The impact of reform on politico-administrative relations in Ireland: enlightening or confusing roles of political and managerial accountability?

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Abstract

There is now widespread acknowledgement that the traditional notion of ministerial responsibility is itself no longer satisfactory and can no longer serve as the sole constitutional touchstone of accountability (Gregory, 2003). However, attempts to reform and give clarity to what is regarded as an outmoded system with the introduction of managerialist ideas such as letting ‘the managers manage’ have not always lead to the effectiveness envisaged. Accountability is a principle that tends to be aired when things go wrong and the case under discussion in this paper is that of the Irish politico-administrative system and the illegal charging of long-term residents in state nursing homes since 1976. The interim report of the investigation into this long-term fiasco referred to it as “principally a failure of public administration.” This case presents an opportunity to investigate the impact of recent reforms in the Irish system aimed to clarify the roles and responsibilities of ministers and their civil servants. The paper hopes to illustrate the complexities of these roles and underline the ambiguity concerning the long-standing principle of ministerial responsibility.

1. Introduction

In March 2005 in interim report on the investigation of the illegal charging of medical cardholders in long-term residential nursing homes over a twenty-eight year period was presented to the Houses of the Oireachtas.1 This report has become known as the Traver’s report after its author - John Travers - who was appointed by the Minister for Health to prepare it. Travers referred to the inaction to carry out an examination of the issues and implications of this practice as representing a major failure of administration. The ramifications of this report are significant in that the state now faces a possible bill of two billion euro to repay these illegal charges. The report is clear that responsibility to carry out an analysis of the situation over the years “rested clearly and unambiguously with officials.”

The main information base and corporate memory on the issues involved lay with the administrative system of the Department of Health....Ministers could not reasonably be expected to be aware of the full extent of the issues that surrounded the practices of long-stay care in health board institutions held in the information

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1 The Tánaiste Mary Harney (PD) became Minister for Health in October 2005. She is the first member of the Progressive Democrat party to hold this portfolio. She has claimed that in late 2004 that she was supplied with misleading information regarding the nursing home charges. Namely that the department had never been advised the charges were illegal and that they had been levied in good faith. She later claimed that civil servants used inadequate briefing documents and failed to mention concerns over the legality of nursing home charges. This left a gap in the cabinet’s knowledge as it introduced emergency laws before Christmas designed to legitimise the fees retrospectively. The legislation was deemed unconstitutional by the Supreme Court in 2005.

2 The precise title of the report is Interim report on the report on certain issues of management and administration in the Department of Health and Children associated with the practice of charges for persons in long stay health care in health board institutions and related matters presented to the Houses of the Oireachtas Joint Committee on Health and children 9th March 2005. For ease of reference it will be referred to as the “Traver’s Report” in this paper.
This is not a case which involved personal financial gain. The issue of resolving the problems surrounding charges for long term care was one that never featured very highly on the agenda of the Department of Health and the money obtained from the allowances of those in long term residential care was a fund of much needed income independent of exchequer handouts in years of fiscal pressures. The view of the department over the years was that the collection of these funds was justifiable given that essential services were being provided. A key problem was that this conclusion was reached without any authoritative legal advice. Ironically, it has been argued that a technically uncomplicated amendment to the 1970 Health Act would have provided a sound legal foundation for the practice. When emergency laws were introduced by the new Health Minister, Tánaiste Mary Harney (PD), in December 2004 they were referred by the President to the Supreme Court which ruled in March 2005 that the Health (Amendment) Bill 2005 was unconstitutional.

This case presents an opportunity to investigate the impact of recent reforms in the Irish system aimed to clarify the roles and responsibilities of ministers and their civil servants. It is also yet another example of how complex the relationship between civil service and its political masters in policy making and implementation has become in contemporary times. In relation to reform the Irish case is an interesting one insofar as its public sector modernisation programme was largely the brainchild of senior civil servants. In other countries reform programmes have predominantly been the prerogative of the politicians (Pollitt and Bouckaert, 2004) whereas in Ireland they endorsed them. It may be argued, however, that in the Irish case the whole relationship between the political accountability of ministers and the managerial accountability of civil servants has had little serious discussion. This paper aims to investigate political and managerial accountability in the Irish case using the case of the illegal nursing home charges and the ensuing Traver’s report to illustrate that the recent legislative reform that sought to clarify political and administrative roles does not appear to have the anticipated impact that it was desired to have. Although civil servants in the Department of Health have been identified with serial failings that are inexcusable and have culminated in the resignation of its most senior official, there has been no corresponding political accountability from the minister. The former Minister for Health, Micheal Martin (FF), appears to have escaped relatively unscathed as he is virtually exonerated in the report. “The shortcomings at the political level since 1976 in probing further were considerably less than those of the system of public administration”. (Travers, 2005)

