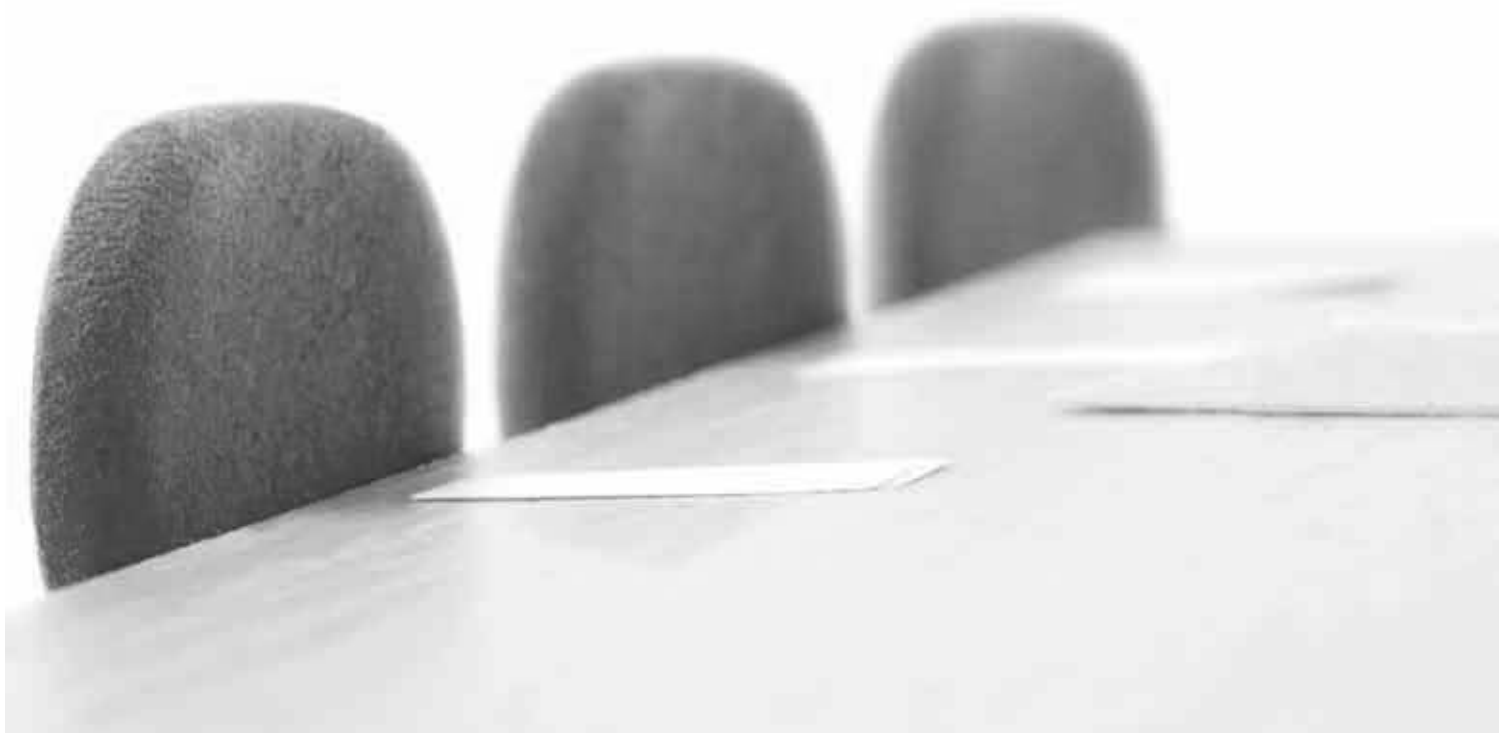


Key messages

# The role of boards



Prepared for the Auditor General for Scotland  
September 2010

# Auditor General for Scotland

The Auditor General for Scotland is the Parliament's watchdog for ensuring propriety and value for money in the spending of public funds.

He is responsible for investigating whether public spending bodies achieve the best possible value for money and adhere to the highest standards of financial management.

He is independent and not subject to the control of any member of the Scottish Government or the Parliament.

The Auditor General is responsible for securing the audit of the Scottish Government and most other public sector bodies except local authorities and fire and police boards.

