

IT TAKES TWO

*How to create effective relationships between
government and arm's-length bodies*

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Foreword

This report continues the Institute for Government's work on the important issue of getting the governance of arm's length bodies (ALBs) right, one of our strategic priorities.

Our previous report identified relations between departments and their ALBs as an area that needed more attention. We have undertaken this project jointly with the Public Chairs' Forum, with whom we are delighted to work closely again. We look at what works and what does not – and look at the building blocks of effective relations. We have produced a framework to help both departments and ALBs put relations on a sound footing and have accompanied it with a diagnostic tool so that both can assess the state of their relationship.

This report provides both the evidence in support of the proposed framework and also begins to explore options for putting relations on a sounder footing in the longer term. In my Open Letter earlier this month to the new Head of the Civil Service and the Cabinet Secretary, we identified unproductive relationships across the public sector, including with ALBs, as something the Civil Service could no longer afford.

We hope this report and accompanying framework will help both central government and ALBs establish more productive relations – for the benefit not only of those who work in them but also much more importantly of everyone who depends on effective public sector institutions.

A handwritten signature in black ink that reads "PJR Riddell" followed by a horizontal line and two dots.

Rt Hon Peter Riddell

Director, Institute for Government

March 2012

About the Authors

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Acknowledgements

This report is one of three outputs from the joint Institute for Government and Public Chairs' Forum¹ project on effective relations between departments and their ALBs. The other two are a practical framework of effective relationships and a diagnostic tool designed to help departments and ALBs focus on opportunities for improvement.

The members of the Public Chairs' Forum, and their Chair, Chris Banks, have given us a lot of time and been extremely generous in sharing their accumulated experience and wisdom. We are grateful too to Stephen Speed and his colleagues in the Association of Chief Executives for their help and support. We have also benefited greatly from the willingness of those working both in sponsor departments and in the Treasury and Cabinet Office to give their time and insights. As well as Chris and Stephen, a number of people served on our advisory group: Debbie Edwards, a Senior Treasury Policy Adviser; Mark Hammond, the CEO of the Equality and Human Rights Commission; Stephen Henwood, the Chair of the Nuclear Decommissioning Authority; Matthew Hilton, the Head of Profession for Sponsorship at the Department of Business, Innovation and Skills; Martin Hurst from the Department of Environment, Food and Rural Affairs; Claudia Kenyatta, the Head of ALB Reform at the Department of Culture Media and Sport; Paula McDonald, Deputy Director of the Cabinet Office; Jane Platt, the CEO of National Savings and Investments; Andrew Summers, the chair of Companies House; and Professor Colin Talbot, Professor of Government and Public Administration at the University of Manchester.

The conclusions we draw are those of the Institute for Government alone, not of the Advisory Group nor of the Public Chairs Forum.

¹ The Public Chairs' Forum is a network of Chairs of Public Bodies working together to improve the efficiency and effectiveness of the delivery of public services. They have identified effective relationships between sponsoring departments and ALBs as being critical to the successful delivery of government priorities and public services.

Executive summary

Arm's-length bodies (ALBs) perform very significant public functions:

- providing public services
- distributing grants in an impartial way
- looking after national assets
- regulating important sectors of the economy
- upholding standards and acting as a guardian of the public interest.

In all cases, they have a relationship with at least one government department. The quality of that relationship influences both the ability of the body to do its job properly and is also important in ensuring value for money and proper accountability.

This report looks at how to create effective relationships between government and arm's-length bodies. It is based on talking to people both in Whitehall and in arm's-length bodies about what works and what does not, and at looking at experience in some other countries.

In our July 2010 report, *Read before burning* we identified a range of problems between government and its arm's-length bodies – a lack of clarity on roles and responsibilities, underinvestment in sponsorship as a function, problems of turnover on both sides of the relationship, lack of induction – as well as more specific areas of tension over the degree of independence of the ALB.

The Coalition came to office with both parties committed to reforming 'quangos', which were seen as both inefficient and unaccountable. New controls were applied to most arm's-length bodies as part of the Government's drive to reduce the deficit, which took away many of the earlier management flexibilities they had enjoyed, and a full-scale review was initiated. The results of that review and associated policy changes mean that over half of public bodies have faced significant change or abolition. At the same time, departmental and ALB budgets are under pressure and numbers of staff are reducing, meaning more 'churn'. This more pressured environment puts a premium on effective and efficiently managed relations to counter the inevitable potential tensions created by putting some functions at arm's length.

A new framework for more effective relations

Our research suggested there were five key areas where good practice between departments and ALBs could contribute immediately to more effective relations:

- accountabilities and clarity on roles and responsibilities
- strategic alignment
- financial and performance management
- communication and engagement
- relationship management.

We have developed a framework of good practice, and we are developing a self-assessment tool for departments and ALBs to use to assess the state of their relationship. The framework is available at www.publicchairsforum.org.uk. The self-assessment tool will be available on the Public Chairs' Forum (PCF) website from early April 2012. These tools need to be applied proportionately and to take account of the status and role of the ALB. The emphasis here is on effective relations – where both sides are able to challenge constructively – not cosy relations or the 'benign neglect' we reported in *Read before burning*.

The building blocks in the framework can be implemented by ALBs and departments now and we recommend that departments and ALBs use the assessment tool to look at the state of the relationship – alongside triennial reviews, but ideally more frequently. Those are our first two recommendations.

Recommendation 1: sponsors and sponsored bodies should both use the framework to make sure the building blocks are present for a good relationship.

Recommendation 2: triennial reviews should cover relations between departments and ALBs. They should use a version of the diagnostic questionnaire² as a temperature check on the relationship and agree joint plans to address any areas of concern. More regular checks (eg annually) could be helpful as well.

We also recommend that departments take a 'portfolio management' approach to relations with ALBs using an assessment of the 'risk' the ALB poses to department/government objectives, as well as a recognition of the degree of independence it requires to perform its function effectively. This is not risk as conventionally understood but covers six headings:

- **Salience** – how important is the ALB to the achievement of departmental/governmental objectives
- **Scale** – how big is the budget (in both absolute and relative terms); how many people does the ALB employ
- **Simplicity** – how complex are the objectives that the ALB is trying to achieve and how easily monitorable are its outputs
- **Track record** – how well has the ALB performed against its key objectives in the recent past and how much trust has the department in the judgement of the ALB board and senior management
- **Stability** – how much change is the body going through in terms of organisation; top team, functions and objectives or external environment
- **Sensitivity** – how politically sensitive is the ALB's business.

Some departments have already developed tools to do this.

² The diagnostic web tool will be available on the Public Chairs' Forum website (www.publicchairsforum.org.uk/research) from early April 2012.

Recommendation 3: departments should adopt a 'dynamic differentiated' approach to managing their portfolio of ALBs, based both on the degree of required independence of the ALB and the 'riskiness' of the ALB to the achievement of departmental and government objectives. The ALB should also be involved in the assessment. This should be reviewed on a regular basis and effort redirected as necessary.

Our remaining recommendations require more collective or cross-government action to be implemented. In *Read before burning* we argued that there was underinvestment in skills for sponsorship in departments and we think this needs to be addressed. There is also a case for some of the big sponsor departments acting as centres for expertise and the recent launch of the cross-departmental peer sponsor network is a welcome development.

Recommendation 4: the Government should recognise that sponsorship requires specific skills and capabilities and make an investment in these. The policy profession should develop a stand on this and look at potential synergies with the development of commissioning skills. The new peer support network should be used to exchange best practice, with some departments becoming centres of expertise on sponsorship.

This report makes clear that in some cases performance management has been too weak and that accountabilities were unclear. We think there is a strong case for increasing the public accountability of bodies which are not under direct ministerial control and think this can be achieved by increasing the status of business plans. We also think that for smaller bodies, government should consider moving to a simpler contractual relationship.

Recommendation 5: Cabinet Office and Treasury should develop plans to:

- enhance the public accountability of big ALBs by upgrading corporate/business plans into public documents, presented to Parliament which will form the basis for holding the ALB to account for performance – departments should refocus their efforts on the development of the plan.
- put smaller bodies onto a more contractual relationship with departments.

Data requests and new controls from the Centre since the advent of the Coalition have become a major source of irritation. Neither is likely to disappear – and it is quite reasonable for the centre to want an overview of the scale of government operations and its performance and to be able to leverage its collective buying power. Both these need to be put on a more sustainable long-term basis, and we recommend that ALBs, as well as finance directors in departments, should be involved in the development of the future regimes to make sure they are proportionate and do not impede effective ALB performance. This is particularly pressing for bodies with significant commercial operations.

Recommendation 6: the Cabinet Office and Treasury should agree a standard and stable data set for ALBs in consultation with sponsor departments and ALBs. ALBs should publish this data in a timely manner in line with the recommendations in the Public Chairs' Forum/Institute for Government Transparency protocol, in addition to the data they have which is aimed at their customers and which they use for their own management purposes.

Recommendation 7: ALBs should be involved in the development of the long-term controls framework.

Our final recommendation relates to the role ministers play. The ministerial role can be very important, but it is also potentially quite complicated to navigate the different relationships. Different departments deal with their ALBs in very different ways, which compounds the problem if and when ministers move jobs. We think there is a case for setting a common expectation for the way in which ministers should deal with ALBs.

Recommendation 8: the Cabinet Office should produce guidance to ministers on the expectations for their role in respect of their departments' ALBs – either in the Ministerial Code, or in the Cabinet Manual.

Conclusion

All the people we spoke to about effective relations between government and ALBs emphasised the importance of trust and mutual respect in underpinning effective relations. No framework or checklist or structural reforms can deliver that – though they can help provide the building blocks. That requires a recognition in departments of the importance of effective sponsorship and a recognition of the important functions performed by ALBs. And ALBs must understand how best to contribute to department objectives in the context of wider government priorities.

It takes two.

1. Introduction

1.1 Aims of this report

Even after the Government's reform programme, arm's-length bodies continue to perform very significant public functions:

- providing public services
- distributing grants in an impartial way
- looking after national assets
- regulating important sectors of the economy
- upholding standards and acting as a guardian of the public interest.

In all cases, they have a relationship with at least one government department. The quality of relations between departments and arm's-length bodies (ALBs) influence both the ability of the body to do its job properly but are also important in ensuring value for money and proper accountability.

This report is an output of a project initiated in summer 2011 by then Cabinet Secretary, Sir Gus (now Lord) O'Donnell in a meeting with the chair of the Public Chairs' Forum, Chris Banks. They agreed that it was a good time to have a look at how to create effective relations between government and its arm's-length bodies.

This work has been a joint project between the Institute for Government and the Public Chairs' Forum. It builds on the Institute's earlier report, *Read before burning* (July 2010).³

The project has produced three outputs. Two are designed to be used as soon as possible. They are a framework for departments and ALBs to use to support effective relationships and a diagnostic self-assessment tool, for both parties to use to test the state of the relationship. The diagnostic tool will be available on the Public Chairs' Forum website from early April 2012. The third is this report, which has two purposes. First it sets out the basis for the recommendations in the framework. Second it makes some recommendations for longer-term changes which could ultimately put relations between government and ALBs on a better basis going forward.

We have included all bodies beyond the 'core' department. The Government does not regard executive agencies which are constitutionally part of departments as operating at arm's-length. But it is clear that they do have a different relationship to the department with their own chief executives and sometimes with a board.⁴ Moreover, there was clear demand from those running executive agencies to be included in the scope of this report. However, some of the recommendations in this report are less applicable to executive agencies than other types of 'more' arm's-length bodies.

³ Gash, T; Magee, I, Rutter, J, and Smith, N *Read before burning*, Institute for Government, July 2010

⁴ See Jenkins, K and Gold, J, *Unfinished business*, Institute for Government, June 2011

1.2 Method

This report is to a large extent based on interviews with current and past chairs and chief executives of ALBs, departmental sponsors and members of the Cabinet Office, supplemented by workshops, including one organised by the Association of Chief Executives (ACE). We have also looked at National Audit Office (NAO) reports on both individual cases and also at more general issues in government-ALB relations. We have drawn on international experience from New Zealand and Canada and, closer to home, Wales. We have benefited from the advice of our advisory group made up of representatives from departments, ALBs, the Cabinet Office, the Treasury and academia (members are listed in the acknowledgements). The views set out in this report are those of the Institute for Government, not of the Public Chairs' Forum which does not have corporate views, nor of the advisory group.

1.3 Context

In our July 2010 report, *Read before burning*, we set out some of the problems that had beset government in managing relations with arm's length bodies. In particular, we noted:

- a lack of clarity on the respective roles and responsibilities of arm's-length bodies and government departments
- underinvestment in 'sponsorship' as a function – this tended to be a relatively low-status activity, delegated down to more junior levels
- too much turnover among both ministers and officials dealing with ALBs
- a confused landscape for ALBs with no consistent approach between departments – a tendency by officials in departments to treat unlike bodies in the same way, not appreciating the differences of status between bodies
- specific areas of tension over 'independence' in areas such as shared services
- a lack of induction of new ALB chairs and boards so that they were not helped to understand the particularities of operating in the public sector.

It was also clear there was an inconsistent approach both between departments but also within departments: we reported a departmental capability review which described management of arm's-length bodies as veering from "*micromanagement to benign neglect*".⁵

1.4 Reforming the landscape

Research for *Read before burning* was completed largely before the 2010 election. The outgoing Labour government produced proposals to reduce the number of ALBs just before the election as

⁵ Gash, T; Magee, I, Rutter, J, and Smith, N *Read before burning*, Institute for Government, July 2010, p.41

part of its 'Smarter Government' initiative.⁶ But the pace and ambition of change moved up a gear after the election.

The Coalition came into government with both parties united on the need to rein in the quango state. The Coalition Programme for Government promised, in its section on 'deficit reduction', to "reduce the number and cost of quangos."⁷ One of the Coalition's first acts was to announce a review of all public bodies – and some departments moved even faster to restructure their bodies. There were two big drivers for change. The deficit reduction imperative was important but, even more so, was a sense that too many functions and decisions had moved too far away from direct ministerial accountability.

In October the Government announced the results of its review of arm's length bodies. The review started with what the Government calls the "existential test" – whether the function still needs to stay in the public sector; after which the government applied the three tests of whether it needs to be done at arm's length from departments and thus ministers. The tests were set out by Cabinet Office Minister Francis Maude in his statement on public bodies' reform.

*If, as in most cases, the body's functions were deemed necessary, we then sought to establish whether those functions should properly be carried out at arm's-length to government. If the body carries out a **highly technical activity, is required to be politically impartial or needs to act independently to establish facts**, then it is right for it to remain outside direct ministerial accountability.⁸*

The result of the review was that a number of functions were transferred back into central government departments or to local government, while a number of bodies have been made into charities or mutualised. In other cases, ministers have preferred executive agency status, which means the function is performed by a dedicated body, but one which is constitutionally part of the department. In other cases bodies remained at arm's length but were merged or substantially reformed.

The scale of change and reform is set out in the diagram below, taken from a January 2012 NAO report.⁹ That shows that over half of public bodies have been through some sort of reform, though the report points out that a large number of the bodies abolished were relatively small advisory bodies, while the abolition of the regional development agencies and Becta accounted for over half the total financial savings.