The paper is organised in three main sections. The first section focuses generally on the concept of accountability (administrative and political mechanisms) as enshrined in the traditional model of public administration and comments on how reform has attempted to improve, but arguably has complicated, the application of this doctrine within public administration systems. It is also apparent that the cases from Challenger to Prison Services represent a few among many, and are witness not only to the increasing failure of governmental systems and processes, but to widespread and intense public concern
over accountability (Gregory, 2003). This discussion is continued with a short overview of characteristics of the Irish political system, how political and administrative accountability is defined and the impact of reform initiatives in the 1990s upon the structure of this system. The remainder of the paper looks at how the operation of the politico-administrative system through the analysis of a select case – the aforementioned nursing homes charges fiasco. The discussion focuses on the relevance of traditions as a means of explaining the way certain practices occur, the nature of minister-mandarin relations in the Irish case and the impact of the proliferation of special ministerial advisers on politico-administrative relations. Above all the paper attempts to investigate issues surrounding power and responsibility and to what degree the disparity between the long-standing doctrine of ministerial responsibility and reality is more exposed in the wake of reform.

2. The principle of accountability

Accountability is a central issue in any democratic system of government. Government organisations are created by the public, for the public and need to be accountable to it. Elcock (1998:23) notes that accountability is debatably the defining concept of public administration as the accountability of public servants to elected politicians and through them to their country’s citizens, fundamentally differentiates public administration from business management. Accountability systems are made up of a number of distinct accountability mechanisms, namely – administrative/managerial accountability to a political superior, political accountability through parliamentary control, political accountability through institutions affiliated to parliament, judicial review, constituency relations and (quasi-) market forces (Verheijen and Millar, 1998).

It has been suggested that accountability is a basic, yet intractable concept (Gregory, 2003; de Leon, 1998). The basic notion of accountability is that those acting on behalf of another person or group, report back to the person or group, or are responsible to them in some way. In other words, there is a principal / agent relationship where the agent carries out tasks on behalf of the principals and reports on how they have been performed. Generally the function of accountability is to keep organisational performance up to standard. In the public sector the system of accountability is what ties the administrative part of government with the political part and ultimately to the public itself (Hughes, 2003). Any acts of government are supposed to be ultimately acts of the citizens themselves through their representativeness whereby accountability at the bureaucratic and political level is supposed to be ensured through the party political process. It does not only involve reactive responses to public expectations but also involves efforts to anticipate emerging performance standards in order to take proactive steps to ensure that the public trust is served (Kearns, 2003: 584).

The origins of the doctrine of ministerial responsibility lie in attempts by 19th century British liberal democrats to reconcile using a salaried bureaucracy that was not accountable to the people with the requirement of an emerging democracy. Parliament was content to delegate responsibility for various agencies and departments to ministers, who would be the final authority and fully answerable to it for the actions of those
bodies. However, the role of the permanent civil service was critical to achieving that balance and reforms in order to fulfil this task are apparent in the Northcote-Trevelyan Report, 1854. In the traditional model of public administration ministerial accountability to parliament was seen as the ideal type of political accountability. The bureaucracy was deemed to advise the political leadership on policy and manage public resources and effective implementation of public policies as well as possible on behalf of the political leadership. Therefore the traditional understanding of accountability is strongly informed by a particular set of institutional arrangements. Weberian public servants accountability is ensured through their compliance with the institutionally, constitutionally and legally mandated rules and processes under and within which they carry out their functions (Gregory, 2003). Every public servant is technically accountable through the hierarchical structure of the department, to the political leadership and then to the people. In addition, there is supposed to be the strict separation between matters of policy and administration as advocated by the contentious politics-administration dichotomy (Wilson, 1887).

The Diceyan doctrine of 1959 states that ministers are accountable to the public, via parliament, for their own decisions and for the work of their departments; civil servants are accountable internally – and only internally – to their political chiefs. This doctrine implies that ministers cannot blame their civil servants and vice versa as this would violate the impartiality and anonymity of the civil service, so undermining the authority of democratically elected ministers (Elcock, 1998). To add to this is the notion that if ministers are deemed at fault then so too is parliament since it is through ministers that parliament seeks to bring the executive to account. Accountability is interpreted narrowly and the system emerges into one that aims at avoiding mistakes and so encourages risk-averse behaviour. In addition it neglects that genuine accountability breaks down at the interaction of the political and the bureaucratic process - i.e. the relationship between administrative head of a ministry and the minister (Hughes, 2003).

To a large degree the concept of accountability tends to be interpreted in a negative sense. It becomes part of the vernacular when things go wrong and a witch-hunt ensues for someone to blame. Gregory (2003:558) notes that the concepts of accountability and responsibility are frequently used as if they were synonymous and they are not. He clarifies that by comparison accountability is a matter of political and organisational housekeeping, whereas responsibility is often about moral conflicts and issues of life and death. However, in Westminster democracies accountability as a concept has been traditionally treated as subordinate to the concept of responsibility whereby the notion of accountability has tended to be introduced as a relatively straightforward component of the explanation of responsibility (Stone, 1995:507). As a result of larger scale and more complex departments, it became increasingly unrealistic to expect ministers to take personal responsibility for actions undertaken in their name. However appropriate this doctrine might have been when public organisations were tiny and officials were nothing more than personal servants of the minister, it falls well short of what is needed in contemporary times to ensure the responsible and effective exercise of public authority. The deficiencies of ministerial responsibility are apparent when serious mistakes are made. Likewise, administrators can claim instructions were not given, or were given in an unclear way so they can evade responsibility. Hence, more watered down notions of
accountability such as ministerial ‘answerability’ for departmental actions began to emerge though accountability remains associated with a punitive response and finding head(s) to roll rather than a potential opportunity to learn from mistakes.

