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**Performance, performativity, and the  
negotiation of autonomy in a regulated system**

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**ABSTRACT**

# **Performance, performativity, and the negotiation of autonomy in a regulated system**

## **INTRODUCTION**

Performance of public sector organisations has become a significant issue for academic study and policy interventions by government. As a result, public organisations are located in a rich performance culture, with an array of targets, measures, and regulatory systems, although the extent of these varies from nation to nation. Underlying these managerial performance systems are the democratic processes of election, consultation and co-production that signal, even if imperfectly, citizens' judgements about an organisation's achievements or lack thereof.

To date there has been little academic study of how the regulatory system operates at an organisational level as an interactive process through which regulator and regulatee negotiate to determine the level of performance and the steps to be undertaken to improve this<sup>[1]</sup>. Such an intersubjective analysis opens the way for new insights into the regulation of performance and the performance of regulation, with implications for both academic and policy audiences. England provides a particularly fruitful site for empirical research into this dynamic because of the well-developed system of performance inspection and regulation that has developed over the past decade. It enables these issues to be seen more clearly, and thus to offer a limiting case from which comparative research can proceed<sup>[2]</sup>. In particular, the way in which English inspection systems lead to classification of public service organisations as 'poor performers' provides insights into the regulation process as a drama, in which performativity – the extent to which both regulator and regulatee 'play their roles' – comes to the fore. In this paper, we examine the case of those English local authorities – large, multi-purpose bodies controlled by elected local politicians – which have been defined as poorly performing, and their interactions with the regulators.

This paper begins by setting out the issue of poor performance and how this relates to performativity. It then describes the regulatory system in which English local authorities operate, including the panopticon of regulators and their respective relationships. It will then detail the research methods by which the data were obtained, before going into the framework for understanding poor performance and improvement that provides the acute context for the performativity issues at the heart of this debate.

## **UNDERSTANDINGS OF PERFORMANCE AND PERFORMANCE FAILURE**

Despite the emphasis on performance, understandings of why organisations fail and how they turn around from failure, is still under-developed. One reason for this lack

of understanding is that public organisations, unlike businesses, do not have a single, measurable outcome to indicate performance:

Profit – is the measure of final output – there are universally accepted, abstract performance measures such as return on capital available. Such simple, unequivocal measures are neither available nor appropriate in the public service. A range of measures is needed to cope with the multi-dimensional nature of public services (Stewart and Walsh, 1994, p.46).

Boyne (2003) argues that public service performance is best understood as a combination of two models of improvement. The goal model focuses on the objectives that an organisation is established to address in order to assess its degree of success or failure as measured by performance indicators. This relatively simple model is complemented by the more complex multiple constituency model, which assumes that a variety of internal and external groups will use different criteria to assess performance. This allows for the inclusion of a political dimension into the measure of performance, and an emphasis on organisational image and legitimacy in addition to service delivery (Boyne, 2003). Performance, then, is intimately connected with the ‘institutional fit’ (Kondra and Hinings 1998) between the organisation’s structures, processes, culture and approach, and that prescribed by the prevailing norms in its institutional environment. This is informed by institutional theory and the notion of isomorphism around institutional norms (DiMaggio and Powell 1983; Scott 1995). For UK public services, these norms are supplied by the ‘modernisation’ agenda of national governments from 1997 to date (Newman 2001), and its particular application to local authorities (Stewart 2004; Stoker 2004). These norms are promulgated through legislative instruments, ‘best practice’ guidance and an extensive infrastructure of organisations created to advise councils and assist in their transformation.

The performance of public organisations is regulated through oversight mechanisms and typically occurs in a multi-tiered system where supervised agencies are semi-autonomous. The measures of performance and design of the regulatory system express the normative meaning of performance through the way in which they privilege certain elements. Good performance becomes a measure of the agency’s fit with this institutional system. Performativity – the acting out of the normative model – provides a means through which agencies can negotiate their autonomy while appearing to be compliant. This aspect of regulatory life is now beginning to be studied, in some cases in the context of poorly performing public services. For example, Perryman (2006) explores the way in which the panoptic process of inspection disciplines teachers to perform in ways expected by the regulator, precisely to escape their gaze. In other words, performativity involves the internalisation (self-disciplining) of the subject in ways expected by the regulator, thus reducing the need for regulation. We term this ‘Performativity 1’. It reflects a compliance mode on the part of the performance subject. Organisational sociologists, especially those working within the Critical Management Studies framework (e.g. Clegg, Kornberger, Carter and Rhodes 2006; Hodgson 2005) have been interested in other aspects of performativity, and especially the capacity of the subject to resist or undermine this process of self-discipline. This is termed ‘Performativity 2’. It involves a duality of compliance and autonomy, managed through a subtle process of interaction between the performance subject and the performance regulator.

