



Northern Ireland Assembly

Audit Committee

Review of the Governance and Accountability Arrangements for the Northern Ireland Audit Office and the Northern Ireland Public Services Ombudsman

Together with Minutes of Proceedings, Minutes of Evidence and other evidence
considered by the Committee

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authorised by the Committee.

**This report is embargoed until the commencement of the
debate in the Assembly.**

Ordered by the Audit Committee to be published 26 January 2022.

Report: NIA 158/17-22 Audit Committee

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Powers and Membership

Powers

The Audit Committee is a Standing Committee of the Northern Ireland Assembly established in accordance with Section 66 of the Northern Ireland Act 1998 and Assembly Standing Order No. 58.

The Committee:

- Exercises the functions mentioned in Section 66(1) of the Northern Ireland Act 1998. The Committee therefore agrees, in place of the Department of Finance (DoF), the estimates of the Northern Ireland Audit Office (NIAO) and lays them before the Assembly;
- Is responsible for tabling a motion for a resolution of the Assembly relating to the salary payable under Article 4(1) of the Audit (Northern Ireland) Order 1987 to the holder of the office of the Comptroller and Auditor General (C&AG);
- Exercises the functions mentioned in sub-paragraphs 18(2) and (4) of Schedule 1 to the Public Services Ombudsman Act (Northern Ireland) 2016 in respect of the Northern Ireland Public Services Ombudsman (NIPSO); and
- May exercise the power in Section 44(1) of the Northern Ireland Act 1998.

The Chairperson of the Audit Committee also has a lead role in the recruitment of the C&AGNI.

In 2016, the Northern Ireland Assembly Commission (NIAC) and the DoF sought to reflect the constitutional independence of the Assembly from the Executive. This led to the development of a draft methodology/protocol for setting the Commission's budget. The methodology sets out an approach that is akin to the approach adopted for the NIAO and NIPSO, whereby the Audit

Committee provides scrutiny and challenge to the Commission's expenditure plans and reports accordingly, in recognition of the independence of the Commission. The Committee fulfils this role in place of the DoF.

Membership

The Committee has 5 members, including a Chairperson and Deputy Chairperson, and a quorum of two members. The membership of the Committee is as follows:

- Mr Daniel McCrossan MLA (Chairperson)
- Mr William Irwin MLA (Deputy Chairperson)^{1 2}
- Mr Jim Allister MLA³
- Mr Alan Chambers MLA
- Ms Emma Rogan MLA⁴

¹ Ms Joanne Bunting replaced Mr Andrew Muir as Deputy Chairperson on 16 April 2020.

² Mr William Irwin replaced Ms Joanne Bunting as Deputy Chairperson on 14 June 2021.

³ Mr Jim Allister was appointed a member of the Committee from 16 June 2020.

⁴ Ms Emma Rogan replaced Ms Emma Sheerin on 5 October 2020.

List of Abbreviations and Acronyms used in this Report

AS:	Audit Scotland
ARC:	Audit and Risk Committee
AW:	Audit Wales
C&AG:	Comptroller and Auditor General
C&AGNI:	Comptroller and Auditor General for Northern Ireland
DoF:	Department of Finance
IOI:	International Ombudsman Institute
LGA:	Local Government Auditor
MoU:	Memorandum of Understanding
NAO:	National Audit Office
NIAO:	Northern Ireland Audit Office
NIPSO:	Northern Ireland Public Services Ombudsman
RaISe:	Research and Information Service
The Audit Committee:	Northern Ireland Assembly Audit Committee
The Commission:	Northern Ireland Assembly Commission

Overview

1. This report sets out the Audit Committee's consideration of evidence and recommendations made as part of its *Review of the Governance and Accountability Arrangements for the Northern Ireland Audit Office and the Northern Ireland Public Services Ombudsman*. The report is a special report to the Assembly under Standing Order 46(7)^[1].
2. In undertaking the Review, the Committee recognised the important function of the Northern Ireland Audit Office (NIAO) in relation to financial audit and public reporting, as well as its critical work in relation to governance and counter fraud and the key support it gives to the Northern Ireland Assembly and citizens of Northern Ireland. It also recognised the key role the Northern Ireland Public Services Ombudsman (NIPSO) plays in promoting good governance and improving accountability in public administration, as well as providing remedy in individual complaint cases. The Committee further recognised the importance of maintaining the independence of both organisations in ensuring the effective exercise of their functions.
3. Therefore, the principle of balancing independence and accountability was foremost in the Committee's thinking. Members were cognisant of the need to strike the right balance that would protect the vital independence of both the Comptroller and Auditor General (C&AGNI) and the NIPSO as corporations sole, whilst ensuring robust governance and accountability arrangements which align with best practice.
4. To assist its consideration of the issues, the Committee requested written evidence from relevant stakeholders and expert witnesses in the fields of public audit and the public services ombudsman; 15 written submissions were received. The Committee also held 12 oral evidence sessions.

^[1] <http://www.niassembly.gov.uk/assembly-business/standing-orders/standing-orders-5-july-2021/#a46>

5. The evidence in relation to public audit included that from the C&AGNI, the Chairperson of the NIAO Advisory Board, the Local Government Auditor, the chairpersons of the statutory boards for audit offices in England, Scotland and Wales and three experts in the field of public audit.
6. The evidence in relation to the public services ombudsman included that from the NIPSO, the Chairperson of the NIPSO Audit and Risk Committee, the President of the International Ombudsman Institute and three expert witnesses in the field of the public services ombudsman.
7. Following consideration of the evidence, the Committee identified scope for the improvement of the governance and accountability arrangements for the NIAO and NIPSO, resulting in 23 recommendations as detailed below.

Audit Committee (Next Mandate)

Recommendation 1 - That, subject to the Assembly agreeing the Review recommendations, the next Audit Committee be asked to:

- **Consider the level of scrutiny and interchange which is necessary between the Committee and both the NIAO and the NIPSO to enable the Committee to exercise its related statutory functions effectively, including in terms of agreeing, or as necessary proposing modifications to, the estimates for the respective bodies;**
- **Further examine the Committee's existing statutory functions in relation to the NIAO and the NIPSO with a view to identifying potential improvements; and**
- **Further examine the MoU which have been agreed between the Committee and the NIAO and the Committee and the NIPSO to identifying potential improvements and changes necessary.**

Recommendation 2 - That, subject to the Assembly agreeing the Review recommendations, the next Audit Committee be asked to prioritise in its

forward work programme the task of identifying and pursuing the appropriate avenues for implementing recommendations that require legislation and undertakes stakeholder engagement on implementing the recommendations generally.

Northern Ireland Audit Office

Recommendation 3 - The tenure of the next C&AGNI is a non-renewable term of 10 years with the current compulsory retirement age of 65 removed.

Recommendation 4 - Former C&AGs must consult a nominee of the Northern Ireland Assembly before taking up any post, and that he/she is prohibited, for a period of two years after leaving office, from holding a position with any organisation or person whose accounts fall to be examined by the C&AGNI.

Recommendation 5 - The NIAO is formally separated from the C&AGNI and is established as a body corporate in the form of a statutory board.

Recommendation 6 - As a minimum, the NIAO statutory board should:

- **Have a duty to monitor the exercise of the C&AGNI's functions, and a power to advise the C&AGNI about those functions. Importantly, the C&AGNI would be duty bound to have regard to any advice given.**
- **Prepare, jointly with the C&AGNI, an annual plan setting out their respective work programmes;**
- **Prepare, jointly with the C&AGNI, an annual report on progress against the annual plan and lay it before the Northern Ireland Assembly.**
- **Submit the accounts of the NIAO to the external auditor (appointed by the Audit Committee) and lay before the Assembly.**

- **Prepare an annual estimate of income and expenses of the NIAO, and to submit the estimate to the Audit Committee for agreement and laying before the Assembly.**

Recommendation 7 - The NIAO statutory board is comprised as follows:

- **Persons who are not employees of the NIAO (non-executive members)**
- **The C&AGNI (executive member)**
- **An employee of the NIAO (executive member).**

Recommendation 8 - Non-executive members of the NIAO statutory board are appointed by the Audit Committee, similar to the arrangements adopted by its Great Britain counterpart Commissions and Committee.

Recommendation 9 - Given that non-executive members of boards play a key role in providing positive challenge, it is recommended that non-executive members of the NIAO statutory board hold the majority of board positions with the chairperson being a non-executive member appointed by the Audit Committee.

Recommendation 10 - NIAO statutory board members cannot take up office on boards of any public bodies that are audited by the NIAO and must consult on any potential conflicts that would arise out of any activities that are related to their work, paid or unpaid, outside their role on the board of the NIAO.

Recommendation 11 - In line with common practice, non-executive members of the NIAO statutory board serve a term of three years with the option for one extension of up to three years.

Recommendation 12 - The executive member (an individual employed by the NIAO) serves a term of three years on the NIAO statutory board with the option for reappointment for a number of terms without limitation.

Recommendation 13 - The NIAO statutory board has an audit committee and a remuneration committee comprised solely of non-executive members.

Recommendation 14 - A statutory requirement is established for a code of practice between the NIAO statutory board and the C&AGNI which should be reviewed on a two-yearly basis.

Recommendation 15 - The appointment of the C&AGNI as Accounting Officer becomes a responsibility of the Assembly Audit Committee to bring it into line with its peers, and that legislation is progressed to effect the change.

Recommendation 16 - The appointment of an external auditor for the NIAO becomes a responsibility of the Assembly Audit Committee, to bring it into line with its peers, and that the DoF legislates to effect the change.

Recommendation 17 - There is a single auditor for the public sector to enhance the effectiveness of the audit function and primary legislation is enacted to make provision for a single auditor.

Recommendation 18 – In advance of the development of a code of practice between the NIAO statutory board and the C&AGNI, the current MoU between the Audit Committee and the NIAO is strengthened and updated to reflect organisational changes and any agreed Review recommendations applicable at that time.

Northern Ireland Public Services Ombudsman

Recommendation 19 - The NIPSO establishes an Advisory Panel to improve governance and accountability and supplement the work of the NIPSO ARC.

Recommendation 20 - The NIPSO's proposals to improve governance and accountability are progressed without undue delay.

Recommendation 21 - The NIPSO considers ways in which to increase and improve reporting arrangements.

Recommendation 22 - The adjudication function in respect of complaints that a councillor may have failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors is removed from the NIPSO and becomes the responsibility of a separate body.

Recommendation 23 - The current MoU between the Audit Committee and the NIPSO is updated to reflect organisational changes and any agreed Review recommendations applicable at that time.