In the past three decades traditional accountability systems have become more outdated and impotent as a result of problems arising from the increasing complexity of government and the evolution of the welfare state into a mass delivery state. To further complicate relationships and structures is the increasing reliance on expertise and professionalism from outside the traditional civil service. The implementation of radical reforms in public administration and management created an additional impetus for a fundamental redefinition of accountability mechanisms (Verheijen and Millar, 1998). Indeed a principal reason for the absorption of managerialism was the perceived failure of the system of accountability under the traditional model of administration and accountability relationships in the private sector were increasingly seen as a model for the public sector. While still remaining accountable to the public through the electoral process, the bureaucracy was required to become more directly accountable to the public for its own performance (Hughes, 2003). The mantra associated with the New Public Management (NPM) approach such as client focused and responsive bureaucracy, taking personal accountability for results, contracting out and privatisation are examples of reforms associated with improving accountability mechanisms. But despite the highlighting of important problems in ensuring the effective accountability of public services, it may be argued that public management reforms have not managed to satisfactorily close the gap between the disparity between practice and the theoretical principle of accountability. Rather they have both exacerbated and further exposed fault lines (Barberis, 1998) and this is evident from an examination of NPM’s theoretical influences (Aucoin, 1990; Pollitt and Bouckaert, 2004) and from political escapades such as the prison services case in the UK.3

But despite its own contradictions and shortcomings NPM has drawn attention to anomalies and inconsistencies in the doctrines that had once justified the modern administrative state (Coombes, 2001: 35). As a result models of control and accountability that had become established under previous reforming movements could no longer be accepted uncritically (ibid) and the 1990s were marked by a resurgence of interest within both private and public sector organizations in the linked themes of corporate governance, probity and accountability. Other political and administrative transformations during the 1990s have also highlighted challenges to reforming accountability mechanisms. In Central and Eastern European states accountability gaps have been exacerbated by the weak structures of civil society, the predominance of consultants in the policy making process which operate outside systems of accountability and control (Verheijen and Rabrenovic, 2001) and differing interpretations of the term

3 This case raised several questions regarding accountability in the wake of public management reform – namely the ‘next steps’ initiative. Two very serious prison escape attempts in 1994-5 prompted the UK Home Secretary Michael Howard, to dismiss the Prison Service Head Derek Lewis (a contracted businessman) who successfully sued for full compensation and costs. This sacking and law suit were unprecedented events which highlighted familiar tensions about the ‘policy’ and ‘administrative’ ('operational') distinction and what passes for the theory of individual ministerial responsibility to Parliament.
accountability (Vidlakova, 2001). The following part 3 provides an overview of several structural, functional and cultural features of Irish public administration in order to set the context for the subsequent discussion.

3. Structural, cultural and functional features of Irish public administration

3.1 Characteristics of the Irish political system

Each administrative system is unique but its nature is closely linked with those of administrative systems that share intellectual and historical roots (Peters, 2003). The Irish system of government is derived from the Westminster model and upon independence in 1922 absorbed rather than changed the system of public administration. The Irish system reflects the British model in that it is a parliamentary democracy with a cabinet system of Government, and a central structure of ministerial departments, which, along with the Local Government system absorb the majority of public business. The Irish legal system is based on common law, drawing its inspiration and approach from the British system, but is distinguished by a written constitution Bunreacht na hÉireann (1937). The political institutions were therefore built on pre-1922 roots with the constitution providing for government by cabinet and led by a Prime Minister (Taoiseach), an Oireachtas (Parliament), comprising a President and made up of the Dáil (lower house) and the Seanad (upper house), and a judiciary. Article 28 of the constitution lays down the basic powers, functions and responsibility of the government. The principal political parties are Fianna Fáil (FF), Fine Gael (FG), Labour (L) and the Progressive Democrats (PD). Both Fianna Fáil and Fine Gael are right of centre and are the successor parties to the opponents and supporters respectively of the Anglo-Irish Treaty settlement in 1921.