This opens up our area of interest, which is the performance of the regulatory system, and the extent to which this involves internalised self-discipline or a dramaturgical process in which compliance is expressed but from the perspective of resistance. Consequently, the 'performance' of (a) the regulated agency and (b) the system of regulation become important objects for academic inquiry and policy design. In particular, it invites us to explore the question of how public organisations resolve the tension between acting out the normative model in such a way that it satisfies regulatory demands, whilst at the same time retaining the highest possible level of autonomy over their own activities. The recovery from poor performance in English local authorities provides the example for analysing performativity as the dual concepts of compliance and autonomy.

## **CHARACTERISTICS OF THE REGULATORY SYSTEM**

The activities of English local authorities take place in a highly regulated and ever-changing environment. Each of the service delivering departments is regulated and inspected by its corresponding central government departments, and the organisation as a whole is subject to scrutiny and advice from a range of agents. The two main central government agents are the Office of the Deputy Prime Minister (ODPM), which is the policy making department with responsibility for local government and which may also undertake regulatory functions in respect of poorly performing local authorities<sup>[3]</sup>, and the Audit Commission (AC), which is an independent government organisation tasked specifically with the assessing the performance of local government.

Inspections of services have traditionally been the main source of performance assessment in local government. In addition to the performance measurement function they provided a check on compliance with statutory requirements. The underlying assumption was that reporting on the functioning of a service would in itself lead to improvements when these were required. Primary school inspections for example result in recommendations for improvement. Although inspectors can play an important role in the aftermath of inspection, implementation of recommendations are largely left up to the individual schools. Such recommendations are more likely to be implemented if implementation was easier to achieve, rather than according to degree of seriousness or urgency (Gray & Wilcox, 1995).

Aspects of governance and management included in service inspections were initially restricted to service delivery, and did not take into account the wider governance or managerial context in which this functions. In local government, the Comprehensive Performance Assessment (CPA) was developed to address this gap, and to provide regulators and the general public alike with an aggregate measure of the organisation's performance. Existing inspection reports were used to score service delivery, for example in the areas of education, social services, environment, and leisure. Corporate governance was assessed and scored through self-reporting and peer-assessment. The framework for analysis was based on a normative model of a well-governed and managed local authority. The two elements of assessment were combined into an overall judgement of 'excellent', 'good', 'fair', 'weak' and 'poor'.

The first round of assessment in 2002 included all top-tier authorities, and 15 of these were rated as poor performers. These form the population for our research.<sup>[4]</sup>

Although inspections were traditionally expected to lead to improved performance, government has the ability to dismiss an authority's powers over a particular service and run the service through ministerial nominees or external consultants instead. This is termed 'intervention'. For example, a ministerial direction to outsource education services was one model that was used in order to deal with poor education provision in certain areas. In one case, extensive use of directions had led to a local authority effectively being run by consultants when several of its services were poor and managerial functions had broken down. This intervention in a failing local authority however was not regarded as a successful approach, as the use of external consultants did not contribute to an improvement of the functioning of the authority itself. In addition to the high cost of the approach, this was not perceived as an efficient solution. Therefore with CPA, ODPM took a different approach to turning around poor performance in local authorities.

