

Institute for Health Sector Development

Health Sector Reform: Human Resources Issues

**A Briefing Note on Public Service
Commissions in the Commonwealth**

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1 Background to Public Service Commissions

1.1 Why is it Important to Understand PSCs?

In most Commonwealth countries, some important human resource functions are carried out not by health service managers but by a Public Service Commission. These functions include hiring, firing and discipline. If reforms are aimed at making services more efficient and directed at the needs of the poorest, it is important to understand the role of these PSCs and the limitations of managers in achieving reform objectives.

1.2 The UK Civil Service Tradition

An underlying principle of the UK Civil Service is that the appointment, dismissal and discipline of people working in the public services should be divorced from political influence. Recruitment of civil servants (but not all public servants) is the responsibility of the Civil Service Commissioners. However, day-to-day responsibility for discipline and ultimate responsibility for dismissal rests with the Government Department concerned. Heads of Department are assumed to have been appointed under the overriding conditions of neutrality and impartiality operated by the Civil Service Commissioners and, in practice, the dismissal or discipline of very senior officers is always referred to the Prime Minister.

1.3 Commonwealth Constitutional Law

The UK has no written constitution. Basic human rights and safeguards for the rights of the individuals are enshrined in common law. However, in order to safeguard these principles in countries approaching independence from British rule, measures designed to promote the impartiality of the civil service were enshrined in their Constitutions. These measures usually went much further than the powers of the Civil Service Commission in the UK. As well as being responsible for appointments, Public Service Commissions (PSCs) in the Commonwealth countries are also responsible for the dismissal of public servants, discipline and other punishments and, sometimes, for promotions or transfers between Departments.

1.4 Development of the Public Service Commissions

Originally, Public Service Commissions in former British Colonies were created to give advice to the Governor General who exercised personal authority, under the Crown, for the public service in the territory. As these territories moved towards self-government, more and more executive powers were given to the Public Service Commissions. Sometimes legal authority for the appointment, dismissal and discipline of public servants remained with the Governor but he was obliged

to act in accordance with the advice of the Public Service Commission. At independence, PSCs were usually perpetuated in the Constitution of the country.

1.5 Typical Constitutional Provisions

Typically, the Constitution of a Commonwealth country will contain sections that:

- establish a Public Service Commission
- set out how its members are to be appointed (requirements for the independence of the PSC may disqualify some people from appointment – for example, members of the Government of the legislature)
- vest responsibility in the PSC for making appointments to the public service, for removing individuals from office and for exercising discipline
- allow the PSC to delegate functions to one of its members or a public officer
- require the PSC to be involved in any decision to reduce or withdraw the pension of a public servant or the pension payable to his or her dependants
- set up a Public Service Board of Appeal with responsibility for appeals against decisions of the Public Service Commission.

1.6 Legislative (Not Constitutional) Provisions

Arrangements to safeguard the independence of the public service in Canada, Australia and New Zealand are enshrined in legislation rather than constitution. In Tanzania, too, the Public Service Commission was established by statute and currently operates under the Civil Service Act 1962 (No11). In Uganda, provisions establishing a Public Service Commission were transferred from the constitution to the Public Service Act 1963 (No 69).

1.7 Scope of the Public Service

An additional complication is that in some Commonwealth countries it is not always clear whether employees of the health service are “public officers” and, therefore, whether responsibility for their appointment, dismissal and discipline rests with the Public Service Commission. In some instances, the inclusion of health service employees within the scope of the Public Service Commission is set out in the constitution. For example, the Constitution of Guyana, revised in 1992, specifically states (Section 190) that the public services include the health service. In other countries, the matter becomes one for subordinate legislation. In Barbados, for example, the Constitution establishes the Public Service Commission (Section 90), whose members are appointed by the Governor General. Power over the appointment, removal and discipline of public officers is vested in the Governor General “acting in accordance with the advice of the Public Service Commission” (Section 93). However, the Civil Establishment Act (Chapter 21) allows the Minister to make orders determining who is deemed to be an “officer of the public service”. In some countries, certain appointments have been removed from the authority of the Public Service Commission

including the Auditor General, the Director of Public Prosecutions, the Solicitor General, and Members of the Diplomatic Service.