The following bodies fall within the remit of the Auditor General:

- directorates of the Scottish Government
- government agencies, eg the Scottish Prison Service, Historic Scotland
- NHS bodies
- further education colleges
- Scottish Water
- NDPBs and others, eg Scottish Enterprise.

Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. It provides services to the Auditor General for Scotland and the Accounts Commission. Together they ensure that the Scottish Government and public sector bodies in Scotland are held to account for the proper, efficient and effective use of public funds.

# Key messages

**1.** Scotland's public sector consists of a large number of organisations of varying types providing public services such as health care, further education and the protection of the environment.

**2.** Many of these bodies have existed since before devolution in 1999. They are governed by boards which oversee their work and how public money is spent, and provide a link to the Scottish Parliament and the electorate.

**3.** Since devolution the overall Scottish budget has grown at an average rate of five per cent each year from 2000/01, to reach £34.7 billion in 2009/10. The budgets of most public sector organisations have increased during this period. This will change as the UK Government seeks to reduce the budget deficit. The Scottish Government predicts that the Scottish budget will be £4.3 billion smaller (in real terms) in 2014/15 than it was in 2009/10.<sup>1</sup>

**4.** The boards of public bodies will be central to managing reducing budgets. This will happen at a time when there will also be increasing demands for public services due to factors such as an ageing population.

**5.** This performance audit covers the boards of the 106 public bodies that existed on 31 March 2009, and which are audited by the Auditor General for Scotland. It examines how:

- they are accountable to the Scottish Government
- people become members of boards and how they are supported to perform this role
- the boards of public bodies operate.

**1** The Scottish Government has made progress with its public sector reform agenda but the public sector landscape remains complex with a number of different types of body. 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. 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.

**6.** The Scottish Government is seeking to simplify the Scottish public sector by reducing the number of public bodies by 25 per cent by 2011. By June 2010, 11 bodies had been abolished. However, the simplification programme does not seek to reduce the number of types of public body or simplify the system of accountability to the Scottish Parliament (Exhibit 1, overleaf).

**7.** The boards of non-departmental public bodies (NDPBs), NHS bodies and Scottish Water are directly accountable to Scottish ministers for the performance of their organisations.

**8.** The boards of executive agencies exist to advise and support their chief executives, who chair the board, and are not directly accountable to Scottish ministers. Some non-executives on the boards of executive agencies are unclear about what their role should be.

**9.** Board arrangements for non-ministerial departments differ and there is no clear reason for this. The General Register Office for Scotland does not have a board. The Office of the Scottish Charity Regulator has a wholly non-executive board that operates like the board of an NDPB. Registers of Scotland, uniquely, is an executive agency as well as a non-ministerial department. Its board is chaired by the chief executive like an executive agency. (See paragraph 39 in the main report for more detail.)

**10.** Nearly three-quarters of the college sector's budget comes from the Scottish Government through the Scottish Further and Higher Education Funding Council (SFC), but college boards are not accountable to Scottish ministers or to the SFC. (See paragraph 36 in the main report for more detail.)

**11.** The Public Finance and Accountability (Scotland) Act 2000 created a separate system of accountability where the chief executives of NDPBs, NHS bodies, executive agencies, non-ministerial departments and Scottish Water are personally accountable to the Scottish Parliament for the proper management of public funds and for ensuring that these resources are used efficiently, effectively and economically.

