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Public Servants and Corporate Governance Failures: Developing for the Future by Learning from the Past

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Abstract
This chapter considers the challenges facing public servants when dealing with the complexities of corporate governance, particularly in relation to corporate failure. The chapter argues that the public servant of the future needs to be equipped with skills appropriate to meeting the challenge of navigating and managing the complexities of corporate failure, in a context where these place severe stresses upon relationships between public bureaucracies, private and third sector bodies, functioning across and within macro, meso and micro levels of governance. The chapter addresses the key questions about the ways in which corporate failures challenge the role of modern public servants in corporate governance, and the lessons that can be drawn from cases from the recent past. A range of illustrative examples from different levels within governance systems are deployed in order to examine this issue. These are: the Greek economic crisis, the FIFA fiasco, the collapse of the KidsCo charity, Oxfam and Save the Children scandals, and the Grenfell Tower fire. The role of the public servant in such circumstances is not just about partnering with stakeholders to minimise failure (through standard-setting, for example) but also to demonstrate leadership by bringing threats under control in a 'crisis management' sense, co-producing lesson learning processes from failures, and strengthening lines of accountability.

Introduction

This chapter considers an aspect of the public servant's role that is largely under considered in studies of modern public administration: corporate governance. Corporate governance is applicable to the core organisational functioning and relationships of public, private and third sector bodies, as standards of sound governance practice have come to apply across these sectoral divides. Corporate governance is comprised of the rules, mechanisms, processes and behaviours which facilitate the direction and control of organisations, and its requirements are, increasingly, encapsulated in formal codes. The relationship between public servants and corporate activity is an intriguing policy space, due in part to its traditional lack of transparency. There is a co-dependency in these relationships, stemming from the fact that policies affecting the behaviours of private corporations and third sector bodies (through, for example limits to market share, payable taxation, trading legalities, regulation of activity and monitoring of governance) have a bearing on economic performance (obviously a major political concern for any government). In some state systems, all non-elected public servants are formally defined as civil servants, while in others the latter term is reserved for specific categories of officials. For our purposes here, the broad term public servants can be deployed, and it is clear that these officials, at all levels of systems of government and public administration, face increasing challenges relating to corporate governance.

The roles of public servants often includes commissioning, stakeholder engagement, representing government on matters relating to industrial relations, putting in place regulatory policies and controls (to name but some). In this context, the public servant needs to walk a careful ethical tightrope when it comes to managing interests and relationships with non-state actors. The embeddedness of New Public Management principles within the public sector, particularly in terms of the contracting out of services, means that private and non-for-profit bodies are clearly essential policy partners for government. In times of crises or acute failure the relationships that public servants have with actors outside bureaucratic channels comes under the spotlight given that it is the feature, and even function, of crises to expose performance deficits, bad governance practices, and poor corporate leadership.

The key questions that underpin the chapter are:

- what are the challenges facing public servants in relation to matters of corporate governance, and;
- what can public servants of the future learn from contemporary corporate governance failure?

This chapter examines these questions. But first, in order to frontload the discussion, the linkages between governance, corporate governance are addressed.

Governance, Corporate Governance, and Public Servants

Modern states function through governance systems and processes, and react to the impacts of complex governance networks of which they are part. This is subject to variations across the globe, as localised contexts are very important for determining specific approaches. Modern governance involves ongoing complex interactions between public servants within state structures, systems and processes, and an array of policy actors from non-state bodies across the private sector and voluntary/3rd sector agencies including NGOs. What are the 'wheres' and the 'hows': the systemic locations and the operational mechanisms and processes of governance in this context?

In terms of location, it can be seen that states govern through, and are affected by, the governance networks at macro, meso and micro levels.

The ***macro level*** refers to international, supra-national, transnational and transgovernmental interactions and processes. Here, we see states govern in specific policy spheres through, for example, global institutions including the United Nations, the World Bank and the International Monetary Fund, through regional transgovernmental bodies with varied emphases on policies across the spheres of trade and commerce, social and economic affairs, including the European Union and the North American Free Trade Agreement, and through defence alliances including NATO, the Organisation of American States and the African Union. The so-called developing states in receipt of aid and support packages of various types and forms, are relatively more likely to rely upon the mechanisms and processes of the macro level for aspects of their core public policy frameworks, and within these, to have considerable interactions with international agencies and NGOs**.** As noted below, this reliance is not unproblematic in relation to recurring governance concerns within and across the networks of NGOs.

The ***meso level*** locates the systems, interactions and processes of national governments within the context of the modern state. This includes government departments, executive agencies and core service delivery mechanisms and networks (including, for example, national health services) which might function on a spectrum of possible decentralised arrangements. This category also includes the full array of state-level regulatory bodies such as audit and inspection agencies, financial regulators and charity commissions.