The fifteen councils that were rated as poor performers in 2002 were subjected to a support/supervisory regime by central government. The aim of the 'engagement' regime was to help councils to improve their performance from within so that ownership of the process would stay with the organisation. The main distinction with the previously used intervention was that engagement was based on voluntary cooperation between local and central government agents, without the use of ministerial directions. Instead, the possibility of invoking statutory powers to reduce a council's authority was implicit in persuading councils to engage. The main support mechanism offered by ODPM was the appointment of a 'lead official' to each of the poor authorities. These lead officials were especially employed for this function, and were ex-local authority senior managers with extensive experience. They provided the councils with support and advice, and ODPM with feedback on the progress made in the local authority. Each council was also appointed a Government Improvement Board, comprising representatives of all relevant central government departments and inspection/regulation agencies. These boards were intended to be a forum for information exchange between all interested parties, to relieve the burden of reporting on the council, and to reassure the inspecting departments that their concerns were being addressed. Finally, in the first phase of the improvement, the councils concerned were required to produce an improvement plan showing how they were going to deal with the shortcomings as shown in the CPA report. In addition to these requirements, a range of optional support mechanisms was available from the whole of the local government family, which includes peer authorities, external partners such as police and health authorities, and local government representative organisations.

The lead official and the government improvement board are the main interfaces between the poorly performing local authority and the regulatory system. Therefore they are the main focus when exploring how performance is regulated, and how regulation itself is performed, from the perspective of performativity.

## **RESEARCH DESIGN**

A research team from INLOGOV and the University of Cardiff was commissioned by ODPM to study the process by which the 15 poor performing local authorities turned around their performance to be released from engagement<sup>[5]</sup>. The research started in December 2002, at the point when the majority of the councils were identified as poorly performing and government supervision was introduced. A case-study methodology within a framework of grounded theory was employed. Five core cases were tracked over three years, involving open-ended interviews and structured data collection with some 20 managers, staff, politicians and external advisors in each council, staff attitude surveys in years one and three, and documentary analysis. The development and implementation of policy by central government and other national agencies involved in regulating poor performers or supporting their turnaround was tracked through interviews with ministers and their advisors, change agents appointed to supervise and guide the councils, and other national-level actors. This longitudinal methodology facilitated real-time observation of the performance choices and trajectories of these organisations (Turner, Skelcher, Hughes, Whiteman and Jas 2004).

The concepts of autonomy and compliance have been explored using two case studies. These were selected because they represent different situations at the start of recovery. In one council the process had started prior to the inception of CPA, and the council was regarded as a pilot study in applying the novel approach of engagement. Because of the scale of the problems in this council and the initial reluctance to engage, this council had a large amount of pressure applied to it by ODPM. The other case is a council where improvement had started prior to CPA in response to internal pressure, and consequently it improved very rapidly after being rated a poor performing council in December 2002. They are described below as Council A and B respectively.

### ***Council A***

Severe problems in this council were identified well before the start of the CPA process, when auditors expressed concern on financial management, and inspections outlined serious corporate and service weaknesses. The council's isolation from the wider local government community partly allowed the council to ignore the feedback, and neither the senior management nor the political leadership of the council fully accepted the diagnoses. The council was constrained by frequent changes of party political control, arising from annual elections and the presence of minority administrations, leading in turn to unstable coalitions with political control held by a small number of votes. There was also a tradition of politically dominant leadership, giving limited room for managerial action. Officers became an instrument for the achievement of the specific political goals of the prevailing administration, and their political neutrality was questioned as administrations changed.

In the summer of 2001, a supervisory board was created by ODPM to advise the council, and external support was provided to deal with the bullying of officers by members and the poor political and managerial leadership that were identified as the main problems. However, the Senior Executive Team (SET) did not accept the advice from the Board, nor the proffered support. The supervisory board advised ODPM to replace SET, and under pressure from ODPM the council decided in the summer of 2002 to remove SET and bring in an interim management team. It was decided the

council would not be included in the overall CPA process, but rather be seen as a pilot for the approach to be taken in the population of poor performing local authorities.

### ***Council B***

This council was ruled by one political party for a long time. Periods of dominant political leadership with disempowered management were interspersed with periods of political leadership vacuum from which guidance to managers was absent. This lack of consistency led to a situation where good quality services were almost accidental, when there happened to be a competent manager in charge. Departments had developed their own ways of working, as there was very little direction from the corporate centre, and there was no connection between service planning and financial planning.