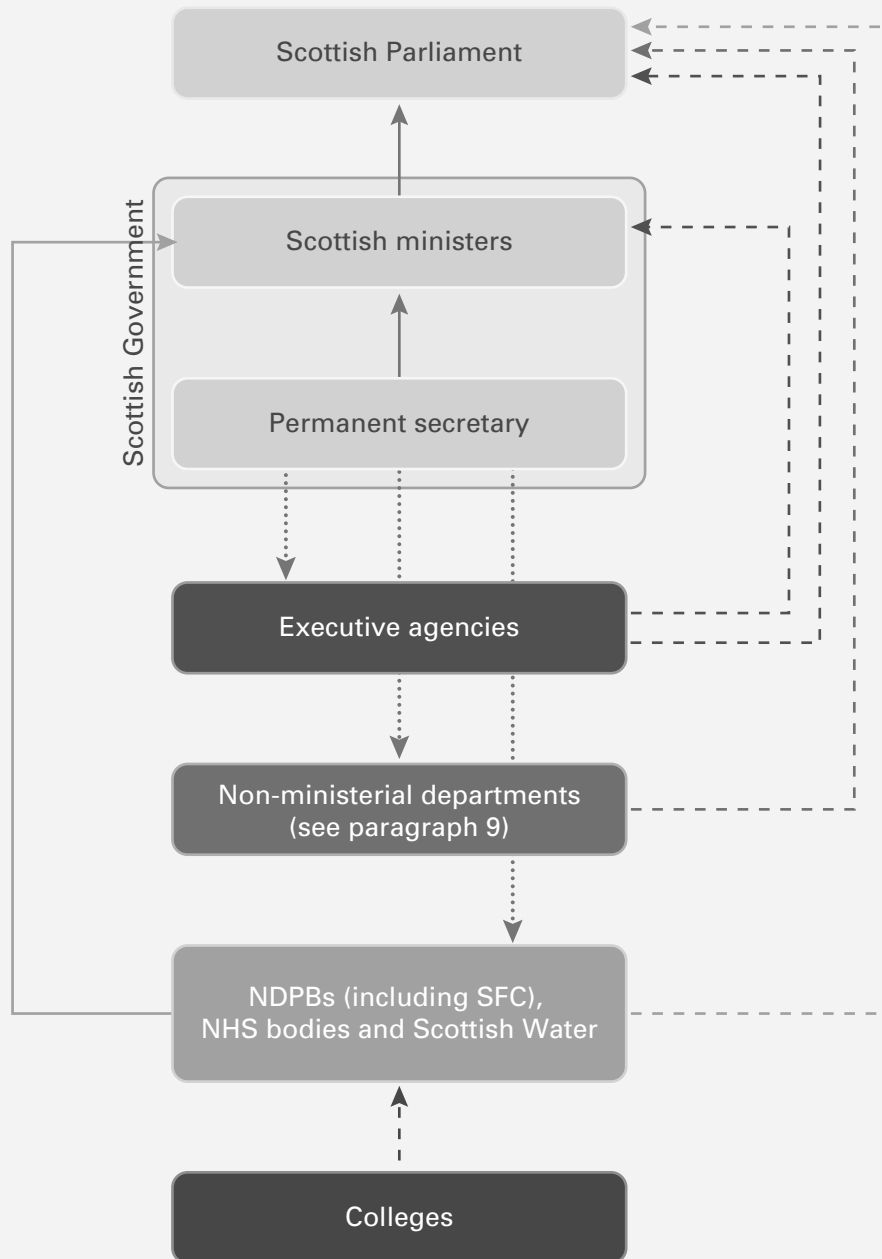
**12.** Both the chair of the board and the chief executive have shared responsibility and accountability for the leadership of the organisation, so it is important that there is clarity about their respective roles.

**13.** College principals – their chief executives – are not statutory accountable officers but are accountable to the chief executive of the SFC for the public funds under their control.

## Exhibit 1

### Accountability of public bodies to the Scottish Parliament

There are complex and parallel lines of accountability between public bodies and the Scottish Parliament.



- Coloured solid line indicates the accountability of boards.
- Dotted lines indicate delegated authority from the Permanent secretary to accountable officers under the Public Finance and Accountability (Scotland) Act 2000.
- Dashed lines indicate the accountability of accountable officers to the Scottish Parliament. Chief executives of executive agencies are also accountable to Scottish ministers.
- Dashed dark blue line indicates accountability of college principals to the chief executive of the Scottish Funding Council for public funds under their control.

**14.** In the 29 NDPBs, nine chief executives are members of the board and 20 are not. None of the 29 NDPBs have other executive board members. There is no clear reason for this variation which has emerged through a series of individual decisions rather than on the basis of an overarching view of whether chief executives should or should not be board members.<sup>2</sup> (See exhibit 15 in the main report for more detail.)

