

# Public Bodies Reform by the UK Government 2010-2013: Initial Findings

Shrinking the State Research Paper 1



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# Shrinking the State

The Shrinking the State project, a 3 year study that commenced in May 2012, is led by Professor Chris Skelcher (University of Birmingham), Professor Matthew Flinders (University of Sheffield), and Professor Anthony M. Bertelli (University of Southern California). Dr. Katherine Tonkiss (Birmingham) and Dr. Katharine Dommett (Sheffield) are Post-Doctoral Research Fellows on the project, and Marc Geddes (Sheffield) is a Doctoral Researcher.

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For further information on the project, see our web site [www.shrinkingthestate.org.uk](http://www.shrinkingthestate.org.uk)



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## Foreword

'It is a commonplace that the characteristic virtue of Englishmen is their power of sustained practical activity, and their characteristic vice a reluctance to test the quality of that activity by reference to principles', R. H. Tawney wrote in *The Acquisitive Society* (1920), '[they] are more interested in the state of the roads than in their place on the map.'

In relation to the administration of the state such comments are undoubtedly true as British constitutional history reveals a deep-rooted commitment to 'muddling through' and an almost unquestionable belief in the capacity of the civil service to respond to social challenges as and when they arise. As Lord Hennessy once put it, 'we [the United Kingdom] are deeply ingrained as a back-of-the-envelope nation, certainly in the organisation of the central state'. Such confidence has in recent years been dented by a combination of factors – the global financial crisis, ever rising public expectations, new social challenges, developments in relation to information technology and communications – that have combined to focus attention on modern public management, the appropriate balance between the public and the private sectors and the principles of 'good governance'. Put slightly differently, 'muddling through' is arguably not good enough in the twenty-first century.

If there was one element of the administration of the state where a preference for 'ad hoc empiricism' had clearly exhausted its usefulness it was surely in relation to quangos and the vast plethora of agencies, boards and commissions that existed beyond ministerial departments. Hazy in number and confused in terms of governance, all three main political parties campaigned on the basis of far-reaching reform at the 2010 General Election.

This initial findings document outlines exactly how the Coalition government has attempted to deliver on its commitment to 'reform the quango state' while also reflecting on some of the tensions and challenges that this reform agenda has unsurprisingly created. It offers not an account of 'bonfires' or 'axes' or but a more sophisticated account of the changing nature and structure of governance. Our core argument is that the approach of the Coalition government has predominantly focused not on abolition (i.e. quangocide) but on tidying-up the quango landscape and tightening-up internal control procedures. The Coalition's reforms in this area cannot therefore be dismissed as cosmetic but at the same time it is important to acknowledge that the quango state has been reconfigured rather than abolished.

This document draws together the main findings from the first year of a three-year project and further research will now explore many of the themes and issues that have come to the fore in more detail. It will also locate the Coalition's reform agenda within the parameters of far broader debates that assess the comparative significance of this research for scholars and practitioners beyond the UK, while also reflecting on the implications of this study for far bigger questions concerning the future of the state.

In terms of tackling these issues we are incredibly fortunate to have two first-class researchers, Kate Dommett and Katie Tonkiss, working on this project and would also like to thank the Cabinet Office, Institute for Government and the Public Chairs' Forum



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## Quangos - Virtue or Vice?

### The context for our study

The Shrinking the State research project is tracking and analysing the UK Coalition Government's major reform of arm's length public bodies (often called 'quangos'), part of its wider agenda to introduce new approaches into the operation of Whitehall and the civil service, and to change the way in which public services are delivered.



Arm's length bodies, as their name suggests, operate with a degree of autonomy from ministers. They have been created by governments of all political persuasions in order to bring independence and expertise into the delivery of policy, regulate services, provide advice, and resolve disputes through administrative tribunals.

Over the past century, such public bodies have become indispensable to modern government globally, preventing ministers from becoming overloaded, bringing expert advice and management to complex policy issues, and undertaking regulatory and quasi-judicial tasks that need to be politically independent. The success of the Olympic Delivery Authority provides an example of the benefits that can be gained from such arm's length bodies.

However, 'the quango' is also a frequent focus for public, political and media criticism. They are claimed to be unaccountable, wasteful, and self-serving. Their autonomy is regarded as a problem. Politicians from all parties regularly argue that they are beyond effective ministerial or Parliamentary control. The media frequently report instances of expenditure or decisions that they regard as unacceptable.

