - can be (and in practice largely is) delegated, at least in part, to the agency Chief Executive. It is, admittedly, only a partial delegation of the accountability function, because the retention of the formal responsibility of Ministers means that, if a Member of Parliament is unsatisfied with the response he has received from the agency Chief Executive, he can always have recourse to the Minister. But in the first instance, at least, it is Chief Executives who give the account to Parliament of their stewardship.

113. Therefore, we believe that the Osmotherly Rules should reflect this considerable change in practice, and make it more formal. The Osmotherly Rules give no indication that agency Chief Executives are in any other relation with Select Committees than that of any other civil servant. Therefore they imply that Ministers may try to prevent an agency Chief Executive from appearing before a Select Committee, just as they might prevent any other named official from appearing. It seems absurd that this should be implied by the Osmotherly Rules, and now almost inconceivable that it would happen. We recommend that the Osmotherly Rules be amended to indicate a presumption that Ministers will agree to requests by Select Committees for agency Chief Executives to give evidence.

114. The Osmotherly Rules also say that Chief Executives give evidence on behalf of the Minister to whom they are accountable and are subject to that Minister's instruction (when doing so). We believe that this no longer accurately reflects the reality. As we have seen, Ministers rarely become involved in the answers given by Chief Executives to Parliamentary

¹⁰² *The Escape from Whitemoor Prison on Friday 9 September 1994* Cm 2741

¹⁰³ Departmental Evidence Response to Select Committees, December 1994. A new edition was published in January 1997. See Research Paper 97/5 for a full analysis

Questions; it is unclear, therefore, why Chief Executives should continue to be subject to Ministers' instruction when giving evidence to Select Committees. In practice, giving an account to Parliament - in the first instance - on the matters within the responsibility of a Chief Executive has become a function delegated to the Chief Executive. We recommend that the Osmotherly Rules be amended to indicate that agency Chief Executives should give evidence to Select Committees on matters which are delegated to them in the Framework Document. This does not, of course, mean that Chief Executives will speak without Ministerial approval on policy matters, as policy matters are not delegated to the Chief Executive. If asked questions about policy, or the impact of policy, the Chief Executive would, as now, refer the Committee to the Minister. Chief Executives would not therefore become, as Mr Heseltine suggests, an alternative political force.

The Committee examined the possibility of dividing the agencies from their departments perhaps by making them statutory NDPBs loosely following the Swedish model. It also looked at a more contractual relationship between agency and department as introduced in New Zealand, but drew no firm conclusions beyond recommending greater definition of respective rules in the Framework Agreements, and that the Government consider at each Agency review whether an agency should be converted into a statutory body (para. 122). The Committee report promised to examine the issue again, and in the meantime recommended to other Select Committees that they consider for agencies within their subject areas "whether a contractual or legislative framework would better serve the public interest than the Agency's present status". The report acknowledged that Select Committees had not yet taken on the character of systematic audit of agencies (para. 123). It recommend that the Government invite Select Committees to comment on Framework documents and agency Corporate Plans before their publication and review.

The Committee also acknowledged that there were different types of accountability apart from Parliamentary accountability, and the increasing use of judicial review; the Parliamentary Commissioners for Administration as well as the Citizens Charter all provided avenues for accountability to the public. On the other hand "delegation and privatisation are reducing the extent to which effective political accountability can be provided through Parliament... Accountability to Parliament should not preclude accountability to the public and vice versa". (para. 174).

The Government response to the Public Service Committee report¹⁰⁴ did not accept that civil servant should be brought within the ambit of the proposed Resolution for Ministers¹⁰⁵ since this would create a shared line of direct accountability to Parliament between Ministers and civil servants.¹⁰⁶ The response also rejected the Committees suggestion that a gap or 'lacuna' existed regarding the accountability of officials where Ministers themselves could not be held to be directly responsible.¹⁰⁷ The response argued as follows:

9. If failures occur or errors are made, it is for Parliament to consider whether the Minister is personally responsible and, if so, what constitutes an appropriate sanction. Where, however,

¹⁰⁴ Public Service Committee First Special Report HC 67 Session 1996/97 November 1996

¹⁰⁵ Recommendation 8 of HC 313 Session 1995/96

¹⁰⁶ para 7

¹⁰⁷ para 8

Parliament decides that the Minister is not personally responsible, it will rightly expect an account from the Minister of what steps have been taken to correct the error and prevent recurrence, including reporting (which may be on a confidential basis) on any disciplinary action.

