

Standards in Public Life

TRUST, TRANSPARENCY AND CARE SIR CHRISTOPHER KELLY'S SPEECH TO THE LSE ANNUAL HEALTH AND SOCIAL CARE LECTURE 17 MAY 2010

The recent election not only resulted in a historic coalition between Conservatives and Liberal Democrats. It also saw the largest number of new MPs for some considerable time. This influx was in no small part due to the expenses scandal, and to its impact on public trust.

I spent a large part of last year working on this subject, as chairman of the Committee on Standards in Public Life. Our work culminated in a report whose recommendations are now mostly being implemented for the new Parliament. I want in this lecture to say a bit about the failures which led to the expenses scandal and its effect on trust and then, drawing on that, to discuss trust in health and social care, its importance and how it can best be safeguarded.

MPs' expenses

Members of Parliament are important people in our democracy. If we are to attract the best people to the role, they need, and deserve, to be properly paid. They also need to be given the resources to do the job properly.

What my committee found was that working out what this implies, or ought to imply, for an appropriate expenses scheme was pretty straightforward. When you come down to it – despite some special pleading - an expenses scheme is just an expenses scheme, and in this case it covers only 650 people. There are many examples of properly conceived schemes elsewhere. The underlying principles are well established – a clear separation between pay and expenses, the need for claims always to be supported by receipts with only de minimis exceptions and so on.

The more interesting question is how it was that before it was exposed to public view in such spectacular fashion the House of Commons allowed itself to enjoy expenses arrangements which were so obviously inappropriate and so clearly lacking in the integrity we have a right to expect.

Until last year my personal view was that in this country we probably possessed one of the least corrupt political systems in the world. On the whole, I still believe that to be the case - though it is a potentially dangerous assumption to make, especially for someone with my responsibilities for standards in public life. I confess that my confidence has been shaken. But my personal experience up to last year had always been that the vast majority of Members of Parliament understood the importance of behaving with integrity in their public lives, whatever they did in their private lives. My experience had also been that they work hard and largely without self-interest on behalf of their constituents. Indeed I suspect that most work much more than many of us appreciate.

But privately many MPs believed, and still believe, that they are underpaid relative to what they could earn elsewhere, whatever they may say in public. They also think that in recent years their pay has fallen behind some of those in the public sector with whom they used to compare themselves – GPs, head teachers, police superintendents and so on. Collectively they had allowed this belief to grow into a sense that they were **entitled** to exploit a generous system of expenses to make up some of the difference. That sense of entitlement was allowed to flourish because of an almost complete lack of transparency and a wholly inadequate set of audit arrangements.

There was also a failure of leadership. Some of those who ought to have been most prominent in maintaining high standards of behaviour in the House, and most zealous in safeguarding its reputation, failed to do so. The recommendations of my Committee's report were accepted in full by

the leaders of all three main political parties within hours of publication. But that was only after the revelations in the Daily Telegraph had introduced a sense of urgency. Before then Parliament had had several opportunities to clean up its own mess. Without fail they fluffed all of them. In particular, in one of the most shameful aspects of the whole episode, the House authorities resisted to the bitter end the notion that the Freedom of Information Act should apply to MPs in the same way as they had legislated for it to apply to almost everyone else in public life.

In retrospect the mess that MPs got into with their expenses should have surprised no one. The combination of a pernicious culture of entitlement with self-regulation, lack of transparency, inadequate audit and poor leadership was almost bound to be lethal. I strongly suspect that in the same circumstances almost any other professional group would have behaved in the same way. It is not an accident that self-regulation has gone out of fashion elsewhere. The House of Commons was just rather slow in catching up with the rest of the world.

For the House of Commons, the new arrangements now in place ought to ensure that **systematic** abuse of expenses is no longer possible. But individual instances of bad behaviour can never be ruled out entirely. Personally I also regret the decision by the new independent regulatory body to allow Members of Parliament to continue to use public funds to employ members of their own family – the only one of our significant recommendations not being implemented.