**15.** Similarly, there are variations in whether there are other executives on the board. In NHS bodies and Scottish Water, some directors are also board members, for example, directors of finance. This is not the case in NDPBs and colleges.

**16.** The average size of boards in public bodies and colleges is 14.<sup>3</sup> However, they range from four to 32 members. In some cases, the number and background of board members is specified by law. If there are too few board members then the range of skills and experience may be too small for the board to perform effectively. If there are too many board members, then it may make effective discussion, decision-making and holding to account difficult. (See paragraphs 119–122 in the main report for more detail.)

**2** The overall number of people applying to be non-executives is falling. The appointments process for non-executives is improving but there are still weaknesses. The length of time it can take to make an appointment remains too long and there has been mixed progress in widening the diversity of applicants to become non-executives.

**17.** The skills and expertise of board members and how they work together is central to the effectiveness of boards.

**18.** Scottish ministers appoint four-fifths of non-executives to the boards of NDPBs, NHS bodies, executive agencies, non-ministerial departments and Scottish Water through the Scottish Government's public appointments process. Other non-executives are nominated by external organisations, such as local authorities, represent staff interests or are directly elected onto boards. The boards of colleges appoint their own non-executives and must have representatives of their staff and students.

**19.** The public appointments process is overseen by the Commissioner for Public Appointments in Scotland and takes an average of six months for each appointment. The process must strike a balance between making the process of appointing board members robust and fair while not discouraging potential applicants.

**20.** The number of applications to become non-executives of public bodies has halved from an average of 41 for each position in 2004/05 to 19 in 2008/09. Over the same period, there has been an increase in the number of times Scottish ministers have had no choice of candidate to appoint. (See paragraphs 67-69 in the main report for more detail.)

**21.** It is not clear what has caused this decline or whether there has been a change in the quality of applications. Board members and others suggested that potential applicants may be put off from applying for a variety of reasons including:

- the nature of the appointments process
- a perceived risk of damage to personal reputation
- public perceptions of public bodies
- pay
- the time commitment needed.

**22.** In September 2008, the Commissioner for Public Appointments in Scotland produced a strategy to encourage a wider range of people to become non-executives.<sup>4</sup> An action plan was developed to implement the strategy but progress against it has been mixed. (See paragraphs 71–74 in the main report for more detail.)

**23.** The time commitment expected from chairs ranges between ten and 156 days a year. Other non-executives are expected to commit between four and 60 days a year to the work of the organisation. However, chairs and non-executive board members estimate that they spend about 30 per cent more time on board work than they expected.

**24.** Most non-executives are paid except for colleges and NDPBs with charitable status. In 2008/09, they received a total of £5.5 million.

**25.** Chairs receive an average of £258 a day for an average annual commitment of 120 days. Other non-executives receive an average of £207 a day for an average annual commitment of 36 days. (See paragraphs 81-82 in the main report for more detail.)

<sup>2</sup> Legislation for the four non-departmental public bodies with charitable status states that the chief executive cannot be a member of the board.

<sup>3</sup> In 2009, the average number of board members in a FTSE 100 company was 10.8. *The Female FTSE board report 2009*, Cranfield University, 2009.

<sup>4</sup> *Diversity Delivers*, Office of the Commissioner for Public Appointments in Scotland, September 2008.

**26.** Eighty-four per cent of non-executives received some form of induction following their appointment and a similar number had opportunities to address their training needs as board members. However, less than a third of chairs had received any training to support them in their role. Only half of college non-executives had their performance appraised. (See paragraphs 84–88 in the main report for more detail.)

**3** In addition to giving leadership and strategic direction, a very important role for boards is the scrutiny of risk, financial management and performance. This will become increasingly important as budgets are reduced. Boards are not consistently good at doing this. Responsibility for risk management is largely delegated to audit committees, rather than being led by the board.

**27.** Despite the diverse range of functions that public bodies deliver, all boards that are responsible for the performance of the organisation must have three essential characteristics. They must:

- scrutinise the organisation's performance, finances and the risks it faces
- provide leadership and strategic direction to the organisation
- act together as a single united body and make decisions collectively.

**28.** Boards must hold the management of the organisation to account and ensure that it meets its organisational objectives. To do this, boards must focus their scrutiny on the organisation's performance – in particular: performance against organisational targets, financial management and the risks faced by the organisation.