10. By contrast, the assumption of a responsibility gap implies that it is for Parliament to "catch" whomever it can - whether Ministers or officials. This would undermine the fundamental principle that civil servants are servants of the Crown, accountable to the duly constituted Government of the day, and not servants of the House, and could risk making decisions about the responsibility of individual civil servants directly dependent on Party politics. It could thus jeopardise the well-established relationship between Parliament, Ministers of the Crown and the Civil Service. This is in contrast to Non-Ministerial Government Departments and Non-Departmental Public Bodies (NDPBs), which are generally set up by statute and whose staff are accountable to the statutory office-holder or boards, who in turn are responsible to Parliament for discharging the statutory duties of the body.¹ The Government's view on this important issue is further spelled out in its responses to Recommendations 26 and 29 of the Committee's Report.

The Government response to the recommendations on agencies noted that the role of Ministers and Agency Chief Executives was already subject to review as part of the five yearly agency review process (Recommendation 15) and that Treasury guidance on agency financial statements would be reviewed in the light of developments in the Resource Accounting and Budgeting initiative which was expected to provide more consistent and comparable financial data for both departments and agencies (Recommendations 16-18).

The Government response accepted a change in the wording of the Osmotherly Rules¹⁰⁸ to indicate a presumption that Ministers would agree to requests by Select Committees for Agency Chief Executives to give evidence, while maintaining that this was the normal occurrence and the intended sense of the existing rules (Recommendation 20). But the Government was clear that Agency Chief Executives should only give evidence to Select Committees on behalf of Ministers: "The Government is not, however, prepared to breach the long-standing basic principle that civil servants, including the Chief Executives of Next Steps Agencies, give an account to Parliament on behalf of the Ministers whom they serve. Were civil servants to be required to go beyond this, they would inevitably be drawn into matters on which, as the Committee itself acknowledges (paragraph 114), they must refer Select Committees to the Minister. The Government's commitment to a permanent, non political civil service means there can be no question of apportioning between the Minister and his civil servants part or parallel shares in a single line of accountability to Parliament." (Recommendation 3). The response acknowledged that the position was rather different for Accounting Officers and Agency Accounting Officers but the essence of those rules was a *personal* responsibility for the propriety and regularity of the public finances for which he or she was answerable.¹⁰⁹

The clarification of the respective rules of Ministers and Chief Executives in the Framework document requested by the Committee brought the response that a description of the role delegated to Chief Executives was a key element in all Framework Documents, "recognising that at the same time it is impracticable to predict every eventuality that may arise in the life span of individual Framework Documents" (Recommendation 20). The Government response

¹⁰⁸ *Department Evidence and Response to Select Committees*, December 1994. A new edition was published in January 1997. See Research Paper 97/5

¹⁰⁹ footnote 4 - Recommendation 3

noted that the revised *Guidance on Agency Reviews*¹¹⁰ made it clear that in addition to the key options of abolition, privatisation or contracting out, there were other options, including NDPB status and transfer of ownership which should be considered. The response, however, did not display any enthusiasm for transfers of agencies to into statutory bodies. It noted that the relevant Select Committee had the option to consider all options at the earliest stage of the agency creation and review process, but did not consider it appropriate for Select Committees to be consulted on documents concerning departmental management in advance of publication (Recommendations 23-24). It therefore rejected the Public Service Committee recommendation that Select Committees be invited to comment on Framework Documents and agency Corporate Plans before they are published and when they are reviewed, intended as part of a constructive dialogue between Parliament and agency.

¹¹⁰ Cabinet Office 1995

Appendix A

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