

When should public bodies exist?

Rewriting the 'three tests' for when
government does things at arm's length



About this report

Current government guidance states that public bodies should exist only 'as a last resort', when three narrow tests are met. This approach means government does not always use the appropriate mechanism to fulfil its objectives. The tests should be re-written in a more balanced way so that public bodies are used when they are the most suitable option, even when other less suitable options are available.

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Front cover image: 10 Victoria Street, London, home to several UK government public bodies.

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Summary

Public bodies have proved a vital part of government in recent years. The central response to the Covid pandemic in 2020 drew heavily on bodies as diverse as NHS England, Ofsted, HMRC, the Arts Council and the British Business Bank. More recently, the Bank of England and Ofgem have moved into the spotlight during the cost of living crisis, as has Ofwat over water pollution.

Governments set up public bodies for many and varied reasons. These might include technical specialism (for example the Pensions Regulator); independent fact-finding (the Office for Budgetary Responsibility); to make long-term decisions outlasting the political cycle (the Infrastructure and Projects Authority); to depoliticise contentious decisions (the pay review bodies); or to show action following a scandal (the Human Tissue Authority).

However, setting up a public body is costly and may be considered for the wrong reasons, so ministers and civil servants are rightly expected to follow Cabinet Office guidance about when they should and should not do so. Yet that guidance is poorly calibrated to the needs and complexity of the modern state. It is summarised in the 'three tests', unchanged since 2010,¹ of which all public bodies must meet at least one.

Box 1: The current three tests

- 1 Is this a **technical** function, which needs **external expertise** to deliver?
- 2 Is this a function which needs to be, and be seen to be, delivered with absolute **political impartiality**?
- 3 Is this a function that needs to be delivered **independently of ministers to establish facts and/or figures** with **integrity**?² (our emphasis)

Though narrow, the tests carry significant clout: proposals for new bodies are assessed against them³ and existing bodies must periodically show that they continue to satisfy at least one.⁴ The Cabinet Office guidance also suggests that a body should only be established as a 'last resort',⁵ or in other words when there is no viable alternative, rather than – as might seem obvious – when it represents the best option available.

It is hard to prove whether the last resort criterion has prevented bodies from being created that might have benefitted the public, although in customer-facing areas of the Home Office and the Department for Work and Pensions (DWP), for example, this may well be true. One live example would be the Office for Local Government, which is currently a unit within the Department for Levelling Up, Housing and Communities (DLUHC) despite its scrutiny functions potentially benefitting from independence, and its role brokering between central and local government potentially benefitting from impartiality (so meeting at least two of the tests).

It is easier to prove that the current framing of decision making around public bodies may have contributed to (or at least not prevented) misguided or mishandled public body abolitions. These may have been informed by a prejudice against quangos (the Audit Commission, the UK Border Agency and, in some respects, Public Health England⁶) or by counterproductive tendencies for government to centralise decision making – such as following the Covid pandemic, as we describe in our report [Licence to Lead: Lessons for public bodies from the pandemic response in health](#).

More subtly, the negative framing implied by the three tests can demoralise existing bodies and undermine them in the eyes of the public and politicians – as we have heard from many of their leaders – even if many bodies (such as NHS England) are still more trusted by the public than the government departments that sponsor them.⁷ It may also contribute to an ongoing shortening of the arm of control between government and executive agencies, which reduces public bodies' independence in practice, if not in theory.⁸

So should the three tests be reformed, or abandoned? Government could dispense with the tests altogether and simply rely on a business case being produced and evaluated for each body proposed. But this would remove valuable discipline from early thinking about public body establishments: in practice, by the time a business case is finalised, key decisions have often been made. We argue that it is better to reform the tests. A rule of thumb is helpful, but current and future governments need one that will enable them to avoid the mistakes of the past and make better choices about the structures of government available to them.

The political context

In the summer of 2022 the Cabinet Office launched the latest public bodies review programme and the minister then responsible, Jacob Rees-Mogg, wrote to his cabinet colleagues asking them to identify bodies that could be merged or closed.⁹ The review programme – which continues under the Sunak administration – reprised some of the same negative language around public bodies seen in the high-profile 'bonfire of the quangos' under the Cameron government.

Through successive reviews of the public body landscape, government has sought to reduce the number of bodies, on the assumption that doing so will also reduce the overall size of the state. In practice, however, it has had more success in achieving the former objective than the latter, as functions previously performed by public bodies have often been displaced elsewhere rather than stopped altogether.¹⁰

In proposing a broader rationale for the use of public bodies, this paper does not take a position on the appropriate size of the state. Instead, it looks at how – *after* it has determined that a function should be carried out by the public sector – the government decides whether that function should be performed under the direct control of a department or by a public body at arm's length. Such a decision does not in itself make the state larger or smaller.

Why the current guidance fails

Depending on how strictly the current tests are interpreted, many existing bodies may not meet any of the tests – which have, at best, been applied inconsistently. For instance, the activities of DVLA or the Education and Skills Funding Agency, while specialist, are not 'highly technical' and if the argument for DVLA's work being done by a public body relies on the impartiality test, for example, then one might also ask why much of DWP's or the Home Office's work is not also conducted at arm's length.*

Bodies can exist for legitimate reasons that the tests do not capture, such as pursuing specific but not explicitly technical objectives in a distinctive way (the National Citizen Service), improving the performance of a privatised industry (Great British Railways), or making more consistent long-term decisions than are readily sustained within a departmental structure (the UK Infrastructure Bank). The Annex contains a longer list of such examples.