⁶ For example, in a speech at the Institute for Government in December 2009 Gordon Brown announced that, "[w]e will...merge or abolish 123 government arm's-length bodies with the remainder subjected to greater oversight with a view to save a further £500 million a year."

www.politicshome.com/uk/article/4376/gordon_browns_speech_on_efficiency_savings.html

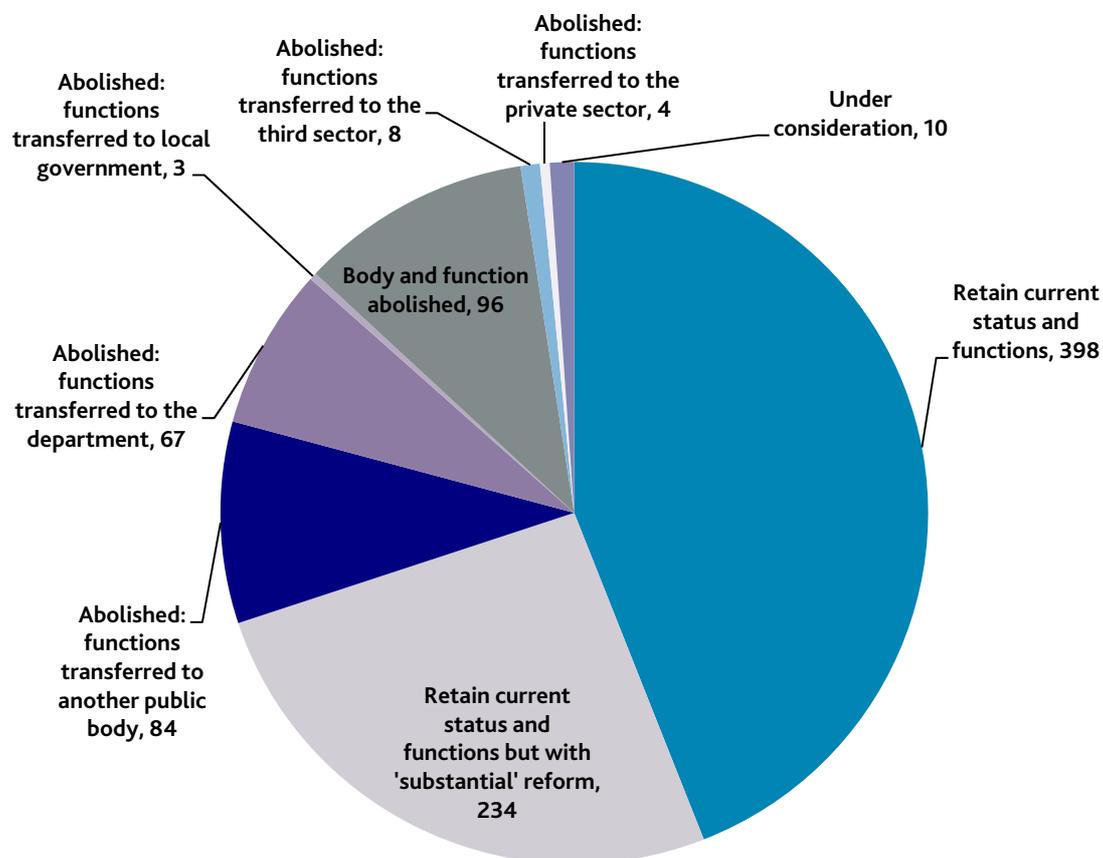
⁷ *The Coalition: our programme for government* p.16. Accessed 14 February 2012 at

www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_187876.pdf

⁸ Rt Hon Francis Maude MP, statement on public bodies reform, Hansard, Col 505 14 October 2010, accessed 14 February 2012 at www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101014/debtext/101014-0001.htm#10101429000005

⁹ NAO Report *Reorganising central government bodies*, 20 January 2012 www.nao.org.uk/publications/1012/reorganising_central_govt.aspx fig.3 p.17

Figure 1: Public bodies affected by the reform programme



Source: NAO report *Reorganising central government bodies*, January 2012

It might be thought that, having completed a comprehensive review, the picture would then be stable – but various factors have militated against that.

- In a number of cases the outcome of the review was substantial reform
- The Government committed itself to reviewing bodies on a three-yearly basis, the so-called 'triennial reviews' which would include looking again at whether the body was needed
- The Government's big policy reform agenda also affects arm's-length bodies – as substantial reforms are made, bodies' roles and statuses changes.

However even after all these reforms, a substantial number of bodies remain, performing important functions – and in addition some new bodies have been created. Some are small, like the new but high profile Office for Budget Responsibility, established in summer 2010 for independent oversight of Government forecasting and fiscal policy. At the other end of the scale, the Government's reforms to the NHS will create an executive non-departmental public

body (NDPB), the NHS Commissioning Board, with an annual budget of some £80 billion passing through it.¹⁰

1.5 Public sector change

Relationships between government and arm's-length bodies need to be seen within the wider context of public sector change. The Government has embarked on a deep, long-running deficit reduction programme, seeking to cut over 20% in programme costs from unprotected departments over the Comprehensive Spending Review (CSR) period and reducing running costs – which include both staff and 'back office functions' across both government departments and their arm's-length bodies by over 30% over the same period.

The impact of those changes has varied between departments,¹¹ but the consequence has been a significant amount of churn at both senior and more junior levels within departments. This will continue. In one department, for instance, with big sponsorship responsibilities, the numbers of staff in the sponsorship team is due to halve over the CSR period.

This churn has implications for relations which depend on mutual trust and understanding. A chair noted at a recent Public Chairs' Forum event that he had had five senior sponsors since the election. In another case a chief executive complained of a complete change in the sponsor team happening with no advance warning or consultation.

1.6 A still complex landscape

Even after all these changes, ALBs still account for a very significant part of public sector activity and perform important functions in the public interest. The Government's review reduced numbers (although 65% of the 262 proposed abolitions were of small advisory bodies which lacked a budget in 2009/10)¹² but did nothing to reform "the incredibly confusing" system of ALBs identified in *Read before burning*. There we identified over ¹¹ types of ALB. More detailed analysis based on information in the National Audit Office's in their 2010-11 Departmental Overviews¹³ shows there are at least 25 different sorts of ALB, and a big category of 'others'. In addition to the categories included in *Read before burning* these include what departments themselves term 'public welfare' ALBs, grant-in-aid bodies, independent inspectorates, levy bodies and sponsored partners.

What also emerges from the data is how important managing ALBs effectively is to the delivery of some departments' business. Figures move around depending on the precise definitions used and the point departments have reached in the reform programme, but it is possible to classify

¹⁰ The NHS Commissioning Board has been established as a Special Health Authority until passage of the Health and Social Care Bill at which point it is reconstituted as an Executive NDPB

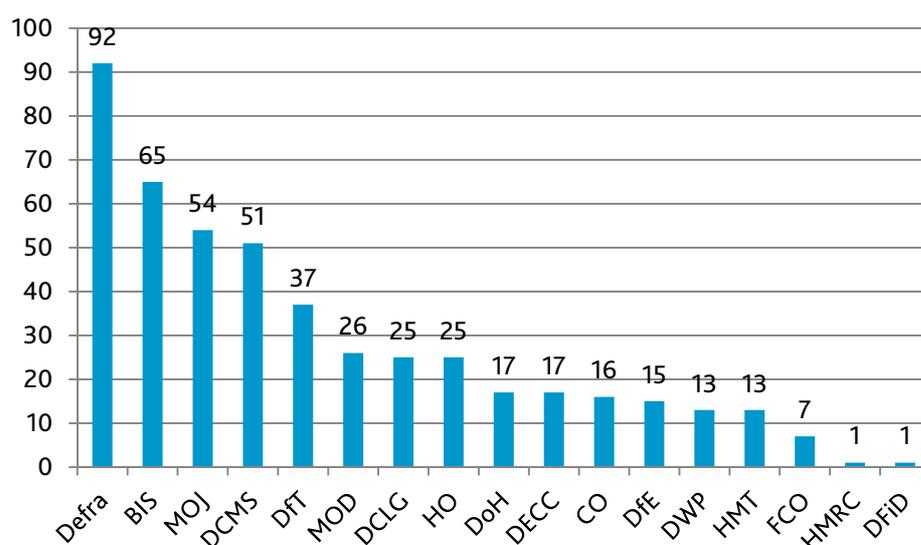
¹¹ The Institute for Government's regular Whitehall Monitor tracks changes in civil service headcount. See www.instituteforgovernment.org.uk/content/whitehall-monitor

¹² NAO Report *Reorganising central government bodies*, 20 January 2012 www.nao.org.uk/publications/1012/reorganising_central_govt.aspx fig 7 p.21 Accessed February 2012

¹³ See http://www.nao.org.uk/publications/departmental_overviews_2011.aspx. Note that the NAO follows departmental definitions and there is variation in how they treat executive agencies

departments into those for whom managing ALBs is critical – departments like the Department for Business, Innovation and Skills (BIS), the Department for the Environment, Food and Rural Affairs (Defra), the Department for Culture, Media and Sport (DCMS), the Department for Transport (DfT) and Ministry of Justice (MOJ) who have more than 30 ALBs each; those who put a considerable amount of business through ALBs – departments like the Ministry of Defence (MoD) and the Home Office (HO); and those for whom sponsorship plays a very minor role – noticeably the Foreign and Commonwealth Office (FCO) and the Department for International Development (DfID).

Graph 1: The number of ALBs sponsored by each government department ¹⁴



Source: NAO departmental summaries September 2011

For the major sponsor departments, the budgets of ALBs bulk large against the departmental budget and are absolutely critical to delivering departmental objectives. Many ALBs also receive income – either from fees or charges or from trading income – which makes it difficult to entangle the net and gross flows. But, for instance, the total spend by the Environment Agency was £1.2 billion in 2010/11 and it employed 11 527 people.¹⁵ Its main sponsor department, Defra, had a 2010/11 budget of £2.1 billion and 2,457 staff.¹⁶

¹⁴ Because departments count their numbers of ALBs differently (e.g. there are variations on definitions, and departments treat their regional ALBs differently), it is very difficult to reach a single, definitive number for all departments. For example, depending on how the number is calculated the MOJ may have 48, 99, or 287 ALBs, or any number in between. The numbers here come from the NAO reports on each department referenced above, and should be treated as illustrative of the relative importance of ALBs to departments.

¹⁵ As of 31 March 2011. *Environmental Agency annual report and accounts 2010/11* www.official-documents.gov.uk/document/hc1012/hc12/1269/1269.pdf p.3

¹⁶ *DEFRA Annual report and accounts 2010/11* www.defra.gov.uk/publications/files/defra-annual-report2011.pdf p.11(Resource budget outturn 2010/11, excluding Consolidated Fund Extra Receipts, Environment Agency closed pension fund, capital grants, net resource consumption of NDPBs and some other expenditure. Total DEFRA expenditure for the period was approx £4.7bn): p.28 (staff-in-post)

Individual departments manage highly complex and changing landscapes. The table below shows the picture for BIS in 2010 and the number of bodies facing outright abolition; others will be being substantially reformed so these numbers understate the real extent of change.

Table 1: ALBs managed by the Department of Business, Innovation and Skills

Types of ALBs	Number April 2010	Number post reforms
Executive NDPBs	16	10
Executive agencies	3	3
Advisory NDPBs	3	3
Non-ministerial departments	3	3
Crown NDPBs	2	2
Public corporations	3	2
Tribunal NDPB	4	2
Regional development agencies	8	0
Research councils	7	7
Local authority	1	1
Trading fund	2	1
Government-owned laboratory	1	1
Other	12	12
Total	65	47

Source: NAO summary of BIS September 2011

A different problem arises where the department manages few ALBs. Then it is likely to have relatively little experience of managing arm's-length relationships either at official or ministerial level. As the chair of an ALB in a department that has very few ALBs told us: *"Relations are good, but structurally the department does not know how to deal with NDPBs."*

1.7 More centralised controls

The new government felt that departments did not have a grip on the scale of public sector operations within their ambit. Before the election, David Cameron said during his 2009 'Bonfire of the Quangos' speech that "*proper public spending control means proper control of quango spending and proper control of quango spending has to start at the top*".¹⁷

The Treasury always set the operating framework for public sector bodies through Managing Public Money, which sets out the duties of Accounting Officers.¹⁸ But after the election, the Efficiency and Reform Group was created in the Cabinet Office to push through the Government's immediate spending reductions, and also to drive public sector efficiency more generally. It introduced a range of spending controls on central government, which includes most ALBs. Initially this was seen as sending a short-term shot across the public sector bow in order to change direction and to signal the Coalition's willingness to get tough on public sector spending, but they have now been put on a permanent basis and cover such issues as spending on marketing, consultancy, IT, procurements as well as a freeze on hiring. The detailed controls are set out in Annex 1. In the Comprehensive Spending Review, the Treasury brought ALB running costs within departmental running cost totals.¹⁹ This has had very significant implications for the way in which departments deal with ALBs, and has catalysed more action on e.g. sharing back-office functions or co-locating to reduce non-staff running costs.

The centre has also asked for more data from departments about their own operations and their ALBs, and applied new transparency requirements to central government – including the requirement to publish all senior salaries above £150,000, all central government spending over £25,000 and all central government contracts over £10,000.²⁰ Among other controls, Cabinet Office approval is required for all leases and lease extensions over £100,000 and all ICT projects with a lifetime value above £5 million. Only non-essential advertising and marketing spending is now permitted, with spending items in this area of over £100,000 subject to Cabinet Office approval.²¹ A significant number of ALBs generate considerable parts of their income from commercial activities, and the controls – both Treasury spending controls with their insistence on annuality and Cabinet office controls – are seen by both their own management and by their sponsors as potentially getting in the way of their ability to do their job effectively.

More generally, both the controls and the data requests are a source of considerable irritation among those who run ALBs. But as we noted in *Read before burning*, there is a dearth of evidence on the efficiency of functions performed by arm's-length bodies.²² There is quite a strong evidential basis for the Government's view that departmental performance management of arm's-length bodies has been weak. Departmental performance management of big executive

¹⁷ David Cameron, 9 July 2009

www.conservatives.com/News/Speeches/2009/07/David_Cameron_People_Power_-_Reforming_Quangos.aspx

¹⁸ (HMT) *Managing public money* 2007 HM Treasury October 2007 www.hm-treasury.gov.uk/d/mpm_whole.pdf chapter 3 and passim

¹⁹ *Spending Review 2010* A.15 p.86. www.cdn.hm-treasury.gov.uk/sr2010_complereport.pdf

²⁰ (CO) *Cabinet Office business plan 2011-15* November 2010 www.number10.gov.uk/wp-content/uploads/Cabinet-Office-Final-Business-Plan.pdf (refreshed annually)

²¹ (CO) *Cabinet Office controls: guidance and actions of processes* December 2011

www.cabinetoffice.gov.uk/resource-library/cabinet-office-controls-guidance-actions-and-processes-document

²² Gash, T; Magee, I, Rutter, J, and Smith, N *Read before burning*, Institute for Government, July 2010, p.32

NDPBs was examined in an NAO report just before the election. This looked at 41 executive NDPBs which spent over £60 million annually in 2009/2010. The report stressed the importance of departments having enough information to enable them to ensure that their bodies were both efficient and cost-effective.

*Both NDPBs and departments need to be able to link cost and performance information in order to prioritise resources and deliver value for money. [Currently], few performance measures explicitly link cost and performance.*²³

The NAO found distinct weaknesses in target setting. There was very considerable churn in performance measures – the percentage of new performance measures in 2008/09 was 40% compared to 2007/08 and 50% compared to 2006/07. And the measures themselves were undemanding: targets in 2008-9 were on average only 87% of previous year's performance – and 44% of NDPBs faced no sanctions relating to their performance. This is not a new issue: a decade earlier weak performance management of executive agencies was identified as an issue in the Alexander Report in 2002²⁴ with only 29% of targets in 1999/2000 higher than the targets set a year earlier, and 51% lower than the executive agency had actually achieved. The persistent generic weakness highlighted in these reports was also reflected in specific cases. In its report in January 2011 of financial management in the Ministry of Justice, a major sponsor department, the Public Accounts Committee drew attention to the lack of grip the department had on its arm's length bodies and executive agencies.

*By its own admission, the Ministry has exercised insufficient control over its arm's-length bodies, including the Legal Services Commission. We do not share the Ministry's view that there is little scope to influence the behaviour of arm's-length bodies. The Ministry needs to be clearer in its funding arrangements with these bodies about what its expectation of them is, setting out, for example, clear rules of engagement and management information requirements. It should also tailor the depth and frequency of its oversight arrangements to reflect the real risks different bodies pose.*²⁵

Weak performance management provides part of the rationale for the new controls regime. The other driver is the desire to leverage the collective spending power of government to drive better value for money for the taxpayer. But concern about efficiency was not the only driver of government action. The government was also concerned that too many ALBs had become too involved in policy. In March 2010, the Labour government moved to ban ALBs from spending money on lobbying activities.²⁶ The new government made it clear that it regarded policy making as the preserve of ministers, and that they would set the policy framework within which

²³ NAO report *NDPB Performance reporting to departments* May 27 2010, 1.13 p.16
www.nao.org.uk/publications/1011/ndpb_performance_reporting.aspx.