1.8 Summary

In most countries of the Commonwealth the existence of a Public Service Commission is enshrined in the Constitution. In a few countries, they are established by primary legislation. The scope of the Constitutional provisions (or those in primary legislation) is always broadly similar: the Public Service Commissions are responsible for the appointment, removal or discipline of public servants. However, it is not always clear whether employees in the health service are subject to the Public Service Commissions. This depends entirely on the definition of “public officer” set out in country-specific legislation.

2 Public Service Commissions in Practice

2.1 Cumbersome and Not Very Effective

In practice, PSC's have proven to be a cumbersome and ineffective mechanism for achieving the functions they were set up to achieve. They are now a major source of frustration to managers who have responsibility for the performance of a public hospital, say, but no practical authority over the hiring, discipline or firing of its staff. These powers lie with PSCs that are part-time committees, distant from and with no accountability for delivering services to the public. It is also doubtful whether they have had any significant success in preventing nepotism and corruption in the appointment and promotion of staff.

2.2 Legislative Complications

The legal development of PSCs has been tortuous and there have been frequent referrals to the Privy Council for interpretations. PSCs have developed codes of conduct for public officers that have been *ultra vires* their jurisdiction – and unconstitutional. They have set standards, defined terms of service, duration of employment, set remuneration and various other things – all of which is a matter for the Executive, not Service Commissions. After much sorting out, it appears that most countries' constitutions intended to state that, in terms of discipline for example, setting standards of behaviour is the business of the Executive. The business of the PSCs is that of undertaking disciplinary proceedings following an alleged breach of those standards. Similarly, whilst it is the business of PSCs to select recruits and appoint them into the public service, the specification of qualifications and levels of remuneration are the exclusive business of the Executive. Whilst, doubtless, the law has been able gradually to clarify what is and what is not the role of the PSCs, many of those performing that role or affected by it are not so clear – and management by legal interpretation and referral to commissions does not sit easily with modern concepts of organisational development, performance management and accountability. In any case, at best the PSC procedures are complicated and slow. The result is that they are not used by managers and in practice much of the public service is void of any real or implied threat of discipline.

2.3 Delegation of Powers

Some public sector reform efforts have relied on the powers of PSCs to delegate their powers so that their functions can be performed by a manager nearer the action of providing a service to the public. Two things need to be taken into account if this is seen as a way forward in improving management:

- PSCs may not want to delegate and they cannot be made to - and even if they agree to, they can stop at any time

- they can only delegate what powers they have and these do not include some powers that would generally be considered part of effective management – like setting codes of conduct, standards, defined terms of service, remuneration and duration of employment which are the business of the Executive.

The delegation of the PSC powers would help - if it can be achieved – but it is not the whole answer to providing managers with the authority to manage.

3 The Way Forward

3.1 Legislative Reform of the Public Sector

Countries could reform legislation to re-invent how the public service works: how the functions of setting standards, terms and remuneration (Executive functions) and the appointment, removal or discipline of public servants (PSC functions) are carried out. But this could take many years. If it requires constitutional change, it is likely to take even longer and may well require a specified majority in parliament that not many governments have – two thirds for example. In any case there will be resistance from vested interest groups including opposition parties, public service unions, public servants and PSCs. It may be possible for some countries but for others it offers a very distant prospect of achieving more effective organisations and management in the health sector.