Alongside the tests, making public bodies a last resort implies government departments instead taking on more responsibilities directly. But direct delivery by departments sets high expectations as to the breadth of activity and technical detail that ministers can effectively oversee themselves.¹¹ Many bodies do work that could conceivably be done within a departmental management structure but at the cost of making departments more unwieldy.

Taking all of these factors into account, government should be willing to employ public bodies as a delivery mechanism when – and only when – they are better suited to achieving its objectives than an alternative structure. This should be the starting point for the new public bodies strategy currently being developed by the Cabinet Office.

If government wants to spend less through public bodies, it can still do so by finding ways to deliver their functions more cheaply or, even better given the [limited efficiencies available](#), considering which substantive activities currently performed by public bodies it would like to stop. This may result in fewer bodies – and there are always candidates for potential abolition or merger.** But just reducing the number of bodies, by means of the three tests or otherwise, is a simplistic and often counterproductive target, which should not be pursued as an end in itself. In the final months of the Johnson government, we argued that it should not wage another war on quangos¹² and should seek better, not just fewer, public bodies.¹³ With the Sunak government now well established, there is an opportunity for a re-set in approach.

* In fact, in the 1990s much of this activity was conducted by executive agencies. We discuss the history of this relatively less independent form of public body below.

** Reform of the Ombuds landscape, for which Ombuds themselves have been campaigning for many years, offers one example: www.instituteforgovernment.org.uk/event/ombuds-schemes-reform.

Replacing the three tests

As well as removing the last resort criterion, we propose to replace the three existing tests with new, broader tests based around effectiveness, independence and cost efficiency. These new tests would make it easier to clearly defend decisions about when a public body is desirable and which type of body is best.

Box 2: Our proposed new tests

- 1 Effectiveness:** could a public body perform its function more successfully than any other structure, or would distinguishing it from the work of a department enhance the effectiveness of government as a whole?
- 2 Independence:** does the function require greater independence from ministers than is achievable within a government department?
- 3 Cost efficiency:** can it be shown that a public body is the least costly option over the long term, or that the benefits identified under the other tests are clearly sufficient to justify any incremental costs, both in transition and in steady state?

Our new tests could also underpin a robust defence against unnecessary bodies, when required. For example, our effectiveness test would exclude functions better performed by an existing part of government or the private sector; our independence test would exclude functions that require regular ministerial input; and our cost efficiency test would tend to exclude functions that are temporary as well as those where a disproportionate overhead cost might be incurred (for example by smaller bodies that unduly complicate the public sector).

Nonetheless, our tests represent a clear shift from the current model of last resort, encouraging government to make use of public bodies where there are clear benefits to doing so. For guidance on interpreting the new tests, see Box 5.

This report begins with the background to public body reform and the three tests in particular. We then set out our proposals to remove the last resort criterion and to replace the three tests in more detail, addressing potential objections as we go.* We also outline how the new tests should be applied in practice.

* Our focus is deliberately narrow. We start from the last resort criterion and the three tests to analyse whether these are appropriate. This work could be augmented by international comparisons, an empirical review of the diverse public body landscape, and perhaps reconsideration of the different forms that a public body can take. The Institute intends to conduct future work in these areas.

Public bodies, the current tests and their origins

Public bodies have existed in one form or other for centuries as a staple of UK government. But the rules and conventions around their formation, operation and abolition have changed frequently, particularly in the past four decades.

Today, public bodies can be [accountable](#) to departmental permanent secretaries and ministers, or directly to parliament. They have boards – either executive management boards or more powerful boards with a non-executive chair – and are scrutinised by the National Audit Office (NAO) and by parliament. They have varying degrees of independence, with executive agencies, unlike non-departmental public bodies (NDPBs) and non-ministerial departments, not being legally separate from their sponsor departments.

Public bodies have been politically controversial for decades

Public bodies have been out of political favour for a long time. [Four decades of reform](#) have reduced the number of NDPBs, the most numerous type of public body, by nearly 90%. Those reforms started with Margaret Thatcher's government, which, in 1979, worried about the proliferation of NDPBs and the lack of ministerial control over them, commissioned Leo Pliatzky to review their role. Pliatzky proposed four relatively broad reasons for NDPBs to be used:

Because the work is of an executive character which does not require ministers to take responsibility for its day to day management; because the work is more effectively carried out by a single purpose organisation rather than by a government department with a wide range of functions; in order to involve people from outside of government in the direction of the organisation; [and] in order to place the performance of a function outside the party political arena.¹⁴

Applying these reasons, the Thatcher and Major governments sharply reduced the number of NDPBs. But in the wake of the influential 1988 *Next Steps* report,¹⁵ their governments also created new bodies in priority areas. These included regulators for the newly privatised industries as well as executive agencies – then an entirely new type of public body – to administer parts of day-to-day government more efficiently, drawing on private sector expertise. By the mid-1990s, three-quarters of all civil servants worked in executive agencies covering fields including tax, prisons, benefits and employment.¹⁶

After 1997, Tony Blair's New Labour government created new bodies to drive its own priorities, including on issues like low pay and disabilities. The prime minister's Office for Public Services Reform issued a report on agencies in 2002, which admitted that there had "not always been a clear rationale" for when different delivery routes were used, although it stopped short of proposing specific tests for when public bodies should be preferred.¹⁷