A number of previous governments – in particular the 1979 Conservative and 1997 and 2005 Labour administrations – have sought to reform public bodies with the aim of reducing their number and expenditure

and increasing their accountability. Despite the existence of emotive rhetoric concerning the lighting of bonfires, the wielding of axes or the promise of 'quangocide', these reform agendas have generally produced only limited results.

In the 2010 general election campaign, the manifestos of the three main political parties contained commitments to reform public bodies. In May 2010, the Coalition Government included this commitment in its *Programme for Government*, and gave particular emphasis to two ambitions: saving money and increasing accountability.

Our research is investigating the background to, process of and consequences from this commitment to reform public bodies. We are asking:

Whether and to what extent public bodies' reform will deliver the twin ambitions of a smaller, smarter, cheaper state, and one that is more accountable?

Over the past year, our research team has been documenting the public bodies reform process. We have conducted over 90 interviews with civil servants in all departments across Whitehall, with MPs and Lords, public body board members, and with other individuals and organisations involved in the reform process. We have also attended meetings and workshops, and analysed reports and other published data.

This first findings paper summarises the conclusions that have emerged from our initial baseline research.<sup>1</sup> The public bodies reform programme continues to develop and intersect with other reform agendas at a rapid pace, and so events reported here reflect the position at early 2013. The latest comprehensive Government position statement is *Public Bodies 2012*, published in December 2012.<sup>2</sup>

### The reform process

Shortly after the Coalition agreement, a cross-departmental review of 900 public bodies was undertaken. This focused on particular types of arm's length body – principally non-departmental public bodies (NDPBs), but also a small number of public corporations and non-ministerial departments. The review did not consider executive agencies, since these are considered by government to have less autonomy from ministers and thus not to exhibit the same kind of accountability problems as NDPBs.<sup>3</sup>

Definitions of these types of arm's length body The results of the review were announced in October 2010. The ministerial statement set out the proposal for each body: to retain, retain

<sup>1</sup> An initial analysis of reform challenges can be found in Flinders and Skelcher (2010).

<sup>2</sup> Cabinet Office (2012a).

<sup>3</sup> Definitions of these types of arm's length body are provided in Cabinet Office (2012b).

but reform, merge, transfer to another sector, abolish, or - in a small number of cases - to defer any decision while additional reviews and consultations were completed.

The *Public Bodies Act*, which received Royal Assent in December 2011, provided enabling powers for reforms to a number of bodies. Other bodies were able to be reformed using existing legislation, or by ministerial decision where the body did not have a basis in statute.

Since October 2010, departments have been implementing changes to some bodies, and in other cases consulting on and making judgements about proposals for change. A number of proposals for reform are still outstanding for one or more of the following reasons: the need for resolution of issues concerned with bodies that cover one or more devolved administrations; ongoing discussions regarding the specific changes proposed; policy reviews, the outcomes of which will affect particular bodies; and the need to draft orders or pass further legislation.

It is therefore possible to argue that the public bodies reform agenda is currently moving from the initial review and reform stage into a second stage that is more focused on preventing 'push-back' where abolitions have been agreed but not yet undertaken and is also more concerned with issues of corporate governance (e.g. enhancing sponsorship, triennial reviews, public appointments, etc.).

### Headline findings from the research

Our overall conclusion at this stage is that this reform process has achieved much greater impact than the efforts of previous governments in reducing the population of public bodies. The

reforms have therefore been significant and far-reaching and cannot be dismissed, as those of previous governments have, as 'cosmetic'. A detailed analysis of the reform proposals and achievements to date reveals that impressive reductions in the 'quango headcount' are intended, largely through the abolition or merger of large numbers of very small bodies. This represents a much needed tidying-up of what had become a congested and confused institutional landscape.

However, in many cases the abolition of a public body has involved all or some of its functions transferring to a new arm's-length body, into a government department, and in some cases to local government or the charitable, not-for-profit or business sectors. Given this, significant savings are only likely to accrue from a focus on reforming the larger public bodies and making tough decisions about specific functions, rather than through decisions on the preferred organisational location for that function. Cutting the cost of quangos and increasing accountability was never going to be achieved by simply cutting quango numbers.<sup>4</sup>

The effects of public body reform on citizens, business, not-for-profit organisations and others are yet to be determined. A number of bodies affected by closure and termination of functions serve or act on behalf of particular sections of society, regulate private activity, or review and comment on the operation of government – for example, the Administrative Justice and Tribunals Council.