The ***micro level*** of governance refers to sub-state, regional and local governmental structures, organisations, interactions and processes. Depending on the nature and type of the state under consideration, at this level there may be more, or less, settled authority and formal responsibility at the localised levels. Thus, for example, in federal states including the USA and Germany, the sub-national units have entrenched constitutional rights to exist and clearly delineated powers. In so-called unitary states such as the United Kingdom, the position of devolved bodies such as the governments of Scotland and Wales and their associated parliaments and assembly, are relatively more circumscribed, and owe their ultimate existence to the national government. Below the regional levels of governance, local authorities are generally more fluid structures, subject to changes in their powers and jurisdictions at the wish of the levels above them in the system.

Governance is, moreover, fundamentally about the strategies for navigating within and across these levels. Public servants, when formulating or enacting policy have to work through a full range of formal, traditional government structures and processes, and also via looser networks and partnerships. The prevailing trend in the emergence of a governance paradigm for understanding complex and multi-level policy interactions, has been the growing importance of the networks between the organisations and institutions of the formal structures of government, and an increasingly complex array of semi- and non-governmental bodies spanning the private and the non-for-profit sectors. The increasing significance of the macro level of governance has meant that the policy interactions between national governments and supra-national entities have steadily assumed greater importance.

It is also important to be aware that the macro, meso and micro categories are not self-contained. In the era of complex interdependencies and networks, while there may be a 'lead element' in one or other of the macro, meso and micro categories, there are also, invariably, subsidiary elements from one or more of the other categories.

Public servants functioning in these contexts are increasingly required to key roles in applying corporate governance standards. The corporate governance practices and standards which transferred across sectors can be helpful in allowing us to establish some benchmarks against which breakdown, decline and outright failures in governance can be assessed. These documents tend to combine generic and generalised requirements for good governance with specific, focused requirements relating to the function and purpose of the body or organisation itself. A distillation, mainly from the Committee for Standards in Public Life (1995), known as the Nolan Principles, of the major corporate governance requirements applicable to bodies and organisations across the various levels and layers of government includes the following:

- *Openness and transparency* in relation to all decision making and operations matters.
- *Accountability* as a core value and principle. Mechanisms should be in place to ensure effective delegated responsibility for key functions, separation of roles across executive and non-executive positions to allow for focused scrutiny, and due delivery of each key element of a functioning system of accountability, including answerability, amendatory accountability, redress of grievances, and sanctions in cases of major failings (see Massey and Pyper, 2005: 151-70). In this category, effectively functioning accountability structures are key elements.
- *Positive organisational and operational culture*, including due engagement with issues relating to equality, diversity, and economic and social responsibility.
- Efficient and effective arrangements for *risk management and audit*, including due processes for securing the independence of the audit function.
- Clear and positive management of all matters relating to *ethics and conduct* throughout the organisation. This is conventionally framed around a sub-code of some description, for example along the lines of the UK's 'Nolan Principles' (Committee for Standards in Public Life, 1995) which apply to all people holding public offices, and span
    - Duty/public service
    - Selflessness
    - Integrity
    - Objectivity
    - Accountability and stewardship
    - Openness
    - Honesty

- Leadership
- Respect

The subsequent examples of corporate governance failures contextualise the challenges facing public servants in relation to these fundamental benchmarks and standards.

Corporate Governance Failures: Implications for Public Servants

Governance failures or crises can be seen as ‘reform triggers’ to allow for individual and organisational learning (Deverell, 2009). Yet there is a complex and tenuous relationship between failures and the capacity and preparedness of policy actors to initiate change (for example, Connolly, 2016; Stark 2019). Learning might occur, for example, via post-failure inquiry or review processes, but there is a difference between ‘learning’ and ‘changing’. This chapter is not an analysis of whether change follows learning (that is for another study), rather, a ‘learning lens’ is adopted here to identify what needs to be learned from failure, particularly in terms of the skills and behaviours required to implement changes in the areas where they have influence within complex policy environments. .

In an era of multi-level (and territorial) governance, there is a fundamental requirement for public servants to develop relationships with non-state organisations and actors across different parts of the governance system. This can come in the context of successfully managing complex commissioning and service delivery operations, and also, for example, when dealing with failures at a global scale that require financial stability - including the interactions between state level public servants and the officials of the intervention by the International Monetary Fund (IMF) when the latter intervened in the crises in the Eurozone. The 2008 global financial crisis is a major example of private sector behaviours exposing the vulnerabilities and failures within global financial systems and the weakness of policy regimes to implement lessons as a result due to the embeddedness of economic power structures, which can inhibit transformational change (see Helleiner, 2014).