Traditionally, the Irish political system has been characterised as unitary, highly centralised and hierarchical in nature with clientilism prevailing (Chubb 1992). National politics remain highly localized, with politicians engaged in dense networks built on personal relationships and acting on behalf of their constituents. Political expediency therefore reinforces a tendency to steer away from the difficult choices and long term solutions that are unpalatable in local constituencies. In many respects this image holds true until the late 1980s, when piecemeal reforms to government heralded some change at the national level, ultimately leading greater political change in the 1990s and 2000s, such as the Strategic Management Initiative (SMI) and the abolition of the dual mandate. The SMI programme suggested a shift from a culture dominated by the Official Secrets Act to a culture based on openness; from a public service which was provider driven to one focused on the customer; and towards a culture which puts accountability to the customer and not just to the minister, centre stage. An element of this reform process has been the provision of new legislation to clarify the respective roles of civil servants and ministers. Using the five characteristics used by Pollitt and Bouckaert (2004) in their

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4 The first constitution introduced upon independence was known as the Irish Free State Constitution (1922). Bunreacht na hÉireann has been subject to two lengthy periods of review, first in 1966-67 and, most recently, in 1995-96 by means of the Constitutional Review Group.
comparative analysis of public management reform the Irish politico-administrative regime is summarized in the table below.

Table 1 Type of politico-administrative regime

<table>
<thead>
<tr>
<th>State structure</th>
<th>Unitary; centralised; written constitution; coordinated</th>
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</thead>
<tbody>
<tr>
<td>Executive Government</td>
<td>Coalition</td>
</tr>
<tr>
<td>Minister/Mandarin Relations</td>
<td>Separate; not politicized</td>
</tr>
<tr>
<td>Administrative Culture</td>
<td>Public interest</td>
</tr>
<tr>
<td>Diversity of Policy Advice</td>
<td>Mainly civil service; increase in special advisors in recent decades</td>
</tr>
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The next section will focus on the principle of accountability in the Irish system with reference to the concept and modus operandi of ministerial responsibility. Ministerial responsibility is not the only doctrine of accountability in the Irish administrative system but is the main principle on which the operation of the civil service is based (Verheijen and Millar, 1998). From a legal point of view, the civil service is seen to play a subservient role, thus parliamentary control of the civil service is indirect in nature, occurring through the ministers and the government. It is the government administration and not the civil service as such which is subjected to parliamentary control (ibid). How ministerial responsibility is defined within the Irish context will be explored in tandem with a short review of the principal attempts to introduce reform in the past four decades.

3.2 Political and Administrative Accountability - Ministers and Secretaries Act 1924

In Ireland government departments are organised on functional lines to cover the major areas of policy, such as agriculture, health and foreign affairs. The distribution of business and the designation of members of the government to be the ministers in charge of particular departments are matters governed by law. Ministerial responsibility was given legislative basis in the Irish Free State through the Ministers and Secretaries Act 1924. The 1924 act designated the eleven departments then set up and indicated the work allocated to each. It provided that the minister in charge of each department would be a “corporation sole”, i.e. that he or she could sue and be sued as the corporate entity rather than as an individual (Dooney and O’Toole, 1998:2). In effect the Minister is the department, and his/her servants have no separate existence. Every decision made by a government department comes, strictly speaking, from the minister. It is he/she that is held accountable for all policies implemented and decisions made by being directly answerable to the government and the Houses of the Oireachtas. How the system works in practice is that the civil servants’ decisions are regarded as being those which the minister would have made had the issues been brought to his/her personal attention (ibid, p.138). The work is carried on through a system of implicit delegation from the minister to the secretary general of the department and on down through the various grades.
Though much has been made of the legal element of this act, which decreed that a minister as “corporation sole” for his or her department could be sued, it has been at the expense of a full analysis of the political and managerial elements. This system has clearly had a major impact on the way in which the civil service does its work and has bred an over cautious approach aimed in particular at ensuring the Minister is not embarrassed by civil service actions/decisions. On the other hand ministers concentrated on protecting themselves from the possibility of being held accountable by the Dáil by tightly controlling the activities of the civil service. Instead of being preoccupied with broad questions of policy making they became burdened with matters of detail. In this system there is one type of opinion – that of the minister, hence the popular phrase heralded so often by Sir Humphrey in the TV series – “yes minister”. It is not surprising therefore that administrative accountability has been weak, dealt with internally within the departmental hierarchy and rarely were civil servants held publicly to account for their actions/inactions. With regard to political accountability it has been extremely rare for a minister to resign due to administrative error or poor performance. In 1961 a crucial parliamentary debate set the ground rules about ministerial responsibility. It involved the Mental Health (Amendment) Act which sought retrospectively to legalise the detention of a number of people in mental hospital. It had emerged that the procedures whereby they become inmates had not been followed correctly and that they were in effect illegally detained. The opposition called for the resignation of the minister Sean MacEntee, but those calls were resisted on the basis that he could not possibly have known what had happened. Former Minister Micheal Martin has said he did not know of the legal problems with the nursing home charges. The problem was raised at a meeting of the Management Advisory Committee (MAC) in December 2003 but the Minister was absent for that part of the meeting it was raised.