There is still some way to go in the House of Lords. Some valuable reforms have been made there recently. But, unlike the Commons, the Upper House has still to accept that it is no longer appropriate in a modern world for them to determine their own remuneration and expenses arrangements.

The impact on trust

The long-term impact of the expenses scandal on trust in politicians, or in public officeholders more generally, is difficult to evaluate.

There is no denying the extent of public anger last summer. Many MPs, even those who had behaved with complete integrity in respect of their own expenses, reported being vilified in the street. If this were to continue the impact could be serious. It might be expected to affect the nature and calibre of those putting themselves forward for election. At the extreme, it could call into question the legitimacy of decisions taken in Parliament. A degree of scepticism is healthy in a democracy. A breakdown of confidence is not. Some commentators expressed concern that the effect might be to increase support for some of the more extreme political parties.

The evidence from surveys undertaken last year was equivocal. A MORI poll in September 2009 found that politicians had replaced journalists as the profession believed to be least likely to tell the truth. Only 13 per cent of the British public reported themselves as trusting politicians, a significant decline from the 21 per cent who said they did so in 2008. Only 16 per cent trusted Government ministers to tell the truth, compared with 24 per cent in 2008.

By contrast a Hansard Society poll showed a much less significant decline in trust. But that may partly be because trust in politicians was already at such a low level that it could not realistically fall much further.

In reality, as we now all know, the more dire predictions of what might happen were not borne out by the recent general election. The main effects seem to have been the significant number of MPs who chose not to stand again, and a small increase in turnout. A few of those whose reputations had been most badly tarnished by the expenses scandal and who did not stand down voluntarily **did** lose their seats. But the smaller parties did not increase their share of the vote. Support for some of the more extreme parties actually decreased. Tribal loyalties seem to have reasserted themselves.

Is there a general crisis of trust?

You might be tempted to believe that there was a more general crisis of trust in public office holders and in the public services, of which what happened to MPs was only one prominent example.

If that was the case, it would be a serious issue. Trust is central to a well-functioning society. Life in a democracy not only requires us to believe that Parliament will legislate fairly and without corruption – something which is particularly important in the absence of a written constitution. We also need to trust the judiciary to uphold that law, to trust the police to protect us in the light of that law without fear or favour, to trust professionals, businesses and public services to be competent, and to operate within the law, and to trust a free press to expose transgressors.

In ordinary life, as Adam Smith pointed out, trust is important to markets and greatly reduces transaction costs. In both the private and public sectors sensible organisations invest a great deal of care in reputation management for that reason and not just because it increases the saleability of their products.

In the health and care services – which often touch people at their most vulnerable times – we need to trust the surgeon who operates, the GP who gives advice or the social worker who takes a decision about a child's safety or finds a care home for our elderly relatives or for ourselves. When we have a stroke or a heart attack we do not have time to look at league tables to determine which hospital has the best record. We need to be confident that whatever hospital we are taken to by the ambulance has competent services.

To take another example closer to my own current responsibilities as chair of the NSPCC, the many thousands of children who ring ChildLine need to be confident that the person who answers the phone will treat them with respect and without judging them and that their confidentiality will be respected up to the point at which they are judged to be at immediate risk of serious harm. If they did not, most of them would not ring us at all.

If we do not have confidence in the truthfulness, competence or integrity of the advice given us we are less likely to give our children the MMR vaccine, less likely to comply with medication requirements and less likely to make the lifestyle choices necessary for our health.

Of course, virtually every day things happen which damage that confidence. Sometimes it is a failure of regulation. Sometimes it is poor leadership and a breakdown of governance, as recently in Doncaster. Sometimes it is the result of poor decisions by an individual or series of individuals, as in the cases of Victoria Climbié or baby Peter Connolly. Sometimes it is the result of a Freedom of Information request which casts doubt on the truthfulness or motivation of those concerned, as with the Climate Research Unit. Sometimes it may be a combination of all these things.