Things began to change after the 2008 financial crisis. In March 2010, the Treasury announced plans to reduce the number of public bodies and their expenditure – plans that included, for the first time, the proviso that any new arm’s length body (ALB) “must be absolutely the last option”. The Treasury’s report, entitled *Reforming Arm’s Length Bodies*, also required government to publicly justify the creation of any new public body.¹⁸

In an attempt to cut through the complexity of the public body landscape as well as the opacity of bodies’ relationships with government – the subject of two contemporary Institute for Government studies¹⁹ – the coalition government sought to move out of the public sector that which could be done in the private sector, and to move under direct ministerial control that which did not need to be done at arm’s length. The reforms that became known as the ‘bonfire of the quangos’ abolished or rebadged nearly 300 (mainly advisory) bodies between 2010 and 2015.²⁰

In practice, the reduction in numbers was largely pursued by merging bodies and displacing activity into central government departments (or occasionally into the private or third sectors).²¹ Relatively few functions actually ceased, even when the bodies performing them were abolished.²² Spending in ALBs did fall during the bonfire: the NAO estimated around £800 million in administrative savings were found in the first three years of the programme, for example through merged bodies sharing office space and procuring goods and services more cheaply at scale. But while these savings were significant as a proportion of administrative spend, they were much less so in the context of public body budgets as a whole.

The NAO also found that the accountability and transparency of functions brought into a department or transferred to the private or voluntary sectors risked being reduced if, for example, annual accounts and performance indicators ceased to be published, or the functions previously performed by a board were now carried out at greater distance from government. Its progress report in 2014 found no quantifiable evidence of improved public services, trust or participation as a result of the changes.²³ Academic research has also found that the Border Force, for example, became less, not more, responsive to select committee recommendations when it became part of the Home Office, rather than part of a public body.²⁴

Alongside increasing scepticism towards creating public bodies, there is evidence of notionally separate public bodies, in particular executive agencies, becoming less independently managed over time.²⁵ In this sense, the centralisation of decision making may exceed that which shows up directly in public bodies’ data. Some executive agencies are particularly closely integrated into their departments, even to the point that their chief executives are line managed by the department’s permanent secretary. This means that if a function needs to be performed independently of ministers, executive agencies are unlikely to be the most appropriate structure.

Instead, executive agencies might be the right home for functions that benefit from some ministerial oversight, but also need greater commercial input, a focus on delivery or more long-term certainty over leadership and goals. But the less distinguishable an agency is from its department in terms of leadership, resources and independence, the more moot the question becomes as to whether it should exist as such.

A recurrent concern among ministers, consistent with this trend, is that however independent a public body is on paper, the relevant minister is always accountable to parliament for its actions. Ministers therefore experience responsibility without power, leading to calls for greater direct control. We will argue that this experience can be ameliorated by clarifying the remit and objectives of public bodies, such that while ministers can be held to account for the direction they set, public bodies can be held accountable for whether they perform effectively.* Given the important roles that public bodies can play, strengthening the way they are overseen by their boards, sponsor teams and parliament may be preferable to simply limiting their scope.

The current three tests

After the 2010 election, Francis Maude became minister for the Cabinet Office, determined to further tighten controls over the quango state. It was on Maude's watch that the three tests – which were also included in the Conservative manifesto of 2010²⁶ – were first applied.** They formed the basis for the coalition's review of the public bodies landscape described above²⁷ and were cemented in official guidance. Further, the Cabinet Office and Treasury must now approve the creation of any new bodies, for which they require a business case showing that a proposal meets at least one of the three tests.²⁸

When the tests were first devised, the Public Administration Select Committee expressed doubt that they "had been properly thought through or... were capable of clear definition".²⁹ The House of Commons Scrutiny Unit found that this led to inconsistent decision making during the 'bonfire' in 2010, with limited explanation being provided as to which tests public bodies had passed or failed.³⁰ But despite this criticism, and despite multiple changes in the responsible ministers, the tests remain integrated into current guidance both for the review of existing bodies³¹ and for assessing whether new bodies should be set up (see Box 3).³²

* The Institute plans further research in this area, focusing on public bodies with a regulatory remit.

** Although Maude is probably the politician most associated with the 'three tests' the first public mention of them appears to have been a speech by David Cameron on 'Reforming Quangos' in July 2009. <https://publications.parliament.uk/pa/cm201011/cmselect/cmpubadm/537/537.pdf>, pp. 7–8.

Box 3: Current guidance on the creation of new bodies

"It is government policy not to set up new ALBs except as a last resort and as such it should not be assumed that approval will be given for such an entity in any but the most exceptional circumstances.

New public bodies should only be created if there is a clear and pressing requirement, a clear need for the state to provide the function or service through a public body, and no viable alternative – effectively establishing new public bodies as a last resort...

When developing proposals on setting up an ALB to deliver a function or service, departments should subject their proposal to the Government's 'three tests'. A proposal should only be taken forward if the service or function meets at least one of the three tests.

The tests are:

- 1 Is this a technical function, which needs external expertise to deliver?
- 2 Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality?
- 3 Is this a function that needs to be delivered independently of ministers to establish facts and/or figures with integrity?"³³

The current tests were not designed with executive agencies in mind, and so were not initially applied to them, but only to NDPBs and non-ministerial departments.³⁴ However, they are now applied to executive agencies, despite the fact that many exist to improve the *operational delivery* of a function rather than for reasons of independence, impartiality or technical prowess.