The internal political culture was accentuated and made more complex by the highly organised, articulate and networked set of community and voluntary organisations and activists in the community. Feedback about poor delivery tended to be interpreted as politically motivated attacks on the majority party on the council rather than as legitimate complaints. Attempts by the Chief Executive to improve the council prior to CPA were not politically supported and did not achieve their full potential. Immediately prior to CPA 2002 there was change of administration and a new Chief Executive was appointed, both were strongly committed to improvement. Although the CPA recognised the progress made, this was not sufficient to avoid a 'poor' rating.

## **UNDERSTANDING POOR PERFORMANCE AND IMPROVEMENT**

In this section we discuss why our case study organisations become poor performers, and the issues they needed to resolve in order to improve their performance. This is linked to a consideration of what 'performances' they needed to demonstrate to the regulators. In the following section, we begin to explore how those performances were enacted in different ways.

Variation in performance in itself is not problematic as over the medium to long-term, organisations go through a cyclical process of performance fluctuation. They move from being stronger performers, to weaker performers, and back to stronger performers again (Jas & Skelcher, 2005). In the private sector market forces are expected to act as an imperative for improvement, whereas in public sector organisations quasi-market and managerial regimes would be expected to exert such pressure. However, in both sectors cases of sustained poor performance show these forces to be fallible. Meyer and Zucker's (1989) offer divergent interests as an explanation for what they call 'permanent failure'. Under conditions of high performance the interests of owners, managers and dependent actors such as non-managerial employees, customers, and members of the community served by the organisation converge. However, when performance declines the interests of these three groups diverge: owners wish to change the organisation to increase profitability, managers also want to increase profitability but are opposed to changes turnaround may bring to their employment, and dependent actors resist change, because of the

impact on their employment and community. Thus dependent actors and possibly managers value the organisation beyond its performance. This collective action problem presents a serious barrier to turnaround (Meyer & Zucker, 1989).

One of the factors that can contribute to a downward curve of the performance trajectory is the 'success breeds failure' adage conform Starbuck and Hedberg (1977). This occurs when the adoption of a successful corporate paradigm initially leads to an improvement in performance. However, institutionalisation of the paradigm reduces the organisation's ability to adapt as circumstances change and the once successful approach becomes outmoded or otherwise unsuitable for the organisation. Another contributory factor is the internal variation of units within complex organisations. In the case of local authorities, services experience different external pressures, which may cause them to develop different practices and become 'loosely coupled' to the centre of the organisation. The third factor identified as important in an organisation's performance trajectory is the issue of institutional fit, as described in the introduction.

These factors influenced the decline in performance in varying degrees in the fifteen cases of poor performing local authorities. And in all of these organisations there were or had been some collective action problems. However, none of this was sufficient to explain the sustained decline in performance. Instead, the return to stronger performance was inhibited by the absence of particular properties within the organisation. Effective turnaround requires the central problems of cognition of poor performance, leadership capability to build a coalition for change, and managerial capacity to deliver this programme, to be resolved. (Jas & Skelcher, 2005). It is these three aspects that the organisations needed to demonstrate performance on to the regulators, in order to escape from their supervision. The question is whether they did this by internalising self-discipline (performativity 1) or through a dramaturgical display (performativity 2).

Cognition refers to the level of understanding of key actors regarding the organisation's current trajectory, and the implications and choices associated with it. Weaknesses in cognition can manifest themselves in ignorance or denial. Information about an organisation's performance can be delivered through a range of internal and external feedback mechanisms. Internal mechanisms include collection of information on official performance indicators, use of performance management systems, and staff surveys. External mechanisms include inspections, contact with peers and partners, customer satisfaction surveys, and the democratic system through local elections. Ignorance occurs where there is an absence of information due to the breakdown of any or all of these feedback mechanisms. Denial occurs where the performance data does not accord with the organisational paradigm. Denial is not a passive response, but involves one or more standard strategies, including attacks on the credibility of the source or content of the data (Agócs, 1997). The local authorities needed to demonstrate to the lead officials and government monitoring boards that they understood their performance problems, and had created systems to enable them to track performance over the future.