Introduction

8. Arising from its consideration of related matters in September and October 2020, the Audit Committee agreed to undertake a review to establish the scope for improving governance and accountability arrangements for the NIAO and the NIPSO and the appropriate avenues for implementing any future improvements in the context of the Committee's defined statutory functions in relation to both bodies.
9. At its meeting on 21 October 2020, the Audit Committee agreed the following draft **Terms of Reference** for its 'Review of the governance and accountability arrangements for the Northern Ireland Audit Office and the Northern Ireland Public Services Ombudsman', with the intention that they be refined as the Review progressed.

Purpose

To establish the scope for improving the governance and accountability arrangements for the NIAO and the NIPSO and the appropriate avenues for implementing any future improvements in the context of the Committee's defined statutory functions in relation to both bodies.

Objectives

While recognising the statutorily independent position of both the C&AG/NIAO and NIPSO, the review will:

1. *Consider the level of scrutiny and interchange which is necessary between the Committee and both the NIAO and the NIPSO to enable the Committee to exercise its related statutory functions effectively, including in terms of agreeing, or as necessary proposing modifications to, the estimates for the respective bodies;*
2. *Examine the following areas with a view to identifying potential improvements in light of experience and evidence:*

- *The Committee's existing statutory functions in relation to the NIAO and the NIPSO;*
 - *The MoU which have been agreed between the Committee and the NIAO and the Committee and the NIPSO; and*
 - *The comparative governance and accountability arrangements in the UK jurisdictions in terms of counterpart committees/commissions, C&AGs/equivalents, audit offices and ombudsman offices, and*
3. *Set out the appropriate avenues for implementing any identified improvements to the governance and accountability arrangements for the NIAO and the NIPSO.*

Sources

The sources of information and evidence which the review will draw upon will include: documentation on existing arrangements; comparative research and legal advice; evidence from expert witness on applicable governance and accountability models in other jurisdictions; and focused evidence sessions with the C&AG/NIAO and the NIPSO.

Output

The findings and any recommendations arising from the review will be set out in a special report to the Assembly which the Committee will make under Standing Order 46(7).

10. This report does not cover Objective 1. The Committee is currently considering the codification of its role in relation to the scrutiny of the draft budgets for the both the NIAO and the NIPSO. This scrutiny is essential to allow the Committee to exercise its statutory functions effectively, including in terms of agreeing, or as necessary proposing modifications to, the estimates for both bodies.
11. The report also does not cover in detail the first two elements of Objective 2, namely, the examination of the Committee's existing statutory functions in

relation to the NIAO and the NIPSO, and the Memoranda of Understanding (MoU) which have been agreed between the Committee and the NIAO and the Committee and the NIPSO. While some progress has been made to examine these areas, the Committee would wish to see the next Audit Committee examine them in more detail in the context of any agreed recommendations emanating from this Review.

12. In relation to Objective 3, it is recognised that implementation of many of the Review recommendations will require legislative change, either through Assembly or Westminster legislation. Some avenues have been identified but others have not. The Committee therefore calls on the next Audit Committee to identify and pursue the appropriate legislative avenues for implementing the agreed recommendations that require legislative change.
13. Some of the recommendations do not require legislative change and can be implemented through administrative measures. The Committee therefore calls on the next Audit Committee to undertake stakeholder engagement in this regard.

Recommendation 1 – That, subject to the Assembly agreeing the Review recommendations, the next Audit Committee be asked to:

- **Consider the level of scrutiny and interchange which is necessary between the Committee and both the NIAO and the NIPSO to enable the Committee to exercise its related statutory functions effectively, including in terms of agreeing, or as necessary proposing modifications to, the estimates for the respective bodies;**
- **Further examine the Committee’s existing statutory functions in relation to the NIAO and the NIPSO with a view to identifying potential improvements; and**
- **Further examine the MoU which have been agreed between the Committee and the NIAO and the Committee and the NIPSO to identifying potential improvements and changes necessary.**

Recommendation 2 - That, subject to the Assembly agreeing the Review recommendations, the next Audit Committee be asked to prioritise in its forward work programme the task of identifying and pursuing the appropriate avenues for implementing recommendations that require legislation and undertakes stakeholder engagement on implementing the recommendations generally.

The Review Process and Issues Considered

14. During the period covered by this Report, the Audit Committee considered matters relating to its Review at eight meetings. Details of the meetings can be found at **Appendix 1**. The draft Terms of Reference can be found at **Appendix 2**.
15. In the course of its Review, the Committee requested and considered written evidence from experts in the fields of public audit and the public services ombudsman; chairpersons of the Ombudsman Audit and Risk Committees in England, Scotland and Wales and the Welsh Advisory Panel; the C&AGNI NIPSO and the Chairperson of the NIPSO Audit and Risk Committee. The written evidence received by the Committee can be found at **Appendix 3**.
16. During the Review, the Committee took oral evidence from the following witnesses in respect of the governance and accountability arrangements for the NIAO (some also referred to the governance and accountability arrangements for the NIPSO):
 - Kieran Donnelly, C&AGNI
 - Martin Pitt, Chairperson, NIAO Advisory Board
 - Dame Fiona Reynolds, Chairperson, National Audit Office
 - Ms Lindsay Foyster, Chairperson, Audit Wales
 - Professor Alan Alexander, Chairperson, Audit Scotland
 - Professor David Heald, Professor of Public Sector Accounting, University of Glasgow
 - Dr Helen Foster, Course Director, Accounting Pathways Lecturer in Accounting, University of Ulster Business School

- Richard Lloyd-Bithell, Chartered Institute of Public Finance and Accountancy
- Colette Kane, Local Government Auditor (LGA)
- Rodney Allen, Chief Operating Officer, NIAO.

17. During the Review, the Committee took oral evidence from the following in respect of the governance and accountability arrangements for the NIPSO (some also referred to the governance and accountability arrangements for the NIAO):

- Margaret Kelly, NIPSO
- Dónall Curtin, Chair of the NIPSO Audit and Risk Committee
- Sean Martin, Office of the NIPSO
- John McGinnity, Office of the NIPSO
- Peter Tyndall, President of the International Ombudsman Institute
- Brian Thompson, Honorary Senior Research Fellow, University of Liverpool
- Dr Chris Gill, Lecturer, University of Glasgow
- Dr Richard Kirkham, Senior Lecturer, University of Sheffield.

18. The Official Reports/Hansards of the oral evidence sessions (Minutes of Evidence) can be found at **Appendix 4**.

19. Other evidence considered by the Committee can be found at **Appendices 5 and 6**.

20. The Committee deliberated on the evidence received at its meeting on 15 December 2021. At its meeting on 26 January 2022, the Committee agreed its Review report and that it should be published.

21. The following two sections of the report provide a summary of the key governance and accountability issues considered by the Committee in relation to the NIAO and NIPSO and are divided as follows:

NIAO

- Appointment and tenure of the C&AGNI
- Corporatisation
- Board Membership and Status
- Code of Practice
- Appointment of the C&AGNI as the Accounting Officer for the NIAO
- Appointment of an External Auditor for the NIAO
- Appointment of a Single Auditor for the Public Sector
- MoU.

NIPSO

- Appointment and tenure of the NIPSO
- Corporatisation
- Local Government Standards Commissioner
- MoU.

22. The evidence received on every issue raised is not rehearsed; a complete picture of the written and oral evidence received can be found in the Appendices.

Consideration of Evidence: Northern Ireland Audit Office

Appointment and Tenure of the C&AGNI

23. Section 65 of the Northern Ireland Act 1998⁵ provides for the appointment of the C&AGNI, with the person appointed remaining in office until he or she: is removed by Her Majesty on foot of a resolution of the Assembly; resigns; dies; or attains the age of 65 (as provided by Section 28(3) of the Exchequer and Audit Act (Northern Ireland) 1921⁶).
24. In considering this issue, the Committee reflected on comparative research it had commissioned⁷ on its counterparts in Great Britain and noted that, in the other jurisdictions, there are fixed-term tenures for C&AGs. In Westminster the tenure for the Auditor General is 10 years; in Scotland it is 8 years; and in Wales it is 8 years.
25. There was consensus among those witnesses who commented that the appointment of the C&AGNI should be for a non-renewable limited term of between eight and ten years.
26. In her written evidence dated 29 January 2021, Dr Helen Foster, Ulster University Business School stated:

“Traditionally the appointment was until retirement age, but most administrations have moved to fixed terms of 8-10 years in line with recent developments in corporate governance which now deems excessively long tenure as a risk to effectiveness and independence. Renewable terms are also not encouraged.”

⁵ <https://www.legislation.gov.uk/ukpga/1998/47/content>

⁶ [Exchequer and Audit Act \(Northern Ireland\) 1921 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1921/28/content)

⁷ <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2020/audit/4520.pdf>

27. In his written submission dated 29 January 2021, Professor David Heald, University of Glasgow, commented:

“A disadvantage of term limits is that holding such public audit posts may restrict the future acceptable employment of the holder at the end of their term. This may therefore make the post less attractive to those under, say, the age of 50. This might be a more important consideration in the context of a small jurisdiction such as Northern Ireland. However, I continue to regard a non-renewable term limit as appropriate: this might affect the decision as to whether the term is eight or ten years.”

28. During oral evidence on 10 March 2021, Mr Richard Lloyd-Bithell, Chartered Institute of Public Finance and Accountancy, summed up the benefits of a tenure time:

“Our view is that there are a number of benefits from having a tenure term. It negates a number of risks: long-term postholders can be open to external pressures, political or from organisations; familiarity can arise from being in a long-term position; and long-term postholders can become complacent in the role.”

29. During oral evidence on 10 March 2021, Professor David Heald, referred to the benefits of a term being non-renewable:

“More important than the term is the fact that it is not renewable. If you get into a position of renewable terms, you run the danger that the choice of topic and the tone of report is conditioned by issues about reappointment. In the United Kingdom as a whole — I am not sure about the position in Northern Ireland — some recent public appointments have become extremely controversial. Any suggestion that the Comptroller and Auditor General was being careful with reports to not upset particular Ministers or parties would be damaging.”