²⁴ (HMT) *Better government services: executive agencies in the 21st century*, HM Treasury and Office for Public Service Reform, July 2002

²⁵ PAC report: *Ministry of Justice financial management* 25 January 2011
www.publications.parliament.uk/pa/cm201011/cmselect/cmpubacc/574/574.pdf

²⁶ (HMT) *Reforming arm's-length bodies*, HM Treasury March 2010, "Rule 4: ALBs required to comply or explain with new rules limiting what they can do, with restrictions around marketing and lobbying" and "ALBs must not use public funds to employ external public affairs or other consultants to lobby Parliament or Government with the principal aim of altering government policy or to obtain increased funding." p.15
www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_186443.pdf), accessed March 2012

ALBs operated. Giving evidence to the Public Administration Select Committee, the Minister for the Cabinet Office, Francis Maude, set out the government position: *"The concern we had was that too many bodies were setting policy in some cases, which, it seems to us, should not be done, unless in a way that's directly accountable..... We think policies should be decided by ministers accountable in this place."*²⁷

1.8 Conclusion: a relationship under pressure

The net effect of all these changes is that there is more pressure on the relationships between government and its ALBs than when we wrote *Read before burning*. In short there is or has been:

- extensive and continuing change within ALBs
- significant reductions in budgets facing most ALBs – and more to come
- new controls on their managerial flexibilities
- a new political environment – and even more scope for public scrutiny
- departments also facing big cuts both in programme and administrative budgets, and ALB running costs now treated as part of departmental envelopes
- considerable churn in sponsor teams – both at more junior and senior levels, accompanied by an overall reduction in the numbers of civil servants.

It is clear from our conversations, in particular with permanent secretaries, that these developments are already catalysing a changed approach to ALBs within departments.

That is the backdrop against which we asked all those involved in making arm's-length government work effectively to consider what was needed to create effective relations in current circumstances, and to point us to examples of good practice. The findings from that research are set out in the next section. These findings form the basis for the development of the framework and the self-assessment tool.

In the following sections we take a step back and look at different ways of thinking about government-ALB relations, and at practice elsewhere. That then forms the basis for some proposals for the way in which relations should develop going forward.

²⁷ Rt Hon Francis Maude MP, oral evidence to the Public Administration Select Committee inquiry *Smaller government: shrinking the quango state*, 3rd November 2011, retrieved March 2012
www.publications.parliament.uk/pa/cm201011/cmselect/cmpubadm/537/10110303.htm

2. Making arm's-length relations work

2.1 How relations work in practice

The decision to put a function at arm's-length means weighing the benefits of management focus, expertise and in many cases creating a body whose credibility depends on its distance from government, against the additional complexity that introduces into relationships – a manifestation of what economists call the 'principal-agent problem'. In the past some departments tended to adopt an 'out of sight, out of mind' attitude to their arm's-length bodies (the "*benign neglect*" noted in the capability review). One permanent secretary told us that their department used to treat relations with their arm's-length bodies much as they treated relations with other government departments. In such cases there is a real risk that the body grows away from the department, developing its own agenda and accreting functions. But micro-management is an ineffective approach as well – it negates the point of putting a function at arm's-length.

Our aim in the research was to learn from the key players what worked well and less well and to identify areas of best practice that they thought could usefully be replicated elsewhere through semi-structured interviews and workshops.

Arm's-length bodies have separate governance arrangements from departments. In most cases they have a chair and board, appointed by the department, and their own chief executive who has delegated powers as accounting officer from the permanent secretary. The degree of independence of the chair and the board may be set out in statute. As noted above we have included executive agencies in this study as it became clear that they saw many of the same issues affecting their relationships with departments.

Relations are complex. Chairs and boards have to face two ways. They are accountable to the secretary of state for the performance of the body, including its delivery of government objectives. But at the same time, they may be charged with maintaining the body's ability to act independently of government. This can mean walking a political tightrope.

We also spoke to senior and more junior 'sponsor' officials and to some ministers who had had responsibility for ALBs. The officials potentially also have a dual role – as the departmental overseer to make sure the ALB is delivering agreed objectives and performing effectively but also often they are called on to fight the ALB's corner in the department or with the Treasury or Cabinet Office.

One of the perceived advantages of arm's-length bodies is their ability to attract people into the public sector with more commercial or management experience – and this is often reflected in the backgrounds of the people who are recruited to chair and chief executive positions. We looked at the prior experience of chairs and chief executives of the 41 executive NDPBs studied in the NAO 2010 report. The data is only indicative as we have constructed it from a number of sources and in some cases this data is only partial. What it showed was that chief executives had more private sector experience than their civil service counterparts, accounting for

approximately 11% of their previous careers, compared to 2.5% for permanent secretaries²⁸ However, by and large they had predominantly public sector backgrounds, accounting for about 70% of their careers, often in local government or the NHS. This may partly reflect the dominance of the (now disappearing) regional development agencies and DCMS bodies in the list. The chairs had stronger private sector credentials, looking at their executive roles – they had collectively spent just under 45% of their careers in the private sector and just over 30% in the public sector. In all cases, the people came to ALBs from senior roles – a major potential source of tension when they then faced ‘junior’ sponsors attempting to ‘second guess’ their decisions.

Issues identified in *Read before burning* around the relationships between government departments and the arm’s length bodies they sponsor re-emerged as important areas to get right in this research. In the section below we look at what our interviewees told us about what works and what does not. We also asked interviewees in each area what advice they would give to a new chair or chief executive or a new departmental sponsor on how to make the relationship work effectively and what advice they would give to help sort out a troubled relationship.

Five key areas emerged:

- Clarity of accountabilities, roles and responsibilities
- Strategic alignment
- Financial and performance management
- Communications and engagement
- Relationship management.

The following sections go into these in more depth, along with best practice examples. We then look at what might happen when relations go wrong, report the views of permanent secretaries and ways of organising sponsorship within departments.

1. Clarity of accountability, roles and responsibilities

Clear accountability underpins effective relations between government departments and the bodies they sponsor. At its crux, effective accountability depends upon respective roles and responsibilities being clearly defined and understood on both sides. One chief executive put it quite clearly.

It’s about accountability. This needs to be expressed in a visible and transparent way.

The starting point for clarity of accountabilities is the Memorandum of Understanding (MOU) between the department and its ALB. This needs to recognise the statutory position of any ALB, its duties and the limitations on ministerial and official interference. A chair of a NDPB

²⁸ Jill Rutter, *How permanent secretaries reach the top*, Institute for Government blog, 8 October 2010 www.instituteforgovernment.org.uk/blog/674/how-permanent-secretaries-reach-the-top/

emphasised to us the importance of the Memorandum of Understanding (MOU) for effective accountability. This must be a relevant document that both parties invest in.

Both sides should recognise it's not just a tiresome document. Both sides should get almost their best people onto it... It's the lifeblood of how we operate.

Moreover, it should be a dynamic document insofar as it should be modified in light of changing circumstances. For this chair, the MOU was crucial during a crisis.

This crisis was handled well because there was an MOU that we could go back to and reinvent. That's the point I want to make to you. I think MOUs are important. They need to be living documents. It needs to be a living document for both sides. The ideal is when you say, 'look, the issues that are coming up between us are not reflected in the MOU. Let us sort the MOU out before it's a problem.'

But where the MOU is not clear and agreed it can be a significant source of tension. For instance, in discussing a recently revised Memorandum of Understanding, the chair of an NDPB expressed his concern that it would result in an unwelcome input by the department in the allocation of the organisation's resources.

I think it's fair to say that one interpretation of the new MOU could be that it could lead to civil servants making decisions about allocation of resources and that raises all sorts of questions about the balance between function and the independence of the organisation.

Often, tension over roles and responsibilities is the outcome of these not being clearly defined at the creation of the organisation. For instance, an interviewee seconded from a major public body to its sponsoring department attributed frequent schisms over policy to a fundamental divergence in the functions of the department and body. This interviewee had "no idea" whether the body's mission statement was agreed by the department, "even though every single word is loaded." She argued that disputes were rarely managed in an emotionally intelligent way. Rather, "the conversation about boundaries largely goes unsaid until you have a spark and then there's a big row. Then it's the wrong space – you don't manage the relationship through dealing with a particular conflict, you manage it by investing in the relationship upfront." Ideally, and though difficult, roles should be agreed at the outset:

Both parties need to explicitly say, we will explicitly talk about our respective roles – even though we will accept that our roles are different and there will be tension in delivering those roles – but we appreciate the importance of managing those tensions and not allowing them to become the overall narrative on which the rest of the relationship is based. That's a very different way of managing the relationship from 'you've got your bit of the world, we've got ours, we'll get on with it, if there's a problem we'll sort it out'. There needs to be an explicit effort at senior level.

One issue that has emerged as a source of tension between government and ALBs since the election is the role of ALBs in respect of policy making. As the quotation from Francis Maude showed, ministers felt that ALBs had taken over too much policy from elected politicians.²⁹In

²⁹ See p.15

some cases that message was one which ALBs who had become used to taking a more independent stance found hard to take. One sponsor told us:

It wasn't easy getting across the idea that under the Coalition it's ministers who want to be saying big things – they don't want the chief exec of a big organisation standing up and saying, 'I don't agree with X because it's not good for Y'....So the shift to no policy and no lobbying was really quite difficult.

This exclusion is not universal. One chief executive of an NDPB explained that the secretary of state in their department sought regular advice on policy issues from the chief executives of his major ALBs. However, there is a feeling among other interviewees in departments that the pendulum has swung too far and ALBs were too little involved in internal policy making where they had clear expertise to offer and where they would be responsible for delivery. Given the need for effective implementation, one senior official in a department that handles a lot of ALBs spoke to us about the importance of engagement with the delivery body.

We need to get our directors to think about talking to the delivery partners, not about policy, but [about] 'were this to be the policy, what do you think, as the deliverer, would be the implications for the customer?'

Moreover, for bodies with statutory duties which cover areas that fall under the general rubric of policy, abstaining from policy is not possible. The chair of an independent regulator pointed out that:

Although you have to understand government policy, you have to have sufficient independence to say from time to time, 'sorry department, I've heard you, but our statutory duty says X'. Sometimes we'll have to do this publicly. Now that's not taking their policy-making function away from them, but this is often a complicated issue! The implementation of policy is not always straightforward.

Advice to a chair/CEO	Advice to a departmental sponsor	Advice to both
<p>Ascertain absolute clarity on the relationship, the body's functions, aims and objectives and the expectations of the chair.</p>	<p>Be clear about the body's status, e.g. independence, and respect it.</p> <p>Engage departmental NEDs in sponsorship functions.</p> <p>Ensure important information is being fed up.</p>	<p>Be clear about the governance arrangements.</p> <p>Have a very clear framework/MOU – this should be a dynamic document.</p>

2. Strategic alignment

ALBs are tasked with specific functions and given specific remits, often in statute. The picture for departments is much more fluid with priorities changing as governments, ministers and senior officials change. The junior officials charged with day-to-day sponsorship may also lack the bigger picture.

Not surprisingly, strategic alignment between the department and its ALBs emerged as an important issue. This means ensuring that there is two-way awareness about how the bodies delivering at arm's length fit into the department's overall activities. Interestingly not one of our interviewees mentioned departmental business plans as filling that strategic gap – indeed many on the ALB side found it hard to discern overall strategic direction in departments. Overall clarity within the department is a vital starting point, but not necessarily always present. The chair of a large NDPB reported that in a recent 'stock-take' on a key policy issue, "*it became clear that people in the department were not talking. The DG wasn't talking to the Perm Sec.*"

Good practice

Shared understanding of risk and two-way feedback: Department of Business, Innovation and Skills

In BIS, a departmental non-executive director chairs a panel bringing together the ALB CEO and chair of the Audit Committee together with the sponsor, in order to encourage a shared understanding of risk. The panel considers whether the department and ALB have a similar understanding of key risks and helps to ensure that the line of communications between both sides works well. This is a balanced process. The panel could just as well reach the conclusion that there is an issue in the department as in the ALB.

Last year, BIS asked all of its ALBs to complete an assessment template, part of which related to the department's performance. The assessment asked ALBs to consider key areas such as delivery against objectives, as well as the effectiveness of the relationship between ALB and department. BIS sponsors were presented with a picture of the key issues across all areas. These issues were discussed in a joint working group and BIS established an action plan to address the areas of concern.

The chair of an executive agency made a distinction between operational and strategic alignment.

There's often operational alignment, but not strategic alignment. It means better aligning your organisation with the objectives of the department overall as opposed to just being given a brief and getting on with it. This means having a better understanding of the broader context of the department – its political objectives and what it's trying to achieve operationally.

The importance of creating a sense of how the ALB fits into departmental priorities – and seeing it as a shared project – was emphasised by the chair of a big ALB.

The relationship works best if there is the atmosphere of a shared project. Rather than one saying 'we know what's best.' Neither of those two extremes results in good governance. The ideal is always working together with ministers. You are giving information and advice. The minister is giving a steer.

In this case the strong relationship between the minister and the chair is vital to creating the sense of common direction. However, in other cases that degree of alignment has proved harder

to achieve. The chair of another large NDPB which consumes more than half the department's budget felt that the sponsoring department lacked understanding of the body's core function. *"It does not feel like a mutually supportive relationship. Sometimes I don't think they understand what we do."*

In that case there could and should be better understanding between the department and its ALB. But strategic alignment is not necessarily appropriate in the case of the regulatory bodies which have been explicitly established to oversee the performance of government and where there may be a direct conflict of objectives. One example was the case where the chief executive of a large NDPB pointed out that the core priorities of his current sponsor department and his body are incompatible.

We don't share any strategic aims with the department. Indeed, they're often in direct conflict! So although on a day-to-day level the relationship is fine, there is a fundamental tension at the heart of it.

Good practice

Achieving strategic alignment: Secondment from Defra to Kew

The Royal Botanic Kew Gardens sought help from their sponsor department, Defra in preparation of their five-year strategic plan in a period when they were going through substantial change. Defra seconded a deputy director for four days a week for an initial period of six months, then extended to nine. The deputy director spent the other day in the department's change team. This was in contrast with the normal direction of secondment – from the ALB into the department.

The secondees were able to provide Kew with an external perspective and offer considerable challenge – but also to help them produce something that was acceptable to Defra. The secondees benefitted from being a key member of a leadership team with a delivery/science focus and a very different culture, with clear personal responsibility and deliverables. The gain for Kew was a top class, experienced policy individual who came with no pre-conceived ideas and was able to provide robust challenge and make innovative suggestions in a confidential environment, and who had a good understanding of what was driving the departmental agenda. For Defra it meant greater confidence in the proposition from Kew and a better understanding of the constraints and challenges faced by Kew and the value they provide in helping us deliver Defra outcomes which laid the basis for a closer partnership.

We have seen examples of this working in reverse too, where the ALB has provided short-term resource to the sponsor team on some important work that they have a particular expertise in.

People were clear on what behaviours could promote strategic alignment. A junior official on the sponsor team of a large NDPB attributed this to, *"being honest about our own priorities,*

understanding their priorities and making sure we have a common aims. We're working on planning together with our corporate centre in terms of big deliverables that we've got coming up."

The chief executive of an executive agency explained the effective relationships enjoyed with the sponsoring department by having two key sponsors sitting on the organisation's board. This provided the sponsor team with the opportunity to understand and input to the development of strategy.

It's about engaging them in activity and openness, showing officials that it's in their interest to be engaged. For example, providing them with comprehensive understanding of strategy and the detail can make them look good in front of the minister.

This is not a strategy that can work for all types of ALBs where having departmental officials on the board would risk confusion of accountabilities – but it does underline the importance of openness in creating genuine strategic alignment.

There is clearly an important role for the most senior people in the department – official and ministerial – in achieving strategic alignment as they are best placed to have an overview of the totality of departmental activities and how they fit with wider departmental and government priorities. Initiatives such as visits, meetings with ALB boards, and joint meetings with senior ALB staff, on top of more routine bilateral contacts can all help create a sense of 'common purpose'.