Capability describes the extent to which the organisation's politico-managerial leadership is able to create a turnaround-oriented coalition. It refers to the previous mentioned collective action problems that arise when interests within an organisation diverge. Local authorities are complex organisations with numerous internal and

external stakeholders, which provides a fertile breeding ground for interests to diverge. At the top end of the organisation are the officers and politicians who not only have to work together, but also have to find a common interest within each group. When departments have become loosely coupled to the centre, other departments can be seen as being the driving force of the performance decline. Even when departments work coherently with each other and the corporate centre, different services are to some extent in competition with each other for resources. At the user end of the organisation there are the different sections of an area's residents with different needs and demands. An increasing emphasis on local government's role in community leadership increases the organisations' need to interact with a wide diversity of stakeholders, adding to the different interests to incorporate. The local authorities needed to demonstrate to the lead official and government monitoring board that they had a sufficiently strong political and managerial leadership coalition to carry forward a programme of organisational improvement.

Capacity describes the extent to which political and managerial technologies exist in the organisation and are oriented to realising the goals set by the leadership. It involves the generation and transfer of knowledge about organisational functioning, from either within the organisation or from external sources. The technologies it deploys include performance management, HR systems, and citizen and consumer consultation. Organisational capacity is more relevant to the service delivery component of performance than to issues of institutional fit, therefore this paper will focus on cognition and capability in exploring questions of performativity.

## **EXPRESSIONS OF PERFORMATIVITY**

The two cases studies on which this exploration of performativity – the negotiation of autonomy and compliance - is based were different on some crucial points. However, they were similar in being publicly labelled a poor performing authority, and having to comply with the basic requirements of the engagement regime. They went through a period of upheaval and negative public attention, as did their 13 peers, immediately after the announcement of the CPA results in December 2002. Both councils achieved sufficient improvement to be disengaged from the supervisory regime by ODPM, albeit at different times. During the improvement-under-engagement process, the relationships between the councils and their central government main agents, the lead official (LO) and government improvement board (GIB), underwent substantial changes. For the purpose of this exploration the process will be split into the initial phase of recovery and the subsequent phase.

### ***Initial phase of recovery***

The initial phase of recovery Council A covers the period it was under management of the interim management team (IMT). This includes half a year prior to CPA and just over half a year after CPA, when the permanent Chief Executive (CEX) started. Some of the problems the IMT dealt with were the result of attempts at institutional fit which had not succeeded. One of these was the transfer of the council's housing stock which led to managerial and financial problems. The IMT appealed to ODPM for help on resolving the problems, operating in a performativity 2 mode by both recognising

the need for change (compliance) but also seeking to shape the response by government (autonomy) by “getting them to see it as their problem, rather than helping us with ours”. However, when another government department wanted to send in a team of consultants to deal with another service, the council resisted as their solution was deemed to be detrimental for the development of the organisation as a whole. Such autonomy was accepted more easily as a result of the earlier exchange.

The IMT’s performativity 2 strategy involved the strategic decision to develop a good relationship with the LO, as the main contact with ODPM. However, the relationship with the initial GIB was less easy, as it comprised mainly inspectors, who were not seen as knowledgeable about local authority practice. Instead, the IMT negotiated – through the LO - to have an improvement board “with more practitioners who could be supportive and useful”. This incident again captures the duality of compliance and autonomy inherent in this case.

In council B the process of recovery had started in advance of CPA, with a change of political as well as managerial leadership. Although the poor CPA rating was initially disappointing to the council, who had been expecting a higher score, they decided to adopt a performativity 2 strategy. The council accepted the support mechanisms that came with the engagement to help them progress (compliance). But they also incorporated their existing corporate aims into the improvement plan they were required to produce (compliance and autonomy). From the start, the narrative in this council was about improvement rather than recovery, signifying its the performativity 2 approach. As in council A, relationships with central government agents were managed strategically. A senior manager commented:

“we’ve been sure to have a course of dialogue throughout this process so that we’re not suffering from what I understand other poor authorities have been suffering from which is a sense of having things imposed on them. We’ve gone out of our way to manage relationships, with the AC, ODPM and the inspectorates not to have surprises.”

### ***Subsequent phase of recovery***

The appointment of a permanent CEx in council A was an important symbolic step into the next phase of recovery. Although the IMT had dealt with a lot of immediate problems, the next phase required consolidating of progress. The council built on the relationship with the new GIB (which contained individuals who were regarded as understanding of the council’s approach) to achieve a partnership approach. At the same time, it was adamant to

“put forward what WE wanted to achieve in order for us to be like other authorities. We were weak, not doing terribly well, but not actually requiring intervention. We can be masters of our own destiny and know what our aspirations and purpose are”.