30. It was noted by a number of witnesses that, should a term limit be introduced, consideration must be given to any future career of the postholder following his/her term as C&AGNI – i.e. safeguards would be required to ensure that any employment following service as C&AGNI does not bring the office into disrepute or compromise public accountability.
31. In particular, Dr Helen Foster recommended in her written evidence that Northern Ireland follows the practice adopted in Wales where former C&AGs must consult a nominee of the legislature before taking up any post and cannot, for a period of two years after leaving office, hold a position with any organisation, or person, whose accounts fall to be examined by the C&AG Wales.
32. At its meeting on 29 September 2021, the Committee considered a copy of correspondence from the C&AGNI to the Speaker advising of his intention to resign from his post at the end of March 2022. The Committee subsequently agreed to commission legal advice on the options for providing that the next C&AGNI is recruited on a non-renewable term of between 8 and 10 years with the current compulsory retirement age of 65 removed.
33. Mindful that legislative change would be needed to provide for the above, the Committee also requested advice on whether this could be best done via an Act of the UK Parliament or an Act of the Assembly (with consent of the Secretary of State); and, given the time pressures associated with the notified retirement date, whether the post of the next C&AGNI could be advertised on the basis that it would be subject to retrospective effect of legislation.
34. At its meeting on 3 November 2021, the Committee considered the legal advice together with correspondence dated 26 October 2021, from the Northern Ireland Assembly Commission (“the Commission”), advising that it intended to proceed with the recruitment of a new C&AGNI on the following basis:
 - That the post change from a permanent appointment to a single, non-renewable term of 10 years;
 - That the current statutory retirement age of 65 will be removed; and

- That post-employment restrictions will be included in the contract of employment.
35. The Commission acknowledged that these amendments would require legislative change, but highlighted that they would be implemented in a way to minimise any legal risk pending future legislative change.
 36. The Committee noted the basis on which the Commission intended to recruit a new C&AGNI and agreed to suggest to the Commission that it might consider approaching the Secretary of State to request that the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill, which was proceeding through Parliament, be amended to effect the change proposed in relation to the tenure of the C&AGNI.
 37. The Committee was of the view that the 65-years age limitation provided in Section 28(3) of the Exchequer and Audit Act (Northern Ireland) 1921, should be abolished and replaced with a non-renewable term of 10 years.
 38. In reaching that view, the Committee acknowledged that the office of the C&AGNI is a statutory creation. Therefore, consideration would need to be given to the options for providing that the C&AGNI is recruited on a non-renewable term of between 8 and 10 years with the current compulsory retirement age of 65 removed; and whether this could be best done via an Act of the UK Parliament or an Act of the Assembly (with consent of the Secretary of State).
 39. The Committee was also firmly of the view that safeguards would be required to ensure that any employment following service as C&AGNI does not bring the office into disrepute or compromise public accountability. Preference was expressed for the robust arrangements that exist in Wales.
 40. **Recommendation 3 - The tenure of the next C&AGNI is a non-renewable term of 10 years with the current compulsory retirement age of 65 removed.**

41. **Recommendation 4 - Former C&AGs must consult a nominee of the Northern Ireland Assembly before taking up any post, and that he/she is prohibited, for a period of two years after leaving office, from holding a position with any organisation or person whose accounts fall to be examined by the C&AGNI.**

Governance and Accountability Arrangements

42. The C&AGNI is head of the NIAO and, as provided by The Audit (Northern Ireland) Order 1987⁸, a corporation sole. The corporate governance arrangements of the NIAO, reflecting the C&AGNI's statutory role, include the following:
- An Advisory Board which is responsible for providing objective and impartial advice to the C&AGNI to assist them in the discharge of functions. The current Advisory Board consists of four non-Executive Members, including the Chairperson, and two Executive Members including the C&AGNI;
 - An Audit and Risk Assurance Committee which is established by the Board to review the comprehensiveness of assurances on systems of internal control, risk management and corporate governance, and is independent of all NIAO operational activities;
 - A Remuneration Committee which reports to the Advisory Board on matters including terms and conditions of employment for NIAO staff (excluding the C&AGNI), talent management, succession planning, pay settlements and the application of remuneration policy;
 - A Senior Management Team, which, having full regard to the advice of the NIAO Advisory Board, is responsible for the running of the Office.

⁸ [The Audit \(Northern Ireland\) Order 1987 \(legislation.gov.uk\)](https://legislation.gov.uk)

43. The Audit Committee has an MoU in place with the NIAO. Under the MoU, the C&AGNI and the NIAO commit to the actions they will take to uphold transparency and manage public money effectively, and in doing so, provide confidence to the Assembly and wider public regarding the arrangements for the governance and accountability of the NIAO. The MoU is considered separately in this report under its own heading.
44. In considering the areas of governance and accountability, the Committee was cognisant of the findings of comparative research it had commissioned on governance arrangements in other jurisdictions.⁹

Corporatisation

45. Against a background of devolution, controversy and changes in the process of public appointments¹⁰, steps were taken across Great Britain to strengthen the governance of the post of Auditor General and associated audit offices. These reforms were primarily concerned with independence, good governance and the quality of public audits; and had different processes but similar outcomes. The reforms included the creation of a board which would both scrutinise and support the activities of the Auditor General. In addition, the board would contain non-executive members, which would ensure it retained a degree of independence from the C&AG.
46. In written evidence dated 18 February 2021, the C&AGNI noted that a corporation sole is an arrangement which remains relevant and current in certain circumstances, such as the role of the C&AGNI. However, he acknowledged that in other audit institutions, the role is supported and challenged by an executive board overseeing operations, whereas the NIAO currently has an Advisory Board. The C&AGNI further acknowledged that any change in this area is a matter for the Assembly, rather than the NIAO to

⁹ [Assembly's Audit Committee and its GB counterparts: a comparative perspective \(niassembly.gov.uk\)](https://niassembly.gov.uk)

¹⁰ Committee on Standards in Public Life, First Report, May 1995
<https://www.gov.uk/government/publications/mps-ministers-and-civil-servants-executive-quangos>

consider, but highlighted that any consideration should take into account the adequacies of the checks and balances at the top of the NIAO, proportionality and the maintenance of the independence of the C&AGNI's role. This view was echoed by Professor David Heald in his written evidence dated 29 January 2021:

“... the balancing act to strike in relation to the governance of the NIAO is between (a) protecting the vital independence of judgement of the C&AGNI, and (b) ensuring that modern governance practices are sustained.”

47. Professor Heald had some reservations about corporatisation, focusing on what a statutory board of the NIAO would actually do. He was of the view that, provided it was restricted to governance 'housekeeping', that was acceptable. He also pointed out that, in terms of its relationships with audit clients, the NIAO being seen to follow modern corporate governance might be advantageous. He cautioned, however, that as soon as such a board starts to perform the strategic planning functions of the board of a private corporation or of a conventional executive non-departmental public body, the operational independence of the C&AGNI would be constrained.
48. Professor Heald noted that, if the present Advisory Board is to be replaced by a corporate board, then there should be clear specification in statute of its functions, making it explicit that the exercise of its strategic functions must not impinge on the operational autonomy of the C&AGNI, for example, in the interpretation of the public audit mandate and in the choice of topics for value-for-money audit or matters that may require investigation.
49. Dr Helen Foster was very clear, in both her written evidence and oral evidence provided to the Committee at its meeting on 10 March 2021, that the NIAO should become a body corporate. While Mr Brian Thompson, in his written evidence dated 18 March 2021, expressed the view that it will be regarded as an anomaly for the C&AGNI and the NIAO not to follow the example in England, Scotland and Wales.

50. When asked during oral evidence about the ambit of challenge that a statutory board would exercise, Dr Foster said:

“In the Northern Ireland Audit Office, there are two distinct areas: audit quality, the quality of work that it does; and governance. Very often, it has an advisory board to assist with its audit quality. As far as I am aware, there is no issue with the quality of the audit carried out by the Northern Ireland Audit Office. It has internal mechanisms and is peer reviewed. It asks colleagues from other audit offices to review cases, and professional bodies come in to ensure that it has quality control arrangements. To prevent the situation that arose in the National Audit Office, with the auditor having huge expenses etc, the board would deal purely with the governance of the organisation, including the accounts that are prepared. The Auditor General is the accounting officer for the Northern Ireland Audit Office, and the board would provide a challenge on those sorts of issues.”

51. During oral evidence on 7 July 2021, the C&AGNI advised Committee Members that, if the Assembly was inclined to create a statutory board, the adjustment from an advisory board would not be a big one. During the evidence session, he highlighted that:

“Independence of mind is really important in any type of board. For Martin [Chairperson of the NIAO Advisory Board] and others over the years, one of the things that would have been tested rigorously was independence of mind and the capacity to challenge as well as support and get a good balance between the two. That is usually important.”

52. The principles of independence of mind, support and challenge, as highlighted by the C&AGNI, were probed by the Committee. When asked for his views on being appointed as Chairperson by a panel chaired by the C&AGNI, who then sets the Terms of Reference for the Board, the Chairperson of the NIAO Advisory Board said:

“From my perspective, that is the best arrangement, given the legislation. If I had a free choice, I would prefer that it was undertaken by someone independent of the C&AG, but we are an advisory board, so, at the end of the day, the role is to support Kieran [C&AGNI]. My preferred model would be that it would be totally independent of him.”

53. When asked about the strength of the NIAO Advisory Board’s challenge function, its Chairperson said:

“The majority of the committee make the decisions. However, as I said at the start, at the end of the day, we are only advisory. All we can do is recommend to Kieran how he proceeds. He can legitimately refuse our advice, if that is how it works.”

54. To assist its consideration of whether the NIAO should become a body corporate, and to increase its understanding of the role a statutory board could play, the Committee heard oral evidence from the Chairperson of the National Audit Office (NAO) and the Chairperson of Audit Wales (AW) at its meeting on 2 June 2021, and the Chairperson of Audit Scotland (AS) at its meeting on 7 July 2021.

55. The oral evidence sessions with the chairpersons of the audit office statutory boards provided the Committee with an insight into the principles that guide their work; the make-up, roles and responsibilities of the boards; and, how they work in practice.

56. During an oral evidence session on 2 June 2021, Dame Fiona Reynolds, Chairperson, NAO, outlined four important principles that guide the work of the NAO Board:

“The first is to respect and maintain the independence of the Comptroller and Auditor General in his statutory role and, connected to that, of course, to respect and maintain the independence of the NAO as an organisation that reports to Parliament. As you may know, we have an established code of practice that sets out that relationship clearly... The second guiding principle is to ensure that we focus on our strategy and its

delivery, rather than on operational details, which are left to the staff and management of the Comptroller and Auditor General. The third is to provide support and appropriate challenge to the C&AG and his senior team. The fourth is to bring our expertise and experience to support the NAO's mission and purpose.”

