

Embargoed until 00.01am on Tuesday, February 7

Decision-making in Northern Ireland is piecemeal and uncertain – and public services are at risk

Since last October, senior officials have been running government departments, with the Secretary of State stepping in to take some major decisions. A new report from Pivotal, the independent think tank focused on Northern Ireland, shows how this combination is unable to properly respond to growing strains in health, education, justice and more.

No-one is in charge of Northern Ireland - leaving public services at risk of further deterioration, according to a new report. Civil servants are running Northern Ireland's government departments but they are unable to make the sort of changes that could help ailing public services.

Northern Ireland has not had properly functioning government for four of the last six years, with overdue decision-making leading to serious deterioration in public services.

That decay is continuing while overall it is unclear who is responsible for decision-making in government, according to *Who is governing Northern Ireland?* – the latest paper from Pivotal, the independent think tank focused on Northern Ireland, published today [Tuesday, February 7].

The Secretary of State has set a Budget, but otherwise he has said that he is leaving big decisions for the return of the Assembly and Executive.

At the same time, the state of Stormont's finances – which could face a £1bn black hole next year – mean that even reforms necessary to fix breaking systems such as health, education and justice will need to be prioritised against one another.

Pivotal's report makes clear that such tough choices need to be made if Northern Ireland is to properly address its immediate and longer-term challenges.

Currently civil servants are the only people with any direct responsibility for government departments. Senior officials have been given limited powers to manage statutory services but they are not supposed to be a replacement for proper government, with decisions made by elected representatives accountable to the public.

Pivotal's report says: "There is no legislative basis for many significant decisions to be taken by anyone at the present time."

For instance, Northern Ireland's health and social care system requires significant reform. A reconfiguration of services was recommended years ago – however, failures by politicians to take decisions combined with years without an Assembly and Executive mean that these reforms have barely begun.

Measures that the Department of Health has felt able to do include public messaging about the pressures on emergency departments and GPs, with the Permanent Secretary giving a speech about the need for health reform and speaking to news outlets about those same issues.

So, officials are able to speak publicly about ongoing pressures on healthcare and the need for transformation of services – but they are unable to implement any of the decisions required to take those problems on.

Pivotal's report makes clear that this is not the fault of civil servants. Officials have been put in an impossible position, asked to keep Northern Ireland on the rails in the absence of an actual government. While they have been able to make some choices about governance, there are many things they are unable to do.

Other comparisons include the ability to green light a third tranche of Engage funding to support children's educational catch-up following Covid, while signing off on the promised Childcare Strategy is not possible; an independent review into Invest NI was published but there has been little room to produce new schemes to assist with the cost of living; and a draft outcome of the business rates re-evaluation has been produced but the overdue anti-poverty strategy has not been published.

Pivotal's report says: "Comparing what civil servants have been able to do with decisions that have not been taken makes clear both the extent of Northern Ireland's current policy inertia and the impact it will have across a wide range of areas which impact on people's day-to-day lives. This will only get worse as time goes on."

Ann Watt, Director of Pivotal, said: "There is no doubt that Northern Ireland is being governed on a limited and piecemeal basis. Civil servants are in charge of departments, but are unable to make any significant, cross-cutting or controversial decisions. The Secretary of State has stepped in with legislation to address some major issues, but otherwise has said that he is leaving decision-making for the return of an Assembly and Executive.

"This puts severe constraints on what progress can be made to tackle Northern Ireland's many challenges in health, education and the cost of living. That would be

difficult at any point in time, and all the more so when people, businesses and society here all face so many major issues. The cost-of-living crisis is devastating. The health service is over-stretched. There are significant financial troubles in education.

“It’s not clear who – if anyone – is responsible for making decisions in Northern Ireland at present. The absence of the Assembly and Executive means there hasn’t been proper government here for four of the last six years, and we are seeing a real deterioration in public services as a result. People are feeling the effects of all this in their day-to-day lives.

