

# INSPECTION/REGULATION/AUDIT/REVIEW

## Background research findings

### **Introduction**

These notes outline the results of a limited literature search, and some further limited research, as background to the Panel project on the Rôle of Inspection in Improving Performance. They are not intended to be comprehensive, but to provide some pointers as to thinking to date and possible fruitful areas for further examination.

A number of writers have suggested definitions for the terms Audit, Inspection<sup>1</sup> and Regulation<sup>2</sup>. To avoid having to settle upon a particular definition prematurely, the terms “review” and “reviewer” have been used here to cover all such activities.

In addition to findings on more general questions of the effects of review, experiences in a number of other countries or specific to certain sectors are attached as annexes.

### **Classical view**

Main benefits of review seen as deterrence and comfort. Both are difficult to value. Therefore, question typically viewed circularly - value defined by what those who commission review are prepared to pay for it.

Review seen less as a tool for positive improvement; more as a control and risk management function. Some evidence that such functions act as a contra-indicator to innovation<sup>3</sup>.

### **Definitional**

The draft scoping note describes the project as focussing on:

“external review of public sector performance, by review bodies with a standing remit”.

That description raises a number of definitional problems:

External - depends on definition of organisational boundaries. Thus, in the case of the Metropolitan Police, whether one includes the Police Authority or GLA staffs (both of whom undertake reviews) within the boundary.

Review - financial propriety is excluded. But does process compliance score as performance review? Is the distinction between “certification” and “inspection”<sup>4</sup> worth maintaining?

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<sup>1</sup> Power 1997

<sup>2</sup> Hood et al 1999 (1)

<sup>3</sup> Chambers (1981) cites various references

<sup>4</sup> Vinten 1998, based on Power 1997

Public sector - does this include private sector providers of public services? The remit of the Social Services Inspectorate, for example, extends to providers outside the public sector.

Standing remit - does this extend to non-governmental bodies who review public services on a regular basis such as the Association of Chief Police Officers? The definition also excludes shorter-term initiatives. If the Panel were attracted by the idea of “sunset” provisions (see below), then there might be benefit in examining some reviews which already have a limited lifespan.

One alternative<sup>5</sup> has been proposed based upon: ability to shape activities; chain of command; and, official mandate to scrutinise. Another possibility could be based on whether there is a statutory or quasi-statutory basis for the review and whether the reviewers make their reports public (given the known behavioural effects of the latter-see below).

**Findings** - *“The lesson of regulatory history is that, in the end, all experiments in control fail and lead to further reforms”*<sup>6</sup>

#### General

Numbers of reviewers and costs of reviews have been rising and have been rising faster than the rest of the public sector.<sup>7</sup>

Reviews are increasingly susceptible to litigation<sup>8</sup>. Reviews linked to funding decisions more likely to result in juridification<sup>9</sup>.

#### Benefits

Deterrence and comfort/assurance are still seen as main benefits<sup>10,11,12</sup> of review. However, it is unclear whether this properly reflects the views of stakeholders or their expectations<sup>13,14</sup>. Indeed, there appears to have been little work done to establish the latter with any rigour.

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<sup>5</sup> Hood et al 1999(1)

<sup>6</sup> Power 1997

<sup>7</sup> Hood et al 1998

<sup>8</sup> Hood et al 1999 (1)

<sup>9</sup> Hood et al 1999

<sup>10</sup> LGA 2000

<sup>11</sup> Power 1997

<sup>12</sup> Quirk 1999

<sup>13</sup> Hird 1999, for example, notes the different audiences and their differing demands, without suggesting how these can be recognised, let alone be reconciled.

Review is seen to imply greater external openness. It is therefore viewed as an integral part of governance<sup>15</sup>. It also contributes to public choice<sup>16</sup> by making available information about service providers. However, there is little evidence of positive improvement as opposed to deterrent effects<sup>17</sup>.