**29.** Eighty-two per cent of non-executives said that they received sufficient information to support them in monitoring the organisation's performance most or all of the time. However, fifteen per cent said the information was sufficient only some of the time. In the 17 organisations we visited, all of the boards received regular performance and finance reports but the extent of challenge from non-executives was variable. In some cases, detailed scrutiny of performance and financial reports was delegated to a committee.

**30.** Risk management was less of a focus for boards than organisation performance and financial management. In all of the 17 boards we visited, primary responsibility for risk management was delegated to audit committees. (See paragraphs 101–102 in the main report for more detail.)

**31.** On average, boards have between five and six committees that support their work. All public bodies have an audit committee. One organisation has 24 committees. If there are too few board members, it may be difficult to find sufficient members for the committees that support the work of the board. If there are too many committees, there is a risk that:

- the board may not be aware of significant issues or risks
- non-executives may become too involved in the organisation's operations
- the ability of the organisation to make quick decisions may be affected. (See paragraphs 107–109 in the main report for more detail.)

**32.** Boards should provide leadership and strategic direction to the organisation. Around two-thirds of chairs and non-executive thought that they should have the prime role in leading and directing the organisation but only half felt that the board actually fulfilled this role.

**33.** The Scottish Government is seeking to align the activities of all public bodies with its purpose, strategic objectives and targets. All public bodies are striving to do this. However, this places limits on the scope boards have to set the strategic direction of their organisation.

**34.** Ninety-four per cent of all board members agreed or strongly agreed that their boards took collective responsibility for decisions. In the 17 boards we visited, boards appeared to take collective responsibility for decisions even when there were strong differences of opinion expressed during discussion. This is vital. If boards do not operate coherently as a group, the risk of poor performance increases. Irrespective of how non-executives come to be on the board, their role as a board member must override any other interests.

**35.** In addition to the three essential characteristics of a board, there has to be an effective relationship between the chair and the chief executive. Eighty-six per cent of board members said that the chair and the chief executive understood and respected their distinct and separate roles. In the 17 boards we visited, relationships between chairs and chief executives were generally constructive and positive with clear understanding of separation between the two roles. However, in some cases, changes in the chair or the chief executive had meant that there had been a need to adapt to different working practices.

**36.** To be effective, boards must also:

- display integrity in how they make decisions
- be open and transparent
- regularly review how they operate.

**37.** It is inevitable that in some cases, board members will have conflicts of interests with the subject of board discussions. It is vital that the public can be assured that such conflicts of interest do not affect boards' operations or decision-making.

**38.** All the boards covered in this performance audit had both a register of interests and code of conduct for board members. Ninety-eight per cent of all board members said they knew how to register and declare their interests. We saw examples of discussions at board meetings where board members left the meeting when a subject with which they had a conflict of interest was being discussed and careful recording of declarations of interest. However, there was not a formal request for declarations of interest at all meetings. (See paragraphs 114-115 in the main report for more detail.)

**39.** The extent to which the boards of public bodies and colleges are open and transparent to the public and to stakeholders varies. For example:

- two-fifths had board meetings that were open to the public
- all made their board minutes available either on their website (three-quarters) or on request (a quarter)
- three-tenths made their board papers available on their website, half on request and a fifth did not make them available. (See paragraphs 111-113 in the main report for more detail.)

**40.** Over three-quarters of boards carried out a regular review of how they operated. In 14 out of the 17 boards we visited, annual reviews of board operation were conducted. (See paragraphs 116-118 in the main report for more detail.)

### Key recommendations

The Scottish Government should:

- as part of its public sector simplification agenda, clarify the lines of accountability between public bodies, the Scottish Government and the Scottish Parliament
- investigate why the number of applications for public appointments is falling and take action to reverse this trend.

The Scottish Government and public bodies should:

- review the skills and expertise that they need among non-executives for the future and seek to attract applicants to fill any gaps identified.

Public bodies should:

- ensure that their boards focus their scrutiny on organisational performance, financial management and risk management
- review the use of committees and ensure that major decisions which should be made by the board are not delegated.

# The role of boards

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