### Relationship to wider civil service reforms

There has been limited connection between reform of public bodies and other aspects of the Coalition government's agenda for the public

sector, for example changes to the public appointments system, the NHS reforms, and the civil service reform plan. The issue of public appointments is particularly acute as the regulatory framework has been radically reformed in recent months and the House of Commons is demanding increasing powers over senior ministerial appointments. How this agenda dovetails with the public bodies reform agenda, let alone the civil service reform agenda or the equalities agenda, is unclear.

There is a tension between the centrifugal forces underlying the civil service reform plan's ambition for improved and more efficient delivery, and the centripetal forces of improved accountability that in part motivated the public bodies review. Careful consideration of the sponsorship relationship linking ministers and delivery bodies is necessary to ensure that reform does not lead to an increasingly opaque and fragmented institutional architecture of ever more sophisticated delivery structures.

This is important because the Government's approach to the use of arm's-length bodies is multifaceted, in the sense that new bodies have been (or are being) created, including some that delegate authority even further away from ministers than NDPBs. The NHS reforms, for example, abolished a large number of NDPBs and in their place created a smaller set. In addition, PCTs (corporate entities, not NDPBs) were abolished, and many of their functions transferred to clinical commissioning groups – new corporate entities created by statute and controlled by GPs and other clinicians.

Effective governance and delivery of the wider reform agenda will require this tension between centrifugal and centripetal forces to be resolved.

<sup>3</sup> Definitions of these types of arm's length body are provided in Cabinet Office (2012b).

<sup>4</sup> As argued in Institute for Government (2010).

## Detailed findings from the research

In the following sections, we present more detailed observations relating to different aspects of the reform process.

### The review of public bodies

#### 1. There has been a very rapid process of reviewing public bodies and developing proposals for change, especially considering the large number of bodies involved.

The Public Bodies Reform (PBR) programme is the most ambitious attempt to reduce the number and cost of NDPBs since the Pliatzky Review in 1979, and the initial review was undertaken in a very short period of time.

Within 5 months, civil servants across 16 departments had reviewed 263 classes of public body comprising 904 individual organisations<sup>5</sup> and agreed proposals for reform with ministers.<sup>6</sup> Each body was subject to an 'existential test': does the body actually need to exist or is its role/function now superfluous? If the function was deemed necessary, it was then assessed against three criteria to establish whether the function needed to be undertaken outside a department: Does it perform a technical function? Does it need to be politically impartial? Does it act independently to establish facts?<sup>7</sup>

The programme has had strong political leadership at Ministerial level, and Cabinet Office has played an active role in driving forward the PBR agenda across Whitehall in order to realise this political objective.

The review and subsequent actions were achieved in a period when the civil service was under considerable pressure as a result of budget and staffing reductions, and immediately following the election of a new Government with a range of other policy priorities.

#### 2. Departments have responded to the public bodies reform agenda in different ways, reflecting their own policy priorities.

Departments have used the public body reform process to review and clarify their delivery landscape, including removing public bodies that were no longer operational or cost effective. In some cases, this had commenced prior to the May 2010 general election, arising from the review process initiated by the Labour government towards the end of 2009.

For some departments, the reform process has aided the delivery of policy objectives by streamlining work and clarifying responsibilities.

In some cases, a key driver for reform was departmental policy and the priorities of the new ministerial team

rather than the public body reform agenda *per se*.

In other instances, reform was driven by deficit reduction and/or policy changes brought about by the previous Government rather than (or at least in addition to) the current reform agenda.

Some departments and public bodies are concerned by the increased oversight role of the Cabinet Office, for example through expenditure controls, and have suggested that in some cases 'the arm' in the arm's-length relationship has been shortened. This tension is encapsulated in the common statement that the previous 'loose, loose' relationship has been replaced by a 'tight, tight' relationship. Ministers, however, suggest that a new 'tight, loose' relationship has been put in place whereby arm's-length bodies enjoy discretion and autonomy within a much clearer and transparent policy and governance framework. It is clear that in many cases these relationships remain fluid and contested.