There is a lack of robust appraisal of the impacts of review or their value. This is, perhaps because of the view that it is “impossible to know when [review] is justified and effective”<sup>18</sup> (See also similar comments on US experience at annex.)

### Behavioural effects on those reviewed

One useful classification of behavioural effects is between Colonisation and Decoupling, although the originator of this split admits that it does not provide a comprehensive description<sup>19</sup>:

Colonisation<sup>20</sup> occurs where the reviewers values and interests begin to supplant those of the reviewee. Thus, organisations start to focus upon documenting processes<sup>21</sup> and levels of direct output rather than results in outcome terms. This may be particularly the case where review tends to be compliance focussed. A further manifestation is the production of data purely for the benefit of the reviewers.<sup>22</sup> The concentration on “approved” process and output data may, in turn, result in the displacement of more effective quality improvement efforts<sup>23,24</sup>.

Decoupling<sup>25</sup> where the impact of reviews is deliberately marginalised. Manifestations include the creation of buffer organisations (such as internal

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<sup>14</sup> ICAS 1993

<sup>15</sup> Pollitt 1990

<sup>16</sup> So a major benefit from OFSTED is seen as its provision of information about the thequality of schools so that parents can make better informed choices. (See, for example, *School Inspectors Improve Public Access* PublicNet Oct 1998)

<sup>17</sup> Martin 2000

<sup>18</sup> Power 1997

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Nash 1998

<sup>22</sup> Kitchener et al 1999

<sup>23</sup> Keogen et al []

<sup>24</sup> Quirk 1999

<sup>25</sup> Power 1997

review mechanisms) and the reduction of review activities towards the ceremonial or ritual.<sup>26</sup>

A study of the behaviours resulting from the publication of a review reports a further range of potentially dysfunctional behaviours.<sup>27</sup> The fact that the data underpinning the review report had been collected and published, without comment, for some years, might suggest that report publication (and publicity) was a cause.

Two other behavioural impacts, in particular, may be worthy of note:

Impression management<sup>28,29</sup> - concentration on good PR and “managing” reviewers’ visits

Management abrogation<sup>30,31</sup> - where managers fail to address issues and risks on the grounds that the reviewer will tell them if there is a problem.

### Reviewers

The proliferation of review bodies is seen partly as a facet of mirror imaging<sup>32</sup> - the tendency to create shadow control systems whenever authority is devolved. Thus, for example, the creation of Next Steps Agencies often also resulted in the creation of teams within the parent Department to monitor the Agency.

In general there is little coordination or convergence<sup>33</sup> review bodies, although more recently multi-agency review approaches<sup>34,35</sup> have been noted with some approval.

A classification of 5 review types has been identified<sup>36</sup> which may be helpful in describing the approaches which do most to promote performance improvement: single institution; multi-service; thematic; survey; monitoring.

Also noted were tendencies for reviewers to:

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<sup>26</sup> Kitchener et al 1999

<sup>27</sup> Smith P 1995

<sup>28</sup> Greer et al 1998

<sup>29</sup> Martin 2000

<sup>30</sup> Interview with Treasury Official Jan 2001

<sup>31</sup> Martin 2000

<sup>32</sup> Hood et al 1999

<sup>33</sup> Day et al 1990

<sup>34</sup> Mordaunt 1999

<sup>35</sup> Day et al 1990

<sup>36</sup> Mordaunt 1999

focus upon the measurable<sup>37, 38</sup>, even where that did not necessarily coincide with objectives;

produce the “right” conclusion<sup>39, 40</sup> which fitted with received wisdom;

recycle findings of internal control and review as their own, particularly in the cases of the Audit Commission<sup>41</sup> and the National Audit Office<sup>42</sup>.

### **Suggestions for improvement**

Sunset clauses<sup>43</sup> such that review regimes expire, or at least require renewal, after a fixed period.