57. During the same evidence session, Lindsay Foyster, Chairperson, AW, also highlighted that her board protects the independence of the Auditor General:

“There is no interference in the individual components of the Auditor General's work programme. The board is set up to monitor the exercise of those Auditor General functions, and we may provide advice. However, we must ensure the provision of resources required for the exercise of those functions, and we must preserve the operational independence of the Auditor General and do nothing to undermine that. How does that work in practice? It is worth having a sense that the board's remit is primarily about running the business and ensuring that Audit Wales is a model organisation for the public sector in Wales. As I say, the board does not seek to influence individual components of the Auditor General's work. However, it is really important that, in order to provide the resources needed to carry out that work, the board has a good understanding of the work that the Auditor General is undertaking.”

58. During oral evidence on 7 July 2021, Professor Alan Alexander, Chairperson, AS, made some key points as to what his board does not do:

“The board does not have a role in setting the scope and focus of the audit work. That work is done by the Auditor General and the Accounts Commission in accordance with the relevant auditing standards and code of audit practice. My board's role is very much about the strategic running of the business. It is not about the focus of audit work, nor is it about the operational management of the business, which is for the management team”.

59. When referring to AS's support and challenge function, Professor Alexander pointed out that:

“For us, support and challenge go hand in hand. They are complementary and not mutually exclusive. The board's focus is on strategy and direction. That includes corporate plans, ensuring, crucially, that they reflect the needs of the Auditor General and the Accounts Commission; strategies and plans on themed areas, such as people, digital, financial, diversity and sustainability; Budget development; and the approval of key policies. We also scrutinise performance carefully by having regular — by which I mean at every meeting of the board — reports on corporate performance, financial performance and the progress of our ongoing improvement plan.”

60. Dame Fiona Reynolds (NAO), also provided an insight to her thoughts on getting the balance right between support and challenge:

“As a board, we are very clear that we want to be supportive and to help the NAO to achieve its objectives. However, we also want to make sure that we are challenging the senior team by asking searching questions. We have a board review every year, which we have just completed. One of the questions that we ask is whether we feel that the NAO is being challenged enough and whether the executive feels that it is getting challenge as well as support from us.”

61. When asked about how to avoid a 'cosy relationship' between the C&AG and the board, Lindsay Foyster (AW) said:

“We have a clear distinction of roles set out. The code of relationship practice is very important in underpinning that, but it is really important in practice. The chair has a role in not only making sure that we are not just seeing things through because we think that it is a good job done but that we have conducted the appropriate level of scrutiny and received the appropriate level of assurance as we go through.”

62. Following consideration of the evidence received, the Committee is firmly of a mind that the NIAO should be formally separated from the C&AGNI and be established a body corporate in the form of a board.
63. The overarching function of the statutory board would be to both scrutinise and support the activities of the C&AGNI while respecting and maintaining the independence of his or her statutory role; and, ensuring that effective governance systems are of the highest standard and are maintained.
64. The Committee recognises that legislative change is required to provide for the implementation of its recommendations, including specifying the board's strategic functions and making it explicit that the exercise of its functions must not impinge on the operational autonomy of the C&AGNI.
65. **Recommendation 5 - The NIAO is formally separated from the C&AGNI and is established as a body corporate in the form of a statutory board.**
66. **Recommendation 6 - As a minimum, the NIAO statutory board should:**
 - **Have a duty to monitor the exercise of the C&AGNI's functions, and a power to advise the C&AGNI about those functions. Importantly, the C&AGNI would be duty bound to have regard to any advice given.**
 - **Prepare, jointly with the C&AGNI, an annual plan setting out their respective work programmes;**
 - **Prepare, jointly with the C&AGNI, an annual report on progress against the annual plan and lay it before the Northern Ireland Assembly.**
 - **Submit the accounts of the NIAO to the external auditor (appointed by the Audit Committee) and lay before the Assembly.**
 - **Prepare an annual estimate of income and expenses of the NIAO, and to submit the estimate to the Audit Committee for agreement and laying before the Assembly.**

Board Membership and Status

67. The Committee considered the differing board memberships in the UK jurisdictions. In particular, it noted the comments made by the statutory board chairs on the importance of having a wide range of ‘non-executive’ expertise on a board to ensure that value is always added to the work of an audit office.
68. Further, it noted that, as a safeguard to ensure the independence of the Auditor General and avoid any conflicts of interest, AW board members cannot take up office on boards of any of the other public bodies that are audited by AW; they must consult on any potential conflicts that would arise out of any activities that are related to their work, paid or unpaid, outside their role on the board of Audit Wales.
69. The issue of conflicts of interest was also raised by the C&AGNI when highlighting matters to be considered in relation to membership of a board:
- “... conflicts of interest. Why do I raise that? When we embarked on strengthening our advisory board many years ago, I remember chairing a panel and a former member of this Committee sat with me on it, and we thought that we had a good field. The successful person rang me up and said, "By the way, I've been offered another position as the chair of one of our leading arm's-length bodies." I said, "You can't do both; that's a conflict of interest." Because we audit every other public body in Northern Ireland, we have to be careful that we do not have people sitting on our board who are also on the boards of other public bodies. I had not appreciated just how difficult that was until we first tried to develop our board not many years ago. We have to take extra steps to make sure that we have a good field and are not handicapped by ruling people out. We will rule people out because of conflicts of interest, but we need to cast the net fairly wide so that we have others that come through who do not have conflicts.”
70. During oral evidence on 7 July 2021, the Chairperson of the NIAO Advisory Board, provided his views on what he felt was key in relation to a statutory

board: people with the right expertise and experience so that there is a professional respect when working with the C&AG, but also a healthy tension; a proportionate number of board members with a sensible balance between non-executives and executives; and, the right checks and balances at the top of the organisation.

71. The Committee also considered the method of appointment of chairpersons and board members in other UK jurisdictions and noted that appointments for non-executive members of boards rest with its counterpart Commissions and Committee.

72. In particular, the Committee noted Professor Alexander's response during oral evidence when asked for his thoughts if he was to find himself in the position where the Auditor General was responsible for his appointment:

“That would change the pattern fundamentally, because the fact that he is independently appointed and I am independently appointed supports the independence of both of us. It also makes it easier for us to have the kind of working relationship that is essential, given that Audit Scotland provides the services that allow the Auditor General to do his job.”

73. The Committee is of the view that non-executive members of the statutory board should be appointed by the Audit Committee to provide for separation and improved governance. Non-executive members should be appointed to the board for a period of 3 years with the option to reappoint to serve a second and final term.

74. It was clear from the evidence received that the non-executive members of the NAO, AW and AS bring with them a wealth of knowledge and expertise, depth of diversity and different perspectives. The Committee believes these features are essential to ensure a robust and effective board that is able to provide both support and positive challenge. As such, it is of the view that non-executive members should hold the majority of board positions, with the chairperson being a non-executive appointed by the Audit Committee.

75. Protecting the independence of the C&AGNI was stressed by all the board chairpersons. In undertaking this review, the Committee was mindful of this principle and believes that prohibiting statutory board members from taking up office on the boards of any public bodies that are audited by the NIAO, and requiring them to consult on any potential conflicts that would arise out of any activities that are related to their work outside their role on the board, would be an effective safeguard in that regard.
76. As referenced by the Audit Office chairpersons in oral evidence, a working relationship with Audit Office officials and the C&AG is extremely important in the development of strategy and other areas. The Committee noted that the AW board includes elected members from within AW (executive members). Lindsay Foyster, (AW), referenced this element of board composition in her oral evidence and noted that it added a real richness and value to board discussions.
77. The Committee appreciates the value experienced executive members can add to a board. In recognition of this, the Committee is of the view that the board should include an executive member who could be reappointed for a number of terms without limitation, subject to meeting appropriate performance standards.
78. Further, the board should have two committees: an audit committee and a remuneration committee (as is currently the case with the Advisory Board) comprised solely of non-executive members. The Committee believes that non-executive only membership would provide an additional level of independence.
79. The Committee recognises that legislative change is required to provide for the implementation of its recommendations in relation to board membership and status.
80. **Recommendation 7 – The NIAO statutory board is comprised as follows:**
 - **Persons who are not employees of the NIAO (non-executive members)**
 - **The C&AGNI (executive member)**

- **An employee of the NIAO (executive member).**

81. **Recommendation 8 - Non-executive members of the NIAO statutory board are appointed by the Audit Committee, similar to the arrangements adopted by its Great Britain counterpart Commissions and Committee.**
82. **Recommendation 9 - Given that non-executive members of boards play a key role in providing positive challenge, it is recommended that non-executive members of the NIAO statutory board hold the majority of board positions with the chairperson being a non-executive member appointed by the Audit Committee.**
83. **Recommendation 10 - NIAO statutory board members cannot take up office on boards of any public bodies that are audited by the NIAO and must consult on any potential conflicts that would arise out of any activities that are related to their work, paid or unpaid, outside their role on the board of the NIAO.**
84. **Recommendation 11 - In line with common practice, non-executive members of the NIAO statutory board serve a term of three years with the option for one extension of up to three years.**
85. **Recommendation 12 - The executive member (an individual employed by the NIAO) serves a term of three years on the NIAO statutory board with the option for reappointment for a number of terms without limitation.**
86. **Recommendation 13 – The NIAO statutory board has an audit committee and a remuneration committee comprised solely of non-executive members.**

Code of Practice

87. It was plain from the evidence received from the chairpersons of the Audit Offices in England, Scotland and Wales, that a code of practice was essential to ensure effective governance and oversight of the operations of an audit office while protecting the independence of the Auditor General.

88. During oral evidence, Dame Fiona Reynolds (NAO) told the Committee that she found the code of practice helpful in a number of aspects:

“To me, it is helpful to have something that has that status and recognition. It is helpful to emphasise the points about the complete independence of the C&AG in setting the audit programme and holding the audit quality responsibilities. It also makes clear what our responsibilities are for the strategy, the budget and the presentation to the Public Accounts Commission and all the rest of it. I have to say that I have found having a clear code of practice very useful in our work so far. It also helps that I am appointed by Parliament and that I chair the process to appoint new board members. That allows us to be clear and strategic about the skills that we need and seek. It also allows us to, quite properly, think about how best we can support and challenge the C&AG, which would be a different situation if the board members were appointed by the C&AG. Those are my answers: the safeguards and responsibilities that we have are pretty clear and well set out.”