3.2 De-linking from the Public Service

For the reasons noted above, several countries are searching for ways to have services for the public provided by people who are not in the public service - by private or NGO organisations, for example, or by creating new autonomous service providers as statutory authorities, state corporations or executive agencies. De-linking providers of services from the public service creates new problems to be solved, including:

- the best legal and organisational structures for de-linked providers
- ensuring that they provide the services needed (and do so cost effectively)
- maintaining accountability for the expenditure of public finance

3.3 New Forms of Provider Organisation

A number of countries are creating quasi-state organisations. This appears to be more acceptable than privatisation. Statutory authorities, for example, can be set up with the express purpose of providing health care services and with a duty to heed policy guidance from a minister. Strategic management of an authority can be exercised by a board whose members can be appointed by a minister. Whilst some would say this leaves too much under the control of government, such authorities can at least gain a high degree of autonomy over their management, including their internal finances and human resources. As a legal entity, an authority can appoint and remove its own staff without recourse to public service regulations – and Public Service Commissions.

Creating new provider organisations could leave existing public service staff with nothing to do whilst remaining on the government payroll! The usual answer to this is to try a combination of:

1. Encouraging staff to leave the public sector and join the new authorities – by paying them more, offering fair and more transparent terms and conditions, including regard for effort and promotion by merit etc. (Many public sector staff are tired of the nepotism frequently involved in promotions and of the patent unfairness of the lack of discipline over lazy fellow workers.)
2. Offering older workers redundancy pay to take early retirement before encouraging staff to transfer as above.
3. Allowing the new authorities to appoint new staff whilst also ‘managing’ existing public service staff. Legally, public service workers are not obliged to take instructions from a non public service worker (the Chief Executive of a new authority for example) and even if the PSC could be persuaded to delegate some or all of its powers, it cannot do so to a non public servant. Nevertheless, various compromise arrangements may be possible in specific circumstances depending on the legislation of the country concerned, the attitude of the PSC, the degree of cooperation of the staff (and the incentives they are offered) – and how this situation is approached in the legislation created or used to establish the authority. Under such an arrangement, the new management would undoubtedly ensure that career prospects were clearly associated with employment by the authority (not with public sector employment) and would encourage talented public service staff to apply for appropriate posts in the new authority and resign from the public service.

3.4 Ensuring that Providers Perform

New provider organisations need an operating context and incentives to do what is needed in the wider public interest. Once the ‘chain of command’ method of administration of the public service has gone, performance has to be achieved by forms of agreement or contract with the new providers. These need to specify what services the provider is expected to provide to the public and what it will get paid for doing so. Specifying services in terms of quantity and quality is not easy: a degree of latitude must be allowed and trust developed – a reason why the purely private model for providers is most popular. Prospective agreements based on broad specifications of volume are required to avoid the use of fee-per-item-of-service retrospective reimbursement and the incentives for supply-led over-consumption that this brings. The issues of contracting in these circumstances are discussed in *Contracting in the Health Sector*, Institute for Health Sector Development, London, 1997.

3.5 Accountability for Public Expenditure

Who then will contract with the new provider of services? Who can spend public finance? It would seem that part of the public service has to remain when providers become new legal entities: somebody must be accountable for public expenditure (as the Permanent Secretary, the Government Accounting Officer, is

now). In practice, this is the weak link in attempts to reform health sectors. Ministries do not have the skills to become policy makers (to set the operating context for providers) or purchasers (to use public money to ensure that providers provide what is needed).

Nor may they have the inclination. If they remain public servants, the staff undertaking these functions remain under the Public Service Commission with its associated lack of discipline and incentives. Technical functions could be shifted to non public servants on contract but this will not be wholly successful if they are responsible to senior public servants themselves not supporting reform.

The functions of purchasing or commissioning services can be devolved to provinces, regions, districts or local authorities (but they don't have the skills and may still be part of the public sector). If ministries of health are obstructive, funding could flow directly from ministries of finance but they would have to learn how to do this.

There is also the possibility of taking the purchaser function outside the public service. Where national health insurance is used for the financing of care, for example, the purchaser function would normally be performed by the insurance organisation. In this case care has to be taken that the insurance organisation acts in the wider public health interests and not in the narrow interests of its own agenda - avoiding covering the less healthy for example.

Some of the issues involved in this sub-section are discussed in Health Sector Reform: Separating Public Financing from Providing Services, Institute for Health Sector Development, London, 1998.