There are a number of factors which might exacerbate the situation:

- A massive increase in public expectations, which means that professionals are constantly battling to keep up with a moving target.
- The availability of all sorts of new information about care services – infection rates, mortality indicators, the performance of surgical teams and so on – which identifies the poorer performers as well as the good ones.
- A significant increase in other types of (sometimes misleading) information available through the internet. It is not unusual, for example, for GPs to report seeing patients who already have a good idea of what their symptoms might imply and what types of treatment they expect.
- The increased marketisation of services, which some have argued could lead to scepticism about the motives of professionals. Is the doctor working in my interest when they suggest the operation or are they attracting money to their hospital? Or might they on the other hand be rationalising decisions about treatment to minimise the cost to the public purse?
- The tendency of newspapers to focus on mistakes and errors - probably because of a possibly correct assumption that competence and trustworthiness are not of themselves very newsworthy. For confidentiality and other reasons, the good news child protection stories, where children are saved from harm and families are successfully helped, rarely if ever make the headlines. Nor would most of those involved usually want them to be.

And finally:

- The fact that we are about to enter a period of considerable uncertainty and change in public services generally, on top of the many changes that have already occurred over the past decade.

In the face of all this, the evidence, such as it is, is fairly surprising. People seem to make a distinction between their own experiences and services as a whole. This finding is remarkably consistent across a range of professions and organisations. In health care, for example, individual patients' reported satisfaction with their care is at an all time high. But the public does not seem to think that their own positive experiences are replicated elsewhere. MORI polls suggest that three quarters of people think that their local NHS is providing a good service. But only around half think that it is good nationally. And only a quarter think that the previous government had the right policies for the NHS. This must be infuriating for those who have injected considerable resources into the health service, without seeing commensurate political gain.

Even in the case of MPs the public are more likely to rate their own Parliamentary representative higher than MPs as a whole.

The other noteworthy fact is that, as Onora O'Neill pointed out in her 2002 Reith lecture, whatever we **say**, our **actions** still do demonstrate trust in services. We still use hospitals, doctors and care homes. There is no evidence that GP attendances declined in the wake of Harold Shipman. Despite the banking crisis few of us have chosen to keep our money under the mattress.

There could be a number of reasons for this, not all of them entirely comfortable. The most reassuring explanation would be that we trust individual professionals and services **either** because they have earned that trust by their behaviour and performance **or** because we trust the regulatory or other arrangements designed to ensure good performance. On this explanation the difference between our views on the particular and the general is because we base the former on our own experiences and the latter on media reporting. We do tend to remember failures like those relating to Victoria Climbié. But unless they have touched us personally we do not translate that into what we think about the services we use ourselves.

Even more encouragingly, it could also be the case that we understand that single instances, however horrifying, do not necessarily imply anything about the generality of service quality when thousands of care transactions occur daily without anything obviously going wrong.

The alternative, and less reassuring explanation, is that we trust the health and care services we receive because we **have** to. We simply could not function if we doubted the quality of the care or advice we are given.

Most of us would probably feel reasonably confident about judging the quality of, say, the work done by a decorator in our own home or the service received in a restaurant. Despite the increases in information available the same will often not be the case in relation to health care. As the current chairman of the Kings Fund, Sir Cyril Chantler, once observed: "Medicine used to be simple, ineffective and relatively safe. Now it is complex, effective and potentially dangerous". Who would ever subject themselves to the attention of a surgeon or physician if they did not have a reasonable expectation of his or her competence?

Public policy and trust

Broadly speaking, the things which can go wrong with trust and confidence in health and care services are much the same as those that went wrong in the House of Commons – failure to observe the seven principles of public life enunciated by Lord Nolan, the first chairman of my committee, poor regulation, particularly where it is self-regulation, lack of transparency, inadequate audit and poor leadership.