Alternatively, there might be failures that require public servants to work across national or territorial boundaries to understand the implications of corporate failures. For example, the corporate failures within the major retailer British Home Stores (BHS) led to the UK Pensions Regulator, following significant parliamentary scrutiny, agreeing deal with billionaire Sir Philip Green who agreed £343m to pay the pensions of 19,000 former BHS workers. This is an example of failure at the meso level where the systems, interactions and processes of national governments within the context of the modern state are located. It is in this governance space that government departments, executive agencies and core service delivery mechanisms and networks (including, for example, national health services) function on a spectrum of possible decentralised arrangements.

We can now illustrate particular issues and themes relating to corporate governance challenges through examining some key examples of corporate failure in recent times. As noted above, there is a degree of fluidity across the macro/meso/micro categories, which means that, in each case, while there will be a reasonably clear leading element from one category, we can see subsidiary influences and inputs from one or more other categories. This serves to emphasise the complex interdependencies which exist through and across the organisational entities and networks in the governance of modern public policy, and emphasises the complexities of the challenges facing public servants working across and within these categories. The cases here reveal significant failings and breakdowns in various elements of corporate governance. The purpose of this approach is not to place undue stress on negativity (it might be argued that sound and secure corporate governance tends to pass without undue attention), but to use these instances of weak or failing systems to exemplify the need for consistent and positive corporate governance, and the requirement for the public servants of the future to be fully briefed on the importance of corporate governance, and alert to the serious consequences of its failure. Our illustrative cases span geographical as well as categorical boundaries.

(1) A Macro Level Example: The Greek Crisis Within the EU

This case raised corporate governance issues for officials within the EU itself, the government of Greece, and key international agencies including the World Bank and the

IMF. The lead elements, or roots of failure, were clearly at the macro level of international, transnational and transgovernmental interactions and processes, although, given the implications for the Greek state, the meso level of national governmental interactions and processes also features.

This crisis had its origins in Greece's entry to the Eurozone, exacerbated by the 2007-08 financial crisis, the aftermath of which produced a serious recession in Greece. This revealed fundamental structural weaknesses in the economy and exposed significant miscalculations and manipulations of government debt figures and deficits. Greek governments adopted severe austerity measures involving successive increases in taxation, public expenditure cuts, and structural reforms.

Notwithstanding these (and, arguably, because at least some of the new measures were inadequately implemented, and the extant endemic culture of tax evasion remained entrenched), between 2010 and 2015 Greece required three emergency loans from the 'Troika': the IMF, the Eurogroup within the EU Commission (EU member states which have adopted the Euro as their currency) and the European Central Bank. The terms of these loans, which included radical reforms to the pensions and social security systems, were viewed politically in Greece as unduly harsh and as contributing to the acute economic, financial and social crisis engulfing the country (Blustein, 2016; Dudin et al, 2016; Matsaganis, 2013; Varoufakis, 2017). The Coalition of the Radical Left, or Syriza, which was opposed to the terms of the Troika bail-outs, emerged as the largest party following the January 2015 parliamentary election, and the resultant coalition government was led by its party chairman, Alexis Tsipras. In June 2015 Greece formally defaulted on its scheduled loan repayment to the IMF.

The new government's eventual acceptance of a renegotiated financial package from the external lenders, following a referendum in July 2015 which had overwhelmingly rejected the terms of the most recent bailout conditions, led to a split within Syriza, and fresh elections in September 2015, which served to confirm the coalition in power. The process of ongoing rescheduling of loan repayments, coupled with commitments to further social welfare and labour market reforms by the Greek government, continued thereafter, and the cumulative debt increased quarter by quarter, reaching over 226 billion Euros by early 2017 (Rankin and Smith, 2017). In short, the close interactions between public servants and political actors were key to framing the policy responses.

An illustration of one fundamental governance issue related to the power and influence of the Eurogroup, the meeting point for Eurozone finance ministers immediately before formal meetings of the Economic and Financial Affairs Council (Ecofin) of the EU. The Eurogroup has been assigned a rather vague, fluid status within the 2009 Lisbon Treaty which sets out the governing structures and process of the EU, but in practice exhibits a number of serious governance flaws, including its failure to publish minutes and agendas, the lack of accountability to the European Parliament, and the loose arrangements for attendees which allow external actors, including the head of the IMF to appear as 'observers' who can actually play a leading role in its operations. As we see below, the role of public servants in this setting became the subject of some controversy.

