



The Scottish Parliament
Pàrlamaid na h-Alba

Derek Mackay
Cabinet Secretary for Finance and
Constitution

**Public Audit and Post-legislative
Scrutiny Committee**

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Dear Cabinet Secretary,

Our Committee wants to be reassured that Scotland's public bodies are spending public money wisely and delivering the best possible outcomes for the people they serve¹. A crucial element in determining whether an organisation meets this challenge is a well-functioning board with clear objectives and clear lines of responsibility and accountability.

For many years, however, the current and previous auditors general have reported on problems of governance and financial management at various public bodies². We and our predecessor committees have scrutinised all such reports, one of the most recent of which led us to expose significant governance failings at the Scottish Police Authority (SPA).

We have considered a sample of recent Auditor General reports in the round, to determine whether they contained any recurring issues that the Scottish Government should address. We also considered a 2010 report by the previous Auditor General, 'The role of boards'³, which made some fundamental criticisms of the structure and operation of public bodies' boards. Many of these criticisms are still valid.

We appreciate that progress has been made in some areas of governance and understand that there cannot be too directive a relationship between ministers and public bodies. However, the Scottish Government has a clear role in setting the legislative and policy framework, and in making appointments to boards. Further, it is

¹ References to 'public bodies' are to all those bodies audited by the Auditor General and which therefore fall within our remit.

² The current and session 4 audit committees have considered more than twenty section 22 reports by the Auditor General.

³ http://www.audit-scotland.gov.uk/uploads/docs/report/2010/nr_100930_role_boards.pdf

not in anyone's interest for there to be constant critical reports about our public bodies. While the proportion of organisations subject to such reports is very small, there is nevertheless a risk of damaging the public's perception of our public services.

For these reasons, we set out below various factors that may inhibit effective governance and we invite the Scottish Government to explain how they will be addressed. We appreciate that some suggestions may require cultural change within organisations; while this cannot be imposed by the Scottish Government it can be encouraged⁴.

Improving board performance

- there can be a risk of senior executives not sharing 'bad news' with their boards, perhaps to protect the organisation's or the minister's reputation. Board members – many of whom are non-expert lay people – must therefore be encouraged to provide an effective challenge to board chairs and chief executives, while understanding that they remain part of the team. Board members must not feel inhibited or be embarrassed about asking basic questions, indeed, this can often be the best means of uncovering a problem. In short, we wish to prevent 'group think' on our boards;
- as our experience with the SPA highlighted, it is vital that board members of all public bodies have a clear understanding of the concept of corporate responsibility⁵ and exactly what it does and does not entail. For the avoidance of doubt, it is **not** a means of silencing 'difficult' voices;
- if a board's chair or chief executive is performing poorly, board members' only redress may be to raise a concern with the relevant minister. This may not always be feasible. We therefore question whether the involvement of a senior independent director on a board, as is the case in some parts of the private sector, could be a useful, additional check and balance on the performance of the board chair/ chief executive;
- in order to improve service delivery and ensure public confidence, we need to establish a fully effective and transparent means of assessing the performance of board chairs and board members. All boards should have a clear, publicly-available set of criteria by which they are judged;
- it is essential that the public appointments process attracts the best possible candidates⁶. The process should be as simple, streamlined and non-bureaucratic as possible so that well-qualified people are not dissuaded from applying simply because of the amount of time required to do so. However, we understand that some potentially very capable candidates from the private sector are reluctant to take part for this reason;

⁴ We also appreciate that chief executives, as accountable officers, are directly responsible to the Parliament and comments apply to them as appropriate.

⁵ Corporate Responsibility is one of three fundamental principles of board life to which all Board members must adhere. See page 24 of '[On Board – a guide for members of statutory boards](#)', published by the Scottish Government.

⁶ We make no comment on any specific issues raised by the Gender Representation on Public Boards (Scotland) Bill.

- we want to ensure that people with a successful track record in the public, private and third sectors have an equal chance of succeeding, not simply those who are most adept at repeating public sector jargon. We also want to avoid a situation whereby some people are on a large number of boards and, potentially, unable to devote sufficient time to each;
- when the Scottish Government decides to introduce new legislation it should – where relevant – give greater consideration to any governance arrangements that would be created and how these could best deliver the desired outcomes. Some of the problems we have encountered have stemmed from poor initial decisions on governance arrangements;
- similarly, while it is entirely up to parliamentary committees as to how they scrutinise bills, a greater focus on governance issues at the outset may prevent a recurrence of the problems identified repeatedly through the audit process.

The role of boards – update

Despite recent reforms, the overall public body landscape remains complex with considerable variance across boards and a confusing array of different public body types⁷.

For example, boards may differ in terms of: the number of board members, whether they are remunerated and the level of pay they receive; whether the chief executive is a member of the board; the balance between executive and non-executive board members; stakeholder representation; etc.

There is not always a clear rationale for such differences in public bodies' boards and we are unaware of any evidence to suggest that a particular approach or board structure is more effective than any other. The differing arrangements for salary and remuneration on boards seem to be particularly arbitrary and we are not certain whether these would stand up to robust challenge.