<sup>5</sup> Public bodies can be divided into those where there is a single organisation undertaking a function (e.g. the BBC or the Audit Commission), and those which are organised on a geographical basis and thus where multiple organisations of the same type exist (e.g. 8 regional development agencies, 147 independent monitoring boards of prisons, etc.). In the latter case, all bodies within a class will be affected by the reform proposal (e.g. all will be abolished, merged into a smaller number of bodies with wider geographical coverage, etc.). Expressing numbers in terms of classes of public bodies is preferable, as it avoids overstating the effects of reform. However government data and statements tend to refer to numbers of individual public bodies. We report both sets of figures.

<sup>6</sup> Cabinet Office (2011).

<sup>7</sup> Public Administration Select Committee (2011), para. 11.

**3. There was considerable concern in the public body community about differences in the extent to which boards were able to contribute to the review process.**

Departments used a variety of review methods. In some cases, it was a paper exercise without the involvement of individual public bodies; in other cases, there was fact-finding and discussion with bodies.

While a number of departments involved public bodies in discussions about their future, in some cases public body chairs only heard that the review had been conducted when the outcome was announced. Their exclusion from the review process generated disquiet, especially where it was thought that the review was not sufficiently informed about the work of the body.<sup>8</sup>

An issue for future research will be to understand the effects of this reform process and the changing infrastructure and procedures for public appointments on the recruitment of non-executives and chairs to public positions.

The research has uncovered a sense that many NDPB chairs feel somewhat bruised and battered, reform weary and under-valued by the recent reform process. The Coalition government may therefore have to consider how to rebuild positive inter-organisational relationships, not least as previous studies have demonstrated the importance of high-trust low-cost inter-personal relationships between bodies and sponsoring departments.

**4. The announcement of the public bodies reform process and specific proposals for individual bodies stimulated considerable**

**debate and lobbying in a number of cases.**

Some lobbying was employed both by individual bodies and by stakeholder groups. In most cases, this lobbying focused on the protection of functions, rather than of bodies themselves.

Data collection thus far indicates that chairs, boards and chief executives of public bodies were very conscious of the constitutional position of Parliament and/or ministers to make decisions about the future of individual public bodies. Their response to reform proposals tended to be framed in terms of the contribution of particular functions undertaken by the public body and the consequences of the proposed reform rather than the survival of the body itself.

The relatively slow passage of the *Public Bodies Bill* through the Lords was in part due to extensive debate and organised opposition to the abolition of a small number of public bodies. This, in addition to considerable Parliamentary concern at the powers being proposed for ministers, resulted in the Bill occupying considerably more time

and energy than had been anticipated.

**Implementation of reforms**

**5. There has been rapid movement in making changes to some bodies, but in other cases the complexity of reform means that proposals are not yet finalised, thus delaying implementation.**

At December 2011, 165 classes of public body (495 individual organisations) were affected by reform decisions or proposals; proposals on a small number of bodies were outstanding at that point.<sup>9</sup>

As of July 2012, some 20 months after the end of review announcement, Cabinet Office reported 106 individual public bodies (81 classes of public body) had been abolished.

Abolition of a public body does not necessarily mean that the body's functions are terminated in whole or in part. At July 2012, in 32 cases the body had been abolished but the functions were retained and transferred either: to a department; to a new committee of experts in a



<sup>8</sup> Public Administration Select Committee (2011).

<sup>9</sup> Cabinet Office (2011).

department or to a new executive agency; to another NDPB or executive agency; or out of public ownership (i.e. to a private sector or non-profit entity).<sup>10</sup>

While some of the reforms have implications only for England, others involve bodies that also cover other parts of the UK. Devolution has therefore resulted in some complexity in implementing reforms to UK-wide bodies, although the extent to which this has impacted upon the delivery of the reform agenda requires further investigation.

The rapidity of the review process reduced the time available to gather evidence to support or clarify reform proposals, and in turn this resulted in delays to the implementation of some decisions. This was particularly challenging for departments with large numbers of bodies to review, and suggests that the complexities involved in implementing reforms were not fully understood.

The order-making process under the *Public Bodies Act* enhanced affirmative procedure, and under other legislation, has generally proceeded with little contention. The main issue raised by the Secondary Legislation Scrutiny Committee has been the need for the Government to provide objective evidence, for example where the Government has decided not to consult on reform proposals or has failed to be specific about alternative ways in which advisory functions can be undertaken.<sup>11</sup> This is an area that requires additional research.