Not surprisingly therefore the public policy approach to building trust and confidence in health and social care has tended to focus on these same issues.

Self-regulation as the **only** means of control has disappeared almost entirely for all professional groups. This is partly because of the increasing complexity of professional practice. But I suspect it

is mainly because of greater understanding of the risk of self-interested behaviour, real or perceived, when peer review is the sole arbiter of good practice. The House of Commons is one of the last previously self-regulating groups to fall into line. The House of Lords looks increasingly isolated in so far as refusing to do so.

Regulation and accountability mechanisms have two purposes. If well designed they can, or ought to, incentivise professionals to recognise and observe high standards. And they can, or ought to, give confidence to the public that those standards **are** being observed.

But as Onora O'Neill also pointed out, the requirement is for **intelligent** accountability. Poorly conceived accountability mechanisms can be dangerous and counter-productive;

- They can impose such onerous requirements that they get in the way of professionals pursuing their primary purpose.
- They can produce the risk of defensive practice, where services select patients, or change how they provide care, so that the risk of poor performance being reported is minimised. In child protection cases, for example, it can sometimes not be in the best interests of the child to engage the police and other statutory agencies right at the beginning. But that can face the social worker with a very difficult dilemma when they know that they could get into trouble if they fail to do this in time and the child suffers serious harm.
- Or they can become mechanisms designed more to protect the professional's own back than to help ensure a high quality of service to the client.
- They can provide the wrong incentives. There have been several accusations, for example, of hospitals "hitting the target but missing the point". And the media have reported the gaming of accident and emergency waiting times, admitting patients unnecessarily to avoid a target breach.
- They can require information to be provided of such complexity that it becomes unintelligible to most recipients. In financial services, for example, some products are accompanied by fact sheets into which the institution concerned has had to put a lot of care. But the fact they have given the document to the client is not of itself necessarily evidence that a mis-sale has not occurred.

Of course, sometimes these points are argued most strongly by those who do not fully accept the case for greater accountability for public services **in principle**. There are also two sides to most of them. When public reporting of post-cardiac surgery mortality rates was introduced in England, for example, concern was expressed that surgeons would avoid high risk cases. There was some evidence of such behaviour in the US. Such evidence as there now is about the UK suggests that it has not happened here. The largely beneficial effect may instead be to hasten the closure and reorganisation of smaller, and usually less effective, surgical units.

Transparency is one of Lord Nolan's seven principles of public life – the others being selflessness, integrity, objectivity, accountability, honesty and leadership. But its effects on trust and confidence can be two-edged. Transparency is without doubt one of the best guarantors of good behaviour. Had, for example, the Freedom of Information Act applied to MPs' expenses from the beginning of 2005 I doubt that many of the subsequent claims would have been made and many individual MPs would not have got into the trouble they did. Again, publication of infection rates in hospitals has undoubtedly provided a significant incentive for better practice.

There is also some evidence that the more information citizens have about their own services the more highly they rate them.

It is for these reasons, as well as a belief that it can act as a spur to efficiency, that all the main three parties are committed to making available more information about health and about public organisations more generally.

But in the short term increased transparency can damage trust. This is particularly the case when as with MPs, it reveals details of things which previously went on unobserved before those concerned modify their behaviour.

Transparency can also pose some uncomfortable dilemmas where it conflicts with other principles. In particular, a relentless focus on transparency has almost certainly led to an increase in a blame culture, an effect which has been reinforced by a system of compensation based on proving negligence under an adversarial system.

If left unchecked, the consequences can be serious.

- It can, as already suggested, lead to defensive practice.
- It can seriously affect people's willingness to enter certain professions such as social work, or to take on certain positions such as directors of children's services.
- It can inhibit honesty when things go wrong.

The last point is particularly important. Care professionals, like MPs, are fallible. Poor decision-making and human error happen. Honest and open handling of them helps to build trust. Serious case reviews in child protection – which are what happens when a child dies as a result of abuse - and serious untoward incident investigations in hospitals rely on honesty if they are to be effective. Yet honesty cannot be guaranteed if those concerned know that if they admit mistakes they run the risk of being publicly pilloried.