Explore the scope for greater competition<sup>44</sup>:

within groups of functional review types<sup>45</sup>, possibly through use of league tables<sup>46</sup>

within individual regulators, such as by market testing<sup>47</sup>;

between reviewers (such as the critical Audit Commission study of OFSTED<sup>48</sup>);

through allowing reviewee choice of regulator<sup>49</sup> or ability to opt-out<sup>50</sup>.

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<sup>37</sup> Keen 1998

<sup>38</sup> Bowerman 2000

<sup>39</sup> Keen 1998

<sup>40</sup> Garrett 2000

<sup>41</sup> Bowerman 1999

<sup>42</sup> From interviews

<sup>43</sup> Scott 2000

<sup>44</sup> Hood et al 1999 (2)

<sup>45</sup> Hood et al 1999 (1)

<sup>46</sup> Scott 2000

<sup>47</sup> Hood et al 1999 (1)

<sup>48</sup> Public Finance ... [1998 5 Feb]. Noted with some glee by Vinten (1998), but without any clue as to whether he would equally have welcomed the converse study!

<sup>49</sup> Scott 2000

<sup>50</sup> Hood et al 1998

Closer coordination and cooperation<sup>51,52</sup> :

between reviewers. (Although this was also seen as a pre-emptive decoupling mechanism from the review community<sup>53</sup>.)

through dialogue with reviewees<sup>54</sup>. (Although, notably, this suggestion came solely from reviewees and could equally be seen as a decoupling mechanism.)

Going beyond mere coordination and cooperation some more formal arrangements have been suggested and, in some cases, tried:

formal protocols<sup>55,56</sup> setting out respective responsibilities;

multi-agency approaches<sup>57, 58</sup>, where two or more review agencies work together on a particular study/assignment.

a more unified review community ranging from a catch-all overall body<sup>59</sup>; an “Inspectorate of Inspectorates” (with responsibility for overview of reviewers, promotion of consistency and best practice<sup>60</sup>); more limited organisational integration<sup>61</sup>, such as a General Inspectorate of Local Authorities<sup>62</sup>; a profession/career structure<sup>63</sup> where individuals moved freely between review bodies.

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<sup>51</sup> Day et al 1990

<sup>52</sup> Bowerman 2000

<sup>53</sup> Hood et al 1999 (2)

<sup>54</sup> LGA 2000

<sup>55</sup> Thus, for example, HMIC has agreed (unpublished) protocols with AC setting how it will approach its task in each of a number of specified functional areas and the extent to which it will rely on evidence produced by AC (and other inspection/audit bodies)

<sup>56</sup> Similarly, Benefits Fraud Inspectorate and AC have published an agreement on the oversight of housing and council tax benefits. (Reported on PublicNet 10 Feb 1999)

<sup>57</sup> Mordaunt 1999

<sup>58</sup> Day et al 1990

<sup>59</sup> Travers 2000

<sup>60</sup> Hood et al 1999(2)

<sup>61</sup> Hood et al 1998

<sup>62</sup> Hartley OA 197?

<sup>63</sup> Hood et al 1999 (1)

Suggestions have also been made for cultural/behavioural shifts amongst the review community:

in undertaking reviews by placing emphasis on seeking innovation and capacity of body to learn, rather than reporting on performance or operating practices<sup>64</sup>;

for reviewers by appraising critically actual impact and avoiding second guessing<sup>65</sup>;

by seeing themselves as a complement to internal processes<sup>66</sup> - recognising that latter will be the engines for improvement;

“Investing in Visibility”<sup>67</sup> - increased and improved publicity as a means of amplifying impact.

Reviewee incentives for performance improvement could be enhanced by :

- making praise rather than blame the basis for reporting<sup>68</sup>;

- reducing reviewer oversight of better performers<sup>69</sup>.

### **Suggested approaches to establishing impact**

Various authors have advocated a systematic approach to cost benefit analysis<sup>70,71</sup> (although one notes the lack of any principles to govern such an analysis). The Government, it is suggested, should develop ways of producing such analyses.<sup>72</sup> One starting point might be to require reviewers to measure compliance costs more systematically<sup>73</sup>.