## 6 Much of the reduction in NDPB numbers is due to abolition, merger or planned reform of classes of NDPBs.

Mergers and transfers of functions to government and other arm's length bodies have been important ways of reducing the public body headcount. However, they have predominantly affected smaller and advisory bodies in terms of headcount and spending. £43.2 billion of spending remains at arm's length from government.<sup>12</sup>

The reform proposals include 16 mergers of NDPBs, and transfers of functions to other NDPBs (5), to executive agencies (9), to departments (16) and to charities, not-for-profit, and business organisations (22).<sup>13</sup>

Abolition of a small number of classes of NDPB containing multiple bodies make a significant difference to the reduced headcount of NDPBs, e.g. Regional Development Agencies (8), Agricultural Dwelling House Advisory Committees (16), Agricultural Wages Committees (15), and Court Boards (19), merger of the Advisory Committees on Justices of the Peace (101 into 49), and the planned reform of Internal Drainage Boards (155).

There remain ambiguities about the extent of efficiency savings expected to be delivered by the PBR programme, with the Public Accounts Committee (PAC) questioning the £2.6 billion savings estimated by the Cabinet Office, on the basis that administrative reorganisation is

unlikely to deliver this figure.<sup>14</sup> The Cabinet Office has responded that this figure is an overall reduction in the administrative cost of all public bodies, including wider efficiencies, in addition to the reductions related primarily to reforms. The total reduction in the administrative cost of public bodies is estimated to be at least £900 million by the final year of the current Spending Review period (2014-15).<sup>15</sup>

The PAC has also questioned whether the Cabinet Office will be able to measure the effectiveness of the PBR programme. The Cabinet Office plans to publish a Benefits Realisation Framework, which will aim to ensure that individual reforms contribute to the overall objectives of the PBR programme.

## 7. There has been variation across Whitehall in the way in which similar functions have been reformed.

- a. In some cases regulatory functions have been retained at arm's length in NDPBs (e.g. Competition Commission, Office of Fair Trading), in other cases they have been moved a little closer to ministers into executive agencies (e.g. Court Funds Office, Legal Services Commission), and in a few cases they have been transferred, or are shortly to be transferred, into departments (e.g. Local Better Regulation Office, Valuation Tribunal for England). The justification for such variation is unclear.

<sup>10</sup> Cabinet Office (2012c).

<sup>11</sup> For example: House of Lords Secondary Legislation Scrutiny Committee (2012).

<sup>12</sup> National Audit Office (2012).

<sup>13</sup> Analysis of data contained in Cabinet Office (2011).

<sup>14</sup> Public Accounts Committee (2012).

<sup>15</sup> HM Treasury (2012).

Where regulatory functions have been brought back in to departments, it has sometimes required special arrangements to ensure separation at official and ministerial level of responsibility for advice and policy making from decision-making on regulatory matters. The same issues face some public bodies, for example the merger of the National Lottery Commission and the Gambling Commission.

### The role of arm's length bodies

#### 8. Arm's length bodies (ALBs) remain an important vehicle for policy delivery.

We have identified some 18 new ALBs that have been, or are in the process of being, created since the 2010 review, some as successors to bodies abolished in the review.<sup>16</sup> Seven of these bodies are NDPBs. Others are executive agencies or special health authorities (which are, in effect, executive NDPBs within the NHS structure). This variety reflects the flexibility available to government in determining the legal form of arm's length bodies.

Reforms of the NHS at sub-national level have replaced one set of arm's length bodies with another. Clinical Commissioning Groups, statutory bodies governed by GPs and other specialists, have replaced Primary Care Trusts. CCGs, along with NHS Foundation Trusts, have greater autonomy than NDPBs (e.g. in relation to board appointments).

A change in Ministerial responsibility from Francis Maude to Nick Hurd within the Cabinet Office – as well as the Public Bodies Team's relocation to the Transformation Cluster – arguably reflects a shift of emphasis from 'review and reform' to 'strategy and sponsorship', together with an emphasis on exploring 'alternative models of service delivery' as part of the wider civil service reform plan to support departments in the design and introduction of mutuals and other types of organisation.

### Accountability to ministers

#### 9. The extent to which Ministerial accountability has been improved remains an open question.

The extent to which the issue of accountability is highlighted as a significant factor driving reform choices varies between departments, as does the level of control departments exert over the bodies that they sponsor.