89. Ms Lindsay Foyster (AW) referred to the clarity and distinction between roles that a code of practice provides:

“... our code of relationship practice sets things out really clearly. It is what underpins our work. As I explained, the way that the board and the Auditor General conduct their day-to-day business is understood in a broad sense, but if we ever wanted to go back and double-check, there is a mechanism that underpins that. Although I do not feel that I can give an opinion directly on the arrangements in Northern Ireland, there is certainly potential, even if it is a perception externally, for cosy relationships to develop if the Auditor General was appointing their own advisory board. That is not to say that that is the situation there, but I could understand that there is the potential for that perception to develop. As I said, I find that having a statutory board and the clarity and distinction between the roles really helpful.”

90. Professor Alexander (AS) highlighted the importance of having a code of conduct [practice], subject to regular review, regardless of whether an organisation is working well:

“I have been on the board for nearly three years, and I think that I have referred to the code of conduct only once in that time, although let me stress that we review it annually and make any changes that we deem to be necessary. It is always important to have a code of conduct, but, if the organisation is working well, as, I think, we are, it should be a longstop, as it were, rather than something that is on our minds continuously”

91. The Committee is of the view that a code of practice, subject to regular review, to govern the relationship between the NIAO statutory board and the C&AGNI is essential to ensure robust governance and oversight of the operations of the NIAO while preserving the independence of the C&AGNI, and avoiding the situation whereby a ‘cosy’ relationship could develop. Further, the Committee is of the view that the requirement to have a code of practice should be in statute.
92. **Recommendation 14 - A statutory requirement is established for a code of practice between the NIAO statutory board and the C&AGNI which should be reviewed on a two-yearly basis.**

Appointment of the C&AGNI as Accounting Officer for the NIAO

93. The governance around the role of the Accounting Officer in UK Audit Offices is broadly similar in structure, and not dissimilar from governance of the Accounting Officer’s role elsewhere in the public sector¹¹. The differences between the NIAO Accounting Officer’s and other Accounting Officers’ governance system revolves around the role of the Department of Finance (DoF).

¹¹ <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/audit/niao-nipso-review/written-submissions/niar-43-2021-public-audit-governance-the-role-of-the-accounting-officer.pdf>

94. While the DoF has no role on the panel that appoints the C&AGNI, it issues the letter appointing the successful candidate as the Accounting Officer for the NIAO under Section 9(6) of the Government and Resource Accounts Act (Northern Ireland) 2001¹². In correspondence to the Committee dated 6 May 2021, the Minister of Finance advised the Committee that it is a well-established convention that his Department carries out a general role in appointing the Heads of all Departments as Accounting Officers, consistent with the guidance as set out in Managing Public Money Northern Ireland¹³.
95. During oral evidence on 7 July 2021, the C&AGNI referred to historical anomalies in the governance of his office, including his appointment as Accounting Officer by the DoF:
- “ when I was appointed Comptroller and Auditor General, I got a letter of appointment as accounting officer for the Northern Ireland Audit Office. The letter of appointment came from the Department of Finance, and that is an anomaly because we audit that Department. Those matters should be anchored in the Assembly and the legislature rather than on the executive arm of government.”
96. Given the NIAO’s role in auditing the DOF, the Committee is of the view that responsibility for the appointment of the C&AGNI as Accounting Officer should rest with the Audit Committee.
97. **Recommendation 15 - The appointment of the C&AGNI as Accounting Officer becomes a responsibility of the Assembly Audit Committee to bring it into line with its peers, and that legislation is progressed to effect the change.**

¹² [Government Resources and Accounts Act \(Northern Ireland\) 2001 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹³ [Managing Public Money NI \(MPMNI\) | Department of Finance \(finance-ni.gov.uk\)](https://finance-ni.gov.uk)

Appointment of an External Auditor for the NIAO

98. The Audit (Northern Ireland) Order 1987¹⁴ currently requires the DoF to appoint an external auditor for the NIAO. In accordance with an extra statutory arrangement, the appointment is made by the DoF acting on advice from the Audit Committee.
99. At present, the NIAO's external auditor certifies the accounts of the NIAO, which are then reviewed by the Audit Committee and laid before the Assembly by the DoF. The DoF does not have any role/responsibility for agreeing/approving the accounts; its role in the process is purely an administrative one carrying out a high-level check on formatting against the requirements as laid out in the guidance issued under cover of a "Dear Finance Director" letter each year.
100. During oral evidence on 7 July 2021, the C&AGNI expressed a view that responsibility for the appointment of auditors for the NIAO should rest with the Assembly.
101. Members noted that in England, Scotland and Wales, the Auditor General does not appoint external auditors; this duty falls to the relevant committee in the legislature which makes the appointment on the recommendation of the board¹⁵.
102. In his correspondence dated 6 May 2021, the Minister of Finance acknowledged the anomaly in relation to the appointment of the external auditor for the NIAO and proposed that his department takes forward work to make this change:

¹⁴ <https://www.legislation.gov.uk/nisi/1987/460/contents/made>

¹⁵ <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/audit/niao-nipso-review/written-submissions/niar-43-2021-public-audit-governance-the-role-of-the-accounting-officer.pdf>

“It has however long been recognised within DoF that the power for appointing an external auditor for NIAO sits more properly with the Assembly. My department therefore, working together with the Assembly/Committee support, would propose to take forward work to make this change once time permits. In the meantime, my officials will consider the most appropriate vehicle to take forward the necessary legislative changes and will liaise with the Clerk of the Audit Committee.”

103. The Committee is of the view that the power for appointing an external auditor for the NIAO sits more properly with the Assembly, and that the Audit Committee should become responsible for the appointment of the auditor to bring it into line with the practice in other UK jurisdictions and provide the public with assurance of stewardship by the NIAO.

104. **Recommendation 16 - The appointment of an external auditor for the NIAO becomes a responsibility of the Assembly Audit Committee, to bring it into line with its peers, and that the DoF legislates to effect the change.**

Appointment of a Single Auditor for the Public Sector

105. Article 4(1) of the amended Local Government (Northern Ireland) Order 2005¹⁶ provides that the Department for Communities may, with the consent of the C&AGNI, designate a member of staff of the Audit Office as the LGA.

106. In written evidence to the Committee dated 18 February 2021, the C&AGNI recommended that consideration should be given to a single auditor for the public sector and indicated that the Welsh model was worthy of consideration:

“The appointment of the Local Government Auditor provides separate accountability arrangements to the ratepayer, through the LGA, and the taxpayer, through the C&AG, but creates some potential for accountability gaps where functions reach across both central and local government. In contrast, Wales, a region with a larger population and geographical area

¹⁶ [The Local Government \(Northern Ireland\) Order 2005 \(legislation.gov.uk\)](https://legislation.gov.uk)

than Northern Ireland, has appointed a single public auditor whose responsibility includes the local government sector. Consideration should be given as to whether there should be a single auditor for the public sector.”

107. During oral evidence on 10 March 2021, when questioned on whether accountability could be improved if there was a single auditor for the public sector as opposed to a separate local government auditor, Dr Helen Foster, stated:

“Having spent the last few years looking at the auditors, Public Accounts Committees and accountability arrangements in the devolved administrations, I know that local government in Northern Ireland is much smaller than local government elsewhere, so we are not comparing like with like. The larger local government organisations elsewhere in the UK have very substantial budgets: bigger than the very small budget here. Even in Scotland and Wales, local government, although a separate body, comes under the Auditor General. Audit Scotland provides services to local government and central government, and the same arrangements apply in Wales. I do not see any need to have separation here. I do not think that accountability would be particularly enhanced if that were the case. It would just add another layer.”

108. On 11 March 2021, the Committee wrote to the C&AGNI requesting further information on the areas where functions reach across both central and local government and details of any accountability gaps that have been identified as a result of the separate accountability arrangements that currently exist.

109. The C&AGNI responded on 19 April 2021, highlighting that practically all local government activities are connected into central government, and provided a number of examples: community development; planning; city deals; health and wellbeing; waste management; tourism; job creation; and, economic revitalisation.

110. The C&AGNI noted that many of the activities listed are linked into the operations of various central government departments and the wider objectives and intended outcomes of the Programme for Government. Therefore, the establishment of a single public auditor would only enhance the effectiveness of the audit function.
111. In relation to the issue of accountability, two key gaps were detailed, both of which relate to reporting arrangements: 1) in conducting local government audits, the LGA may identify themes which cut across multiple local councils. However, under current arrangements, there is no mechanism to report such matters to the Northern Ireland Assembly; neither to the Committee for Communities, nor the Public Accounts Committee; and, 2) there is no formal mechanism to deliver reports for the activities, as set out above, which cut across both central and local government.
112. Given that the Department for Communities is responsible for the designation of the LGA, the Committee wrote to the Minister for Communities on 15 March 2021, to seek a view on whether there should be a single auditor for the public sector and details of the appropriate legislative mechanisms for effecting such a change should the matter be progressed.
113. The Minister responded on 20 April 2021, outlining the same understanding as the C&AGNI – i.e. that the appointment of the LGA provides separate accountability arrangements to the ratepayer, through the LGA, and the taxpayer through the C&AG, but creates some potential for accountability gaps where functions reach across both central and local government. The Minister concluded by stating that it is for the Executive/Assembly to decide on whether there should be a single auditor for the public sector as it would require primary legislation.
114. During an oral evidence session on 7 July 2021, Mr Martin Pitt, Chairperson of the NIAO Advisory Board, was asked who performed the challenge function in respect of the LGA. The Chairperson explained that the Advisory Board's function:

“extends as far as the Audit Office, but our remit stops with the Comptroller and Auditor General ... I do not know the answer to that question.”

115. During the same evidence session, the C&AGNI outlined that there are:

“... quality control arrangements that straddle central and local government. Say, for example, that there is an independent review of a sample of audits. I think that the local government audits, as well as central government audits, are included in that sample ... In that sense, there is a control mechanism.”

116. When questioned further on whether the challenge function for the LGA fell within the ambit of the Advisory Board, the C&AGNI stated that “it would not be explicit”.

117. During oral evidence on 29 September 2021, an NIAO official provided further information on the local government audit function within the NIAO:

“Prior to 2003, the local government audit function sat within the former Department of the Environment. At that time, the auditor and the associated staff were civil servants. The Audit and Accountability (Northern Ireland) Order 2003 changed that and brought the local government audit function into the Audit Office. Over the subsequent 18 years, the amalgamation of those functions, along with the health service audit function, has meant that the NIAO is now, effectively, a one-stop audit shop for the whole NI public sector. We apply one set of auditing standards and one methodology, regardless of whether our audits are in the local government or central government sector. However, there are some differences. The key difference that I will flag up is that, when the auditor ultimately forms their opinion on an audit in local government, it does not include a regularity opinion. Those apply only in central government.