“While there are significant limits on what civil servants can do, they are also being asked to make choices that are inappropriate in a democracy.

“At a time when public services are on their knees, senior officials have to make spending decisions around how to distribute a very limited amount of money, given ongoing budgetary constraints. Huge concerns have been raised about the budget’s impact on health, education and justice in particular.

“Such tough choices should be the duty of elected representatives who the public are able to hold accountable at the ballot box – not civil servants whose job is supposed to be informing and advising the decisions of ministers.”

The Northern Ireland Executive collapsed last February when the First Minister resigned. Departmental ministers remained in post as caretakers, but with limited powers, continuing in this role following the May election because no new government could be formed.

The caretaker ministers were stood down from their positions at the end of October. Since then, civil servants have been at the wheel. Legislation brought forward in Westminster by the Secretary of State gave civil servants some increased ability to take decisions in the public interest. However, they wield even fewer powers than the caretaker ministers – working under guidance which says “some decisions should not be taken by civil servants without the direction of elected Ministers.”

Senior officials are working within a paradoxical situation where they are supposedly in charge of departments and other government business while under explicit direction to not make any significant decisions – albeit all their choices are made on a case-by-case basis.

This means they are wedded to a cautious approach, frequently taking legal advice and being highly aware of the fact they should not infringe on ministerial responsibilities despite filling the gaps left by the absence of actual ministers.

Meanwhile, Northern Ireland's list of immediate and longer term problems accumulates.

At the same time, some huge decisions have been left in the lap of those senior officials. Late last year, the Secretary of State stepped in to set a budget for the ongoing fiscal year. This provided each department with a funding allocation – but left the decisions about where that spending would go within each department to the civil service.

The pressures on the budget this year have been eased partly by bringing forward £330 million from next year. However, that is kicking the can down the road. A former Head of the Civil Service has estimated next year's funding pressures to be around £1 billion.

Pivotal's report covers many significant questions about the current state of government in Northern Ireland:

Who can take decisions now?

The Secretary of State can bring forward legislation in Westminster for Northern Ireland, but he has said that he wants to leave devolved matters for the return of locally elected politicians. He did however bring forward legislation for a budget for this year, and the Northern Ireland (Executive Formation etc) Act 2022 allowed him to set a regional rate next year and reduce MLAs' pay. However, the Secretary of State has made it clear he wants to avoid taking action in Westminster as much as possible.

Senior civil servants are now at the helm of government departments – but they have much less authority than ministers. The 2018 *Buick* Judgement saw the High Court and Court of Appeal rule that officials should not make decisions that are normally the preserve of ministers, and this point has been reiterated in guidance to the Northern Ireland Civil Service.

What decisions are being made?

The normal business of government has continued across all departments including management of public services, publication of information, and some recruitment to boards.

Following the Secretary of State's budget, each department received a financial allocation for this year, with civil servants tasked with distributing those monies within departments.

Other decisions and actions from civil servants since October 28 include:

- Department of Education: funding for Engage III to support learning following Covid school closures
- Department of Education: proposals for expansion and closure of particular schools
- Department of Finance: published public sector pay policy and made pay offer to Northern Ireland Civil Service
- Department of Finance: draft outcome of business rates re-evaluation
- Department of Health: public messaging and media interviews about pressures on Emergency Departments and GP access

However, while this shows that civil servants have felt able to make progress in some areas on a case-by-case basis, there are many critical aspects of public services where important reforms are in limbo.

During this period, MLAs are able to represent their constituents by writing to senior officials or the Secretary of State, but are largely shut out from their normal abilities to scrutinise policy and service delivery.

And which decisions are not being taken?

While some policy choices have moved forward at the direction of civil servants, many have not.

These include agreement about the long-overdue reconfiguration of health services, signing off action plans to deliver the commitments in the new Climate Change Act, agreeing the childcare strategy promised in New Decade, New Approach, and publishing an anti-poverty strategy.