During the Greek crisis, Yanis Varoufakis, as his country's Minister of Finance, became increasingly frustrated as he found himself outflanked by unelected officials during key discussions in the Eurogroup:

> It convenes around a huge rectangular table. Finance ministers are seated along its two longer sides, each accompanied by a single aide…However real power sits at either end of the table (with) the Eurogroup president…the IMF representatives…the commissioner for the Euro and social dialogue…the economic and financial affairs commissioner…and (the representative of) the ECB …
>
> (Varoufakis, 2017: 231-2)

Varoufakis's experience was that the elected politicians were effectively marginalised in the Eurogroup:

> Only after these unelected officials had given their assessment and set the tone and terms of the debate did the elected ministers get a chance to speak. Moreover, for almost all the meetings at which I was present the ministers received no substantial briefing on *any* of the topics under discussion. A reasonable and impartial observer might easily have concluded that the purpose of the Eurogroup is for the ministers to approve and legitimize decisions that have already been taken …
>
> (Varoufakis, 2017: 232)

It is fair to point out that there was something of a clash of cultures between the personal negotiating style of Varoufakis and that of the Eurogroup, and his account of the meetings is perhaps coloured by this. Nonetheless, other analysts, including Blustein (2016, Chapter 18), provide additional supporting evidence for the case that outline agreements reached by politicians could be fundamentally altered following interventions by officials, and a lack of transparency in key discussions was an integral feature of the Eurogroup's functioning.

Viewed as a whole, the key corporate governance issues which were revealed by the Greek crisis within the European Union related to failings in the realm of matters of *openness and transparency* in the decision making processes which were dominated by unelected public servants and produced the agreements within the Troika and between the Troika and the Greek government, on austerity measures. Additionally, there were problematic issues relating to matters of *accountability*. The lack of clarity regarding the roles and accountabilities of key individuals (in particular, the power and influence of unelected EU officials) and bodies (for example the Eurogroup) displayed a set of weaknesses in the area of governance centred upon effectively functioning accountability structures.

For public servants, the key lessons to be drawn from this episode concern the need to ensure that when working with, and to, elected political leaders in complex policy spheres straddling macro and meso levels of governance, the fundamental corporate governance norms of openness, transparency and accountability are fully adhered to, otherwise this produces strained relationships and elucidates weaknesses in the democratic credentials of macro-level economic decision-making. The behaviours of public servants in such circumstances can, therefore, risk wider accusations that they are exacerbating and feeding into the narratives of supranational governance itself in terms of democratic deficits – ultimately undermining the wider operations of supranational governance.

(2) A Macro-level Example: The FIFA Crisis

A second case in this category, is also a macro-level example, concerns the corporate governance challenges faced by FIFA (the Federation Internationale de Football Association) which is the governing body of world football. FIFA has close working relationships across states and international organisations. The organisation has suffered from successive waves of serious governance failures, consequently presenting challenges for the organisation itself, and for its network partners across the globe - including the public servants working for central and local governments.

Based in Zurich, FIFA is a registered association under the Swiss Civil Code, and accordingly functions as a non-profit and non-commercial organisation (Tomlinson, 2014: 28-9). Growing steadily from its origins in 1904, FIFA gradually developed what appeared to be a fairly extensive governance framework. The Congress of over 200 member associations meets annually, and elects a President every four years, while a series of key boards and committees (including the Executive Committee (ExCo) and its standing committees numbering more than 30, the Financial Committee, and the International Football Association Board (which deals with the rules of the game)) manage the business of the organisation (Tomlinson, 2014: 29-37). However, from the outset, important organisational weaknesses existed, and were allowed to persist, despite criticisms from within the organisation and beyond. The lack of limits on the number of Presidential terms or periods of individual membership of ExCo, failure to elect independent (non-executive) members to ExCo, toleration of multiple membership of key committees by certain individuals, lack of openness and transparency in voting processes, the relative weakness of the belatedly introduced (2004) Ethics Committee, and the infringement of guidelines relating to conflicts of interest all contributed to a culture and set of practices which led the organisation, and its commercial and governmental partners, into serious problems.

The successive Presidencies of Joao Havelange (1974-1998) and Sepp Blatter (1998-2015), each of which featured multiple re-elections to the post and the nurturing of cronyism within the structures of the organisation, raised important questions about financial mismanagement, alleged bribery and money laundering, the award of marketing rights, and the process for allocating hosting rights to World Cup tournaments. In June 2015, the United States government indicted a number of current and past FIFA officials and their partners in sports marketing companies on charges of bribery and money laundering. Blatter was subsequently the subject of proceedings by the Swiss Attorney General on grounds of alleged criminal mismanagement and misappropriation of funds, was suspended from FIFA activities for six years, and forced to step down as President in December 2015.

The FIFA case illustrates a series of key corporate governance failures. Prominent amongst these were problems stemming from a lack of *openness and transparency* in decision making and operational matters, and *accountability* deficits, particularly in relation to the clear separation of roles, the lack of adequate scrutiny, and properly functioning structures. The abuses of power during the Havelange and Blatter eras were indicative of systemic problems within the body's *organisational and operating culture*, and epitomised a fundamental deficit in regards to the management of *ethics and conduct* on a range of fronts. For public servants, the FIFA case provides elucidates the serious consequences, including abuses of power, which flow from an organisation's failure to implement key aspects of sound corporate governance.