Advice to a chair/CEO	Advice to a departmental sponsor
<p>Aim for strategic alignment – seek understanding on where your body fits into the departmental agenda.</p> <p>Involve the sponsorship team in the development of strategy.</p>	<p>Be really clear about the department's priorities and ensure you have common aims.</p> <p>Be strategic about where they sit in relation to the departmental agenda.</p> <p>Recognise the expertise within the body.</p> <p>Work together and involve body in planning where appropriate.</p>

3. Financial and performance management

Financial and performance management constitute the most formal aspects of most department-ALB relationships. Such processes articulate clear goals for bodies and provide an opportunity for the department to scrutinise a body's performance and ensure good value for public money. This can be achieved by regular and effective performance reviews.

For one large NDPB, this was achieved through twice-yearly ministerial performance reviews chaired by the secretary of state with both the top departmental team and the senior management and chair of the ALB. This provided an opportunity to discuss both performance and future challenges. As well as this the department's board, which met quarterly, monitored overall departmental performance and delivery, including that of sponsored bodies. A 'scorecard'

system ranking the body on five top indicators red/amber/green traffic light system was used for both of these reviews. The high-level ministerial meetings were complemented by a series of quarterly/monthly meetings between the DG/CEO and the sponsorship team. Both the department and the body agreed that this is a healthy and systematic way of monitoring the performance of the body from both sides of the relationship.

However, there is a feeling among some of the people we spoke to that financial and performance management are not as consistent or meaningful as it ought to be. From the department's perspective there are concerns about the quality of information being supplied by its public bodies. For example, as one senior sponsor comments, *"accountability is one thing, but how can the department be assured that the information we're getting is correct?"* From the arm's-length bodies' point of view, information requests are often burdensome and the use of the data is not always made clear. There is a feeling among some chairs/CEOs of public bodies that key data requests should be agreed in advance and should be standardised as far as possible.

It seems to me that one of the issues is that there are shared assumptions about what should be discussed, about information we should provide, and shared assumptions about what the department in turn should provide for us.

There is a particular issue with requests for data from the Centre. The current Government has a much more hands-on approach to managing arm's-length bodies than its predecessor and one manifestation of that is a desire for common data on ALBs which was not previously sought by departments or the Centre. One problem with this is that departments often lack their own information strategy defining the data they require, and cannot explain either the rationale for central data requests nor give the body feedback on how the information has been used – which is a source of irritation.³⁰

Officials are not oblivious to this problem but are clear that the desire to have a better handle on the scale of the public sector will not disappear. An interviewee from the Centre acknowledged that *"ALBs don't want more regulating and monitoring. For this reason it would be good to bring together existing monitoring. To ask the questions once and use the answers many times."* Similarly, when asked what advice they would give to fellow sponsors, several recommend keeping information requests to a minimum: *"Being very clear for instance, when you're asking for performance management information, why you want it and what it's being used for"* and *"free them up to deliver and take as much of the uncertainty and data burden off them as possible."*

Advice to a chair/ CEO	Advice to a departmental sponsor
Present data in a clear and accessible way. Stick to deadlines for data requests.	Do not ask for information unnecessarily. Make it clear what the data is being use for.

³⁰ NAO report *DCMS financial management* 10 March 2011 p.6 paragraph 14

4. Communication and engagement

Effective relations require good internal communication within departments, with the ALBs and proper engagement on issues of common concern.

Within a department, it is crucial that internal communication processes are sufficiently joined-up in relation to its arm's-length bodies. Although the 'complexity' of relations means that 'a single point of contact is not always appropriate', it is crucial that these are effectively dealt with. *"If managed well, there is a richer tapestry of relationships. If mismanaged, you can get jealousies, power struggles – into Whitehall power politics."*

Effective communications need to be two-way and offer opportunity to give genuine feedback. BIS's ALBs created a 'partner engagement group' which meets regularly with departmental sponsors and allows issues to be addressed. In addition BIS have regular meetings of the key players in the 'partnership' between them and the department to ensure genuine two-way communication.

External communications are a potential source of conflict. Both sides need to take care to manage any announcements which have potential implications for the other. ALBs appreciate being given advance warning in the event of the most sensitive of announcements. The chair of a small NDPB appreciated that the minister was *"extremely courteous"* in phoning him on the morning the department released a white paper suggesting the organisation's abolition. Equally chairs/CEOs of ALBs should abide by a 'no surprises' policy, should respect confidences when fed information, and should be aware of the political saliency of policies and of developments. For instance, a sponsor remarked how much it helps that the chair of the body he sponsors has good political instinct and that they can have difficult conversations in private.

In an interesting example of crisis management, the chair of an NDPB recalled an incident that occurred within the body's policy area that was likely to erupt into a media scandal. She immediately contacted the department and was asked to wait for three to four days before publicising the incident because of the impending general election. Accepting the need for political caution, she agreed to wait. However, at the same time she advised the minister it would be better to take control of the issue. In the event, the minister took her advice and managed to quell the scandal. In this situation, the chair's sensitivity to and intuition of the political saliency of the issue helped to maintain excellent relations.

Advice to a chair/CEO	Advice to a departmental sponsor
<p>Have a good understanding of the context.</p> <p>Be sensitive to the political saliency of policies/developments.</p> <p>Speak to key stakeholders.</p> <p>Early meeting with the secretary of state/minister/permanent secretary.</p> <p>Work together with the civil servants to prepare for the meeting.</p> <p>Be clear about what you want to convey at high level meetings.</p>	<p>Establish trusting and open working relations with key people.</p> <p>Demonstrate knowledge of the policy area/key people.</p> <p>Do not have arguments in public.</p> <p>Work with ALB when preparing briefing for meeting with Minister.</p> <p>Be aware of ALB's other dealings with the department.</p>

5. Relationship management

However good the formal structures are, much of the quality of the relationship will come down to the individuals involved and their willingness to put time and effort into creating effective relationships. There is widespread agreement that good relationships are characterised by 'trust' and 'mutual respect', by 'communication' and by *"being clear about what we expect from them and what they can expect from us"*.

This depends upon early investment in the relationship. Several of the chairs we spoke to emphasised the importance of an early meeting with the minister and the permanent secretary. Another recommended working with the official who is doing the briefing for the meeting. *"It is in everyone's interest that all are comfortable, clear and relaxed."*

Good practice

Peer-to-peer mentoring: Ofqual and Ofsted

At the moment there is relatively little guidance to new chairs. The new chair of Ofqual reported benefitting from advice and support from the longer-standing chair of another similar Department for Education (DfE) ALB, Ofsted. This relationship provided the new chair with a sounding board and a place to 'check in' when dealing with new or unfamiliar issues. The chair also found the advice of a more experienced regulator on her board very helpful.

This matters on the other side of the relationship too – with the sponsor willing to pay an early visit to the organisation to learn the culture.

Get in there. Discover the good bits and bad. Don't assume you know everything. Ask good questions and praise and spread the story they're good at this.

But the ALB can help too – by offering their new sponsor (at whatever level) a comprehensive induction as National Savings and Investment does (see box below). Cross-postings between the department and the ALB can help as well. One permanent secretary told us that they see this as a way both of deepening understanding in the department of delivery issues, while also helping the ALBs understand government and departmental issues.

The importance of the dynamic between the department and the ALB was frequently cited, with many interviewees emphasising that the department needed to assume a role of 'critical friend' in offering a healthy balance of challenge and support. For instance, one sponsor remarked, "You need a focused team who puts pressure on the delivery partner, but also, to say 'enough's enough' when the delivery partner is under stress."

One saw himself as an 'advocate' for the body he sponsors, 'particularly at spending reviews', while another describes his role as "constructively challenging".

Yet another sponsor acknowledged the balance to be achieved in sponsorship in advising, "One always has to be a critical friend – you can never go native. On a given day there might be grumbling, but this is fine if it happens in a fundamentally happy relationship." He argued this can be achieved through 'active listening' in order to empathise and establish authenticity. Indeed, several people we spoke to emphasise the need to learn the other perspective or to "consider the issue from their end of the telescope".

Practical methods for ensuring a good quality relationship include frequent catch-up meetings, or more formally, a collaborative review of the framework documents or a one/two-way secondment.

Second, relations between the department and the body should be conducted at an appropriate level. Frequently, chairs were critical that relationships are played out at too junior a level. One talked about a 'tick box' culture. Another was less concerned about the level, but thought that sponsors should be better trained on what the job involves.

The low level civil servant was excellent – he wasn't very high level but he understood what sponsorship really meant. That was partly supporting the organisation, advising me what to do, but also championing the organisation within the department.

Another complained: "It ought to be a high level, regular relationship. That's now happening but only because I'm pushing."

An interviewee from the Centre expressed surprise at the relatively small resources dedicated to sponsorship within some departments:

The sponsor team is critical – in some instances, it's a one man and a dog outfit. I'm often surprised by a quite complex NDPB being looked after by one person, who is quite a junior grade, as part of their job.

The majority of Chairs/CEOs we spoke to did not complain about access to senior levels within the sponsoring department. Indeed, several chairs remarked that they had regular access to the secretary of state or felt they could seek it if there was reason. This was the case even among chairs from relatively small ALBs.

However, there is a feeling from within some departments that some bodies expect too much in terms of the seniority of contact. As one ex-minister commented about a body who were 'grumbling' that they had not yet appeared at one of their events: *"Generally every organisation thinks they're the most important organisation, when actually, they're on a long, long list of concerns."*

An official commented that although bodies want more "senior face-time", this is impossible in the context of the substantial cuts being made to internal departmental resources.

Good practice

Investing in relations with the sponsor: National Savings and Investments

National Savings and Investments (an executive agency) enjoys extremely effective relations with their sponsor department, HM Treasury which they attribute to two things. First, two officials from the sponsor team sit on their board and second, they are involved in one another's 360 reviews.

Having sponsors sit on the NS&I's board allows them to be involved in the development of strategy and be aware of any issues or problems. This ensures there are 'no surprises' for the departmental sponsors. It also provides the sponsors with a sophisticated understanding of the context and a sense of ownership of the strategy. This in turn helps them in their dealings with the Minister.

NS&I and the Treasury also have a 360 degree process which provides a two-way opportunity for feedback and creates an additional incentive for establishing effective working relationships on both sides.

NS&I has also taken the initiative in sponsor induction. This involves taking sponsors around sites, meeting people, listening in on customer phone-calls and giving them 'a crash course in strategy'. This helps to provide sponsors with a comprehensive understanding of the organisation.

Third, the importance of an effective and trusted board for strategy and direction is, from the point of view of many chairs and chief executives interviewed, thought to be crucial. This should contain a *"good mix of skills, personalities and backgrounds"*. Several recommend conducting a review of the board when newly appointed and bringing in people with the right expertise. One review resulted in the recruitment of *"for example, a lawyer, a techie and a private sector body"*, which changed the attitude of the department to the board: *"now that it is used as a strategic and challenging board, the department have started to take an interest in it."* In other bodies this would fall to the chair. Two newly appointed chairs credited their immediate reviews of the board with *"revitalising and ensuring the body's survival"* in the one instance and *"increasing credibility in the eyes of the department"* in the other.

Good practice

Getting the right board: Student Loans Company (SLC)

The Student Loans Company was in a troubled state when Ed Smith was appointed as its chair. The summer of the previous year had seen the student loans fiasco which had seen thousands of students not receiving their student loans. An enquiry into the delays was critical of the SLC, blaming errors and equipment failure. Two directors stepped down following this and the senior management team was restructured. Ed Smith was appointed in November 2010.

One of his first steps as chair was to conduct a review of the board and the SLC Committee structures. This was intended to ensure there was a mix of skills, personalities and backgrounds. It also provided an opportunity to ascertain board members' views of the organisation's strategy, management, direction and risk. He considers his review of the board as crucial for having revitalised the Student Loans Company. It not only made the board more focused, but also strengthened their "credibility in the eyes of the department". It also resulted in a refreshed and strongly motivated executive team.

Getting the board right is, therefore, very important. This alone is not enough, however; departments must actually utilise the expertise of the members of the boards of their departmental bodies. In some cases, boards looked more like stakeholder fora rather than bodies able to give effective strategic leadership to important organisations with big budgets.

Once the right people have been appointed, they need feedback on how they are performing. Chairs undertake appraisals of their boards – but departments appear to treat appraisals of board members largely as a formality and failed to give useful feedback. As our report, *The challenge of being a minister* showed, ministers themselves are rarely skilled managers and their performance is never subject to routine appraisal. Senior officials can find it difficult to give feedback to a senior chair. Feedback should work in the other direction too – with the ALB asked to give feedback on the performance of the people with whom they have relationships.

Advice to a chair/CEO	Advice to a departmental sponsor
Be attuned to the relationships at all levels.	Assume a dual role of challenging and supportive.
Consider a review of the board.	Be open, transparent and manage expectations.
Be open and honest – immediately inform the department of any problems.	Understand the body's culture and concerns.
Recognise importance of relationship with the department – 'they hold all the cards'.	Act as an advocate for the body – 'sing their praises'.
	Have an analytical approach to what the body does over time.

2.2 When things go wrong

In the preceding paragraphs we looked at how to manage relations in a relatively steady state and what each side needed to do to ensure that business between a department and its ALBs was conducted relatively smoothly. But things can and do go wrong. In many cases, a poorly functioning relationship can cause or compound problems. For example, in a report about the problems over exam testing in 2008, the Children Schools and Families Select Committee found that there were a range of problems in the relationship between the then Department of Children, Schools and Families (DCSF) and the Qualifications and Curriculum Authority (QCA). The key finding was a confusion of responsibilities with the department attempting to micro-manage delivery, despite the QCA being set up as an arm's-length body. The particular criticisms focused on:

- the lack of detail in the annual remit letter leading to blurred accountabilities
- poor communications – the chief executive failed to communicate his apprehension about the QCA's ability to discharge its duties and was unprepared to challenge government on this
- confusion over the role of departmental 'observers' on the ALB board.

In consequence the NAO concluded that:

*The Government should revisit the conduct of its relationships with its delivery agencies. Whilst acknowledging the difficulty of establishing the appropriate dividing line between policy and delivery, we believe that DCSF had involved itself too much in the detail of delivery, placing undue constraints on the executive decision-making abilities of its agency, QCA. We recommend that the leadership of government agencies should be more prepared to stand up to the Government when it considers that directions from the Government to the agency are unreasonable or incapable of performance.*³¹

It also made it clear that it was inappropriate for the department to sit on the board of an independent regulator.

More recently, the NAO and the PAC examined the problems in the health and social quality regulator, the Care Quality Commission. Although the report, and then a separate capability review by Department of Health, looked at shortcomings within the CQC itself, there were also indications of problems in the relationship with the department, which have some echoes of the QCA problems. These are:

- an underestimation of the capacity of the CQC to cope with the scale of additional demands on it, especially given a reduction in grant-in-aid of 49% between 2009/10 and 2010/11 which more than offset the CQC's increase in revenue from fees³²

³¹ Children, Schools and Families Committee Report *Policy and delivery: the National Curriculum Tests Delivery Failure in 2008* July 2009 Summary paragraph 4

³² NAO report *The Care and Quality Commission, Regulating the quality and safety of health and adult social care* 2 December 2011 2.2 p.17 Accessed February 2012

- an initial failure to support bids from CQC for additional manpower in discussion with the Treasury and Cabinet Office which had longer-term implications for the adequacy of manpower available even when inspection staff were deemed business critical and therefore exempted from the freeze³³
- unclear performance metrics and a failure to clearly articulate a set of strategic priorities inclusive of quality indicators, which contributed to ineffective performance monitoring and confused lines of accountability.

These illustrate what can go wrong when the fundamentals of effective relations are not in place. Fortunately, most relationship failures are not quite at this scale – but both sides recognise that relationships can become problematic. We asked our interviewees, some of whom had inherited poorly functioning relationships, to share their advice on how to recover a position. The advice to departments and to the ALBs is remarkably similar.