The Cabinet Office has tightened controls over and monitoring of public bodies to improve accountability, including operating the new expenditure controls system that applies to departments and NDPBs;<sup>17</sup> further work needs to be undertaken to establish the impact of these controls, including on accountability.

Some reforms have involved abolishing public bodies and transferring their functions to existing or new executive agencies. This is unlikely in practice to increase

accountability to ministers, as the difference between executive agencies and NDPBs in governance terms is somewhat ambiguous.<sup>18</sup>

Although integration into a departmental line management system theoretically should increase accountability to ministers, it may not have this effect. Because of their arm's length status, NDPBs are required to produce annual reports and (depending on their size and function) regular monitoring information. In addition, an official or team are responsible for sponsorship, which for larger NDPBs involves regular meetings to discuss performance at official level, and at ministerial level for larger NDPBs or those with particular salience. This ensures transparency and profile for the NDPB. Where functions are transferred into a department, any report is likely to be a small component of the department's annual report at best. Indeed, the function may be too small to warrant a mention. Thus the transparency necessary for accountability to ministers is likely to be reduced.

#### 10. Reforms of advisory bodies that are justified on the basis of financial savings and greater operational flexibility may be at the cost of public transparency.

38 advisory NDPBs are being abolished and reconstituted as advisory committees of experts or similar informal 'sounding boards'.<sup>19</sup>

<sup>16</sup> Data from the research team's cataloguing of new ALBs since 2010. At April 2013, bodies are: Education Funding Agency (EA), Health Research Authority (SHA), Independent Commission on Aid Impact (ANDBP), Independent Monitoring Boards (6) (other NDPB), Legal Aid Agency (EA), NHS England (formerly, NHS Commissioning Board) (ENDPB), NHS Trust Development Authority (SHA), National College for Teaching and Leadership (EA), National Crime Agency (EA), National Employment Savings Trust (ENDPB), Office of Budget Responsibility (ANDBP), Public Health England (EA), Social Mobility and Child Poverty Commission (ANDBP), Sports Ground Safety Authority (ENDPB), Standards and Testing Agency (EA). Note: EA= executive agency, E/A NDPB = executive/ advisory non departmental public body; SHA = special health authority. See also Cabinet Office (2012a)

<sup>17</sup> Cabinet Office (2012d)

<sup>18</sup> HM Treasury/OPSR (2002).

<sup>19</sup> Analysis of data contained in Cabinet Office (2011).

Departments justify this on the basis of reducing the governance overheads and enabling more flexibility in the way the committee is constituted and operates.

Further research is required in order to establish whether the change of status from advisory NDPB to 'departmental committee of experts' will affect the level of transparency for such functions. This will involve a comparison of the requirements governing NDPBs with the Code of Practice for Government Scientific Advisory Committees and its application in practice<sup>20</sup>, in the context of the emphases on open policy-making in the Civil Service Reform Plan.<sup>21</sup>

## Consequences of reform

### 11. The impact of public bodies reform on social, economic and environmental well-being is yet to be determined.

Some bodies subject to abolition have a direct effect on well-being. In some cases this involves them in service delivery or in the monitoring and review of public services or the operation of government, business or not-for-profit organisations.

In part, the justification for the reform of some bodies (for example, the Disabled Persons Transport Advisory Committee) was that the function could better be undertaken within government or through other mechanisms. In some cases these proposals were challenged by stakeholder organisations. The impact of such change will require further investigation by the research team, as the effects of reform take effect.



### 12. The reach of the state is still extensive.

In only 80 (9%) of the NDPBs proposed for abolition are all the functions of that body to be abolished.<sup>22</sup>

In most cases where NDPBs are subject to abolition, their functions continue to be exercised in whole or in part by other organisations (114/199 57%).<sup>23</sup>

However, despite the continuing relevance of arm's length bodies, the public bodies reform agenda appears to have created a climate in which proposals for the creation of new NDPBs to deliver new policy initiatives are seen as undesirable. This has led to some uncertainty about how to proceed where NDPBs would seem to be the most appropriate solution.

### Developments from the public bodies reform process

#### 13. Across Whitehall, the public bodies reform process has highlighted the need to develop greater expertise and consistency in the sponsorship of NDPBs and other arm's length or partner bodies.

Historically, there has been considerable variation within and between departments in approaches to sponsorship. In part this reflects differences between public bodies' functions, scale and significance; but it also highlights variation in the level of strategic awareness of and guidance about sponsorship policy and practice.