Many of the issues highlighted above were discussed in the previous Auditor General's report on the role of boards, which we referenced earlier. We therefore request that the Scottish Government provides an update on the measures it has subsequently taken to respond to this report, focussing on the points set out in the annexe to this letter.

Openness and transparency

Boards also take differing approaches to such matters as holding meetings in public or private; publishing advance agendas and papers; live streaming their meetings; encouraging public access to meetings; etc. Given our concerns with governance arrangements at the SPA, we were surprised to receive SPA meeting minutes suggesting that some of its governance standards were higher than in other central government public bodies⁸.

We also therefore ask the Scottish Government to explain how it could best encourage bodies to be more open and transparent in their work – another issue highlighted in the 2010 Auditor General report. Our own view is very simple: boards should be as transparent as possible and should meet in public unless there are justifiable reasons for meeting in private.

Learning the lessons from audits

We want to reach a point where the Auditor General is not obliged to publish so many – or any – critical reports about public bodies.

Where a significant problem is reported at a public body, we want to be reassured that, where appropriate, the Scottish Government always disseminates any general learning points across the public sector. We therefore request a detailed explanation

⁷ For example, the Scottish Government's '[National Public Bodies Directory](#)' discusses: Executive NDPBs; Advisory NDPBs; Tribunals; Public Corporations; Health Bodies; Non-Ministerial Departments; Commissioners and Ombudsmen; and other Significant National Bodies.

⁸ See page 5, paragraph [10.8](#): "The Chair also informed the Board that a study had been carried out on all central government public bodies in Scotland and that the standard being applied by the SPA was higher than any other he had seen."

of how Scottish Government sponsorship teams and the public bodies unit work to bring about improvements in governance and performance.

Looking ahead, we also request that when the Auditor General publishes a critical report on governance of wider relevance to public bodies, the Scottish Government writes to the Committee to explain any action it has taken in response.

On a related point, the Auditor General occasionally produces more than one 'section 22 report' on the same body^{9, 10}. Ideally, there would be no need for any section 22 report to be published. It is even less acceptable for an organisation to be the subject of repeat investigations as this suggests a significant underlying problem for the body under scrutiny. In such cases, we therefore request that the Scottish Government provides an update on the actions it has taken – if appropriate – to support the body in question.

None of the above is to detract from the fact that individual public bodies retain primary responsibility for responding to any critical report published by the Auditor General. We will, of course, continue to carry out robust scrutiny of these bodies and seek reassurances that they have satisfactorily addressed all identified problems.

Next steps

We would be grateful if you could reply to this letter 27 October 2017. We will then determine whether to take any further action.

We have copied this letter to other Scottish Parliament committees, the Auditor General and the Commissioner for Ethical Standards in Public Life in Scotland.

Yours sincerely,



Jackie Baillie MSP
Acting Convener of the Committee

⁹ Section 22 reports refer to the Auditor General's relevant powers to publish reports under the Public Finance and Accountability (Scotland) Act 2000.

¹⁰ Recent examples of repeat section 22 reports include: NHS24, Scottish Police Authority, NHS Tayside and Edinburgh College.

Annexe – The role of board

This annexe sets some issues in there report on which we would welcome an update—

- “Accountability for the performance of public bodies is complex and lacks clarity” (paragraph 32);
- “The Scottish Government’s public sector reform agenda has reduced the number of public bodies in Scotland but there has been no systematic review of whether these structures remain fit for purpose post-devolution.” (paragraph 2, page 3);
- “there remains a lack of clarity about the roles of the boards of public bodies, particularly the extent to which they provide leadership and strategic direction.” (paragraph 5, page 3);
- “The make-up of boards and their role has evolved over time rather than as a result of any objective evaluation of the best model for public accountability.” (page 5);
- Chief executives and their boards have parallel lines of accountability and this can cause confusion over who leads the organisation unless the separate roles are well defined and understood. Public bodies need strong leadership to make important decisions on spending priorities in the coming years. It is essential that the roles of chairs and chief executives are clear and their relationships work well to ensure effective leadership.” (page 5);
- Relationships between the Scottish Government and public bodies vary and need to improve to ensure that public bodies effectively meet future priorities and financial challenges.” (page 5);
- “Boards are not consistently good at providing scrutiny. Responsibility for risk management is largely delegated to audit committees, rather than being led by the board.” (page 5);
- “The Scottish Government should clarify the lines of accountability between public bodies, the Scottish Government and the Scottish Parliament.” (page 5);
- “....., despite this simplification agenda there remains a large number and range of different types of public sector bodies and the reasons for this are not always clear.” (paragraph 33, page 13);
- “Of the 106 public bodies that we have examined, there are six different categories and each has different accountability arrangements. Even within these categories, there are differences between public bodies in the way they account for their expenditure and performance and to whom they do so. These arrangements appear to have evolved over time, are difficult to understand, and run the risk that in some circumstances it may not be clear who is ultimately accountable for the performance of a public body. It is not clear why accountability arrangements differ.” (paragraph 34, page 13).