Governments do not always follow their own rules

In practice, ministers have sometimes set up public bodies, or moved functions into them, for reasons that fall outside the three tests. Possible reasons have included entrenching functions around which they want to build political consensus over time (for example the Low Pay Commission)³⁵ or showing that they are taking action in response to a crisis (the Gangmasters Licensing Authority, following the Morecambe Bay cockling disaster).³⁶

The idea inherited from the departing Labour government in 2010 that establishing new bodies should be a last resort seems intended to limit these ministerial tendencies as well as to prevent civil servants from inflating bureaucracy. The frequency with which bodies are set up for political reasons does seem to have declined following 2010, which suggests that a rigorous set of tests can act as an effective check.

However there are also good operational reasons why governments have created new public bodies that are not captured by the current three tests. For example, the creation of the Next Steps agencies in the 1990s was partly intended to make central government more manageable by parcelling it up into individual functions and reducing ministerial overload.³⁷ The reform programme was also intended to improve performance by giving bodies focused objectives and requiring ministers to formally hold them to account for delivery³⁸ – which resulted in some eye-catching performance improvements, even for functions (like passport delivery) that are not highly technical.³⁹ Government has also set up some public bodies for performance improvement reasons more recently (such as Great British Railways and the Government Property Agency).

The tests also omit the role of public bodies in making predictable long-term decisions on which private sector partners can rely, which applies, for example, to the recent creation of the UK Infrastructure Bank or the British Business Bank. An organisation with clear public objectives and an independent board may be better able to engage third sector or private sector counterparties in investments or collaborations that require a consistent direction – without political interference – over many years. There is also no mention in the current tests of the importance of NDPBs' separate wage structures. Many public bodies, especially those delivering quasi-commercial functions, could not attract staff if they were subsumed into departments and forced to comply with civil service pay constraints.

Bodies have also been created to undertake temporary, ring-fenced responsibilities (like the Birmingham Organising Committee for the 2022 Commonwealth Games), or as a route to potential privatisation (the Green Investment Bank): it is easier to privatise a function if it already has a CEO and board, for instance, than by transferring functions directly from the civil service to the private sector.

In short, there are many reasons for using public bodies that have been decisive in practice but are not currently acknowledged in the three tests. Tests used in the past to determine whether public bodies are the right tool have been broader; other countries' equivalents are more flexible. In Australia, for instance, there is no last resort criterion: instead, the Australian government conducts cost benefit analyses for a range of delivery options where it has the power to undertake an activity, is best placed to do so, and does not already have an existing body that can take it on.⁴⁰ Our proposed approach is broadly consistent with this, with our revised tests designed to foreground key considerations at an early stage of decision making.

How the three tests should change

We propose three new tests, which would replace both the current set and the last resort criterion. This section further explores the limitations of the status quo and how these can be overcome.

Box 4: Comparing the current and proposed tests

The current tests are:

- 1 Is this a **technical** function, which needs **external expertise** to deliver?
- 2 Is this a function which needs to be, and be seen to be, delivered with absolute **political impartiality**?
- 3 Is this a function that needs to be **delivered independently of ministers to establish facts and/or figures** with **integrity**?⁴¹ (*our emphasis*)

Our proposed new tests are:

- 1 **Effectiveness**: could a public body perform its function more successfully than any other structure, or would distinguishing it from the work of a department enhance the effectiveness of government as a whole?
- 2 **Independence**: does the function require greater independence from ministers than is achievable within a government department?
- 3 **Cost efficiency**: can it be shown that a public body is the least costly option over the long term, or that the benefits identified under the other tests are clearly sufficient to justify any incremental costs, both in transition and in steady state?

Public bodies should not be a last resort

The Cabinet Office's *Public Bodies Handbook* states that "It is Government policy that new arm's-length bodies should only be set up as a last resort, when consideration of all other delivery mechanisms have been exhausted".⁴² This policy performs an important function. It dissuades ministers from creating unwarranted public bodies as an easy way to be seen to be taking action (particularly smaller ones, which unduly complicate the public sector). It also stops civil servants from simply farming out problems they are struggling to solve. There are costs to setting up a new body, which rightly means there should be a presumption against doing so. The policy also makes some political sense – increasing the number of public bodies is in itself rarely popular with the public.

But the policy has some negative consequences, too, since a last resort criterion can lead to poor decisions about when to set up – or abolish – bodies. There will be circumstances when an alternative is *possible*, but less effective or less efficient, which the government would then feel obliged to pursue, to its own detriment. Examples might include the abolition of probation trusts in 2014 in favour of outsourcing to the private sector, which performed so badly that the work was largely brought back under government control by 2020,⁴³ or the abolition of the Audit Commission between 2010 and 2015, which has led to a number of problems in public sector audit.⁴⁴

The desire to minimise the number of discrete bodies – as distinct from keeping activities within departments – can also have negative consequences. For example, Public Health England (PHE) was created in 2012 through a merger of two major public health functions of preventative public health (like combatting obesity and smoking) and health protection (safeguarding against infectious diseases), which were previously delivered separately. Ministerial and organisational attention understandably focused on the former at the expense of the latter, which was marginalised in the organisation – tellingly, in the financial year that ended with the Covid pandemic, PHE’s annual remit letter from ministers made no mention of health protection or infectious disease at all.⁴⁵ This lack of focus – felt during the pandemic – would have been less likely had the functions remained in separate, single-minded organisations.