This case also highlights how public servants within formal state bodies need to be wary of the 'contamination risks' associated with the necessary interactions they might have (for example through negotiating contracts around events such as the World Cup) with a non-commercial organisation of this type. This is a clear example of an organisation that was led with a sense of 'groupthink' i.e. that they would be shielded from criticism with a sense of institutional arrogance regarding conduct. Public servants need to be aware of the spill-over effects from organisations that they might not be employed by but they have relationships with as it calls into question how such non-commercial, but powerful cultural organisations with a high degree of 'soft power', are regulated.

(3) Macro-Meso Level Example: The Collapse of Kids Co

This is a case which straddles the meso and macro governance levels in the sense that it featured an NGO (hence the macro element) but was largely concerned with the relationship between that organisation and a key department of the UK government (hence the meso element). The case raised issues around the corporate governance implications of delegating significant policy and financial resources from the central state (and, arguably, local authorities) via a loose sub-contracting arrangement, to a third sector/voluntary body which came to display serious corporate governance failures with disastrous consequences (for more on the movement towards the delivery of core social services by the voluntary sector, see Austin, 2003).

Keeping Kids Company, which came to be generally known as 'Kids Company', was a UK charity founded in 1996 by Camila Batmanghelidjh, with the aim of providing a range of support (practical, emotional and educational) to vulnerable children, young people, and adults via 12 centres and partnerships with 40 schools in London, Bristol and Liverpool. The charity claimed to support 36,000 individuals (although this figure was disputed by MPs who subsequently investigated the matter (Public Administration and Constitutional Affairs Committee, 2015: paras 26-36), and was funded through a combination of private donations and £42 million of public funds allocated by the UK central government, plus an additional £4 million from local authorities and lottery grants, between 1996 and 2015.

Kids Co was run on a demand-led basis, on the principle that no child should be turned away, with many recipients of its support self-referring. This support model, coupled with financial mismanagement, led to periodic crises which became more acute in the summer of 2015, when a request was made by the charity for emergency rescue funding of £3 million from the government. Overriding the formal objection of their senior civil servant, the Permanent Secretary to the Cabinet Office, two UK government ministers (Oliver Letwin and Matthew Hancock) gave instructions for this grant to be paid, as part of an agreement around the restructuring of the organisation, and the money entered the charity's account on 30th July.

In governance terms, this reveals both the importance of public servants taking a firm stand on an ethical matter (in this case by formally objecting to the decision taken by ministers), and the limitations of such an approach in the face of political directives. It was subsequently reported that a police investigation had commenced into allegations of sexual abuse within the charity. Separately, the government sought to recover its emergency finance due to concerns about a possible breach of grant conditions (some of the money was being used to pay salaries). Moreover, matched funding that was promised from a private source failed to materialise and Kids Company closed amidst a state of crisis on 5th August. Investigations and inquiries were carried out by the Metropolitan Police, the Charity Commission, and by two House of Commons select committees (Public Accounts Committee, 2015; Public Administration and Constitutional Affairs Committee, 2016).

This case raised issues relating to criminality, financial mismanagement, weak regulation and accountability, audit failures, insider-access for a high-profile charity and its charismatic leader, and, fundamentally, the proper respective roles and responsibilities of public service organisations and charities for the care and support of vulnerable people.

Our primary focus here is on the matters relating to corporate governance which arose in the course of the Kids Co debacle, and the failings here were extensive. There was a significant deficit in terms of *openness and transparency* in decision making and operational matters. *Accountability* mechanisms, structures and processes were limited, at best, and absent in key spheres of activity. The *organisational and operating culture* was largely based around a cult of personality and charismatic leadership, and this served to mask the major functional and financial difficulties facing the organisation, until the point where it was effectively too late for remedial action to be taken. The state of the organisation's finances at the point of demise showed that there were no proper arrangements in place for *risk management* and serious deficiencies in both the internal and external *audit* functions. In this context, serious questions were raised during the subsequent parliamentary inquiries into the collapse of Kids Company regarding the failure of government ministers in the Cabinet Office to exercise due diligence in relation to risk assessment when approving the final emergency funding of the organisation despite the objection of their senior civil servant. Finally, the management of *ethics and conduct* at various levels of the organisation was exposed as inherently flawed.

For public servants, the case exposed the catastrophic consequences of serial failures of corporate governance within an organisation partnered to central government departments and local authorities for core service delivery, and the learning from the sad episode was the need for the requirement for much closer scrutiny of the organisational culture of such organisations. Equally, ministers also need to learn that despite the political incentives and good public relations that comes with intervening to save failing charities, they need to be mindful of the advice of public servants with regards to the prudence of using public funds to bail out organisations when there are fundamental and structural reasons for not doing so.