3.3 The impact of reform on politico-administrative relations

It is stressed that the characteristics of the existing political and administrative systems act as shaping influences over processes of management change (Pollitt and Bouckaert, 2004). Despite the changes that EU membership brought the civil service in terms of adapting to the European policy process it may be argued that the Irish administrative system continued to preserve the essential characteristics of the inherited British structure of government. Attempts to reform the system were generally not successful and it has been remarked that proposals suggested as early as the late 1950s to reform the civil service had been successfully resisted by senior officers in various departments (Chubb, 1992:219). Two reform initiatives of note were the review by the Public Services Organisation Review Group culminating in the Devlin Report (1969) and the White Paper Serving the Country Better (1985). Although both recommended the need for change and modernisation neither were destined to be comprehensively implemented. The Devlin Report provided an overall blueprint for change and had diagnosed two particular defects in the administration - inadequate emphasis on policy making and lack of coordination within the service as a whole. In relation to the principle of ministerial responsibility it recommended that policy making should be confined to those areas of broad policy and overall management; executive functions and policy management should be separated. The White Paper Serving the Country Better (1985) emphasised the concerns about the
inherent contradictions in the governing doctrine of ministerial responsibility. It emphasized the need to install management systems based on personal responsibility for results and value for money. The idea was to facilitate civil service managers to have greater managerial authority and while ministers would be responsible for departmental policy they would be relieved from being answerable for day to day operational details. The emphasis was predominantly on changing the administrative process through invoking greater attention to management principles and the concept of “corporation sole” remained intact (Connolly, 2005). However, by the late 1980s no significant structural reform had been undertaken and reform became associated with reducing the size of the civil service in a period of fiscal austerity.

Reform was not back on the agenda until 1994 with the launch of the Strategic Management Initiative. The aims of this initiative may be summarised as delivering excellent service to the customer, maximum contribution to national development and efficient and effective use of resources (Murray and Teahan, 1998). More or less paralleling with the launch of this internal strategic review was the surge of a series of controversies, which drew attention to the relationship between civil servants and ministers and thrust issues of accountability and transparency into public debate. Such concerns were reflected in a pledge to institutional reform with due attention to accountability, transparency and freedom of information within the programme for government introduced by the Fine Gael, Labour and Democratic Left coalition government which came into office in 1994. In March 1995 the Government requested a coordinating group of secretaries to “review existing systems for making decisions, allocating responsibility and ensuring accountability in the Irish Civil Service” (report of the coordinating group of secretaries (1996). Recommendations were made for a set of mechanisms for facilitating and mandating change. In May 1996 Delivering Better Government was published which sets out the overall framework for change, specifically within the civil service but with the intention of broadening the process to the wider public service. These were new frameworks for authority and accountability, for human resource management, financial management and for information technology.

Of particular interest to this discussion are the proposals which recommended a reform of the Ministers and Secretaries Act 1924 as clearly the introduction of a managerialist agenda necessitated a review of the existing outmoded accountability mechanisms has challenged key principles of public administration. The most recent legislation dealing with the relationships between Government Departments is the Public Service Management Act 1997. This act is also founded on the principle of ministerial accountability to the Dáil but it does provide for the transfer of responsibility, where appropriate, downwards in the public service hierarchy. It outlines among other things, the respective responsibilities of the minister and the secretary general of a department, and also the role and functions of special advisers. The cornerstone of this structure

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5 Political scandal and allegations of corruption have culminated in the establishment of several public inquiries since the mid-1990s. In 1994 controversy arose regarding the handling of the extradition file on the paedophile priest Brendan Smyth and became a catalyst in the fall of the Fianna Fáil-Labour coalition government (1992-1994).
implies that individuals know and recognise the extent of their responsibility and the ways in which they are answerable for the exercise of their responsibility.

The 1997 act states “A Minister of the government having charge of a department shall, in accordance with the Ministers and Secretaries Act 1924 to 1995, be responsible for the performance of functions that are assigned to the department pursuant to any of those acts.” A secretary of a department shall, “subject to the determination of matters of policy by the minister” have responsibility for carrying out a number of specified functions. These include managing the department, preparing and submitting a strategy statement, providing progress reports and assigning responsibilities. The act also states that the secretary’s duties include “providing advice to the minister…with respect to any matter within, affecting or connected with the responsibilities of the minister or the department…giving rise to material expenditure chargeable to its appropriation account.” The act also provides for civil servants to appear before parliamentary committees and has clearly made significant additions to the arrangements in the Ministers and Secretaries Act, which did not provide for the formal assignment of statutory responsibility to secretaries or their subordinates for the exercise of functions on behalf of the minister (Dooney and O’Toole, 1998:139).

Managerial responsibility for the department is therefore assigned to the secretary general (as secretaries were retitled in the act), while the minister remains responsible for the administration of the department. The 1997 act has therefore sought to graft modern managerial thinking on to the “corporation sole”. However, it does not address how the minister’s will, as mandated through the political process, would be imposed on the department. Verheijen and Millar writing in 1998 commented that at first glance this type of reform carries important risks for the civil service and politicians and that maintaining the definition of ministerial responsibility would in the long run likely to be damaging to politicians as well as to the civil service. The following section discusses issues pertaining to the clarification of these responsibilities in practice and whether confusion still remains regarding the doctrine of ministerial responsibility in the wake of the Traver’s report.