... [The LGA], once designated, carries out their audit function in the statutory way, along with their other responsibilities. They exercise their

own professional judgement, and they are independent of the Department and the C&AG. Although we are a one-stop audit shop, we still have two public auditors: the C&AG and the local government auditor.”

118. During the same evidence session, the LGA outlined her views on how local government would be handled if the matter of a single auditor for the public sector was to be progressed:

“The structure is to be agreed, but the arrangement might be that the C&AG and the local government auditor is effectively one person, with directors below that, like me, who take the lead on particular council audits and central government.”

119. When questioned on the role of the Advisory Board in relation to the oversight and challenge for the LGA, the NIAO official stated that:

“... the advisory board's function, in respect of both the C&AG and the local government auditor, is exactly the same.”

120. A discussion ensued on whether the evidence that was provided to the Committee on 7 July 2021, in relation to who performs the challenge/oversight function in respect of the LGA, was consistent with the evidence on the same matter provided by the LGA and the NIAO official. The Committee therefore agreed to seek written clarification on who performs the challenge/oversight function in respect of the work of the LGA, and details of what that function entails.

121. The C&AGNI responded on 27 October 2021, advising that the matter should be considered under two distinct areas – i.e. the audit judgements made by the LGA; and, the strategic and operational oversight of the LGA including quality control arrangements.

122. In relation to the audit judgements made by the LGA, the C&AGNI referred to the key principle of independence that applies. He noted that for an individual or a board to have an influence over these processes and judgements would not be appropriate, and confirmed that neither he as C&AGNI nor the Advisory

Board has a challenge or oversight function in relation to the audit decision-making processes and audit judgements that are ultimately formed by the LGA.

123. In relation to the strategic and operational oversight of the LGA, including quality control arrangements, the C&AGNI informed the Committee that the bulk of this work is resourced and performed in-house by NIAO staff, with a small number of audits contracted out. He clarified that the LGA is responsible for her portfolio but, as a member of NIAO staff, she remains accountable to the C&AGNI, and the Advisory Board, in its delivery.
124. Given that practically all local government activities are connected to central government, and the significant accountability gaps that exist under the current arrangements, the Committee believes that accountability would be improved if the C&AGNI was the single auditor for the public sector with the ability to report to the Assembly and relevant committees on issues which cut across multiple local councils and deliver reports which cut across both central and local government.
125. The Committee recognises that legislative change will be needed to provide for a single auditor for the public sector.
126. **Recommendation 17 - There is a single auditor for the public sector to enhance the effectiveness of the audit function and primary legislation is enacted to make provision for a single auditor.**

Memorandum of Understanding

127. The Audit Committee has an MoU in place with the NIAO. Under the MoU, the C&AGNI and the NIAO commit to the actions they will take to uphold transparency and manage public money effectively, and in doing so provide confidence to the Assembly and wider public regarding the arrangements for the governance and accountability of the NIAO.
128. Acknowledging that the MoU which was agreed in July 2015 is out-dated, the Committee wrote to the C&AGNI on 8 July 2021, requesting views on how the

current MoU could be strengthened and updated to reflect organisational or other changes.

129. The C&AGNI responded on 14 October 2021, proposing that more detail is included on the NIAO's updated internal governance structures to reflect the prominence of the Advisory Board over the Audit and Risk Assurance Committee and that the Committee has the opportunity to meet with the non-executive members of the Board once per year.
130. The Committee recognises that any subsequent changes to the governance and accountability arrangements that might result from the recommendations emanating from this Review would necessitate significant revisions to the MoU and the development of a Code of Practice to govern the relationship between the NIAO Statutory Board and the C&AGNI.
131. While some progress has been made to identify areas for improvement and correction, the Committee would wish to see the next Audit Committee examine the MoU in more detail in the context of any agreed Review recommendations.
132. **Recommendation 18 – In advance of the development of a code of practice between the NIAO statutory board and the C&AGNI, the current MoU between the Audit Committee and the NIAO is strengthened and updated to reflect organisational changes and any agreed Review recommendations applicable at that time.**

Consideration of Evidence: Northern Ireland Public Services Ombudsman

Appointment and Tenure of the NIPSO

133. The Public Services Ombudsman Act (Northern Ireland) 2016¹⁷ provides for the NIPSO to be appointed for a single term of seven years.

134. The Ombudsman addressed the issue of her tenure and appointment in written evidence dated 9 April 2021:

“The 2016 Act already makes provision for the Ombudsman to be appointed for a single term of seven years which is in accordance with current best practice and complies with the Venice Principles. The salary, terms of appointment and pension arrangements for the Ombudsman are determined by the Assembly Commission, negating the need for any form of remuneration Committee.”

135. The President of the International Ombudsman Institute (IOI), Mr Peter Tyndall, agreed with the Ombudsman’s assessment pointing out, in his written evidence of 19 March 2021, that the open, transparent and merit-based appointment process for the Ombudsman is in line with the very best international practice.

136. The views expressed by the Ombudsman and Mr Tyndall were echoed by Dr Richard Kirkham who suggested that there was no clear reason to reconsider the current arrangements.

137. Based on the evidence received, the Committee is of the view that no change is necessary to the current appointment arrangements or tenure of the NIPSO.

¹⁷ [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(legislation.gov.uk\)](https://legislation.gov.uk)

Governance and Accountability Arrangements

138. In considering the governance and accountability arrangements for the Office of the NIPSO, the Committee was cognisant of the findings of the research it commissioned on the comparative governance and accountability arrangements for the offices of the Ombudsman in other legislatures¹⁸.
139. In particular, it noted that all of the individual ombudsmen are independent of government in the exercise of their functions, and cannot be overruled by Parliament, Government Ministers or Committees; the Offices are all accountable to their respective governments by the laying and publishing of Annual Reports and Accounts before Parliament, which are subject to scrutiny by individual government committees; comparable features across the Offices' governance arrangements include audit and risk committees to advise on corporate governance and internal control; the Ombudsman is designated as the Accounting Officer for the Offices, responsible for financial probity and regularity; and, all are subject to annual internal and external auditing.

Corporatisation

140. In written evidence dated 9 April 2021, the NIPSO outlined the governance arrangements that currently exist within her Office. These arrangements include:
- Accountability, under an MoU with the Assembly Audit Committee;
 - An independent Audit and Risk Committee (ARC) to which NIPSO provides regular and comprehensive information regarding the effective discharge of our functions;
 - An externally appointed Internal Audit Service, which examines and reports on a rolling programme of operational and administrative

¹⁸ [Governance and accountability arrangements for the Offices of the Ombudsman in other legislatures \(niassembly.gov.uk\)](https://niassembly.gov.uk/governance-and-accountability-arrangements-for-the-offices-of-the-ombudsman-in-other-legislatures)

areas of NIPSO's business and which presents an annual Assurance Report;

- External Audit, undertaken by the NIAO, including an assurance that the expenditure and income in the annual financial statements have been applied for the purposes intended by the Assembly;
- A Senior Management Team comprising multi-disciplinary directors who support the Ombudsman in the development and delivery of the Office's strategic and business plans.

141. Addressing the issue of corporatisation in his written evidence, Mr Tyndall provided a view that the governance arrangements for the NIPSO are entirely consistent with best international practice and highlighted that no other IOI's members have a statutory board. He stated that such an arrangement is contrary to the need to respect the independence and judgment of the Ombudsman and the introduction of such would not be consistent with the Venice Principles and would bring the Office out of step with a model which has worked effectively across the globe for more than 200 years.

142. This view was also presented by the Ombudsman in written evidence and expanded upon during oral evidence on 2 June 2021:

"I spoke to all the other ombudsman's offices in all the other jurisdictions and to Peter Tyndall, who gave evidence, and my understanding is that none of the other ombudsman's offices has a statutory board. The Parliamentary and Health Service Ombudsman has a voluntary board, but the ombudsman is chair of that board. To be honest, that rather defeats the purpose and is a confusion of roles, whereas I think that Dónall's [ARC Chairperson] role is very clear. The ombudsman makes decisions on cases, so we are the decision of last resort other than the court, and it goes to the court for judicial review if someone is very unhappy with my decision or feels that it was unfair or inappropriate. My understanding ... is that, to put a statutory board in place, you would have to take the ombudsman out and keep them as a corporation sole and incorporate

NIPSO as an organisation. You would then have to come up with a mechanism by which to appoint a statutory board. The strategic plan or the accounts would go through that process, and the ombudsman would sit separately as a corporation sole. I think that the Committee does quite a robust job of looking at my accounts, my strategic plan and my reports. So, who would the Committee have? I could come and give evidence, but I would not be accountable for it in that respect, so the Committee would have to have the chair of the statutory board give evidence, because that would be the decision-making body, if you like. It actually makes it quite confusing, and I think that the reason that the Venice principles say that the ombudsman should be accountable to the legislature, in this case, through the Committee, is that that is a straight line of accountability and a straight line for the independence for the role. I have been appointed by the Assembly through an open appointments process. That is where accountability belongs. I would almost have to bring a chair of a statutory board with me to answer, as I understand it, the statutory questions”.

143. Dr Richard Kirkham was also not in favour of changing the statutory model of oversight for the NIPSO. In written evidence dated 29 March 2021, he made the following comments:

“I would not recommend changing the statutory model of oversight for the NIPSO, as for an organisation of its scale it would be a disproportionate response to the potential dangers. As noted above, there are already multiple other routes through which ombudsman schemes can be subject to scrutiny and seek advice, and these should be explored.”

144. In written evidence dated 18 March 2021, Mr Brian Thompson made the point that the independence of the NIPSO might not be impaired by the establishment of a statutory board:

“Given that the current advisory arrangements on governance are close to a statutory board, then perhaps so long as the Board jointly with the NIPSO exercise the powers to formulate strategic plans, prepare budgets,

draw up the estimates, the necessary independence will not be impaired by the establishment of a statutory board with a non-executive majority.”