(4) Macro-Meso Level Example: Oxfam and Save the Children

In 2018 further serious governance problems were exposed in the part of the macro level populated by NGOs, when a series of scandals erupted in relation to issues of culture and ethics. Again, although primarily featuring organisations located at the macro level, these cases illustrated the interactions between levels, as they raised questions about the functioning of public servants within the key regulatory agency (the UK's Charity Commission) at the national government, or meso level of activity, and some critics questioned the role of government itself in this and similar cases.

In February 2018 *The Times* newspaper published allegations of serious sexual misconduct by senior staff working for Oxfam in Haiti in the aftermath of the 2010 earthquake, including exploitation of local women (O'Neill, 2018). Oxfam responded that it had carried out an internal investigation at the time, dismissed four members of staff against whom there were proven allegations, and allowed three others to resign. Subsequently, the UK's regulatory body for this type of NGO, the Charity Commission, stated that the report it had received from Oxfam in the aftermath of the Haiti incident had not revealed the full facts of the case (Charity Commission, 2018). Further allegations emerged in *The Times* concerning the use of sex workers by senior Oxfam staff working in other parts of the globe. Oxfam's Deputy Chief Executive, Penny Lawrence, resigned, and Oxfam announced that it was setting up an independent commission to review its internal culture and practices. Despite this, major external funders including the European Commission and the UK Government announced that they would be reviewing their support for Oxfam, while a large number of individual supporters and several high-profile celebrity 'Oxfam ambassadors' severed their ties to the charity (BBC News, 2018).

With questions being raised about its effectiveness as an external agent of accountability in this case, the Charity Commission opened a formal statutory inquiry into the Oxfam case, and the House of Commons International Development select committee held a public evidence session as a preliminary to a full investigation into the scandal (International Development Committee, 2018). During this evidence session, Oxfam's Chief Executive revealed that 26 new sexual misconduct claims had been raised within the organisation since the initial scandal had been reported (International Development Committee, 2018: Q16), and the Chief Executive of another NGO, Save the Children, gave evidence that his organisation had investigated 53 allegations of sexual misconduct in 2016 (International Development Committee, 2018: Q109). It also became clear during this committee's hearing that the UK Department for International Development, the major sponsor and aid delivery partner of Oxfam, had been informed in 2011about the charity's internal investigation into the misconduct in Haiti, but, according to the account given by Matthew Rycroft, the current DFID Permanent Secretary,

> …at no point was either the scale or the severity of the allegations made clear to our predecessors.
>
> (International development Committee, 2018: Q122)

One academic analyst challenged this account, arguing that the UK government, and others, generally failed to act when presented with evidence of governance failures in aid NGOs:

> The net of blame needs to be cast wider than NGOs. Those at the top of the aid chain donor governments – did not listen to warnings of wrongdoing. Donors do not have a good record of being proactive when presented with evidence of abuse.
>
> (Crack, 2018)

These cases raised serious issues relating to a range of corporate governance criteria. Failures stemmed from a lack of *openness and transparency* when the organisations initially learned about the alleged abuses in their ranks, and, in the case of Oxfam, chose to report these to the regulatory body, the Charity Commission, in a highly edited form. This, in turn, raised questions about the functioning of both internal and external lines of *accountability*, and the effectiveness of the accountability structures and processes within the organisations.

Most fundamentally, however, the cases revealed significant deficits in the *organisational and operating cultures* of these NGOs, with serious failings in the treatment of issues relating to matters of equality, diversity, and economic and social responsibility. Allied to this were extraordinary failures to secure sound standards of *ethics and conduct*, with particularly glaring deficits in the realms of duty, public service, integrity and respect.

It is worth pausing here to point out that the governance issues around NGOs, particularly those operating in the aid field, have been extensively examined and critiqued (see Austin, 2003; Haque, 2011). Haque has argued that the drive to supersede or supplement the structures and processes of national states (albeit those which, in some cases were inherently problematic due to, *inter alia,* corruption or other dysfunctionality), with NGOs has led to increased deployment of these bodies in key policy fields, and to the evolution or conversion of most NGOs ‘in line with business-like standards, structures and motives’ (Haque, 2011: 334). In governance terms, this can have significant consequences for the dispersal of roles, responsibilities and lines of accountability:

> In line with this new trend towards a diminishing role for the state, a new framework of governance has emerged, based on multiple stakeholders (private, public and non-profit) – known as ‘distributed’, ‘networked’ or ‘shared’ governance – which underscores the roles played by all major actors (called ‘partners in governance’)
>
> (Haque, 2011: 335)

A further consequence relates to the creation of potentially problematic operating cultures within NGOs:

> …a corporate culture of high salaries and undue privileges for top NGO executives based on an exploitative relationship with poor NGO members.
>
> (Haque, 2011: 335)

This description seems particularly apposite in the context of the Oxfam and Save the Children cases, and emphasises the importance of strong, pro-active concern and intervention on the part of public servants charged with responsibility for managing policy partnerships with such bodies, and for regulating their activities.