Advice to both	Advice to a chair/CEO	Advice to a departmental sponsor
<p>Analyse what the problems are and their cause.</p> <p>Seek an informal meeting in the first instance.</p> <p>Both parties should keep written records of discussions.</p>	<p>Engage in a constructive, but candid, dialogue with the department.</p> <p>Examine the MOU with the sponsor team – go through it line-by-line and determine what is working and what is not.</p> <p>Consider talking to the permanent secretary if someone is not up to the role.</p> <p>Don't be too defensive.</p> <p>Do not have arguments in public and respect confidentiality.</p> <p>Consider the issue from their perspective.</p>	<p>Engage in a constructive, but relatively candid, dialogue with the chair/CEO.</p> <p>Examine the MOU with the chair/CEO – go through it line-by-line and determine what is working and what is not.</p> <p>If the people are not right they may have to be replaced.</p>

The starting point has to be an analytic approach to what is going wrong. One chair recommended that all internal solutions be explored before going to the department, and an emphasis on seeking an informal exploration in the first instance before elevating to a more formal approach. Honest conversations are needed, but there is also recognition that escalation may be unavoidable – particularly if either side thinks that the current incumbents stand in the

³³ NAO report The Care and Quality Commission, *Regulating the quality and safety of health and adult social care* 2 December 2011 2.13 and 2.14 p.21 at: www.nao.org.uk/publications/1012/care_quality_commission.aspx Accessed February 2012

way of a solution. Also important is the advice (which could easily apply to both sides) to look at the issue from the other's perspective.

2.3 The view from the top

In addition to the views of people involved with ALBs on a day-to-day basis, we also spoke to some permanent secretaries in departments with significant ALB responsibilities. They have a perspective across the departmental portfolio as a whole, as well as having a formal relationship to the accounting officers in ALBs to whom they delegate responsibilities. One told us he discovered that his only lever over an ALB which was not performing was the potential to revoke accounting officer authorities.

Most of them saw a significant change in the approach compared to that that departments had taken three to four years ago. In particular, they identified a new recognition of the key role ALBs played in delivering departmental objectives and also demonstrated an appreciation of the significant risks ALBs could pose to those objectives. That meant previous hands-off 'random' approaches could not be sustained.

One described the changes in their department's attitude as moving from a "*hub and spoke*" model of the department and its arm's length bodies to seeing the role of the department as part of a wider "*ecology*". Another spoke of the need to assess the system through which the department aimed to achieve its objectives and the need to understand the role ALBs played in it. The department needed to be assured both of the performance of the ALB and of their capacity.

Reductions in staff numbers meant that relationships had to be managed in a more strategic way. There was a feeling that in the past departments had managed relations with ALBs at too low a level, with senior people only called in when things went wrong, which could result in not knowing things they needed to know about the performance of their ALBs. More formal risk assessment of ALBs allowed permanent secretaries to have a clear view of which ALBs they needed to take most interest in – one focused on six to seven key ALBs. One department encouraged links between internal audit in the department and in ALBs. In another a network of audit and risk committee chairs was created.

Approaches to engagement varied. One had quarterly meetings with the accounting officers of all ALBs. The recognition of the importance of ALBs to the department had also resulted in more exposure by, for example, including ALBs in visit programmes which had previously just focused on executive agencies.

In another case there were regular dinners of the leaders of the department and the key ALBs to ensure that there was 'common purpose'. Another department had just had its first ever meeting of all their ALBs and the department to allow the ALB senior leadership to understand the high-level challenges facing the department.

There was no permanent secretary induction on how to handle ALBs – and permanent secretaries moving department could face a very different set of relationships from the departments they had worked in before. That had meant too little focus early on and a belated discovery of the limited powers and levers departments had, particularly where ALBs were

established in a very prescriptive way. It was very important to get framework documents right and take opportunities to amend them when there were changes of chair and chief executive.

The inclusion of ALB running costs within the departmental envelope had also meant departments had had to be much more engaged with ALBs than before to manage the reductions effectively. That had also opened up more possibilities for ALBs to work together. But the squeeze on spending had another implication as well: departments needed to draw on the expertise in their ALBs. In one department the secretary of state regarded the ALB executives as important policy advisers. But there was also a huge amount of non-executive talent available to the department in ALBs – in one case ALB non-executive directors (NEDs) outnumbered the number of permanent staff. Part of managing relations in the future was to emphasise the clear responsibility on boards for living with lower budgets.

One of the roles of the permanent secretary was to act as *“a marriage guidance counsellor”* when relations became strained between chairs and chief executives. Secretaries of state tended to focus predominantly on the business and performance of the ALB – not governance issues. Junior ministers needed to be more involved.

More generally there appeared to be a clear move toward a more active and strategic approach to sponsorship by departments, with greater permanent secretary involvement – what one described as *“a switch from being reactive to proactive”*. The department had to have the skills and capabilities to fulfil that role. Better understanding allowed more effective challenge. One told us, *“The relationship should neither be cuddly nor dysfunctional, but collaborative”*.

2.4 Organising sponsorship

There is no right way of organising sponsorship and departments change the way they do this on a frequent basis. There are two basic models:

- placing sponsorship in the policy team, which means that sponsorship functions are distributed across the department
- concentrating sponsorship in a core team at the centre of a department.

There are advantages and drawbacks to both approaches. In the first case, there is clearer alignment with policy – but there are likely to be limited sponsorship skills in the teams, and sponsorship is likely to be regarded as an unexciting addendum to policy work. There is also a risk of very inconsistent approaches across the department as well as duplication of effort.

In the second case, there is a risk that the sponsor team does not connect well to the priorities of the policy team. In both cases there will need to be a set of further interactions with corporate services such as finance and HR – the more so if they operate a number of the controls at departmental level. The right solution will also depend on how important bodies are to the department's business.

The Ministry of Justice – one of the departments for whom sponsorship matters enormously – has developed what appears to be a very good hybrid approach. It generally lets policy teams lead on the sponsor relationship, but a central 'ALB Governance Division' provides support on cross-cutting sponsorship issues, developing materials for teams to use, including induction packs for new sponsors and newly appointed ALB board members, leading on public

appointments and acting as the connection into finance and HR. This is bringing benefits, for example a more active management of appointments and greater harmonising of terms and conditions.

3. Doing things differently: experience from other countries and other fields

Most other countries have equivalents of the UK Government's arm's-length bodies – and have also found governance problematic. Contexts always differ which makes it difficult to assert that what works in one jurisdiction can be successfully exported to another. Nonetheless, there were some aspects of the way in which arm's-length relations work elsewhere which looked potentially applicable to the UK.

In some countries the arrangements are too different. In Sweden, for example, the equivalents of our arm's-length bodies have a constitutional status that puts them on a par with departments as a unit of government.³⁴ The decisions of agencies – which employ almost 50 times more people than their 'parents' – have a similar status as those made by a court of law, and the constitution protects their independence from government interference over any decision regarding the rights and responsibilities of particular citizens or organisations.³⁵

For this report we looked at three potential learnings from countries who have bodies with a similar relationship to their government as the UK government has with its ALBs:

- enhanced accountability in New Zealand
- ministerial guidance in Canada
- new relationship principles in Wales

Finally, we also looked at whether any lessons could be drawn from the 'commissioning' model which the Government is keen to adopt for the provision of many public services.

1. Enhanced accountability in New Zealand

New Zealand has probably taken the new public management model further than any other country, with formal contracting processes between departments and their ministers. At the heart of New Zealand's accountability arrangements is the system of 'statements of intent' (SOI).

These are statements of planned outputs by both departments and ALBs which are produced annually and presented to Parliament alongside the budget. They also look forward and identify potential strategic risks to the achievement of the organisation's objectives. The headline statement of intent is underpinned by a more detailed output plan. The body is then held to account by the minister, the department, and Parliament for the achievement of the outputs to

³⁴ Nikalsson in *Government agencies: practices and lessons from 30 countries*, Verhoest, Van Thiel, Bouckaert and Laegrid eds. p.245 (2012)

³⁵ Pollit, Talbot, Caulfield and Smullen, *Agencies: how governments do things through semi-autonomous organisations*, p.81-82 (2004)

which it has committed itself. This provides much sharper accountability than anything in the UK system and removes the risk of out-of-date memoranda of understanding, unplanned ALB evolution away from original intent and unchecked mission creep, as well as minimising perfunctory scrutiny and sign-off of business plans.

There is significant scope for ministerial input. The starting point for the statement of intent is a 'letter of expectation' sent by the minister to the ALB. There then follows a period of negotiation, although the minister is limited on where he is able to give direction to the ALB by its statutory status. The New Zealand Treasury produces guidance on statements of intent – the key elements of that guidance are set out in Annex 2.

There are some drawbacks. One is fragmentation, with bodies focusing on delivering their own objectives rather than contributing more collaboratively to cross-government goals. A second is the lengthy ideal timetable set out by the Treasury, which runs to some seven months on an annual cycle. Third, we have been unable to find any systematic evaluation of the impact of the statement of intent process on the performance of New Zealand's ALBs (crown entities).

New Zealand is also not the UK, and so there may be dangers in over-extrapolating from a system which appears to work there. First, there is a much more contractual relationship between departments and ministers, which sets the context for departments having more formal contractual relationships with their crown entities. Second, New Zealand has a rigid taxonomy for crown entities which informs the nature of the relationship. Third, both the Treasury and the State Services Commission have much more powerful central roles in relation to both departmental and ALB performance than do our Treasury and Cabinet Office, and so they are able to set and enforce the operating framework.

2. Ministerial guidance in Canada

One of the things that is very notable in the UK is the lack of any formal guidance to ministers on their role vis-a-vis arm's length bodies. The Ministerial Code and the Cabinet Manual are silent on ministers' role and duties in respect of ALBs and simply refer them to individual framework documents. Ministers are given no training or induction and practice varies between departments, which matters since ministerial turnover between departments in the UK is so high.

In the early part of this century, Canada suffered a corruption scandal with its arm's-length bodies, exposed by the Auditor General, which led to the establishment of an independent judge-led commission to look at ministerial relations with ALBs.³⁶ The Gomery report recommended that CEOs should be appointed by their boards and the boards themselves should appoint directors when new directors are required. Ministers, in short, should be removed from the appointments process.³⁷ Alongside these developments which tried to prise ministers out of

³⁶ This was the Gomery Commission, established February 2004. The first report was released 1 November 2005, with the second being published 1 February 2006, shortly after the Liberals suffered defeat in the federal election in part due to their alleged involvement in the Sponsorship scandal.

³⁷ The new Conservative government passed the Federal Accountability Act in 2006, which incorporated some – but not all – of Gomery's recommendations. However, the government shelved the Act following Parliament's rejection of their first choice of appointee to head the independent appointments commission.

public appointments, the Privy Council Office (equivalent to the Cabinet Office here) produces explicit guidance to ministers on their role with what they call 'portfolio' bodies. This is reproduced at Annex 3. This seems to be useful in giving ministers a more consistent starting point (although how many of them actually make it to Annex H of the document might be questionable).

3. Principles for relations with public bodies in Wales

One of the early acts of the new Welsh Assembly Government (WAG) after devolution was to bring a lot of functions which had been at arm's length in-house (its own version of the public bodies bill). In 2010 it set up a review, led by officials in the Welsh Government, but working alongside ALB colleagues to draw up new operating principles for how the Welsh government would interact with its ALBs. The terms of reference spelt out the twin purpose of the review:

1. *To develop appropriate governance structures and processes. These structures and processes should strike the right balance between control and allowing AGSBs (Assembly Government Sponsored Bodies) to operate independently on a day-to-day basis – as was the intention in setting up the bodies as arms length organisations.*
2. *To establish governing principles that engenders good working relationships between WAG and the AGSBs, with each partner enabling and supporting the other in the achievement of ministerial objectives. These relationships should be based on trust and open and honest communication to enable effective utilisation of the expertise of each organisation.*

The result of the review was a set of 10 governing principles to underpin relations with ALBs. These are reproduced in Annex 4.

The emphasis is very much on outcome management, board responsibility and strategic sponsorship, but with a right to intervene if there is poor performance. One particular point of emphasis is the status it gives to WGSB board members as "*important figures in Welsh public life*". There is also a big emphasis in this document on the establishment of relationships based on trust – an issue that emerged very strongly in our interviews with chairs and chief executives.

Commissioning

The Government is already exploring the potential for delivering more public sector services on a commissioning basis, with the aim of promoting more choice and competition between providers and opening up the way for more 'payment by results'. In some cases ALBs are or will become commissioners or regulators of such markets³⁸. Formal commissioning is one approach

The Federal Accountability Act therefore slipped into limbo, and the appointment process remains largely unchanged. Aucoin, *Public governance and accountability of Canadian crown corporations: reformation or transformation?* p.10-11 (2007)

³⁸ *Open Public Services* White Paper Chapter Five July 2011 at:

<http://files.openpublicservices.cabinetoffice.gov.uk/OpenPublicServices-WhitePaper.pdf> Retrieved February 2012

to dealing with the principal/agent problem, assuming it is possible to design and monitor contracts.³⁹

Table 2: Comparing commissioning and sponsorship

Issue	Sponsorship	Commissioning
Provider	Single functional body established by government	Multiple potential providers
Landscape	Government decision	Market entry and exit and government procurement rules and regulation
Governance	Government appointment of board and MOU/ framework document	Independent governance but with government market regulation
Outputs/outcomes	Statutory duties plus performance framework	Contract
Funding	Grant-in-aid/user charging	Payment for activity/by results
Performance agreement	Negotiated between ALB and department: non-contractual	Response to government tender: contractual
Performance management	Information feeds from ALB; regular internal review meetings	Contract performance (measured by department/regulator or user)
Sanctions	Non-reappointment of board/chair Abolition or reform	Non-payment Loss of contract
Review points	Triennial reviews	Contract renewal
Ending function	Abolition through legislation if necessary	"Decommissioning"

It is interesting to look at the Government's relations with ALBs through the commissioning lens. In this case the Government is 'commissioner' and the ALB is the 'provider', but potentially also the sole supplier which means the Government cannot chose an alternative, but has to reform the body or change the contract if it is not performing the functions as it wishes.

³⁹ The Institute for Government is looking at commissioning in the public sector as part of its theme on "new models of governance and public services"

The big difference between the two models is the more interconnected relationship with government over appointments and governance, and the fact that the relationship cannot be reduced to a simple contract. On the other hand, sponsors face nothing like the complexity of dealing with a market with multiple providers, nor issues of pricing or the need to deal with potential exit and how to ensure service continuity. Good commissioning puts a huge amount of weight on getting the contract design right and links payment directly to performance. However there is a grey area where the provider is delivering complex outcomes which are less easy to measure. In this case the recommended approach is 'relational contract management' which requires a much more active dialogue between commissioner and provider.

The Government has recognised that commissioning requires new combinations of skills and is exploring ways of developing them. Sponsorship sits somewhere on a continuum between direct provision and commissioning and raises distinct challenges if it is to be done effectively

4. A framework for effective relations

Many of the chairs and chief executives we spoke to expressed real dislike for what they characterised as a 'parent-child' view of the relationship between department and ALB. Similarly they reject the HQ-subsidiary analogue. Their preference is to be regarded as 'partners' by their departments, and the Department of Business, Innovation and Skills has explicitly adopted partnership language. Other departments have, at times, preferred terms such as 'family' or 'network.'

Partnership implies what Canadian academic Peter Aucoin has termed a 'horizontal' (equal-to-equal) as opposed to 'vertical' (superior-subordinate or principal-agent) accountability relationship. However, in relation to Canadian public bodies he sees this characterisation as adding a further layer of complexity, rather than clarifying accountabilities since it "*merely adds to and does not replace the existing accountability requirements of the two parties*".⁴⁰

There are two different issues here. In terms of formal accountabilities, *Managing public money* makes clear that, notwithstanding the statutory position of the ALB, departments are responsible for monitoring their NDPBs' activities and "*making such interventions as deemed necessary*", and for bringing any matters of concern to the NDPB board for "*assurances that appropriate action has been taken*". Ministers should also periodically conduct an assessment of risks to department and NDPB objectives and activities. Finally *Managing public money* makes it clear that the sponsor department's accounting officer, (usually the permanent secretary) is responsible for making sure that there are arrangements to "*inform the NDPB of relevant government policy in a timely manner*".⁴¹ Moreover, for all but the most independent ALBs with constitutional or judicial functions, ministers make key appointments of the board and chair and can dismiss them and departments can reform or abolish the ALB. So formally, in most cases, the ALB is 'subordinate' to ministers in a vertical relationship.

It is also clear that the Government will continue to include ALBs within the ambit of central controls in order to drive down spending.