145. However, during oral evidence on 14 April 2021, Mr Thompson said that, if pushed, he would prefer not to have a statutory board but to retain the current arrangements and perhaps augment them with an advisory panel.
146. The advisory panel referred to by Mr Thompson was discussed in detail during an oral evidence session with Mr Tyndall on 14 April 2021. Mr Tyndall informed the Committee that he introduced an Advisory Panel when he was Ombudsman in Wales. The Panel, which operates as an adjunct to the audit and risk committee and has advisory powers only, provided him with an extended advisory function and involved people with backgrounds in, for example, public service who were able to offer advice. He stated that the Panel was used particularly in the context of the development of a strategic plan and in operational planning so that he had some independent advice in relation to those matters.
147. When questioned on whether a similar panel would be a useful tool for the NIPSO, Mr Tyndall said:
- “I think that having an advisory panel can provide a useful additional reference point, if I can put it that way, for the ombudsman. It is important that the ombudsman be fully independent but able to turn to people who are no longer active in particular spheres but can provide professional advice on them. That is helpful.”
148. When asked whether the Welsh Advisory Panel considered financial spend and needs, Mr Tyndall informed the Committee that there was an overlap in membership of ARC and the Panel – i.e. members of the ARC were also members of the advisory panel. In effect, the Panel was ‘the audit committee-plus’.
149. During oral evidence on the same day, Dr Chris Gill, when asked whether the Welsh Advisory Panel added anything of substance to government arrangements, said:

“I am not 100% sure that it does from a public perception perspective. If the aim of setting up the additional accountability arrangements is to convince prospective complainants or those who have complained and been left disappointed that they will be dealt with fairly, I am not sure that an advisory board appointed by the ombudsman will make a huge difference to how they will feel. It might be better from a public perception perspective if there were a greater element of independence in how the board was appointed and perhaps if it were put on a statutory footing.

On the other hand, there are things that you might expect that kind of board to do. It sounded as if Peter Tyndall had found that useful, and I can imagine that, if you were leading an ombudsman organisation, an element of external input would be useful and beneficial and might improve the way in which the organisation is run. It comes down to what you are trying to do with the arrangements and whom you are trying to satisfy. It seems to me that an advisory board could be a useful appendage to the organisation and help it run smoothly, but, on the question of whether it would help convince sceptics that the ombudsman was really being held to account, I am not sure.”

150. When questioned during oral evidence on 14 April 2021, on the value of the Welsh Advisory Panel, Dr Kirkham stated:

“Chris Gill suggested that it might not add much to the public perception. I guess that he must be right on that, but it potentially has two big values. One of those is value for you, as a Committee. You might get some reassurance from knowing that there is a body of other people out there, and I suspect that they will be eminent and experienced people. You will hopefully get a diverse bunch of talents in the room who will ask some difficult questions, just as the Committee would. You are right that it is not fully independent and is not transparent — we do not get to witness the discussions — but you can have some confidence that something important is going on and that those people will, more often than not, ask difficult questions of the ombudsman.

Internally, this is a good opportunity for office holders to road-test some of their ideas. If they have to make difficult decisions or face difficult challenges, they can get critical input from critical friends. That could have value, and bad ideas or bad arguments could be weeded out earlier in the process. It is certainly not a guarantee of full accountability, and my claim would not be that, but it is another opportunity to help improve the governance of ombudsman schemes.”

151. Recognising the important role ARCs play in advising the Ombudsman on the adequacy of corporate governance and control systems, and to find out more about the work of the Welsh Advisory Panel, the Committee wrote on 21 April 2021, to the NIPSO ARC, the ARCs in other jurisdictions, and the Welsh Advisory Panel, asking for information under a number of pertinent headings: appointment and membership; remit; role in relation to governance and accountability arrangements; a view on whether there was a need to widen/reduce the role or remit or introduce further mechanisms to improve governance arrangements/enhance accountability; an assessment of the extent to which a challenge function is fulfilled as opposed to an advisory one; frequency of meetings and who is entitled to attend; and, publication and reporting requirements.
152. The detailed information provided by the ARC chairpersons and the Chairperson of the Welsh Advisory Panel provided the Committee with a greater insight into the workings of the ARCs and Welsh Advisory Panel, and the confines in which they operate.
153. The Committee heard oral evidence from the Mr Dónall Curtin, Chairperson of the NIPSO ARC, at its meeting on 2 June 2021. Discussions focused mainly on the external appointment process for the chairperson and members of the ARC.
154. When asked about the appointment process for the chairperson of the ARC, and whether an interview panel chaired by the Ombudsman provided sufficient transparency and oversight, Mr Curtin said:

“From a transparency point of view, I have no difficulty at all. It is very transparent; it is publicly advertised. There is a process for how shortlisting is done and how those who were invited to interview were scored, and the role was then offered to me or whoever else. So, it is totally transparent in that way. On the wider question about whether it is good corporate governance, in my view, you always have a difficulty that if you disassociate the appointment or the selection, you remove the sense of ownership. Take a hypothetical situation: if you were to take somebody who is very highly respected and you get them to populate an interview panel to decide who should be the chair of the audit and risk committee, there is not the same sense of ownership as there would be with Margaret [the Ombudsman], or whoever is the office holder, having an input into that selection. They should not be able to have the sole decision.”

155. Mr Curtin advised the Committee that the other members of the ARC are appointed through a recruitment process and interview by a panel comprising him as Chairperson of the ARC, the Ombudsman, and another independent person. The Committee questioned how that arrangement might be perceived in terms of transparency. In response the Chairperson said:

“Yes, I see how it looks, but that is in line with best corporate governance practice. I am not being defensive, because your challenge is healthy, and I welcome the debate to rethink it, but I put the question to you in another way: as chair of the audit and risk committee in NIPSO, or anywhere, would I feel comfortable having a person appointed for whom I and the ombudsman, in this case, or the CEO of another organisation, were not on the panel? No, I would not. Do I believe that the appointment should be down to just the two of us? No.”

156. The Committee considered the NIPSO’s proposal, as referred to later in this report, to undertake a review of the recruitment, operation, membership and skills of the current NIPSO ARC to identify if there are areas for improvement which would enhance governance. The Committee believes that this review is

necessary and would wish to see it undertaken without delay, and with a focus on providing transparency.

157. In written evidence, the Ombudsman expressed a view that the current governance and accountability arrangements for the NIPSO provide a proportionate approach to ensuring appropriate accountability while maintaining the operational independence of the office. However, the Ombudsman was of a mind that it would be beneficial to develop stronger relationships between NIPSO and other Assembly Committees to ensure maximum benefit from the work undertaken by NIPSO in ensuring the accountability of public bodies and in identifying areas for improvement in the delivery of public services while also providing an opportunity for proportionate scrutiny and accountability of the Ombudsman.

158. Following this, the Ombudsman outlined a number of proposals to improve governance and accountability in her Office. The Ombudsman also provided detail on her proposals during oral evidence on 2 June 2021:

- Review of the MoU between the Assembly Audit Committee and NIPSO to strengthen the accountability relationship.
- Develop with the Assembly Audit Committee an appropriate mechanism for the wider dissemination of reports of investigations undertaken by NIPSO.
- Explore with the Ombudsman Association how we could participate in a peer review exercise and update the Assembly Audit Committee on the outcome.
- Undertake a review of the recruitment, operation, membership and skills of the current NIPSO ARC to identify if there are areas for improvement which would enhance governance.
- Publish on the NIPSO website summaries of all NIPSO audit reports.

- Undertake a review of our current Service Standards process and benchmark against other jurisdictions including consideration of an external reviewer.
- Undertake a customer satisfaction survey and public awareness survey, every three years beginning in 2021.

159. Dr Gill referred in his oral evidence to the need to exercise a certain amount of caution in efforts to enhance accountability but acknowledged that additional accountability arrangements are required:

“The link between enhancing accountability and buttressing an organisation's public reputation and allowing it to be effective in its other work is not automatic. That is why a certain amount of caution needs to be exercised. You really cannot go too far. At the same time, however, some additional accountability arrangements are probably required, because, otherwise, the ombudsman can be left exposed when people criticise and say that it was not a fair process or that the outcome was not right. It is hard for the ombudsman to say why that is the case, apart from to say "Read the arguments in the report", so I favour some additional accountability arrangements, because they make it easier for the conversation at least to be had with the public about why what the ombudsman does is fair and appropriate.”

160. In written evidence, Dr Gill highlighted the value increased reporting could play in improving accountability:

“Dr Richard Kirkham and I argue that rather than imposing potentially burdensome and complex legislative requirements on the ombudsman, providing a set of reporting duties is likely to be the best way to ensure that a range of stakeholders can hold the institution to account. Transparency, in other words, provides the means for ensuring that the ombudsman's independence is not encroached upon, at the same time as providing information that allows relevant actors to understand and ask questions of the ombudsman's performance.”

161. Dr Gill provided examples of areas in which a reporting duty might be established: quality control of standards of decision-making; implementation of recommendations; analysis of complaints per sector; engagement with bodies under jurisdiction; results of systemic investigations; implementation of the Complaint Standards Authority Role; details of any legal developments affecting the office; consultation with other oversight bodies; and a statement on the delivery of administrative justice.
162. Having considered the evidence received, the Committee is of the view that governance and accountability arrangements for the NIPSO should be strengthened. However, the creation of a statutory board is not thought to be appropriate given the scale of the organisation. Instead the Committee favours the introduction of additional mechanisms to improve the existing governance and accountability.
163. The Committee is keen that the actions to improve accountability and governance as proposed by the NIPSO should be progressed without undue delay. In addition, the NIPSO should consider increasing reporting in line with the examples cited by Dr Gill.
164. The Committee welcomes the NIPSO proposal to undertake a review of the recruitment, operation, membership and skills of the current NIPSO ARC in an effort to identify if there are areas for improvement which would enhance governance.
165. While acknowledging that the ARC is an important part of the NIPSO governance and accountability arrangements, the Committee is of the view that an 'Advisory Panel' with a broad cross-section of relevant experience and expertise should be established to improve governance and accountability and supplement the work of the ARC. Indeed, some Members of the ARC should sit on the Advisory Panel.
166. In view of the Ombudsman's Corporation Sole status, the Advisory Panel should be advisory only and have no executive powers. However, should the Ombudsman decide not to follow a recommendation of the Advisory Panel, the

Ombudsman's decision should be recorded in the minutes of the Advisory Panel's meeting which should be published.

167. Based on the Welsh Advisory Panel model, the Committee envisages the NIPSO Advisory Panel assisting the Ombudsman in:

- Establishing strategic direction, aims and objectives and targets; key business policies; and key employment strategies and policies.
- Scrutinising the NIPSO Strategic Plan and the Annual Operational Plan; high level budget allocation; and the budget estimates submitted to the Assembly Audit Committee.
- Monitoring and reviewing: operational performance and delivery; financial performance; effectiveness of employment strategies and policies; diversity and equal opportunities; external communications strategies and stakeholder relations; health and safety and business continuity.