3.6 Summary

PSCs are a part of the puzzle of achieving more responsive and goal oriented organisations delivering health care services. They are one of – but only one of – the reasons structural reform is desirable in the first place and why some countries are taking the route of having services for the public provided by people who are not in the public service. At the same time PSCs are a factor that has to be taken account of in trying to achieve this route ie. in separating the 'purchaser' and 'provider' functions.

The way forward will be different in specific contexts. Where there is the political will, anything is possible, including the use of existing legislation for provider organisations (eg. state corporations) as a step towards longer term solutions. Where it is not realistic for ministries of health to reform themselves into competent policy bodies and spenders of public finance, it may be better for more powerful (and often more progressive) ministries of finance or planning to lead.

Where there is not sufficient political will to carry through reforms, efforts are better directed at promoting the needs for change through appropriate partner organisations including creating awareness of possibilities through study tours and interactive learning programmes. SWAs may offer further incentives for reforms. And opportunities should be sought even for piecemeal increases in decentralisation and autonomy within the existing public sector system to provide experience and demonstrate achievement.

4 Public Service Commission

4.1 Some Brief Cases

The aspects of health sector reform discussed in this document – and particularly the issue of achieving management autonomy where public sector staff are currently controlled by Public Service Commissions – must in many ways be regarded as ‘work in progress’. Different approaches are being tried and with mixed success. Some examples are outlined below.

Case 1: Kenyatta National Hospital, Kenya

A large public hospital was turned into a form of statutory authority run by a board. Public sector staff were offered higher salaries to transfer to its employment and most of them did so. New staff have been employed directly. The new organisation has achieved efficiencies in its operations and has introduced new management and financial systems.

The ministry of health has not been changed substantially in any way. It has not been able to provide the hospital with a policy context or clear role. The hospital has no contract with government defining its services linked to its budget. The hospital now receives more money from government revenues than it did before and does not appear to be doing any more work.

Case 2: The Health Sector Reform Programme of Trinidad & Tobago

Legislation created new autonomous provider organisations and a new structure for the ministry of health was put in place with policy, purchasing and quality assurance functions performed by staff on contract. The providers were run by boards and all public assets were vested in them. The PSC refused to delegate powers to the new organisations. The providers appointed some new staff and tried to manage the public service staff who were instructed by government to work in the new provider owned facilities. It was intended that public service staff would be presented with options to transfer employment or to work for the new providers on secondment. But a loss of political will resulted in the programme stalling; after three years, the choice of transferring employment has yet to be put to staff. The new providers are achieving a lot but the new ministry has not functioned – the old structure was not dismantled and operated in parallel to the new one. The purchaser function did not develop and the providers have not been made to perform to their contracts (which were prepared but never used).

Case 3: Decentralisation in Uganda

In a move to enhance local control and accountability in public services, new legislation decentralised finances and staff to district level. Districts, with an average population of half a million, already had district governments that were managing some staff and limited revenues. The legislation greatly increased the extent of finances they managed and transferred public servants working in the district (under the Public Service Commission) to employment by the districts. District Service Commissions (DSCs) were established under the legislation to be responsible for recruitment, discipline and promotion of staff in the district.

In the health sector, this meant that the staff working in primary health care, district hospitals and district management were transferred to the district payroll and were under the DSC. However the legislation also established a Health Services Commission (HSC), with responsibility for recruitment at head of department level and above (including District Directors of Health Services), although it can delegate this role to the DSCs. The HSC has only recently been appointed and it is not yet clear how it will operate.

The introduction of DSCs means that there should be more local knowledge about staff performance and, since the DSCs have a smaller workload, less delay in promotions, confirmation of appointments and disciplinary matters than had been experienced with the PSC. On the other hand, there have been reports of nepotism and tribalism in a few districts. Senior staff such as doctors were concerned that they would lose mobility and chances for further training if they were employed at district level but have appreciated the way that some districts have offered salary supplements to attract doctors and other staff they need.

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