It is difficult to evaluate the potential for mergers other than on a case-by-case basis, and even then caution is required (there is some evidence that mergers rarely achieve the efficiencies their advocates expect)⁴⁶ but we have also heard reasonable arguments about an unnecessary overlap between multiple bodies in some fields, such as financial services or the environment, which may be confusing and burdensome for businesses and the public. There are certainly potential advantages in maintaining a streamlined public body landscape that is easier to oversee and to coordinate, on the one hand, but also in discrete, dedicated bodies being able to focus on specific tasks, on the other. These relative advantages must be weighed up individually and can play out differently, for example in the case of PHE, already discussed, or with respect to the expanding remit of [Ofcom](#).

Even for bodies that escape abolition, the presence of a last resort criterion has negative consequences: we heard from several public body leaders that framing their organisations’ very existence as an unwanted necessity was demoralising to them and their staff, leading to a dampening of morale and possibly therefore performance.

In short, the last resort criterion has in some cases contributed to government pursuing less effective means of delivering a service, or abolishing useful bodies, and has undermined the morale and reputation of those working in public bodies. We therefore propose that the criterion should be abandoned, and we have drafted our revised tests to enable the government to employ public bodies as a delivery mechanism when – and only when – they offer the most effective and efficient means of achieving its objectives.

The two tests on independence should be combined into one

The two current independence-related tests are unhelpfully similar and could be combined into a single, simpler test. This would be met if either the *performance* of a task needs to be conducted without political interference (the standard interpretation of the current political impartiality test as regards, for instance, medical treatment), or if the *determination of facts* needs to be conducted without political interference (the current integrity test that justifies the work of the Office for Budget Responsibility, for example).

This single test would only be met if independence was required to an extent not possible within a government department. (Civil servants already operate with some independence from ministers, as set out in the civil service code,⁴⁷ so the test must be judged in relative terms.) Where a function cannot be, or be seen to be, performed sufficiently independently within a departmental structure reporting directly to ministers, then its performance by a public body may be appropriate. A public body that is legally separate from its sponsor department – so in general an NDPB rather than an executive agency – would be more likely to meet such a test.

The technical expertise test should be expanded into an effectiveness test

The current technical expertise test is particularly narrow. There are other reasons, beyond specific technical ability, why staff recruited into a dedicated organisation might deliver a function better than either existing departmental staff or those who could be recruited and retained in a department. Staff best suited to bodies ranging from the Pensions Regulator to HM Prison & Probation Service might be attracted by different pay structures or by a professional status associated with working for the body, for example, which could not be replicated in a department.

Other non-technical factors might include public bodies' ability to focus more clearly on a particular objective, or to do so in a more sustained and consistent way. They may be able to establish a distinct culture and style of leadership (perhaps informed by a sector they interface with) or to transition more easily into the private sector where this is intended. Any of these factors could make a public body a more effective delivery option than direct delivery within a department.* We therefore propose that the current technical expertise test should be replaced by a wider effectiveness test.

A public body justified on grounds of effectiveness would not only need to be preferable to delivery by a government department, but also to delivery by the private sector, through either privatisation or contractual outsourcing.

Previous Institute research has argued that outsourcing tends to work relatively better for more straightforward support services than for complex front-line delivery⁴⁸ (although it can be problematic even in apparently simple cases).⁴⁹ Delivery by the public sector may be most clearly preferable where there is uncertainty, for instance concerning policy, service demand or the performance of related services, or where the function requires bespoke investment or is harder to evaluate.⁵⁰ Within this, UK Government Investments have described public bodies' distinct role as relating to

* See the Annex for further potential considerations.

'specialised delivery' and published advice on optimising their use for this purpose.⁵¹ Comparison with other delivery mechanisms should take into account the options for [improving delivery within departments](#) (including through greater specialisation)⁵² and [collaborating across them](#) – both topics the Institute has previously looked at.

Effectiveness should be judged primarily in terms of the performance of the public body's own function, but also in terms of how its existence might enhance, or detract from, the performance of the rest of government. In the 1980s, Leo Pliatzky's criteria, together with some of the reforms that followed, reflected a desire not only to manage the work of public bodies more effectively but also to reduce the demands on ministers for day-to-day oversight, with the rationale that this enabled them and their departments to focus more effectively elsewhere.

The effectiveness of government as a whole may therefore be enhanced by the existence of a public body, even if the body's own activity is not improved by being placed at arm's length. One example could be border security. The wide-ranging and complex work of the Home Office and its ministers might be improved if border security was delivered by a body with a more independent management structure (even though there is a chequered history of public body performance in this area). With the staff and board of that body focused on *operational* questions, the Home Office and ministers could concentrate on the many policy and political issues in this field.

Indeed, politics and policy will need to be taken into account when applying the effectiveness test. The high political salience of immigration, in the Home Office example, and the consequent fact that politicians will more frequently be held to account publicly for any perceived failings, makes it harder to maintain service delivery at arm's length. But guidance should caution against ministers using the test as an excuse to micromanage the service in question themselves. As far as possible, and as we recommended in light of the pandemic experience, ministers should instead work to build trust with public body leaders ahead of political pressure points so that they can work well with them at those times.⁵³ Clarity on a public body's mandate and objectives will be key here.

A new cost efficiency test should be applied

Establishing or abolishing a public body (or indeed any other machinery of government change) is costly and disruptive, as previous Institute for Government work has shown.⁵⁴ Such changes should only be enacted when the benefits clearly outweigh the costs – taking full account of the transition as well as the eventual outcome, and after considering any alternative courses of action too. This assessment should be made over an appropriate time frame, taking a realistic view of the likely longevity of the body. The additional cost efficiency test we propose emphasises the potential costs of transition and places the burden of proving cost efficiency on any proposal for change. Replacing the last resort criterion, it would in effect move the framing from 'avoid at all costs' to 'explain and justify the costs'.