168. Again, based on the Welsh model, the Committee envisages the following arrangements:

i. Membership

The Ombudsman

A minimum of four and a maximum of eight independent external members (who offer specific skills and experience sought by the Ombudsman and may include someone from another ombudsman office)

Up to two co-opted members.

The Advisory Panel should comprise some members from the ARC.

ii. Term of Office

A three-year term of office for independent members with the Ombudsman having the option to extend this term for one further year.

iii. Chairing Arrangements

The meetings should be chaired by one of the independent external members. The Ombudsman should appoint an independent member of the panel to the position of chairperson on the recommendation of the Advisory Panel.

169. **Recommendation 19 - The NIPSO establishes an Advisory Panel to improve governance and accountability and supplement the work of the NIPSO ARC.**
170. **Recommendation 20 - The NIPSO's proposals to improve governance and accountability are progressed without undue delay.**
171. **Recommendation 21 - The NIPSO considers ways in which to increase and improve reporting arrangements.**

Local Government Standards Commissioner

172. The NIPSO also holds the separate offices of Northern Ireland Judicial Appointments Ombudsman and Northern Ireland Local Government Standards Commissioner. In relation to the Ombudsman's role as Local Government Standards Officer, responsibilities include both investigation of and adjudication on complaints from people who believe a councillor may have failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors.¹⁹ The adjudication function is a judicial role and there are limited grounds on which to appeal any decision to the High Court.
173. In considering this issue, the Audit Committee was cognisant of comparative research²⁰ it commissioned on the position in other jurisdictions in relation to the investigation and adjudication of complaints against councillors who may have failed to comply with their relevant Code of Conduct. The research clearly

¹⁹ [Code-of-Conduct.pdf \(nipso.org.uk\)](http://nipso.org.uk/Code-of-Conduct.pdf)

²⁰ <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/audit/niao-nipso-review/written-submissions/3-research-paper-investigation-of-complaints-against-local-councillors-for-breaches-of-codes-of-conduct.pdf>

shows that Northern Ireland is unusual in that the NIPSO is responsible for both the investigation and adjudication of complaints.

174. During oral evidence on 14 April 2021, Mr Tyndall addressed the Ombudsman's dual role of investigator and adjudicator in relation to complaints against councillors:

"... there is limited precedent for the role ... My experience from when I was ombudsman in Wales is that, where the investigation was undertaken by the ombudsman's office, hearings were held by the local authorities standards committee for lesser issues and more serious hearings were held by a separate adjudication panel. As the arrangements are particular to each jurisdiction, the jurisdiction concerned needs to make its own. It would be a cleaner arrangement if the investigation were undertaken separately from the adjudication, preferably by separate bodies."

175. In response to Mr Tyndall's comments, Dr Richard Kirkham expressed a similar view during his oral evidence session on the same day:

"I echo Peter Tyndall's comments that it is unusual. I do not know what the thought process was when the legislation was passed, because, as you were suggesting, a stronger model would be to separate the two roles. ... Having said that, I would not lose complete faith in it without further enquiry, insofar as there is that route to get to court to test the elements of the process. I have no insight, but I presume that there is a cost issue, because what is the alternative? Would you set up a new tribunal to do that work? I suspect that that might be my favoured solution."

176. In relation to the role the Ombudsman would be best placed to undertake, Mr Tyndall said:

"The process of investigation is often similar to that for the investigation of an allegation of maladministration, so the administrative resources of the office are often quite well placed to undertake that kind of role. ... the combination of adjudication and investigation provides challenges."

177. In light of the evidence received, the Committee believes that the Ombudsman should not have responsibility for both the investigation of and adjudication on complaints from people who believe a councillor may have failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors.
178. Given that the process of investigation is often similar to that for the investigation of an allegation of maladministration, the Committee is of the view that the NIPSO should retain the role of investigation of complaints and that the role of adjudication becomes the responsibility of a separate body.
179. The Committee understands that legislative change will be required to remove from the NIPSO the function of adjudicating on complaints. Consideration will also need to be given to which body is best placed to assume the role of adjudicator. In considering this matter, securing independence should be paramount. However, any new arrangements should be as cost-effective as possible.
180. **Recommendation 22 - The adjudication function in respect of complaints that a councillor may have failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors is removed from the NIPSO and becomes the responsibility of a separate body.**

Memorandum of Understanding

181. The Audit Committee has an MoU in place with the NIPSO. The MoU outlines the commitments of the Ombudsman and her Office to the Audit Committee on the actions they will take to uphold transparency and manage their resources effectively, and in doing so, provide assurance to the Assembly and members of the public regarding the arrangements for the governance and accountability of the Ombudsman.
182. The Committee wrote to the Ombudsman on 8 July 2021, requesting views on how the current MoU could be strengthened and updated to reflect organisational or other changes

183. The Ombudsman responded on 14 October 2021, stating that the MOU as it stands appropriately reflects the role of the Assembly Audit Committee as outlined under the relevant legislation. However, minor amendments were suggested to reflect organisational and other changes.
184. The Committee recognises that any subsequent changes to the governance and accountability arrangements that might result from the recommendations emanating from this Review would necessitate significant revisions to the MoU.
185. While some progress has been made to identify areas for correction, the Committee would wish to see the next Audit Committee examine the MoU in more detail in the context of any agreed Review recommendations.
186. **Recommendation 23 - The current MoU between the Audit Committee and the NIPSO is updated to reflect organisational changes and any agreed Review recommendations applicable at that time.**

Links to Appendices

Appendix 1: Minutes of Proceedings

View Minutes of Proceedings of Committee meetings related to the Review (21 October 2020, 25 November 2020, 10 March 2021, 14 April 2021, 2 June 2021, 7 July 2021, 29 September, 15 December 2021 and 26 January 2022) at the following links:

Minutes of Proceedings – Session 2020-21:

<http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/standards-and-privileges/minutes-of-proceedings/session-2020---2021/>

Minutes of Proceedings - Session 2021-22:

<http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/standards-and-privileges/minutes-of-proceedings/session-2021---2022/>

Appendix 2: Draft Terms of Reference

[Link to the Draft Terms of Reference](#)

Appendix 3: Written Submissions

29 January 2021 - [Professor David Heald, Professor of Public Sector Accounting at the Adam Smith Business School, University of Glasgow](#)

29 January 2021 - [Dr Helen Foster, Ulster University Business School](#)

4 February 2021 - [The Chartered Institute of Public Finance and Accountancy](#)

18 February 2021 - [Northern Ireland Audit Office Report - Governance in the Northern Ireland Audit Office](#)

18 March 2021 - [Mr Brian Thompson, University of Liverpool](#)

19 March 2021 - [Mr Peter Tyndall, International Ombudsman Institute](#)

19 March 2021 - [Dr Chris Gill, University of Glasgow](#)

29 March 2021 - [Dr Richard Kirkham, University of Sheffield](#)

9 April 2021 - [Northern Ireland Public Services Ombudsman](#)

7 May 2021 - [Ian Williams, Chair of the Public Services Ombudsman for Wales' Audit & Risk Assurance Committee](#)

10 May 2021 - [Anne Jones, Chair of Advisory Panel, Public Services Ombudsman for Wales](#)

24 May 2021 - [Mr David Watt, Scottish Public Services Ombudsman Advisory Audit Board](#)

27 May 2021 - [Deep Sagar, Chair of the Audit and Risk Assurance Committee, Local Government and Social Care Ombudsman](#)

27 May 2021 - [Linda Farrant, Chair of the Audit and Risk Committee and Gill Kilpatrick, Chief Operating Officer, Parliamentary and Health Service Ombudsman](#)

27 May 2021 - [Audit and Risk Committee, Northern Ireland Public Services Ombudsman](#)

Appendix 4: Minutes of Evidence

25 November 2020 – [Research and Information Service \(RaISe\) Briefing on Public Audit Governance](#)

25 November 2020 - [RaISe Briefing on Ombudsman's Offices in other Legislatures](#)

10 March 2021 - [Chartered Institute of Public Finance and Accountancy](#)

10 March 2021 - [Professor David Heald, University of Glasgow](#)

10 March 2021 - [Dr Helen Foster, Ulster University](#)

14 April 2021 - [Dr Richard Kirkham, University of Sheffield](#)

14 April 2021 - [Mr Peter Tyndall, International Ombudsman Institute](#)

14 April 2021 - [Dr Chris Gill, University of Glasgow](#)

14 April 2021 - [Mr Brian Thompson, University of Liverpool](#)

2 June 2021 - [Ms Lindsay Foyster, Chairperson, Audit Wales and Dame Fiona Reynolds, Chairperson, National Audit Office](#)

2 June 2021 - [Northern Ireland Public Services Ombudsman](#)

7 July 2021 – [Northern Ireland Audit Office](#)

7 July 2021 – [Professor Alan Alexander, Audit Scotland](#)

29 September 2021 - [Northern Ireland Audit Office, Local Government Auditor](#)

Appendix 5: Research Papers

- [Assembly's Audit Committee and its GB counterparts: A comparative perspective: NIAR 60-20](#)
- [Public Audit Governance: NIAR 320-2020](#)
- [Governance and accountability arrangements for the Offices of the Ombudsman in other legislatures: NIAR 321-20](#)
- [Investigation of complaints against local councillors for breaches of codes of conduct: NIAR 103-2021](#)
- [Public Audit Governance: The role of the Accounting Officer: NIAR 43-2021](#)
- [Standards of Public Audit Governance: NIAR 357-2020](#)

Appendix 6: Correspondence

- 19 April 2021 - [Comptroller and Auditor General - Single auditor for the public sector](#)
- 19 April 2021 - [Comptroller and Auditor General - potential remit, powers and membership of a statutory Board of the Northern Ireland Audit Office](#)
- 20 April 2021 - [Department for Communities - Single auditor for the public sector](#)
- 30 April 2021 - [Public Accounts Committee - Review of the governance and accountability of the Northern Ireland Audit Office](#)
- 6 May 2021 - [Minister of Finance - Comments on research paper](#)
- 22 June 2021 - [Northern Ireland Public Services Ombudsman – Whistleblowing policy and Audit and Risk Committee member removal](#)
- 26 October 2021 - [Northern Ireland Assembly Commission - Recruitment of a Comptroller and Auditor General](#)
- 27 October 2021 - [Northern Ireland Audit Office - Review of Governance and Accountability](#)

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