A long list of other stalled decisions was published in the media last week, including stabilisation of oncology services and breast assessment services, approval of an environment strategy, peatland strategy and green growth plan, options for re-opening the independent living fund, funding for victims' payments, and more.

What does this mean for government in Northern Ireland?

In the absence of an Executive and ministers, it is not clear who - if anyone - is responsible for making significant decisions.

The Secretary of State stepped in to set a budget, and may step in on other matters, but has said he wants to leave as much as possible for local politicians here.

Civil servants have increased powers but these fall far short of ministerial capabilities and any big decision they do make are inherently undemocratic.

For the most part, there is a deficit of governance. Big decisions that are crucial to maintain public services are not being made. The consequence will be further deterioration in areas like health and social care, education and justice.

Northern Ireland faces many long-term challenges that require well-planned reform, but the last multi-year budget was in 2011-15. Instead, civil servants are left trying to square a budgetary circle that will see quick fixes, at best, in some areas and managed decay in others.

Recommendations

Pivotal's new report makes several recommendations on the best ways to proceed:

- All concerned should focus themselves on the urgent restoration of the Assembly and Executive, which would allow proper decisions to be made with democratic accountability.
- Recent apparent progress in the UK/EU Protocol talks is welcome, and all involved should recognise the need for a successful resolution, given the growing negative impact of Stormont's absence.
- Greater attention needs to be given to providing effective government in Northern Ireland. There has not been an Executive and Assembly for more than four of the last six years, meaning limited and piecemeal decision-making in the midst of a multitude of immediate and longer term challenges. This has led to ongoing, significant deterioration in public services.
- If the period without an Executive and Assembly continues, the UK Government should consider how to ensure that important decisions are taken in order to prevent the further deterioration in public services here. While legislating in Westminster would be against the principle of devolution, it could ensure the improved delivery of essential services.
- The budgetary process for 2023-24 should recognise the enormous pressures facing public services.
- Northern Ireland urgently needs multi-year budgets to address its immediate and longer term problems. Repeated single-year budgets do not allow the much-needed planning, investment and reform in public services.
- Permanent Secretaries should look for opportunities to provide more information about their departments' activities in the absence of ministers, for example through progress reports, oral briefings or media interviews.
- Those outside government - including civic society, business and academia - should re-double their efforts to raise issues, develop ideas, press for change and work collaboratively to promote good decision making.

ENDS

Notes to Editors

For more information contact Ryan Miller – 07789 552 340 – ryanmiller@nick-garbutt.com

1. Pivotal is an independent think tank launched in September 2019. Pivotal aims to help improve public policy in Northern Ireland
2. Pivotal's earlier reports are available [here](#)
3. Pivotal's Board of Trustees provides oversight of its work. They are Peter Sheridan (Chair), Chief Executive of Cooperation Ireland; Sarah Creighton, housing advisor and lawyer; Richard Good, public policy consultant; Jarlath Kearney, strategy advisor and media contributor; Seamus McAleavey, former NICVA Chief Executive; Andrew McCormick, former NICS Permanent Secretary; Rosalind Skillen, climate activist and columnist; and Alan Whysall, Honorary Senior Research Associate, Constitution Unit, University College London
4. A wider Reference Group has helped steer the development of Pivotal and will provide ongoing guidance
5. Pivotal's Director Ann Watt is a former senior civil servant with 20 years' experience in public policy development and delivery. Most recently Ann was Head of the Electoral Commission in Northern Ireland (2014-2019)
6. Pivotal has received funding and in-kind support from Belfast Harbour Commissioners, The Community Foundation Northern Ireland, the Department of Foreign Affairs and Trade, The Joseph Rowntree Charitable Trust, NICVA, Queen's University Belfast, Ulster University
7. For further information about Pivotal see pivotalppf.org or contact Pivotal's Director Ann Watt on 07932 043835
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