Transition costs require the closest attention when a body is intended to solve problems or deliver services likely to be temporary. Key projects may benefit from the autonomy that comes from being constituted at arm's length, as with the Birmingham Organising Committee for the 2022 Commonwealth Games, or before that the Olympic Delivery Authority for London 2012 – both executive NDPBs.⁵⁵ But in these examples, pre-existing institutions were not readily available, so the costs of disruption would have been lower than, say, for NHS Test and Trace, where there is a stronger argument that existing infrastructure and institutions could and should have been used.⁵⁶

Cost efficiency should be carefully assessed from the perspective of the exchequer as a whole, rather than only the public body itself⁵⁷ – recognising the implications for adjacent delivery mechanisms and for departmental oversight. Much of this work is currently done in the business cases for setting up bodies, but they are often prepared too late to nip costly mistakes in the bud before a direction of travel is set. It is unrealistic to suggest that a full business case should be prepared before ministers even begin to pursue an outcome, but they should receive robust early advice, agreed with departmental analysts, on the likely costs and benefits of institutional change. Even high-level advice should be sufficient to head off the most expensive misjudgements.

On grounds of cost efficiency, restructuring undertaken primarily to remove unwanted senior leadership would be discouraged; simply replacing the relevant leaders would be more efficient. Establishing a body as an easy route to announcing that something was being done would also be hard to justify, as more cost-effective alternatives would clearly be available. In these ways, the cost efficiency criterion would partially replace the last resort criterion as a check against the creation of unwarranted public bodies.

Applying the new tests in practice

Our new tests, like the current ones, constitute a high level rubric. This section offers practical guidance on how they should be applied by decision makers.

If either the effectiveness or independence tests are met then the case for a public body is likely to be strong. But the cost efficiency test should always be considered alongside these. Value for money may be enhanced, relative to the status quo, either by saving money or by delivering benefits that are worth the incremental cost.*

Box 5 contains some 'guiding questions' to assist those applying the tests. These should be considered when evaluating potential new bodies as well as the reform or abolition of existing ones, either individually or as part of a periodic review process.

Box 5: Guiding questions when applying the new tests

1 Effectiveness: could a public body perform its function more successfully than any other structure, or would distinguishing it from the work of a department enhance the effectiveness of government as a whole?

Guiding question: Will it work?

Issues to consider:

- What function is not being performed optimally, and how will the proposed change resolve that?
- Could the problem you are trying to solve be addressed in another way?
- Could either the private sector, an outsourced provider, or in-house provision by an existing body or government department do better?
- Once established, will the body reduce distraction for a department, or confuse control and accountability over the function?
- Will the transition cause distraction from other important work?

* The NAO defines value for money as comprising economy (minimising the cost of resources used), efficiency (the relationship between outputs and the resources to produce them) and effectiveness (the relationship between the intended and actual results of public spending: NAO, 'Assessing value for money', retrieved 10 March 2023, www.nao.org.uk/successful-commissioning/general-principles/value-for-money/assessing-value-for-money/). Our cost efficiency test is intended to capture both economy and efficiency, decisions regarding which are closely related when considered at the level of whether an organisation should exist or not. Effectiveness, which relates to the organisation's ability to deliver against its objectives, is sufficiently important and discrete to be considered separately.

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- Will the body be better able to recruit, motivate and retain those with the necessary expertise? Can this be achieved within civil service pay constraints?
 - Will the need for the function be the same in future?
 - Does the political profile of the function make it difficult to delegate?

2 Independence: does the function require greater independence from ministers than is achievable within a government department?

Guiding question: Could it be undermined?

Issues to consider:

- Could the determination of facts or judgements be subject to political interference?
- Does the task need to be performed with political impartiality?
- Does the public credibility of the function rely on it being seen to be independent?
- Must the function make long-term commitments that extend beyond the political cycle?
- Will the function exist in a coherent and transparent governance framework?

3 Cost efficiency: can it be shown that a public body is the least costly option over the long term, or that the benefits identified under the other tests are clearly sufficient to justify any incremental costs, both in transition and in steady state?

Guiding question: Is it wasteful?

Issues to consider:

- What is the cost of transition, both expected and in plausible risk scenarios?
- What will be the steady state costs after transition?
- How long is the body likely to survive?

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- What cost implications will the change have for the rest of government and for other bodies?
 - Are there cheaper alternatives for the public sector as a whole, for example if an existing body or government department performed the function?
 - Can you quantify the benefits in a way that enables you to compare them to the costs?
 - How confident are you in the projected costs and benefits?

Alongside carefully considering each test, decision makers should be clear about their own overall motivation for pursuing the change. We recommend that they review the list of potential motivations in the Annex, which range from the functional to the political, to help them think this through. They should also ask themselves whether they are open to revising their decision when a full business case has been prepared.

Our three tests are intended as a template rather than a straitjacket for decision making, but experience has shown that such a template is important to facilitate high-quality decisions at an early stage. In whatever way they are phrased, no tests should be seen as a replacement for the contextual judgement of ministers or civil servants – and of course ministers are ultimately responsible for any tests that are set.