That is, for example, one, but not the only reason why, despite generally being in favour of openness, the NSPCC has consistently argued against the full publication of serious case review reports. Our approach has been to seek ways of ensuring that the public is given all the information they have the right to know about what went wrong **without** inhibiting the honesty of the underlying report or putting at further risk siblings or families who might be identified if full reports were published.

There are some encouraging signs of a more mature attitude to reporting. Last year, for example, the National Patient Safety Agency reported a seven per cent increase in the overall number of incidents reported, with a 25 per cent increase in primary care. The chief executive of the agency said at the time: "More reports do not mean more risk to patients. Indeed quite the reverse. These data are sound evidence of an improving reporting culture across the NHS. Frontline staff are more likely than ever to raise safety concerns much more openly".

Conclusion

So where does that leave us? I want to make four points in conclusion.

First, it would be wrong to think that what went wrong with MP's expenses reflected circumstances which were peculiar to them and could not happen anywhere else. In health and social care we appear to have stronger systems of audit than in the House of Commons, and unlike them we have external regulation. But if they are not combined with transparency and strong leadership in ethical issues there is a risk that, just as with MPs, trust will be abused.

Indeed, it is almost impossible to overestimate the importance of leadership in influencing behaviour in organisations. You can have as much regulation, transparency and audit as you like. Without strong and effective leadership they will not of themselves be enough. Unless those in leadership positions in the public services promote them by their own behaviour and example, high standards will not be embedded in the culture and behaviour of their organisations.

Second, the over-riding requirement of accountability mechanisms is that they should be **intelligent**. That means recognising that some of the things that are done in the name of accountability can sometimes be counterproductive in terms of outcomes, and understanding that there can sometimes be real dilemmas in applying general principles like transparency. These dilemmas should not simply be ignored. They need to be addressed honestly.

It is also important that efforts to improve accountability and to empower citizens through more and better information should not be passive. If they are to work for everybody these efforts need actively to target the most vulnerable and marginalised who otherwise risk being left behind as the more able and affluent benefit from improved choice and control.

Third, the relationship between trustworthiness and trust is complex. The increase in regulation and in performance audit within healthcare may have increased standards. But it has not necessarily increased trust and confidence.

There are parallels elsewhere. When the Committee on Standards in Public Life was originally set up in 1994 we were charged with keeping standards of behaviour under review and with making recommendations intended to improve them. This remit was framed at least partly in the belief that it would improve public confidence. 16 years and 12 reports later I am pretty confident that standards **have** improved –though in parenthesis I would have to say that concrete evidence is pretty hard to come by. We are trying to collect together such as there is at the moment. But despite this believed improvement in **actual** standards there is no evidence that public **confidence** has improved. Indeed the opposite is generally the case. The implication is that if we want to improve trust in public services we may need to adopt other strategies than those that are simply directed at improving trustworthiness.

In particular, there are some aspects of behaviour which may have nothing to do with competence or integrity but which may nevertheless have a significant impact on levels of trust – the courtesy with which a doctor deals with their patients and listens to their views, for example, or openness about the way decisions are made or about the factors affecting them, or giving people the feeling that they have had the opportunity to influence those decisions. We neglect these considerations at our peril.

Fourth, and lastly, trust does not depend on regulation, leadership, transparency and accountability on their own. It tends to be built and maintained through a series of individual experiences. It is the actions of every member of staff in the health and social care sector that can make or break the trust and confidence of patients and users. If high levels of trust in public services are to be maintained, it is essential that individuals take responsibility for their own actions, consistently demonstrating their adherence to the principles of public life and taking responsibility for their inevitable mistakes.

In other words, just like MPs, we must all take responsibility for our own actions and for the impact of them on levels of trust and confidence.

Thank you for listening.