4. Ministers, Senior Civil Servants and Advisers roles in policy making and implementation – lost in translation?

4.1 Challenge or change - culture and the persistence of tradition?

At the most basic level the concept of traditions may simply involve a statement that there are patterns in administrative behaviour and thinking that persist over time (Peters, 2003:13). The inheritance of the Westminster style of administration brought a cultural theme of the difficulty (or even distastefulness) of change. The doctrine of ministerial responsibility continued to be accorded respect in spite of the failure of parliamentary practice to deal effectively with the emergence of strong rule by party leaders (Chubb, 1992). The Department of Health and Children is a complex, politically sensitive

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6 This is clearly of relevance for the case in question – illegal charges to residential care patients holding medical cards.
department within the government hierarchy which is no stranger to controversy\(^7\) and it has been suggested that the department really requires two secretary generals – one for fire fighting and one for policy and legislation. It has also embarked on a programme of wide-scale reform in recent years with the abolition of the health board structure in place since 1970 and the creation of a new Health Services Executive in January 2005. The question may be posed whether that irrespective of all the reforms that have been set in place and the new rules on accountability, benchmarking and business plans, the reality is that the system continues to function along the same lines as it always has?

In his report Travers attempted to provide an explanation for why an obviously dubious system was allowed to exist for so long. Amongst the explanations are a desire to protect the health board’s income, a failure to confront the legal concerns, the embedding of practice over time and an undue concern about political sensitivity. It is apparent from the report that health officials had a long term policy settling out of court any individual challenges to the levies, clearly out of a well founded appreciation of what would happen should the floodgates open. However the issues raised by the report point to more than simply the compounded effects of administrative errors and poor decision making. Many reviews of practice were carried out and all concluded that the legal basis for the charges was uncertain. Proposals to deal with the situation were ‘parked’ in 2001\(^8\) and a departmental file on legal advice on the matter has gone missing.

It is claimed that the secretary of an Irish department epitomizes the anonymous public servant who plays a key role in the mechanics of government and that the secretaries operate in a political culture with deep rooted traditions not easily changed (Zimmerman, 1997: 540). In his evidence the former secretary general of the Department of Health Michael Kelly stressed that the “culture of the department over the years had leaned too far in the direction of facilitating ease of manoeuvre at political level.” In his report Travers recommends that in the future concern for the political sensitivity of an issue must no longer be allowed to interfere with making a clear case for action. In addition, where the politicians throughout the years have clearly failed has been in conveying to their civil service staff any real determination to make their departments efficient, accountable and responsive. There is failure to translate their promises into any motivating force for civil servants who have not wanted “embedded” routines disturbed. Although it is interesting to think about the problems that arose from the perspective of ingrained routines and departmental culture as a contribution to understanding the administrative system; it may be questioned to what degree this approach provides satisfactory explanations? Given the case in question it is necessary to look at the key actors involved in the controversy and consider their roles and the way in which the characteristics of the system impacted upon their actions.

4.2 The nexus of policy making – The Role of the Minister and the Secretary General

\(^7\) One such example is the Hepatitis C and infected blood case of the late 1990s.

\(^8\) In 2001 the government extended the medical card scheme to everyone over 70 years old (regardless of income) which inevitably increased the problem. Some health boards sought the department’s advice on the implications of the new freedoms for the over 70s and it ignored the requests.
The Irish civil service is close to government and ministers, and is at the hub of public affairs, with the dual role of advising and administering (Hussey, 1993). Ireland’s multi-seat electoral system places a heavy burden of local demands and party responsibilities on ministers that even the best of them are much more reliant on their permanent officials than in other countries. Until 1993 the appointment of special advisers was sporadic and quite rare. Collins and Cradden (2001:55) refer to Departmental Secretaries General, their Assistant Secretaries and Principal Officers as the most powerful public servants in the government bureaucracy whose ideas of what is desirable, possible and, to a degree, politically advantageous for the government are most influential in deciding what is done. As noted the Public Service Management Act 1997 for the first time put the accountability of a secretary general to his or her minister on a statutory basis. The legislation governing the running of departmental business – the Public Service Management Act 1997 obliges secretaries to keep a minister advised on all matters pertinent to his office. As mentioned it did not change the primary locus of accountability i.e. ministerial responsibility despite that the status of ministerial responsibility is now unclear in Westminster and there have been several problems in the Irish case.