At the same time, ALBs have expertise and 'time' to focus on functions with no counterpart in central government. In this sense, for many of the big non-departmental public bodies (the bodies which we called 'departmental sponsored bodies' in *Read before burning*),⁴² effective partnership should be the aspirational way of working. But partnership is inappropriate for the more independent bodies that act as watchdogs or scrutineers of government activity (what we called 'independent public interest bodies'). These bodies still need to answer to ministers and Parliament for their efficiency and effectiveness within their statutory framework, but also need to be able to take a stand against their 'parent' department.

This highlights the complexity of the relationship and the fact there is no single model that can be applied across all ALBs. There are some real sources of tension and some trade-offs that need

⁴⁰ Aucoin and Jarvis, *Modernising government accountability: a framework for reform* p.33 (2005)

www.publications.gc.ca/collections/collection_2008/csps-efpc/SC103-15-2005E.pdf retrieved February 2012

⁴¹ HMT *Managing public money* 2007 Annex 7.4 Appendix 5.3

⁴² Gash, T; Magee, I, Rutter, J, and Smith, N *Read before burning*, Institute for Government, July 2010, p.14

to be made between autonomy and oversight. However, we do think both sides of the relationship should aspire to more effective ways of working in the public interest. We have therefore taken the insights and examples from our research and incorporated them into a framework, titled *It takes two: a framework for effective relationships between government and its arm's-length bodies*. This provides the building blocks for effective relations and is available at www.publicchairsforum.org.uk/research. The framework suggests actions for each of the key players in the relationship – the department and the ALB (with some actions falling to the chairs and chief executives). This framework is based on the existing operating context, and so could be implemented straight away. In the next section we set out proposals for the longer term.

This is not intended to be prescriptive, and needs to be used in a proportional, sensible way that recognises the most appropriate form that a specific relationship should take. What works for a small body with relatively few staff and uncontroversial functions will be inappropriate for a multi million (or billion) pound body managing a vital public function with thousands of staff. Users of the framework also need to take proper account of the statutory duties and independence of the body. This framework is intended to act as a starting-point for a conversation between the parties, not as a tick-box checklist. Having said that, the objectives and broad themes we set out should be universal for any effective partnership. They are set out in the table below.

Table 4: Key themes of the framework

Area	Objectives
Accountabilities	<p>Overall roles and responsibilities of department, ALB and minister are clear, understood by all parties and kept up to date in line with underpinning legislation. Both sides have the same expectations about the role of the ALB and the chair/chief executive, the degree of independence and the relationship with the department.</p>
Strategic approach	<p>The department adopts a differentiated approach according to the role, status and salience of the ALB.</p> <p>There is a clear and agreed view on risk which informs the sponsorship approach.</p> <p>There is good strategic alignment between ALBs, departments, NEDs and Ministers.</p> <p>The ALB understands how to contribute to policy making in the department where it has discretion and is routinely involved in policy development where it has expertise and/or is expected to implement the policy.</p>
Financial and performance management	<p>Both sides have access to the timely and reliable data they need. Data requests are proportionate; framework is clear regarding data requirements.</p> <p>A process for data quality assurance is in place and agreed by the department and ALB. This process is clearly communicated and adhered to. There should be agreed clarity about disclosure once assurance has taken place.</p> <p>Budgeting is stable, transparent and realistic; recognition that budgeting is also about income and income streams.</p> <p>Performance is managed effectively by the ALB and it is held to account by the department.</p>
Communication and engagement	<p>Relationships between the ALB and the department should be open, honest and constructive; expectations are made clear.</p> <p>Communications are coherent and consistent.</p> <p>There is a common understanding on both sides on public positioning with no surprises policy observed; potentially sensitive issues are raised in advance to allow a conversation to take place.</p>
Relationship management	<p>Department and ALB show mutual respect and understanding; the terms and language used in communications are appropriate to individual/specific ALBs.</p> <p>There is a clear and agreed map of relationships with regular meetings scheduled; the role of 'the Centre' is clear and well understood.</p> <p>Quality of relationships is good with sufficient time invested in building them.</p> <p>The department has confidence in the board to manage both the ALB's business and can operate effectively in a public sector environment.</p> <p>Clear processes are in place to resolve any disputes in a timely and effective manner.</p>

In the framework, we set out the potential roles of departmental sponsor, minister and arm's-length body. We have not included the new departmental non-executive directors (NEDs) in the framework. David Verey, the Departmental Non-Executive at the Department of Culture, Media and Sport is leading work on behalf of Lord Browne, the government lead NED, on the role departmental NEDs should play in respect of ALBs. One key thing about departmental NEDs is the very limited time they have available so a major role is not possible – and indeed that would risk double governance, undermining the role of the ALBs' own boards.⁴³

We see two principal roles for departmental NEDs which fit with their functions of 'challenge and support' to Ministers and the executive team, and which also avoid the risk of double governance while recognising the competing calls on the limited time available to departmental NEDs.

The first is around **assurance** that the department has adequate processes in place to oversee ALBs in a proportionate and risk-based way and understands ALB risks. This will include ensuring that the department is getting and using management information to enable effective performance management. This fits with the fact that a NED will chair the departmental audit and risk committee. This opens up the possibility of creating a network of chairs of the departmental audit and risk committee (ARC) and ALB.

The second potential role for a NED, to be used very sparingly, is to be able to act as an honest **broker** between the department and the ALB if there is a serious relationship breakdown. In this case the NED may be better placed to understand what is going on than the minister. But this role is unlikely to work if the departmental NED is only called upon in case of crisis. It will work better if there is already a network of relationships with chairs of critical ALBs. One department has already assigned their departmental NEDs to specific big ALBs.

The role of departmental NEDs is new and still evolving. Their role in ensuring that departments have effective relations with their ALBs is developing. David Verey, lead NED a DCMS and himself a former Chairman of the Tate, a DCMS ALB, is leading on this for the NED network and it will be a subject to be revisited in the future.

⁴³ These issues were discussed at a seminar at the Institute for Government, organised in conjunction with the Public Chairs' Forum and Deloitte on 27 February 2012

5. Looking forward: putting government/arm's-length relations on a sounder long-term footing

5.1 Taking relationships seriously

As we have said above, the framework offers the building blocks for a good relationship.

In *Read before burning* we recommended that there should be regular reviews of ALB governance and performance – GAP reviews. The Government has subsequently committed to triennial reviews of executive NDPBs (though not necessarily including executive agencies, although some departments are also committed to reviewing them).

We think that the triennial review should also trigger a review of the performance of the government department alongside the question of whether the ALB continues to be needed and the function still needs to be performed at arm's length. In particular, we recommend the use of a diagnostic questionnaire, based on the framework we have developed to act as a tool for establishing both areas of agreed strength and weakness but also to highlight the areas where the perceptions differ. The assessment tool will be available at www.publicchairsforum.org.uk/research from early April 2012. There would be value in using the questionnaire more regularly to take the temperature of the relationship and identify issues.

The departmental supervisory board and the permanent secretary need to be aware of any systemic relationship issues and make sure the department addresses them.

Recommendation 1: sponsors and sponsored bodies should both use the framework to make sure the building blocks are present for a good relationship

Recommendation 2: triennial reviews should cover relations between departments and ALBs. They should use a version of the diagnostic questionnaire⁴⁴ as a temperature check on the relationship and agree joint plans to address any areas of concern. More regular checks (eg annually) could be helpful as well.

5.2 A portfolio management approach

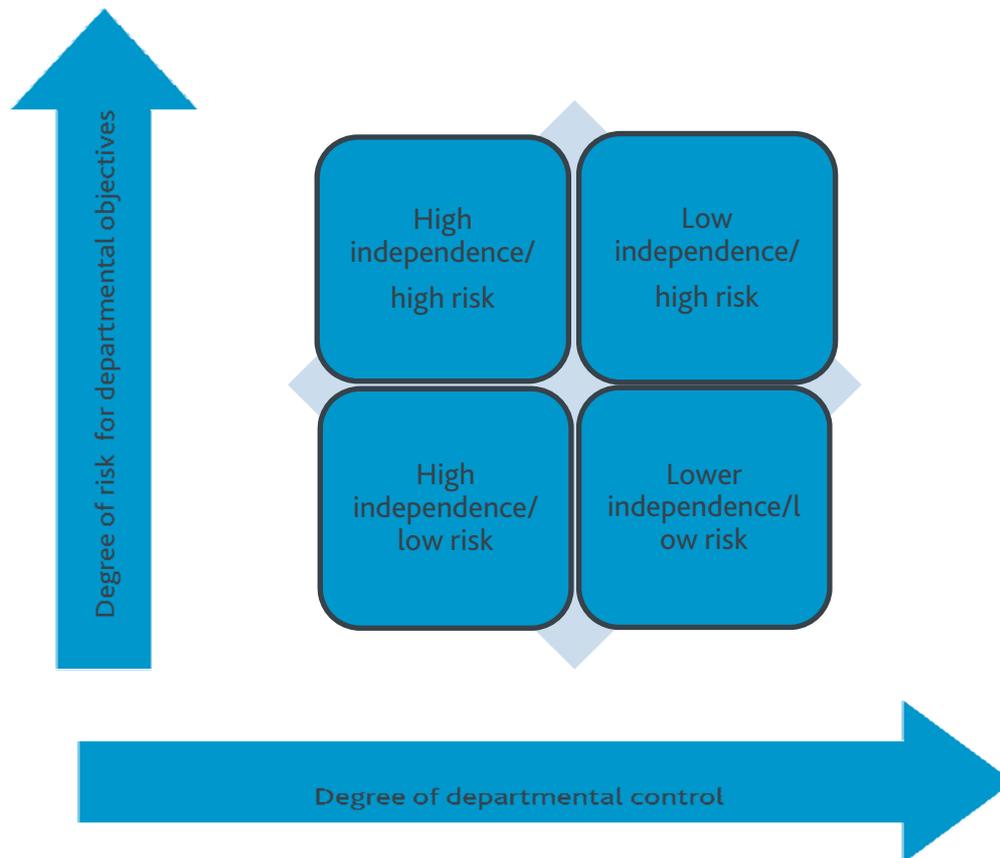
As departments face administrative spend reductions they will need to adopt a more strategic approach to managing relationships with arm's-length bodies. It is also clear that the resources developed to sponsoring ALBs are more a product of history and inertia than any real appreciation of the different requirements of ALBs at different times. Many of the people we spoke to, as well as the National Audit Office, have recommended that departments take a more

⁴⁴ The diagnostic web tool will be available on the Public Chairs' Forum website (www.publicchairsforum.org.uk/research) from early April 2012.

'risk-based' approach to managing relations with their ALBs and some departments are already doing this⁴⁵.

There are two key dimensions departments need to think about in deciding how they need to relate to their ALBs. The first dimension is the appropriate degree of independence from government. The second is the 'riskiness' of the ALB to the achievement of the department's objectives. We discuss both dimensions below.

Figure 2: Portfolio management assessment



There are a number of factors that should lead departments to decide the degree of 'riskiness' of an ALB. This is not risk as conventionally defined but rather requires judgements under (at least) six headings which allow an overall assessment. These headings are:

- **Salience** – how important is the ALB to the achievement of departmental/governmental objectives
- **Scale** – how big is the budget (in both absolute and relative terms); how many people does the ALB employ

⁴⁵ The Ministry of Justice ALB Governance Division has developed a sophisticated tool which its sponsor divisions use to decide the nature of their sponsorship relationship. In the first year, the tool was simply used within MoJ. The teams now involve the ALB in the assessment.

- **Simplicity** – how complex are the objectives that the ALB is trying to achieve – and how easily monitorable are its outputs
- **Track record** – how well has the ALB performed against its key objectives in the recent past and how much trust has the department in the judgement of the ALB board and senior management
- **Stability** – how much change is the body going through – in terms of organisation; top team, functions and objectives or external environment
- **Sensitivity** – how politically sensitive is the ALBs business.

Where individual ALBs score on these factors should reveal where the department needs to focus its sponsorship 'effort' and where the department can afford simply to rely on more routine processes. As the factors imply, this is not a static process – as factors change, so should the departmental effort. For example, where a body is going through considerable change – with new functions, new people or new organisation, the department will need to take a more active role than after those changes have bedded down.

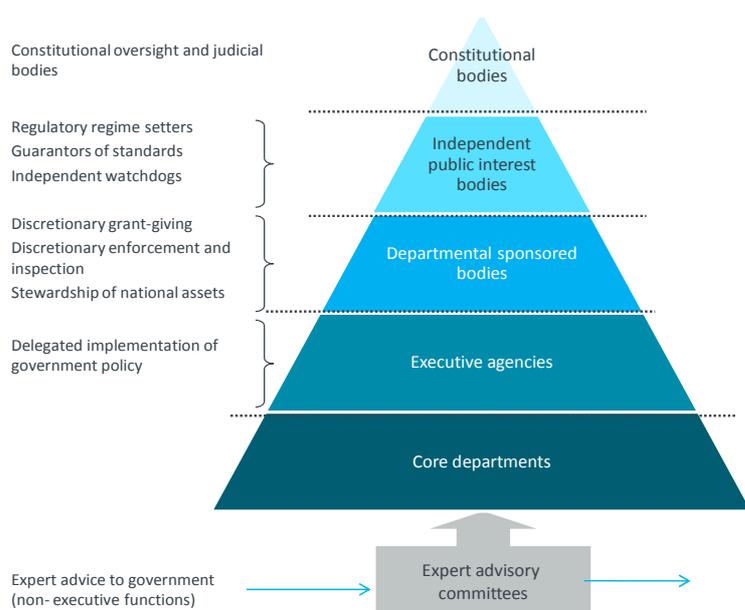
The second dimension is the degree of independence the body requires from central government to perform its functions credibly. This is a very important issue: for a big executive NDPB spending a significant portion of the department's budget, there should be a clear alignment between the strategic framework set by the secretary of state and the ALB's priorities, though the body may have separate statutory functions where it needs to be act much more independently. The position is very different for regulator, watchdog or judicial or constitutional body – in that case the body must be able to fulfil its statutory responsibilities and the department's role is ensuring the body is doing that.

In *Read before burning*, we argued that form should follow function – which would allow departments to distinguish the approach needed for different types of body quite easily. But those changes have not been made and form is currently not a good guide to function. Departments, therefore, will need to make a body-by-body assessment of how independent a body needs to be and thus the appropriate nature of the relationship. As broad heuristics, we suggest departments could adopt the categorisations that underpin the new taxonomy we set out in *Read before burning*. These are set out on the left hand side of the diagram below.

Figure 3: *Read before burning* taxonomy

Read before burning proposed taxonomy with form following function

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Thus departments would have certain core approaches across all ALBs – for example on basic performance data – but they would manage the relationship with an independent economic regulator or watchdog very differently from the relationship with a significant grant giver.

One consequence of this more strategic approach to ALB relations should be to make it easier to set expectations better when new chairs and chief executives are appointed both on the degree of autonomy from the department they can expect, but also on the degree of interaction and involvement they are likely to see from the department.

Recommendation 3: departments should adopt a 'dynamic differentiated' approach to managing their portfolio of ALBs, based both on the degree of required independence of the ALB and the 'riskiness' of the ALB to the achievement of departmental and governmental objectives. The ALB should also be involved in the assessment. This should be reviewed on a regular basis and effort redirected as necessary.

5.3 Skills for 'sponsorship'

One of the themes that emerged from *Read before burning* was that sponsorship was often a low status activity within departments and that there was generally an underinvestment in helping people understand both the sponsorship role and the bodies they were intended to sponsor.

With fewer resources in departments, and significant parts of government activity being delivered at arm's length, effective sponsorship will become increasingly important. However, this is not unique to other challenges government faces. Managing the relationship with arm's-length bodies can be seen as part of a continuum from in-house delivery to commissioning from third-party providers through payment by results or other contracts to setting frameworks within which multiple actors make decisions as described in our report *System stewardship*.

The Government has already recognised the need to build commissioning skills in the Civil Service. But it has no similar commitment to invest in sponsorship skills. At the same time, sponsorship should be recognised and valued internally as an important civil service skill and one that bridges 'policy' and 'delivery' – requiring an understanding of both to be done effectively.

There is also much to be done in terms of transferring best practice between sponsors. A peer network has just been launched, led by Ministry of Justice. One possibility is to establish one or more of the big sponsor departments (MoJ, BIS, Defra or DCMS) as a cross-government centre of expertise on ALB sponsorship – able both to pool expertise between departments for whom sponsorship is a significant function, but also to assist departments who sponsor relatively few bodies.