(5) A Micro-Meso Level Example: The Grenfell Tower Fire

Primarily within the micro level of local government, the case of the 2017 fire at the Grenfell Tower housing block in London raised serious and fundamental corporate governance issues for a local authority, linked to the arrangements for the management of its housing stock, its management of sub-contacts for housing renovation projects, the complexity of the myriad of contractual relationships across these commercial networks, and the looseness of the accountability regime which contributed to a catastrophic event.

The fire started on 14 June 2017, and its rapid spread resulted in the building being engulfed in flames within a relatively short period of time, causing the deaths of 71 people (BBC, 2017). Post-crisis attention focused on the part played by the tower block's exterior cladding in accelerating the spread of the flames. Constructed in the 1970s as council housing, at the time of the fire Grenfell Tower remained predominantly a local authority property, with only 14 out of the 129 apartment flats privately owned (Turner, 2017). The local council, the Royal Borough of Kensington and Chelsea, had sub-contracted the management of the property (along with the rest of its housing stock) to the Kensington and Chelsea Tenant Management Organisation (KCTMO), the board of which had representatives from the resident population of the 10,000 properties it oversaw, and the Borough Council, with an additional three independent members (Kensington and Chelsea Tenant Management Organisation, 2006). In 2015-16, as part of the final stage of a renovation project at Grenfell Tower, the building received new cladding.

The KCTMO awarded the contract for the overall renovation project to Rydon Ltd, a company which submitted a bid for the work which was £2.5 million lower than the original contractor (Gapper, 2017). A myriad of sub-contractors then became involved in the work, but it was clear that, as part of these arrangements, a cheaper form of exterior cladding was used:

> Rydon handed the £2.5m job of installing the new façade to Harley Curtain Wall, a company based in East Sussex, which was taken over by a linked group, Harley Facades, during the Grenfell refurbishment. CEP Architectural Facades, a division of the UK manufacturer Omnis, cut the cladding, which was supplied to Harley by the US aluminium group Arconic; insulation was supplied by Celotex, based in Suffolk. At least some cost-cutting took place as the project proceeded: early plans for zinc cladding, for example, were replaced with an aluminium-coated product which is generally cheaper, planning documents show.
>
> (Gapper, 2017)

Residents' concerns about fire safety in the building, channelled through the Grenfell Action Group (2017), focused on issues including defunct fire extinguishers, exposed gas supply pipes, limited escape routes, and the presence of rubbish within the building's corridors. In relation to each of these fundamental health and safety issues, there was an apparent lack of clarity regarding the respective roles and responsibilities of the Borough Council, the KCTMO, and numerous sub-contractors. In addition to a series of internal inquiries launched by, *inter alia,* the Borough Council and the London Fire Brigade, a public inquiry into the fire was established in June 2017, under the chairmanship of Sir Martin Moore-Bick. The longer term impact of the fire and its aftermath will hinge to some extent at least on the findings of this inquiry.

However, there were some interim consequences for the Borough Council, including the resignations of the Conservative council leader, Nicholas Paget-Brown, and the council's chief executive, Nicholas Holgate, in June 2017. Two months later it was announced that the Borough Council was to assume from the KCTMO management control of the estate within which Grenfell Tower is located, and the KCTMO lost its contract with the borough the following month (Godden, 2017).

Notwithstanding the need for definitive conclusions to await the outcome of the public inquiry, several significant governance issues arose from the Grenfell disaster. In the main, these issues were located at the micro level, relating to the operations of the Borough Council and its offshoots. However, some concerns were also raised regarding the meso level role of UK central government, specifically in connection with the possible impact of deregulation of certain controls in the building and construction industry, the impact of which might have contributed to toleration of sub-standard work and installations:

> …devolvement of responsibility makes it vitally important for there to be a clear set of safety standards …greater self-assessment of fire risk has been combined with less exact rules …
>
> (Gapper, 2017)

A broader issue to emerge during the Grenfell disaster was feelings that this was a crisis stimulated by another societal crisis – that of chronic inequalities, which is of a meso-level concern regarding questions about the levels of government (in)action. In other words, the fire become a symbol of the fact that 'the most disadvantaged in our society suffer most from the mistakes of the most powerful' (Sawlani, 2017).