The Ministry of Justice completed a detailed review of its sponsorship arrangements, and sought to work with the Sponsorship Peer Network to develop cross-government learning and principles of good practice. However, there was some concern that a 'one size fits all' approach would not recognise the diversity of bodies or the diversity of approaches to sponsorship and governance taken by different departments.

<sup>20</sup> Government Office for Science (2011).

<sup>21</sup> HM Government (2010).

<sup>22</sup> Analysis of data contained in Cabinet Office (2011).

<sup>23</sup> Analysis of data contained in Cabinet Office (2011).

Balancing autonomy and control is an ongoing task. The meaning of autonomy – or ‘day-to-day operational independence’ - and how that meaning can be reconciled with different types and sizes of bodies, is unresolved. A ‘risk assessment’ approach to sponsorship is apparent in DCMS and Ministry of Justice, with an emphasis on developing a proportionate amount of autonomy based on size of body, expenditure, and whether the body/function is contentious. Other approaches, such as one based on the classification of bodies, have been explored at the Sponsorship Peer Network.

Given the concerns of public body chairs and non-executives over aspects of the review and reform process, it will be important to identify how departments seek to ensure effective working relationships within the sponsorship process.

**14. Triennial reviews are an important second phase of the public bodies reform agenda, but further research is needed in order to understand the effectiveness of the process.**

The first year of reviews considered smaller and largely non-contentious bodies, and confirmed decisions reached in 2010 to retain those bodies.

The second year of triennial reviews is now under way. It will be important to consider the interaction of these reviews *vis-à-vis* the Civil Service Reform Plan, in respect of the latter’s ambition to further develop the delivery landscape.

There are variations in the way in which the reviews are implemented in different departments. For example, in the Home Office an official has overall responsibility for all triennial reviews, while in DCMS this

responsibility is shared amongst the ALB team. It will be important to learn lessons from these experiments.

As other policy priorities come to the fore, and civil service resources are further constrained, there is a danger that triennial reviews will become an administrative burden rather than contributing to refreshing the department’s approach to delivery, the operation of individual public bodies, and the sponsorship relationship.

Departments will face increased capacity and resource constraints in the future. Departments with a high number of NDPBs will be under particular pressure in delivering triennial reviews for all of their bodies.

**Interaction with other reform agendas**

**15. Public bodies reform has been undertaken with limited appreciation of the range of related measures that are affecting the public appointments system.**

The regulatory framework overseen by the Commissioner for Public Appointments has been radically streamlined after concerns regarding flexibility and proportionality. The Commissioner for Public Appointments is hoping that a more flexible and principle-based regulatory framework will allow departments to achieve ministerial targets for greater social diversity in public appointments.

However in the NHS, the Appointments Commission has been closed. This was responsible for making around one thousand appointments to health bodies each year and had a major outreach role to promote greater diversity in board appointments. Some of its functions,

but not outreach, passed to the recently established NHS Trust Development Authority. The Development Authority will make appointments to the remaining 103 NHS Trusts (around 650 chair and non-exec board appointments per year) until these trusts achieve foundation status and become responsible for their own board appointments. In addition, the new Clinical Commissioning Groups have considerable independence in appointing their lay advisors. It remains to be seen whether the loss of outreach capacity, and the greater level of appointment autonomy of NHS Foundation Trusts and CCGs will affect board diversity.

In September 2010 the Chancellor of the Exchequer announced a new system of ‘double-locking’ for appointments and dismissals to the Office for Budget Responsibility. This was given legal force under the *Budget Responsibility and National Audit Act 2011* and empowered the Treasury Select Committee with a statutory veto over ministerial appointments. In February 2011 a second model of *non-statutory* ‘double-locking’ was announced as the Minister for Justice announced that in order to strengthen the independence of the Office of the Information Commissioner the Government had decided to accept the Justice Select Committee’s conclusion following a pre-appointment hearing on whether or not the candidate should be appointed (i.e. an effective veto).<sup>24</sup> This led to calls for select committees to enjoy greater powers of veto over a wider range of senior ministerial appointments. In June 2012 the Government rejected the Liaison Committee’s demand for greater powers, arguing that it would not be appropriate for Parliament to be an equal partner in ministerial appointment decisions.