Recommendation 4: the Government should recognise that sponsorship requires specific skills and capabilities and make an investment in these. The policy profession should develop a strand on this – and look at potential synergies with the development of commissioning skills. The new peer support network should be used to exchange best practice, with some departments becoming centres of expertise on sponsorship.

5.4 A clear, transparent public accountability and performance framework

At the root of many of the tensions between government and its arm's length bodies are the lack of a clear and current accountability and performance framework. There are elements – in MOUs, in ALB business or corporate plans, but these are not brought together in a systematic, routine way. Yet, as our research has shown, lack of clarity on objectives, expected outputs and the demarcation between departmental and ALB responsibilities is a source of much of the tension.

One potential way forward is to adopt a system based on principles similar to the New Zealand system of 'statements of intent', which provides for enhanced public accountability of arm's-length bodies. When we raised this possibility with the chief executives of ALBs, they were sceptical about the value added over existing business plans and the existing business planning process. However, it is clear from discussions with New Zealand government representatives that the SOIs do play a more significant accountability and performance role in their system than business plans do in ours. Executive agencies already lay their business plans in Parliament, with a ministerial statement, but practice for other arm's length bodies is mixed.

For big ALBs we think that business plans should become a vehicle for public accountability, presented to Parliament after discussion (and if appropriate agreement) with the department and the minister. This would have the benefit of focusing sponsorship on agreeing demanding (but realistic) objectives in advance, with the ALB then held to more public account for its delivery. Plans could either be laid for the CSR period or for a single year.

For smaller bodies which are in the low salience/high independence quadrant, there may be an advantage in going further and applying a simple contracting model to their operations. Government would set out its requirements for the body, the body would 'contract' to deliver and there would be a minimum of other interactions. This could provide a second impetus toward moving bodies out of the public sector.

Recommendation 5: Cabinet Office and Treasury should develop plans to:

- **enhance the public accountability of big ALBs by upgrading corporate/business plans into public documents, presented to Parliament which form the basis for holding the ALB to account for performance. Departments should refocus their efforts on the development of the plan.**
- **put smaller bodies onto a more contractual relationship with departments.**

5.5 The role of the centre

The centre's more active interest in the size and performance of the overall public sector is going to be a fact of life as the Government implements its continued deficit reduction programme. The Government is clear in its determination both to change culture towards spending, but also to be able to leverage the spending power of the consolidated central government sector to drive efficiency. The emergence of a 'third person' in the relationships between departments and ALBs has become a major source of irritation for chairs and chief executives.

In terms of data requests, the Cabinet Office, Treasury and inter-departmental sponsor group, together with ALB representatives should agree a set of core data which they require for all ALBs and aim – once this list is agreed – to keep to that set. Data will become more meaningful if there are stable and comparable series across all ALBs.

ALBs can wait to be asked. But we suggest that they take a more active approach and put required data onto their website as soon as it is available. This will not only remove the need for departments and the Cabinet Office to make data requests, it will also improve their transparency to the public they serve. The transparency best practice guide developed by the Public Chairs' Forum and the Institute for Government, endorsed by the Cabinet Office, sets out some principles for data transparency.⁴⁶

The second concern is on specific spending controls. Chief executives themselves acknowledge that the initial controls were hugely valuable in signalling the change of direction and the Government's determination to tackle the deficit. But in the long run a detailed micro-control regime risks a failure to take full advantage of the potential gains of arm's-length governance. A number of chief executives and chairs we spoke too gave examples of where the current regime had got in the way of delivering objectives cost-effectively. In addition they thought there was a longer-term risk of delivery failure. This was most pressing for ALBs with significant commercial operations.

⁴⁶ The PCF guide to transparency best practice can be accessed at www.publicchairsforum.org.uk/images/uploads/pcf-transparency-in-albs.pdf

More transparent and public performance objectives, for which boards and chief executives are held to account by departments and by Parliament, as set out above, should start to address the concerns at individual body level.

But that in itself may not be enough to satisfy the centre's desire to collectivise spend and deliver benefits across government. Here the answer seems to be to put in place clear frameworks and expectations against which the ALB operates, with penalties for deviation, rather than a plethora of controls. Where possible, business plans should contain clear plans for e.g. consultancy, IT and marketing, in line with pan-government frameworks. Once approved, accounting officers should be allowed to spend in line with those plans without further approvals being needed.

Again this is an area where ALBs can get ahead of the curve. The Public Bodies Act gives new powers to allow bodies to share services with each other and their departments. Showing that ALBs can work constructively together to lower costs, and are prepared to work across boundaries can provide ministers with additional reassurance that ALBs understand ERG concerns.

The initial control regime was very much a central imposition with no consultation – it was imposed within 10 days of the Coalition coming into office. As it has now become an enduring part of the landscape, it makes sense to involve not just finance directors in departments, but also ALB representatives in developing a practical and effective regime going forward.

Recommendation 6: The Cabinet Office and Treasury should agree a standard and stable data set for ALBs in consultation with sponsor departments and ALBs. ALBs should publish this data in a timely manner in line with the recommendations in the Public Chairs' Forum/Institute for Government guide to transparency best practice, in addition to the data they have which is aimed at their customers and which they use for their own management purposes

Recommendation 7: ALBs should be involved in the development of the long-term controls framework.

5.6 Clarifying the roles of Ministers

Ministers have an important role to play in getting the ALB relationship right, including their role in appointments. Some do it very well. But there are also examples of poor behaviours and a failure to appreciate the status and role of ALBs. At the moment the Ministerial Code and the Cabinet Manual have very little to say on this subject. This means ministers have to navigate a complex network of relationships with no map. The different approaches to managing relations between departments, combined with relatively frequent changes of ministers, compounds the problem. We think it would be useful to spell out the ministerial role more transparently, as in Canada.

Recommendation 8: the Cabinet Office should produce guidance to ministers on the expectations for their role in respect of their departments' ALBs – either in the Ministerial Code, or in the Cabinet Manual.

Conclusion

Getting arm's-length governance right is difficult but important. The arm's-length landscape is so varied that there is no one size that can fit all. However, the public depends on the many arm's-length bodies for vital public functions – and those need to be performed effectively and efficiently. In some cases the best route will be through the creation of genuine partnerships with departments – in others, ALBs need to maintain their ability to stand up to and challenge government on behalf of the public. Ministers and departments need to recognise that. The checklist we have pulled together should offer the building blocks to underpin effective relationships.

But there are limits to what it can do on its own. The biggest message that came through our discussions and workshops was the importance of basing relationships on mutual trust and respect, based on a real understanding each other's objectives. The imperative of deficit reduction necessitates different ways of working across central government and the public sector. No checklist or set of structural reforms can deliver that. The principles that the Welsh Government developed jointly with their sponsored bodies recognises that by emphasising the role of boards, but also underlining the important role that those who serve on public bodies play in Welsh public life.

As the public body reform programme continues, recognition within departments of the importance of effective sponsorship, as well as a general recognition of the role played by public bodies are needed. And ALBs must understand how best to contribute to department objectives in the context of wider government priorities. Neither on its own is enough.

It takes two.

Annex 1: Controls on arm’s-length bodies

Below are summarised some of the key controls that the Cabinet Office’s Efficiency and Reform Group have imposed on departments and ALBs as set out in the most recent guidance (December 2011). The whole document is available online at www.cabinetoffice.gov.uk/resource-library/cabinet-office-controls-guidance-actions-and-processes-document.

Scope: “The Actions and Processes apply to the Office for National Statistics definition of central government, which includes government departments, most agencies and non-departmental public bodies, and most other non-market bodies controlled and mainly financed by departments.” Exemptions: NHS, FE Colleges, Universities, Academies, Olympic bodies. A number of public corporations are also included.

Process: “Cabinet Office and HMT approvals are needed for spending outside of delegated limits... Where appropriate departments should submit requests to the relevant Cabinet Office contacted point.. copies to their HM Treasury spending team. A decision.. will be provided within 28 days.”

Appendix 1 Table 1: Specific controls from *Guidance on actions and processes*

Area	Delegation
Advertising and marketing	Only spend on “essential activity” e.g. where government has legal duty to provide information, spend critical to effective running of government, robust evidence delivers measurable outcomes. CO approval needed for any spend over £100,000 which applies at departmental level – coordinated for agencies and NDPBs by departmental comms director; HMT approval required below; can be increased to £500,000 by HMT/CO agreement
Complex commercial models/ strategic supplier management	CO approval needed for all complex/non-standard commercial models “Crown Representative” approval needed for all contracts > £5m
ICT	Delegated up to £5m; up to £1m for systems supporting finance, HR and procurement or upgrades. Poss increase to £20m by agreement
Consultancy	Any spend > £20,000 needs departmental approval All new and existing contracts > £20,000 need to be submitted for reapproval every three months

	CO, HMT approval needed where contracts are expected to last > nine months (or extended beyond nine months) and spend over £20,000 on procurement related consultancy
Recruitment and temporary staff	Departments are responsible for external recruitment freezes in departments; frontline and business critical posts exempted but departmental approval (DG or above) required for exemptions.
Property	CO approval required for new or extended leases or property purchase > £100,000 Lease renewals expected to achieve minimum 25% rent reduction Specified space maxima and workstation ratios (80%)
Procurement	All volume spend through centrally sourced contracts
Redundancy schemes	CO approval for any redundancy schemes offered
Learning, training and development	All generic training to be sourced through Civil Service Learning Any other spend > £10k needs approval through CSL gateway process
Digital	Core standards for MI on quality of service delivery being developed and will be mandatory unless specific exemption. In interim, Government Digital Service to be consulted on all digital service development on programme by programme basis,
Identity assurance	Any only of digitally based service must align with CO Identity Assurance strategy
Management information	CO, HMT and finance directors developing small number of common data definitions; interim data submission process

Annex 2: New Zealand 'statements of intent'⁴⁷

The key characteristic of the New Zealand system of managing arm's-length bodies (and departments) is a formal annual process of preparing the statement of intent. The guidance on preparation of statements of intent explains:

[T]he purpose of a Statement of Intent (SOI) as set out in legislation (section 138 of the Crown Entities Act) is to promote the transparent accountability of a Crown entity by:

- enabling the Crown to participate in the process of setting, at a minimum, the Crown entity's medium-term intentions and undertakings*
- setting out for the House of Representatives those intentions and undertakings*
- providing a base against which the Crown entity's actual performance can be assessed.*

The SOI is the vehicle through which accountability information is provided to Parliament and ministers. It enables, in particular responsible ministers and members of Parliament to review the performance of agencies and sectors and hold them to account for their use of resources and powers, as well as their delivery of outputs and contribution to outcomes.

However, the Crown Entities Act (CEA) usefully also requires the SOI to provide a high level description and explanation of an entity's operating intentions and performance expectations over the medium term.

The guidance then sets out the three ways in which SOIs allow effective governance and management:

- facilitating strategic management – both setting out key outcomes and how the entity will achieve them
- by identifying actions and resources it enables accountability
- since it addresses future challenges and risks, if provides assurances that issues of planning are addressed.

While the entity can decide the form of the SOI, it is advised to seek assistance from monitoring departments who in turn will consult with 'central agencies' when providing feedback.

The guidance makes clear that the obligation to prepare an SOI lies with the Board whose collective duties are owed to the Responsible Minister. The SOI has to be signed by two members of the Board.

⁴⁷ *Preparing the statement of intent: guidance and requirements for departments*
www.treasury.govt.nz/publications/guidance/strategy/soi-depts Accessed March 2012

1.1.3 Engagement on the statement of intent with the responsible minister (and the monitoring department)

The balance between the obligations of the Crown entity and the rights of the responsible minister is carefully drawn in the CEA. In particular:

- the entity must consider the responsible minister's comments on a draft SOI, but does not have to change the SOI once it is finalised following consultation, unless directed to do so by the responsible minister (section 146)
- a responsible minister can direct on some of the content of an SOI [(section 147(1)]. The areas on which s/he can direct are the nature and scope of the entity's functions and intended operations, the impacts, outcomes and/or objectives the entity seeks to achieve, how the entity intends to perform its functions, the measures and standards by which its performance will be judged, the matters on which the entity will consult/notify the Minister, the kind and frequency of reporting, processes in relation to acquisition, and its statement of financial performance
- the responsible minister must consult a Crown entity before directing it, and any, such direction must be tabled in the House of Representatives and published in the New Zealand gazette [section 147(2)(b)]
- if the entity has been directed to give effect to or have regard to government policy directions, it must say how the objectives set out in the SOI might relate to any outcomes or objectives referred to in the direction [section 141(1)(c)]. The entity and the minister may agree on additional information being included in the SOI [section 145].

The responsible minister cannot give directions in relation to a statutorily independent function, nor direct a Crown entity to bring about a certain result in respect of a particular person [section 147(2)(b), section 113]. More generally, the CEA recognises levels of independence in the way that it categorises Crown entities [section 7] and the CEA does not provide a power for ministers to direct Independent Crown entities on Government policy [section 105].

The CEA's reporting requirements are intended to leverage off effective working relationships between Crown entities, and their responsible minister(s). The companion *Guidance for Crown entities: planning and managing for results* advises early and ongoing strategic engagement between the responsible minister, the monitoring department, and the entity.

It is expected that there will be substantive engagement between Crown entities, responsible minister(s) and the monitoring department before the draft SOI is sent to the responsible minister for comment. In particular, Crown entities may want to consider giving their minister specific opportunities to:

⁴⁸ *Preparing the statement of intent*, retrieved from www.ssc.govt.nz/sites/all/files/soi-guidance-crownentities-nov10.pdf March 2012

- confirm or change the medium-term strategic outcomes for the entity, and determine the priority areas for attention in pursuit of those outcomes
- set or agree appropriate performance expectations for at least the priority areas of the entity's activity.

In practice, much of the process of consultation with the responsible minister will be delegated to the monitoring department acting, in effect, as an agent of the minister. The process will be easier if:

- the responsible minister(s), Crown entity and monitoring department have engaged early during the planning process and the entity and the monitoring department continue to engage at key times, involving the minister as necessary
- the monitoring department has a well developed understanding of the entity's operating environment, operating intentions, organisational capability, any sector wide or joint arrangements for delivering outcomes and the entity's thinking about its impacts, outcomes and/or objectives and activities.

There is then a lengthy explanation of the nature of the engagement of the responsible minister on preparation of SOIs.

This can be quite a long drawn out process as set down in the 'expected' timetable.

Appendix 2 Table 1: Expected timetable for statements of intent

Action	Date (no later than)
Expectations setting by letter or through discussion	Seven months before budget e.g. October
On-going discussion between Crown entity, minister and monitoring department	November to February
Early draft to monitoring department	March at the latest
Crown entity provide a draft SOI to its responsible minister	31 days before budget
Responsible minister provides comments on the draft	15 days before Budget Day
Entity must consider comments on the draft, and provide the final SOI to its responsible minister	The day before Budget Day
The Responsible Minister tables the SOI in the House	Day after Budget Day

Source: Preparing the statement of intent: guidance and requirements for departments

Annex 3: Extract from Canadian government guidance on relations between ministers and arm's-length bodies

Extract from *Accountable government: a guide for ministers and ministers of state – 2011*

Annex H: Portfolio organisations

This Annex discusses ministers' relationships with the diverse range of organisations for which they may be responsible as heads of portfolios. It includes guidance on practices for the coordination of portfolio activities, as well as discussions of ministerial relationships with two kinds of organisations tending to have high levels of independence, Crown corporations and administrative tribunals.

By convention, a minister or minister of state should not speak about or otherwise become involved in a colleague's portfolio without first consulting the colleague and gaining his or her approval. The practice has evolved whereby ministers and their offices do not deal directly with public servants, but go through the office of the responsible Minister.