The relationship between the minister and secretary general requires mutual trust. In Ireland the civil service is not politicized and civil servants are supposed to be neutral and impartial. In the course of their collaboration care is taken by both the minister and the departmental secretary general to avoid any issues of a purely political nature (Dooney and O’Toole, 1998). Traditionally the relationship between public servants and their political masters has been aligned to the ‘village life’ model (Peters, 1987) whereby both groups are envisaged as having relatively similar values and goals. To this end connections between the public administrators and politicians are those of mutually cooperative elites with a primary interest in maintaining the state and promoting its efficient and appropriate functioning in the interests of the public. The two groups have tended to cooperate in maintaining that functioning regardless of the political complexion of the government of the day.

Hence, ministers need their secretary-generals administrative expertise and knowledge while civil servants need the political savvy the minister brings into the relationship. After all managerial competence has little relevance in being chosen for a ministerial post. In addition, the clientelist nature of Irish politics puts significant pressures on politicians to involve themselves in detailed matters. In any case no politician can be expected to oversee every departmental endeavour, which is why senior civil servants should brief them. The degree of influence over policy outcomes that is exerted by the civil service has been and continues to be a matter of debate (Connolly, 2005:343). The Secretaries General are the main channels of civil service advice available to ministers, and though ministers frequently change, their advisors do not (Collins and Cradden, 2001:55). They normally hold office for a maximum of seven years. In contrast Zimmerman (1997) notes that the policy advice role has declined reducing the role of the secretary as primarily a coordinator of the activities of the various divisions within the department. The Travers report referred to a “weakness in risk assessment procedures” in this case. The charges on pensions had been reviewed on a regular basis since they were
first imposed in 1976. All of the information gathered pointed to the possibility of their being illegal, yet in all of that time nobody thought to address the problem. The problem was exacerbated when the government decided to extend free medical care to all persons over 70 (regardless of how rich) in the 2001 budget.

The electoral benefits of improved accountability systems are likely to be limited as politicians are only likely to act when a clear lack of accountability is likely to translate in electoral cost (Verheijen and Millar, 1998). In Ireland resignation from office is seen as an admission of personal guilt on the minister’s part for whatever wrongdoing or mistakes were made. It is highly unlikely that no indications of the difficulties associated with the long-term charges were conveyed to ministers over the years but there is no documented evidence of it. The Irish policy style is often characterised as informal and in this instance it would appear that briefings would have been verbal only. A second characteristic emphasised is the traditionally opaque nature of policy making. In this case the secretary general was blamed for supplying misleading information to the Minister and by extension to the government. The minister was told the department had never been advised the charges were illegal and that they had been levied in good faith, which was not the case. With regard to accountability the current minister clearly did not feel obliged to be responsible for the mistakes of civil servants. In addition the evidence from the former secretary general Michael Kelly was in direct conflict with that of the former Health minister Micheal Martin who claimed that he had not been adequately briefed on the affair and never saw a file including a letter seeking advice from the Attorney General that the secretary general claims to have sent him.

4.3 The proliferation of advisers – efficient and effective?

Is there a difference in the Minister’s degree of responsibility for public servants and for those he has personally appointed as political advisers? It may be argued that the introduction of ‘special advisers’ has further complicated lines of accountability and overcrowded the most crucial point in the political-administrative nexus. On the other hand the introduction of ministerial advisers who share the minister’s aims and philosophy goes some way to correct imbalances and strengthen political control.

The Civil Service Commissioners Act 1956 and the Civil Service Regulation Act 1956 granted the Minister of Finance wide powers relative to regulating civil service and allow certain exceptions to the requirement that positions be filled by competition. The practice of appointing outside advisers to ministers is deemed to have originated with Taoiseach Eamon de Valera who retained the services of Professor Timothy A Smiddy of UCC on an ad hoc basis on principally economic matters (Zimmerman, 1997:538). However the entrenchment of special advisors within the system is associated with the Fine Gael-Labour coalition in 1973. They were concerned that the civil service having served so long under Fianna Fáil administrations would be biased against the new government. Hence the coalition sought to bring in its own professional expertise into departments as a defence. Following this initiative the practice of introducing of advisers waxed and waned, perhaps climaxing with the added introduction of programme
managers in the Fianna Fáil-Labour government 1992-1994. Ministerial advisors, personal secretaries and programme managers from outside the civil service are appointed to “excluded positions”. These appointments are temporary and end when the minister’s term of office ends and how they are received depends on the department in question. Although they are creatures of the Minister, the presence of special advisers within the system can reduce the secretary general’s access to the minister and thereby affects his/her policy advice role.

The 1997 act institutionalises and also sets out for the first time the role and duties of special advisors. These include providing advice; monitoring, facilitating and securing the achievement of government objectives and performing such other functions as may be directed by the minister. Special advisors are accountable to the minister in the performance of their functions. The role of the special advisors was drawn into the illegal nursing home charges debacle, as the Minister’s two advisors were in attendance at a significant meeting in December 2003 whereby it was decided to seek the advice of the Attorney General. The secretary general has argued that it was expected that these advisors should have been able to brief the minister who was absent or follow up on any concerns they had in their own right. The fact that the minister remained in the dark about the details of the charges has spotlighted the role of advisers generally. The 1997 act does not lay out whether such special advisers represent the minister at meetings which he/she is unable to attend, or whether they are expected to report the contents of such meetings to the minister. The Travers report points out advisors should not stray beyond the roles set down for them in legislation and neither should they be regarded as part of the line management system of a department. The briefing of special advisors by departmental officials and the fact that advisors attend particular meetings should not be accepted as alternative to the direct briefing of a minister on important areas of business. It may be noted that two junior ministers were also at the meeting but anticipated that departmental officials – as should be the norm - would brief the minister given that the issues involved did not fall within the remit of their responsibilities.