Our three tests complement the business case process

In an ideal world, a full business case for a public body would be produced before the creation of such a body was even announced – this would, in theory at least, remove the need for any tests or a last resort criterion, as the relevant information would be covered therein.*

However, particularly when bodies are set up in response to a crisis or a pressing need, decisions can be made quickly and the business case effectively becomes a housekeeping exercise after the fact, retrospectively documenting earlier thought processes.⁵⁸ By the time a full business case is drafted, it might lead to tweaks in the design of a body, but only rarely has it led to abandonment of the project altogether – indeed, in one recent example, a business case was judged not to be necessary “as wide consultation and ministerial engagement had already occurred”.⁵⁹ The NAO has noted – consistently with our interviews – that the Cabinet Office “regularly engages with departments who are trying to retrofit decisions to create a new public body

* Cabinet Office guidance provides for the three tests forming a component of the strategic case within a business case prepared according to the five case model: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686716/The_Approvals_Process_for_the_Creation_of_New_Arm_s-Length_Bodies.pdf, p. 15.

into the business case process”, and it has also criticised the quality of business cases for new public bodies, observing that they often fail to adequately consider the risks involved and alternative options.⁶⁰

It is right that civil servants and the NAO should emphasise the importance of business cases and that they should be prepared as soon, and as comprehensively, as possible to be relevant. But it is not always realistic to expect that full business cases can be prepared *before* decisions start to be made. The three tests therefore play an important role in structuring ministers’ decision making at the earliest stage, before a trajectory becomes substantially fixed. Our tests move into the foreground some key elements of a business case to ensure that they are front and centre of ministers’ minds from the outset.

To ensure that business cases do not become an afterthought, however, government should publish (at least) a summary of the business case supporting the creation of any new public body. This would ensure proper scrutiny of business cases and encourage departments to produce them to the highest quality. The government initially promised to publish business cases in 2010 to facilitate more scrutiny of the process for creating public bodies.⁶¹ The argument for fulfilling this commitment still applies.

Our tests can help with classification decisions, but cannot predetermine them

Government needs a simple rubric to inform its decisions at an early stage, but the specifics of where and how a function is delivered will always be case-by-case questions, depending on who the function serves; what type of activity it performs; what role it has in a wider decision-making or scrutiny ecosystem; and what role its sponsoring department is able, or desires, to play.

The Institute for Government showed in 2010 that the distinctions between executive agencies, NDPBs and other types of public bodies are imprecise and applied inconsistently in practice. Without an overhaul of this decades-old taxonomy⁶² it would be difficult to write a set of tests that could pre-judge the necessary decisions as to the classification of particular bodies.* Neither the current three tests, nor ours, offer sufficient granularity to determine which of the different types of public body should be used when new bodies are being created.

The Cabinet Office already has some helpful guidance on how to align public body form and function, suggesting essentially that classification decisions should be based on the extent of independence required. But there are also a range of related factors, such as the way the body is to be funded, staffed, managed or overseen by its board and ministers, which will affect the choice of structure. And even ranking types of body according to their independence is fraught: the guidance describes non-ministerial departments as the most independent option, for example,⁶³ whereas the Institute has found that some of these have been simultaneously classified as executive agencies – the least independent category – and has argued that the ‘non-ministerial department’ is such an anomalous classification that government should avoid creating them at all.⁶⁴

* The Institute intends to revisit this question, but any change in the taxonomy applied to public bodies would be extremely difficult to apply to existing bodies retrospectively, given that many are defined in statute.

The key decision in most cases will be between an executive agency and an NDPB. NDPBs have greater independence, and are not staffed by civil servants. Our tests do not dictate the type of body that should be used, but they do make this decision more straightforward. Bodies set up to achieve greater independence (meeting our second test) will normally need to be NDPBs. Those set up primarily for reasons of effectiveness might be executive agencies or NDPBs, depending on the level of long-term independence they also require and the extent to which they need to operate outside civil service pay scales, for instance. These decisions will need to be made on a case-by-case basis, with a presumption in favour of an executive agency – on cost efficiency grounds – unless an NDPB can be shown to be preferable.

What next?

Government should perform its functions as effectively and efficiently as possible, through whatever structure best achieves that. But current guidance states that public bodies should only be used as a last resort. It tends towards limiting the use of public bodies even when they may be the most appropriate solution to a problem. This is at best distracting to those making decisions about the structure of government, and at worst counterproductive.

Yet there is surprisingly little public debate on the approach, which this paper has shown can damage both accountability and delivery, despite the real-world effects it has on citizens' lives.

A desire to minimise the number of public bodies may have led, for example, to public health bodies being disbanded in the years leading up to the biggest health crisis in a generation – and with 'health improvement' now being subsumed within the health department itself there is a risk of similar mistakes being made again. With hindsight, abolishing the Audit Commission clearly made outcomes worse, and the current temptation to keep the Office of Local Government as a unit under the watchful eye of the local government secretary in DLUHC seems counterintuitive given its stated role in independent oversight and in brokering trust between local and central government.

The current tests for when public bodies should exist are too narrow; ours are broader, but do not imply a lower bar. Instead, they are designed to promote clear reasoning about the pros and cons of public bodies in real life situations and on a case-by-case basis. They could justify the abolition of existing bodies as well as the establishment of new ones. What matters is not the number of public bodies per se, but ensuring that those which exist are there for good reason.⁶⁵ Our tests help to facilitate this in a straightforward way.