1. Types of Portfolio organisations

In most cases, a minister heads a portfolio that can include a variety of organisations. These organisations are varied, reflecting the range of organisational models needed to deliver differing policy objectives, and have varying relationships with the responsible Minister. Portfolio organisations can include:

- ministerial departments – the primary vehicles for developing government policies and programmes – which are generally broadly mandated and have presiding Ministers vested with powers, duties and functions
- agencies, which take many forms under a variety of names (e.g. agencies, boards, commissions, offices, centres); they generally have more specialised mandates and authorities are vested in the organisation or its deputy head, with varying residual responsibilities for ministers
- administrative tribunals, which make decisions and hear appeals at arm's-length from the government following quasi-judicial processes, with varying residual authorities vested in ministers
- Crown corporations, which provide specific services, usually on a commercial basis, with considerable operational autonomy under the oversight of a board of directors, usually with certain powers of direction reserved for ministers.

2. Integrated portfolio coordination

Portfolios are generally organised to bring together bodies that share common purposes. The integrity and coherence of government activities depend strongly upon ministers' ability to

coordinate their respective portfolios in an integrated way while respecting any necessary degrees of independence.

All organisations are different. They have differing mandates, a variety of organisational structures and differing relationships with the minister. In accordance with the enabling legislation, ministers exercise varying degrees of control and responsibility for the organisations in their portfolio. Building on existing statutory roles under a minister's authority, portfolio coordination seeks to ensure that all organisations work together in the most effective fashion in support of the minister and the government.

The deputy minister, as the minister's principal source of public service support and policy advice, is expected to advise the minister on all matters under the minister's responsibility and authority. While the deputy minister does not have direct authority over non-departmental bodies in the portfolio, he or she plays a key role in promoting appropriate policy coordination, and building coherence in the activities and reporting of the portfolio bodies. Deputies can provide advice to ministers on the appropriate means to ensure integration in the undertakings of their portfolio, while respecting any accountability requirements and mandates set out by legislation.

Depending on the portfolio, the deputy may also be assigned certain specific responsibilities by the minister. In those cases, it is important that the minister provide clear guidance to all agency heads on his or her expectations of the portfolio integration role of the deputy. This role must not infringe upon the arm's-length relationship with portfolio organisations or the accountability of the deputy heads of these organisations to the Minister, and the heads of portfolio organisations may communicate directly with the minister, as appropriate.

In turn, agency and Crown corporation heads – while maintaining the necessary arm's-length relationship and managerial autonomy required for their bodies – should seek out opportunities to contribute to the overall functioning of the portfolio. Ministers need to make sure that the perspectives of these bodies are brought to bear in the policy development process within the portfolio.

A variety of mechanisms to support portfolio responsibilities can be applied successfully, including, for example:

- regular meetings, either bilateral or including some or all portfolio organisations
- mandate letters from the minister to the organisation (which must respect the entity's degree of independence from the minister)
- the establishment of portfolio secretariats, where warranted by the size and nature of the portfolio.

For many portfolios, it may be appropriate to adopt a coordinated and timely approach to supporting the minister's responsibility for providing information to Parliament and Canadians regarding portfolio organisations. This could include:

- the preparation of coordinated responses for Question Period, or coordinated materials for committee appearances or parliamentary returns
- where appropriate, depending on the nature and the relative independence of the portfolio organisations in question, coordination of activities relating to public

communications, such as identification of key issues and strategies, joint environmental scanning, and sharing of information and materials.

Additionally, all portfolio organisations should cooperate in providing timely and accurate data pursuant to the Treasury Board's Policy on Reporting of Federal Institutions.

The development of memoranda to Cabinet, Treasury Board submissions or other reports on departmental initiatives may also present opportunities for coordination and enhanced policy coherence.

These tools should be tailored to specific circumstances, and deputy ministers need to work with their ministers and with the heads of other portfolio organisations to find the most effective approaches given the unique features, scale and scope of the portfolio. A particularly important consideration is that there must be no interference with decision making by quasi-judicial bodies. However, in all cases, regular and consistent contact between deputy ministers and the heads of other organisations in the portfolio will support an environment for mutual understanding and collaboration.

3. Crown corporations

The minister who is the appropriate minister for a Crown corporation must have dealings with the corporation on a variety of matters. While the precise responsibilities of a minister with respect to a particular Crown corporation may vary with the governing statute, the minister is in all cases ultimately accountable to Parliament for the overall effectiveness of the Crown corporation in achieving the purposes for which it was established. Accordingly, the minister has direct responsibility for such broad orientations as framework legislation and recommending appointments, as applicable; for reviewing and approving corporate plans; for assessing the ongoing relevance of the corporation's mandate and its effectiveness as a policy instrument; for providing broad policy direction to the corporation (e.g. to help guide development of the corporate plan); and for dealing with appropriations and recommending these to Cabinet. These guidelines do not affect such dealings.

However, the minister does not become involved in the day-to-day operations of a Crown corporation, nor does his or her staff. Because of the wide range of activities carried out by individual Crown corporations, the appropriate role of the minister must be determined on a case-by-case basis.

The following guidelines will assist ministers in fulfilling their representative duties, while preserving the managerial autonomy of Crown corporations within their portfolio. The principles underlying these guidelines also apply to ministers of state.

- No minister should personally promote the private interests of any individual, corporation or non-governmental organisation, including a constituent, with any Crown corporation.
- It is always appropriate for a minister to raise the concerns of a constituent directly with the minister responsible for a Crown Corporation.
- The staff of a minister when dealing with constituency matters may, however, make representations to a Crown Corporation.

- The staff of the responsible minister, because of their special responsibilities in support of their minister, may not make representations, on behalf of a constituent, to any Crown corporation that falls within their minister's portfolio of responsibilities.

It is recommended that the office of the minister responsible for a Crown Corporation establish a procedure, in cooperation with the corporation, to enable the minister's office to pass on as a referral, for the corporation's appropriate action, representations or inquiries that the minister or his or her office receives from parliamentarians, other ministers or their offices, the minister's own constituents or, more generally, the public. The Office of the Conflict of Interest and Ethics Commissioner will work with ministers' offices and Crown Corporations in establishing these procedures.

More broadly, these guidelines do not prevent any minister or his or her political staff from social contact with the officers and staff of Crown corporations, nor from participating in briefing sessions initiated by the corporation.

4. Administrative tribunals

Characteristics of administrative tribunals as part of the executive

Administrative tribunals are created, usually by statute, to make decisions in specific areas at arm's-length from government – decisions that may be described as 'quasi-judicial'. As confirmed by the Supreme Court of Canada, while administrative tribunals possess adjudicative functions, they operate as part of the executive branch of government, under the mandate of the legislature. They are not courts, and do not occupy the same constitutional role as courts. The degree of independence required of a particular government decision maker or tribunal is determined by its enabling statute.

The principle of non-intervention in quasi-judicial decisions

The decisions made by administrative tribunals often concern individual rights or interests (such as qualification for programme benefits), are technical in nature (such as scientific regulation and licensing), or are considered sensitive and vulnerable to political interference (such as broadcasting).

Parliament's intention to lessen or remove political influence in decision making in such areas underlies the principle that ministers should not intervene with administrative or "quasi-judicial" tribunals on any matter that requires a decision in their quasi-judicial capacity. However, the principle is subject to a number of important nuances:

- the principle does not apply to every aspect of the organisation's work, but specifically to decisions made in a quasi-judicial capacity
- the extent to which the quasi-judicial decision-making process itself is insulated from ministerial involvement is largely determined by the constituent legislation
- whatever the degree of independence of an administrative tribunal, the responsible minister is at some level accountable for the effective functioning of all portfolio organisations, including tribunals. Hence, it is important that tribunals be attuned to the broader context in which the government operates.

Quasi-judicial versus non-quasi-judicial functions

Many federal entities possess some functions of a quasi-judicial nature. Sometimes the quasi-judicial function is predominant, but often a significant part of the organisation's work is 'executive' in nature, for example, developing regulations, issuing licences or permits, monitoring and supervising compliance, and conducting research.

The provisions of their enabling statutes will accord administrative tribunals varying degrees of autonomy in exercising these executive functions. For example, the minister or governor in council may have authority to make or approve regulations or standards; issue directions, either on broad policy or more specific matters (e.g. classes of persons to whom licences may not be issued); or require the body to conduct particular studies or reports.

Where a minister has a role to play in a function that is not quasi-judicial, such as approving the entity's annual budget, it is important that the minister's authority not be used, or appear to be used, to do indirectly what the minister is not able to do directly. The parties should be mindful of the context in which an authority is exercised.

The varying independence of quasi-judicial functions

Even with respect to quasi-judicial decision-making processes, some enabling statutes explicitly provide for ministerial involvement. As the Supreme Court of Canada has confirmed, enabling statutes do not have to accord tribunals court-like independence, even with respect to their adjudicative functions.

In some cases, the legislation provides the government with neither the capacity to give direction on decision making, nor to interfere with decisions once made, except to appeal to another adjudicative body (such as to the courts for judicial review). However, in other cases, the minister or governor in council may have a range of powers that could impact directly or indirectly on decisions, such as directive powers; authority to make or approve rules, regulations or standards which elaborate on statutory decision-making criteria; and power to vary or overturn adjudicative decisions, or to refer them back to the tribunal for reconsideration.

The need for interventions to be consistent with the enabling statute

It is essential that ministers and portfolio deputies have a clear understanding of each of the tribunals in the portfolio and the nature of the minister's role. The portfolio deputy is the minister's principal source of public service advice and support on managing relationships with administrative tribunals. However, as the deputy minister does not have direct authority over arm's-length portfolio entities, the minister and deputy should work to achieve portfolio-wide understanding with respect to the role the minister wishes the deputy minister to play. Agency heads, in turn, have a responsibility to work cooperatively with the minister and the deputy minister to the full extent consistent with their statutory independence.

An engagement between the minister and the organisation need not be explicitly authorised in statute in order to be appropriate, provided it is consistent with the legislative regime.

Even in cases where the entity's functions are almost solely adjudicative and the government has no explicit statutory levers to affect a decision, it is important to maintain an ongoing open dialogue, and to seek information of a general nature (as opposed to information on specific cases before the tribunal), and to discuss matters of general relevance to both parties, such as

administration and budgeting, the tribunal's mandate and enabling legislation, and the minister's responsibility to answer for the tribunal in Parliament.

Dealings with quasi-judicial tribunals on behalf of constituents

There are limitations on the ability of a minister or minister of state to act on behalf of constituents as far as quasi-judicial bodies are concerned. Ministers, ministers of state and their staff may seek information on the status of a matter or other information that is available to the public. Further, several departments have set out instructions on how ministers' offices, usually in the constituency, can deal with inquiries regarding such matters as disability benefits, employment insurance, old age security, or citizenship and immigration.

Guidance can be obtained from the Conflict of Interest and Ethics Commissioner, who can provide briefings on this subject to ministers and members of their staff, including those dealing with constituency issues.

Key practical considerations

Administrative or 'quasi-judicial' tribunals are part of the executive branch of government under the mandate of Parliament. The responsible minister is ultimately accountable for the effective functioning of the tribunal and must answer questions in Parliament for all matters pertaining to it.

The independence of administrative tribunals is not an absolute standard arising from a constitutional separation of powers. An administrative tribunal's independence, in both quasi-judicial and non-quasi-judicial functions, is determined by its enabling statute.

Ministers must not intervene, or appear to intervene, with tribunals on any matter requiring a decision in their quasi-judicial capacity, except as permitted by statute.

In all cases, even where the Minister or Governor in Council has authorities to send back or overturn decisions once made, it is inappropriate to attempt to influence the outcome of a specific decision of a quasi-judicial nature.

Examples of appropriate communications/intervention include:

- the exercise of a ministerial/Governor-in-Council authority set out in statute, including discussions regarding the possible exercise of an authority
- the exchange of views on matters of general relevance to both parties, such as management and budgeting, the tribunal's mandate and enabling legislation, the minister's responsibility to answer for the tribunal in Parliament, and portfolio coordination
- communication of the government's broader agenda, and its possible impact on the tribunal
- communication by the tribunal concerning the potential impact of proposed legislation or other initiatives
- communication by the tribunal concerning the effectiveness with which the current legislative framework supports the tribunal in delivering on its mandate.

Annex 4: Welsh Government: principles for relationships with Welsh Government Sponsored Bodies

Governing Principles defining relations between Welsh Government Sponsored Bodies and the Welsh Government ⁴⁹

Joint mission and purpose

- 1) **Delivering for Wales.** Welsh Government Sponsored Bodies (WGSBs) play a key role in the governance of Wales and meeting the aspirations of Welsh citizens. From the perspective of the Welsh Government, the primary role of an WGSB is to fulfil its statutory responsibilities and to meet objectives established by the Welsh ministers using funds voted by the National Assembly of Wales. This relationship is conducted through a sponsorship arrangement managed on behalf of ministers by the Welsh Government. WGSBs have diverse organisational forms, including charities and quasi-judicial bodies and can cover different jurisdictions beyond Wales. While respecting this diversity, ministers look to WGSBs primarily to deliver important functions and services for the people of Wales on their behalf.
- 2) **Outcome focus and WGSB performance.** Within the constraints set by statute and ministerial commitments, WGSB objectives will as far as possible be specified in terms of outcomes that are clear, relevant and challenging. To promote innovation and efficiency, WGSBs shall be given as much flexibility as possible in how these outcomes are achieved. Individual remit letters should be no more prescriptive than the WGSBs responsibilities require. However, the performance framework should assess the contribution of the WGSB in achieving outcomes.

Relationships between the Welsh Government and WGSBs

- 3) **Relationships defined by trust and risk.** The relationship between the Welsh Government and WGSBs should be based on trust and mutual respect, with a proportionate approach to risk. Where there is evidence of poor performance or weak governance, the Welsh Government will adopt a more prescriptive 'hands-on' approach to the relationship. The Welsh Government will ensure that its sponsorship functions perform effectively and meet the expectations set out in these principles.
- 4) **Effective collaboration.** WGSBs are highly valued for their expertise and experience. WGSBs, the Welsh Government and the wider public sector recognise the importance of working together and building 'Team Wales', seeking opportunities for broader and deeper collaboration in policy development supporting each other and celebrating success. Opportunities to save money, identify efficiencies and improve effectiveness should be pursued energetically and jointly.

⁴⁹ Reproduced from Welsh Government Sponsored Body specimen framework document

- 5) **Effective communication.** WGSBs and the Welsh Government form an extended family and undertake to maintain a consistent, respectful and collegiate approach to dealing with each other in public and private. All parties undertake to strive for effective communication, to be as open as possible, to share information on a 'no surprises' basis and to manage contentious matters through dialogue and negotiation.

Governance and accountability

- 6) **WGSB chair and board.** The chairs of WGSBs are important figures in Welsh public life and will be appointed in accordance with the Code of Practice for Ministerial Appointments to Public Bodies. WGSB boards are accountable to ministers for achieving the defined objectives, ensuring high-quality corporate governance and for oversight of the WGSB executive, including the chief executive.
- 7) **Primary role of the board in WGSB oversight.** Governance and the internal control regime should be a matter primarily for the WGSB board. The Welsh Government will rely on the board, internal audit and Wales Audit Office for assurance. The sponsorship role should focus on accounting for delivery of objectives and the management of relationships between the WGSB and the Welsh Government. Clear roles and expectations for ministers, chairs, boards, executives, accounting officers, sponsorship divisions and auditors should be set out in the 'framework document'.
- 8) **Performance management.** While we expect the norm to be good performance, effective governance and a respectful relationship, our approach must be capable of an effective response to poor performance or other problems. Where there is evidence of poor performance in relation to objectives, management of funds, board effectiveness or other aspects of governance, the Welsh Government has both the right and responsibility to become more involved and more prescriptive. Performance management will be risk-based, relying on evidence of robust internal control to support a lighter touch or alternatively to apply a stronger grip where risks are managed less satisfactorily.
- 9) **Delegation.** Welsh Government and WGSB accounting officers remain jointly accountable for public funds spent through WGSB sponsorship. However, the routine sponsorship management regime should be only as prescriptive as necessary to be assured that public funds are managed correctly and that outcomes are being achieved cost-effectively. Financial responsibility will be delegated to the extent possible, consistent with Welsh ministers and accounting officer responsibilities.

Responding to change. In a changing world and with changing ministerial priorities, it may be necessary to reshape the functions and methods of service delivery of WGSBs or, where more appropriate, to review the continued relevance of their objects and constitutional arrangements. The Welsh Government may from time to time conduct in-depth organisational or thematic reviews to ensure that its WGSBs remain fit for purpose and to make proposals for reform.