As noted part of the fallout of this fiasco is the claim that the system of special advisors is not working as it was intended i.e. to forewarn of potential political time bombs and to provide an integrated system of communication across departments. The special advisors in attendance at the meeting have stated that they did not read briefing material that contained a summary of legal opinion obtained by the South Eastern Health Board suggesting that charges levied on patients in public nursing homes were illegal. A former advisor to the leader of the Labour party, Fergus Finlay, has commented that if an

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9 Programme Managers were introduced to help coordinate the efficient delivery of policy and programmes. On the Fianna Fáil side programme managers were largely drawn from the civil service ranks. The ‘rainbow coalition’ that followed 1994-1997 replaced the civil servants with external political appointees. Under the current Fianna Fáil-Progressive Democrats administration 1997- programme managers have been drastically scaled back to two.

10 The Attorney General is the adviser of the government in matters of law and legal opinion and is appointed by the President on the nomination of the Taoiseach.

11 Ministers of State (junior ministers) are not members of the government and have no right of attendance at government meetings.
important matter was discussed it was important that the minister was informed and had a good flavour of the discussion. In other words a minister should not be left unawares if his adviser attended the meeting. It should also be noted that there are other types of advisors, such as those who undertake constituency business for the minister. There is no defined role for advisers who are supposed to be wholly accountable to the minister and therefore should not be interpreted as available to act as intermediaries or in loco parentis with senior civil servants.

5. Some tentative conclusions

The Travers report gives those concerned with the reform of the public service in Ireland much to consider. The core issue of responsibility for decision making remains unresolved and will continue to cause problems for the public service, politicians and public. These are issues that, despite numerous controversies in the past several years, have not been subject to any sustained debate. The exact role of the civil service in contributing to policy formulation and advice has never been adequately addressed. The concern with these issues preceedes the ill fated Devlin Report in 1969 and it would be surprising if findings from the Traver’s report detailing the problems in the Department of Health and Children are unique across the civil service in relation to dealing with gaps in competencies, legality issues, ministerial-top management relationships and personal versus corporate responsibility. Addressing wider issues of the latter relationships remain essential to ensuring the satisfactory performance of the public service and continuing with the reform agenda. Other issues raised indirectly by the report, such as the failure of parliamentary questions to elicit the required information, inadequate oversight of secondary legislation, and even the relationship between ministers and ministers of state, also require further analysis.

As noted the inadequate responses and mistakes in this case have been labelled as being due to “long term systematic and corporate failure” with far less rigour paid to political actions and responsibilities. The Minister is responsible at law and in constitutional terms for his/her department. There are several issues in this case, which are of interest for politico-administrative relations. One issue that arises is the obvious indication that ministers want desired political results but that there needs to be an upgrade in managerial reforms to ensure that political accountability is reinforced. Traver’s recommended that Ministers should insist on full and periodic briefings on key issues of policy and operational performance. This is basic sense in any system of government whereby Ministers are entitled to be warned of 30 year old skeletons in the cupboard as the case in this instance. Likewise, the civil servants in question should ensure that all such briefings are adequately documented. The 1997 act gave a public, legal accountability to the secretary general of each department and acknowledged the key strategic and managerial role holders of this office play. A stronger sense of political ownership may have quickened the pace of, or even changed the nature of, the reforms. A second problem is that heaping the blame publicly on the civil service could lead to a confrontation between politicians and their most trusted civil servants. One commentator has noted that the real fall out of this case is not the failure of political accountability but the undermining of the civil service (O’Cinneide, 2005).
As noted, the nursing home debacle also focuses the spotlight on the role of ministerial advisors. A number of issues were in the public domain from the many concerns raises in individual cases and from a number of internal and external reports prepared over the years. This question arises what are advisers for? As Travers comments, “Ministers and their special advisors might have been expected to more actively probe and analyse the underlying issues involved.” Advisors should not involve themselves in department activities but at the same time there is the expectation that they should head off these types of political messes and contribute to making policy making more and not less efficient.

In conclusion, this case is far from over and clearly this policy / decision making fiasco will have serious consequences for the funding and delivery of the health service as well as the government’s fiscal strategy. The Houses of the Oireachtas Joint Committee on Health and Children is currently hearing evidence and has been calling ministerial advisers, health board executives, senior civil servants and former ministers of health. The Joint Committee will report back to the Dáil in two months concerning the legal and administrative implications of the reports findings and its conclusion.

References


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