As we have argued elsewhere, decisions about individual bodies should be made in the context of a wider public bodies strategy.⁶⁶ That strategy should address issues of public body governance, accountability, sponsorship and responsiveness, which are of concern to ministers, civil servants and the public, with the aim of enabling public bodies to better achieve their potential for government. But a proper strategy can only be developed when the idea that public bodies are a last resort, and the expectation that their numbers should be continually reduced as an end in itself, is replaced with the aim of employing public bodies when – and only when – they are the form best suited to the task.

Revising the three tests as we propose would set a constructive tone for this project, from which a public bodies strategy that really improved how government works could flow.

Annex: Reasons why public bodies might exist

This table sets out some of the range of possible reasons for establishing a public body, illustrating that they extend well beyond those covered by the three tests. Some are more appropriate than others, but our proposed tests would enable decision makers to navigate them more effectively than the current tests do.

Reason		Justification
Government's existing 'three tests' *		
1	Is this a technical function, which needs external expertise to deliver?	Public bodies are better able to develop and retain technical expertise, and can work closely with other organisations and sectors.
2	Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality?	Public bodies can make decisions at a distance from ministers, removing risks that decisions are made on party political grounds.
3	Is this a function that needs to be delivered independently of ministers to establish facts and/or figures with integrity?	Some parts of government need to demonstrate independence from ministers and departments in order to assess the work of government fairly.
Possible additional reasons for public bodies to exist (from more functional to more political)		
4	Would a time-limited, ring-fenced project be better delivered by a dedicated organisation?	A public body might be an appropriate choice for temporary projects, such as major public events.
5	Is the public body an interim step to private sector delivery of a function?	A public body could be created with the intention that it is sold to the private sector once established.
6	Does delivering the function well require working closely with, or even emulating the working practices of, a certain sector or group of customers?	Some functions require replicating the work of outside organisations (for instance in the private sector), or working very closely with customers. This is easier to do in public bodies, which can have their own culture and working practices, than within departments.

* Source: Cabinet Office, *The approvals process for the creation of new arm's-length bodies: guidance for departments*, 15 March 2018, www.gov.uk/government/publications/the-approvals-process-for-the-creation-of-new-arms-length-bodies, p. 6.

	Reason	Justification
7	Does delivering the function well require a single-minded focus on a narrow set of outcomes?	Public bodies can focus their culture and mandate on single issues that otherwise might be neglected or underfunded if undertaken within a government department.
8	Would the ethos and culture of a public body deliver services better than a government department or the private sector?	Public bodies can have a coherent mission underpinned by a commitment to public service. They may also find it easier to maintain a specialist professional identity. This may enable them to deliver a better service than either a more generalist department or a private body doing the same thing.
9	Would performance be enhanced by applying commercial discipline beyond what a government department can achieve?	Public bodies may be better able to integrate private sector management techniques and other commercial disciplines than government departments.
10	Is a function better situated outside of a department due to its cross-cutting nature?	A public body may be better able to satisfy objectives that span multiple departments than a department itself.
11	Does the core work of a ministerial department need to be simplified?	A government department may be too unwieldy to manage if it delivers all services directly.
12	Does the department lack the credibility to perform a function directly?	Stakeholders may not accept a department performing some functions directly, rather than at arm's length.
13	Is this a function that needs to provide more challenge to ministerial decision making than departmental civil servants do?	Some parts of government are structurally required to challenge ministerial decisions to improve decision making. This is distinct from establishing facts and from actually making impartial decisions. It may require some independence from a department.
14	Is this a function that cannot be delivered by civil servants, for instance because of pay constraints?	Civil servants are subject to tight pay constraints, but sometimes government needs to access expertise in better-paid sectors. Some public bodies can offer higher pay than the civil service.
15	Would a public body be better able to maintain good industrial relations?	Government may find it expedient not to directly employ staff in some industries, so as not to be directly involved in industrial disputes.

Reason		Justification
16	Does ongoing poor performance need to be addressed?	Ministers may want to establish a public body when existing structures are delivering poor operational performance.
17	Does poor leadership need to be addressed?	Ministers may find it easier to establish or reform a public body than to tackle poor leadership directly.
18	Is this a function that requires long-term stability away from political cycles?	Some areas need very long-term stability in decision making, for instance to provide certainty to investors. This is easier when decisions are not subject to changes of minister or government.
19	Does managing a function across the four nations require consent from or co-operation with the devolved nations?	Public bodies may be a useful way of arbitrating between the four nations of the UK or drawing in input from multiple administrations.
20	Is this a function that needs to be independent of ministers because there are risks of 'pork barrel' politics or otherwise sub-optimal decision making?	Ministers making individual funding decisions may feel pressure to allocate money in response to political pressures. But they may agree that it would be better if these decisions were taken by a public body that is less subject to such pressures.
21	Does a contentious issue or decision need to be depoliticised?	Public bodies are sometimes set up to depoliticise an issue or avoid a political debate. Motivation may range from protecting specialist judgements to avoiding difficult political decisions.
22	Is there a need to demonstrate that a problem is being addressed?	Ministers may want to establish a public body as a way of showing they are 'doing something', especially in response to negative news stories.
23	Is there a risk of the function being abolished by a future government?	Ministers may use public bodies as a way of tying the hands of their successors, by making a function difficult to abolish.

There are, of course, other possible motivations for establishing bodies such as resolving a personality clash, creating opportunities for political patronage, ensuring a personal legacy, or facilitating a pet project. Such motivations might be alleged in some cases, but it is clear that they should not be included in any appropriate list of reasons for public bodies to exist.

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