Important governance questions arose in relation to the extent to which proper *openness and transparency* could be said to have characterised the operations of the Borough Council, particularly in relations to its links with residents of the tower block when these residents had repeatedly raised concerns about safety matters. There were also some fundamental concerns regarding the *organisational and operating culture* of the Council and the extent to which this exhibited due engagement with its economic and social responsibility. Efficient and effective arrangements for *risk management* are key elements of sound corporate governance, and it was obvious that serious questions would be posed regarding the extent to which the Borough Council, and its offshoots, carried out risk assessments when deciding to install the cheaper cladding option on the Grenfell Tower block.

Perhaps most fundamentally, however, and running through all of the considerations above, the fire at Grenfell Tower focussed attention on a set of *accountability* deficits and failings, which, while not unique to this Borough Council, had catastrophic implications in Kensington, and raised serious issues about the risks associated with extended, and convoluted, accountability relationships in the context of public sector contractualisation. The complex relationships between the Royal Borough of Kensington and Chelsea, the Kensington and Chelsea Tenant Management Organisation (KCTMO), Rydon Ltd, and the companies to which Rydon sub-contracted the various elements of the work for the Grenfell Tower refurbishment project, mirrored those in place for capital, construction and service delivery projects across the UK public sector in the era of contractualisation. However, without establishing clarity around the specific role responsibilities and accountability lines in these relationships, serious risks are incurred.

In the aftermath of the Grenfell fire, the Royal Institute of British Architects raised concerns about the lack of a single, clear point of responsibility for the refurbishment project, and in its evidence to the Independent Review of Building Regulations and Fire Safety, the RIBA recommended the adoption of 'Principal Designer' and 'Principal Contractor' roles as a means towards securing such clarity:

> …significant consideration (should be given) to the impact of procurement decisions and allocation of project responsibilities on project quality and safety, and the role of clients in ensuring independent scrutiny of construction work.

(Royal Institute of British Architects, 2017: 19)

For public servants, the Grenfell tragedy raises serious issues around the corporate governance failings in the realms of openness and transparency, organisational and operating culture, risk management, and accountability. As with the other examples documented in this chapter, the public servants involved in managing the issues which played into the Grenfell tragedy, whether they were based within the local authority, or central government departments and agencies, were working with, and to, elected politicians, in whose hands lay the ultimate power over key decisions (for example, over contracts, and regulatory policy). Public servants can therefore be confronted with moral and ethical dilemmas resulting from tensions between the implicit or explicit political directives they work to, and the norms of sound corporate governance. Resolving these dilemmas is a key corporate governance challenge facing public servants.

Conclusion

Our examination of key issues and themes in this realm of governance and analysis of a series of cases where significant problems arose in relation to major aspects of corporate governance allows us to draw three key conclusions.

The first is that, although there is normally a reasonably clear and obvious 'lead' governance level (macro, meso or micro) in cases where corporate governance has become seriously problematic, this level can vary across cases. The second is that, notwithstanding the presence of a 'lead' level of governance, in cases of weak or failing corporate governance, the problems tend to involve more than one level of the system, and, sometimes, all three. The third is that there is invariably weakness or failure across more than one element of corporate governance. In some cases, it is possible to discern problems across all the key elements of *openness and transparency, accountability, organisational and operational culture, risk management and audit*, and *ethics and conduct*. In others, there is a combination of weaknesses or failings in at least two of these elements.

For the public servants of the future, therefore, lesson-learning from these episodes could involve the construction of a basic toolkit of good practice, which would be framed around, and would encompass, the following:

- The need to adhere to the standards of sound corporate governance practice applicable to the specific organisational entity of the public servant, whether this might be a local authority at the micro level of governance, a central government department at the meso level, or a trans-/inter-national organisation at the macro level.
- In this context, being aware of the potential tensions which might result from the nature of the political directives (explicit or implicit) governing day to day policy making and delivery, on the one hand, and the need to adhere to sound standards of corporate governance on the other.
- Developing a full appreciation of the complexity of policy networks and accountability structures in the era of multi-level governance and differentiated polities, and the consequences of this in terms of the requirement to govern proactively within, but also across, the micro, meso and macro levels.
- Being alert to the risks and potentially serious consequences of corporate governance weaknesses and failures in key policy partner organisations, including private sector bodies and NGOs, with a particular focus on the possibility of breakdowns across two or more of the key corporate governance benchmarks of *openness and transparency*, *accountability*, *organisational and operational culture*, *risk management and audit*, and *ethics and conduct*. This also requires the need to resist, within constitutional parameters, the temptations and intentions of politicians, however popular in the eyes of the public, if the evidence indicates that the organisations themselves will inevitably fail and are not sustainable (for example due to the conditions of the market).

In overall terms, public servants have crucial roles in leading the modes, styles and cultures of corporate governance but they also have a responsibility for maintaining the integrity of governance systems (of which corporate governance is a key part). The importance of having a toolkit, as noted above, is clearly based on what is addressed in this chapter but underpinning all of this is the need for public servants to have the skills and mind-sets to evaluate failures.

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