In its dealings with central government agents, it decided not to try to play one off against the other, but rather see them as one system to deal with. This enabled it to retain a degree of autonomy through the process of channelling information through a single stream rather than to different agents. The council also managed negotiating the inspection process in order to get the maximum benefit out of the system.

However in this phase the council also met with struggle in its dealings with central government agents. It perceived a lack of understanding by inspectorates as to why they were not able to deliver the transformational change they expected, but instead were undertaking more incremental change. This led to a setback in the relationships with part of the regulatory system, and pressure for greater compliance. However the relationship with the LO remained constructive and the council was able to balance the autonomy-compliance relationship to retain control over its improvement drive.

In Council B the subsequent phase of recovery was signified by an improvement in its score one year after CPA. This improvement was seen as a confirmation that it had indeed already been improving at the time of the original CPA, and its focus remained on leaping a category within the next year.

There were certain management and governance arrangements which the council is adopting because they lead to increased inspection scores or access to funding. It did not consider itself to be in a position to be able to forego the benefits associated with the arrangements.

“Housing goes into an ALMO (arm’s-length management organisation) not because we believe that the service should be managed at arm’s length, but because that is the only way we can access that particular pot of money. If we believed in that model of service provision for its own sake, we would use it for other departments, but we don’t. . . There’s an organisational theory behind the ALMO model and we’ll end up with a service in that model without having bought into the theory behind it.”

The council did not perceive the GIB was asking for the right information to fulfil its function, but it complied all the same. When the council was appointed to the care of a new LO the function of the GIB changed in recognition of the council’s improved position.

## **CONCLUSION**

This paper starts a process of exploring the relationship between regulator and regulatee as a process in which there is a strategic choice on the part of the latter. One choice is to comply, and perform in line with normative expectations, thus reducing supervision from the inspection panopticon (performativity 1). The other is to express a duality of compliance and autonomy (performativity 2), in order to perform regulation and thus escape the regulation of performance. The latter is a more subtle and political process. In our cases, it required resources of alliance building between the council and the lead officials, and judgement about when and how far to resist the demands of regulators. Although we have not been able to cover it in this paper, it is also reflected in the physical distribution of actors at GIBs.

In their performativity 2 strategy, balancing autonomy with compliance, both councils strengthened their cognition and capability needed to improve. One of the factors that contributed to Council A’s decline in performance was its lack of feedback due to its isolation from the wider local government environment. The emphasis on relationship building with other practitioners strengthened the cognition of performance through peers. When in the subsequent phase it received unwelcome feedback on its performance it was able to keep its focus and sustain its relationships with central government agents, showing the capability to maintain an improvement coalition.

Whereas council B had previously been in the habit of dismissing criticism on its performance as politically motivated, its welcoming of information about its performance in order to avoid surprises contributes to its cognition. The council was willing to comply in order to keep relationships cordial, but aware of compliance for instrumental motives, also showing its capability to facilitate improvement.

Both councils had previously suffered a poor reputation of service delivery and poor relationships with the local press and various external stakeholders. Both focused on building better relationships and presenting their case for improvement in order to show and reinforce the leadership coalition for change.

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<sup>[1]</sup> There is a literature on individual level regulatory interactions, notable that in the ‘street level bureaucrat’ field (e.g. Lipsky ???; etc.)

<sup>[2]</sup> There are significant differences in governmental structures, processes and policies between England, Northern Ireland, Scotland and Wales arising from devolution. Consequently the discussion of the English case should not be treated as applying to the whole of the UK.

<sup>[3]</sup> In the latest Government reshuffle, the Office of the Deputy Prime Minister was abolished and responsibility for Local Government changed to the newly formed Department for Communities and Local Government (DCLG). However, in the period this paper addresses it was still ODPM, so that name will be used throughout.

<sup>[4]</sup> There have been subsequent annual CPA scores. The criteria and scoring system was changed in 2006.

<sup>[5]</sup> Further details of the research are available at: <http://www.inlogov.bham.ac.uk/research/expofrecovery.htm> The views expressed in this paper are those of the authors, and do not necessarily reflect those of OPDM.