<sup>24</sup> Hansard HC Deb 16 Feb 2011.

The current situation concerning parliamentary scrutiny of ministerial appointments is therefore chaotic and confused with different appointments sitting at different levels of a 'ladder of legislative scrutiny' that appears devoid of logic or principles.

The Government has responded by emphasizing the role of the recently established Centre for Public Appointments in the Cabinet Office. It remains to be seen what strategic role this will play in relation to either promoting social diversity *vis-à-vis* public appointments or responding to the Liaison Committee's view that the Government has seriously misjudged the issue.

**16. The public bodies review process has laid the groundwork for a wider set of reforms to the way that Whitehall operates, especially in terms of alternative delivery models and cost reduction.**

Departments, in many cases faced with limited resources and capacity, are considering alternative models of governance for their public bodies, and other delivery partners. The risk-based approach to sponsorship taken by DCMS is one such example.

The triennial reviews process and benefits realisation framework underpin this second stage of public bodies reform, whereby departments will continually review the governance of their NDPBs in a drive to deliver further efficiency and accountability.

The Cabinet Office and new Minister for Civil Society, Nick Hurd MP, have emphasised new business models for NDPBs, such as mutualisation, as ways of delivering cost reductions. However, it remains to be seen the extent to which these alternative models are appropriate for NDPBs and will be adopted.

This second phase of the public bodies reform agenda dovetails with the Civil Service Reform Plan in driving forward efficiency through alternative models of service delivery. However, these agendas have largely developed independently of one another, and the extent to which civil service reform emphasises new forms of delegation will have important implications for the shape of the arm's length governance in the future.

The Cabinet Office 'expenditure controls process' is designed in part to facilitate better planning of public expenditure in a period of tighter resources.<sup>25</sup> There has been some concern by public body boards that this reduces their capacity to be flexible in using resources to deliver their objectives. It is also not yet clear how some departments are applying controls within their discretion to their ALBs. This is an area that we will explore in the next phase of the research.

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<sup>25</sup> Cabinet Office (2012d).

## Conclusion

The policy debate about reform of arm's length bodies has developed significantly within central government through the three years since its launch. What started as a major initiative to reshape NDPBs, motivated by the desire of a new government to get a grip on their accountability and expenditure, has turned into a wider concern with the overall sets of relationships between ministers and their departments on the one hand and the delivery landscape on the other. This delivery landscape potentially includes other types of bodies operating at arm's length - including executive agencies, contracted-out functions, the mutuals which are now being floated off from mainstream departments, and so on.

This development has placed 'sponsorship' much higher on the agenda than ever before within central government, and stimulated a debate about its role and the skills that are necessary.<sup>26</sup> As the Civil Service Reform Plan takes effect, this will further enhance the significance of this role. One of the unintended side effects of this has been to build a stronger cross-Whitehall community concerned with these issues.

Looking at these changes from the perspective of public bodies, however, one can see a variety of reactions over time. Initially, there was considerable consternation on the part of boards at the lack of consultation on proposed reforms, together with a concern about the effects of losing expert knowledge, public services and the experience of individuals appointed to bring an external insight into the affairs of government. This has continued in relation to certain bodies, especially some included in the *Public Bodies Act* and with strong external stakeholders.

Over time, bodies affected by the reforms have had to manage the implications, including merger, downsizing, transfer of functions and closure, and involving staff management, continuity of service, knowledge management, and a host of other issues. Those bodies continuing in existence have had to adapt to the expenditure controls system, changes in public appointment processes, and differences in the sponsorship process.

However, there has also been an active process of trying to make the new system work. Chairs and chief executives we have interviewed

universally express the view that their job is to deliver their responsibilities within the prevailing framework and not to take a public stand against changes with which they might disagree - although in private meetings with government they will point out the implications of such changes.

Less tangible are the effects of these changes on citizens, business, and special interest groups. Given the extent to which there is a transfer of functions from NDPBs to government, one might expect the changes to be limited. However this is to ignore the wider environment of fiscal constraint, and the ability of NDPBs - as quasi-independent bodies - to engage with stakeholders in ways that government may not be able to achieve.

These are some of the issues our project will address as it develops over the next two years. Updates will be available on our website as well as through features in the public service press and other channels. For those seeking further academic analysis of our data, we regularly present at conferences and anticipate a stream of journal articles.

<sup>26</sup> Institute of Government (2012).

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