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<sup>64</sup> LGA et al 2000

<sup>65</sup> PUMA 1996

<sup>66</sup> LGA 2000

<sup>67</sup> Day 1990

<sup>68</sup> LGA 2000

<sup>69</sup> Scott 2000

<sup>70</sup> Called for by Hood et al 1999 (1)

<sup>71</sup> Smith 1993

<sup>72</sup> Travers 2000

<sup>73</sup> Scott 2000

A case is made for evaluation rather than audit<sup>74</sup> as the basis for establishing impact. The approach should be qualitative rather than quantitative - using social science techniques to examine behavioural impacts rather seeking to measure the benefits directly, given the difficulties (impossibility?) of the latter.

A further study examines the use of influence diagrams and dynamic simulation to unravel effects of review and other performance improvement mechanisms<sup>75</sup>.

**A possible balance sheet**

<i>Benefits</i>	<i>Disbenefits</i>
Deterrence	Reviewer cost
Comfort	Reviewee cost
Openness/accountability	Cost to sponsoring Department
Performance improvement	Disincentive to innovate
Information etc for policy makers	Unwanted impacts: compliance/colonisation/displacement reputation/decoupling
Informed consumer choice	

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<sup>74</sup> Power 1997

<sup>75</sup> Boland et al 2000

**International**France<sup>76</sup>

Inspectorate General in each Ministry reports directly to the Minister.

Prefects (strictly Commissioners of the Republic) and Regional Audit Courts to oversee decentralised functions. Effectiveness of former seen to reflect largely respective political clout of Prefect and Mayor.

## Denmark

Has established User Boards in an attempt to improve quality of service. Seen as marginalised, and thus of limited influence, in practice.<sup>77</sup> It has also established a working group to review state regulation of Local Authority activities.<sup>78</sup>

## Canada

Royal Canadian Mounted Police report directly to Minister, who is accountable to Parliament. Doubts as to the effectiveness of such direct supervision<sup>79</sup> given need for force to have operational independence.

## USA

Inspectors General in each Department and Agency. Appointed by President; confirmed by Senate; report jointly to Agency, Department and Congress. Jointly form Presidential Councils on Integrity and Efficiency. Have made considerable shifts towards to NPR/NPM agenda. However, the outcome from Inspection work remains “difficult if not impossible to measure”.<sup>80</sup>

Those States which have moved towards performance based budgeting have introduced a variety of control/inspection mechanisms - often overseen by an independent commission.<sup>81</sup>

## Greece

Has established a body of Inspector-Controllers at the Ministry of the Interior, Public Administration and Decentralisation. The body “inspects, controls and researches” public sector organisations with a view to ensuring effectiveness and service quality. It is staffed by public servants on detachment.<sup>82</sup>

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<sup>76</sup> IIAP 1986

<sup>77</sup> Jorgensen 1998

<sup>78</sup> PUMA Country Survey 2000 on PUMA website

<sup>79</sup> d’Ombrain 1999

<sup>80</sup> Newcomer 1998

<sup>81</sup> Malkers et al 1998

<sup>82</sup> PUMA 1999. The English version of the relevant Greek website, which might give some indication of the success of this enterprise, is still under construction.

[Scotland] Accounts Commission; Joint Performance Information Review Groups

**Sector Specific**

Creation of OFSTED, outside DfEE, seen as reducing its role in influencing Government education policy.<sup>83</sup>

OFSTED less keen than other Inspectorates on joint working<sup>84</sup>

“The truth is that we simply do not know what effect [OFSTED] has had on the nation’s education”<sup>85</sup>

Network of Police oversight bodies seen as move towards greater central control of policing.<sup>86</sup>

Police avoidance of politically unpopular recommendations.<sup>87</sup>

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<sup>83</sup> Brennan 1996

<sup>84</sup> Mordaunt 1999

<sup>85</sup> Travers 2000

<sup>86</sup> Cope et al 1997

<sup>87</sup> Walker 2000

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