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Dear Daniel

Review of the Governance and Accountability Arrangements for the NIAO

Thank you for your letter of 12 March 2021 seeking my views on the potential remit, powers and membership of a statutory Board of the Northern Ireland Audit Office (NIAO), should corporatisation be progressed. In this response, I will address each of the issues in chronological order; however, I will take remit and powers together, as one is intrinsically linked to the other.

1. Remit and Powers

The Advisory Board and its sub-committees is responsible for providing objective and impartial advice to me and assists me in the discharge of my functions and it works in partnership with me and my Senior Management Team. The Board scrutinises and challenges the work of my Office in the five areas of strategic clarity, commercial sense, talented people, results focus and management information, as set out in 'Corporate governance in central government departments: Code of good practice NI 2013' issued by the Department of Finance, with the objective of providing constructive challenge.

Under the guidance of the Chairperson, the Advisory Board:

- (1) provides effective strategic advice to me in the delivery of my responsibilities;
- (2) brings independence of thought, informed by experience gained from outside of the NIAO;
- (3) provides advice in the development and implementation of my Office's business transformation programme;
- (4) advises me on the use of resources providing challenge, advice and rigour to the decision-making process; and
- (5) advises me on the delivery of the Northern Ireland Audit Offices objectives.

To compare elsewhere, by way of relevant example, I would refer the Committee to the National Audit Office (NAO) Board [Terms of Reference \(ToRs\)](#). Under these arrangements, the NAO Board collectively provides leadership on various matters.

I consider that the current NIAO Board and its subsidiary committees works collaboratively with me, but in an advisory capacity as opposed to collective leadership. Indeed the Advisory Board does most of what is outlined under the NAO Board's ToRs, the key difference being that it reports to me. However, it is worth noting that under your Committee's Memorandum of Understanding (MoU) with my Office, the Chair of the Audit [and Risk Assurance] Committee currently has a formal line of access to your Committee. Indeed the MoU states that "*The Assembly Audit Committee shall have the opportunity to meet with the non-executive members of the NIAO Audit [and Risk] Committee once per year.*"

Under the NAO Board's ToRs, it also has sole responsibility for various matters including:

- preparing an estimate of NAO's use of resources;
- providing resources to the C&AG for the carrying out of his/her functions as the C&AG requires;
- employing staff to assist in the carrying out of the C&AG's functions; and
- procuring services for the purposes of C&AG's functions.

My Office performs these functions and consults with the Board, and its sub-committees, as and when required. The key difference between NAO and NIAO is who would be leading i.e. the Board rather than the C&AG.

One further function of the NAO Board for which it has sole responsibility is to make a recommendation to the Public Accounts Commission (TPAC) regarding the appointment of an external auditor for each financial year. This is an issue which your Committee will wish to consider, given that under current arrangements, the external auditor is appointed by the Department of Finance, a body which I am responsible for auditing.

The NAO Code of Practice identifies further Board responsibilities including consideration of:

- the C&AG's draft programme of statutory work;
- proposals for more resources to deliver the programme of statutory work;
- proposals for more resources to deliver the programme of NAO approved services;
- proposals around fee charging; and
- commenting in public on the work of the NAO (only in general terms and not to make comments on matters of audit opinion and judgement which are reserved to the C&AG).

In dealings with my current Board and its sub-committees, while it has had no formal input on my programme of statutory work, I consult with it on an ongoing basis in the development of my forward work programme. In terms of public commentary on the work of NIAO, the Board has no public facing role in regard to the Office's audit reports. However, on the corporate side

of the business, the Board Chairperson has recently taken a lead role in the launch of the Office's new three year corporate plan.

The C&AG and the NAO Board also have joint responsibilities including:

- reviewing and revising the annual strategy for the delivery of audit functions for joint submission to TPAC;
- the preparation of the annual report and accounts;
- report in respect of the work carried out during the year and the submission of the report to TPAC; and
- the preparation of a Code of Practice dealing with the relationship between the Board and the C&AG.

My Audit and Risk Assurance Committee supports the Board in advising me, in my role as Accounting Officer (AO), on the annual report and accounts, including the process for review of the accounts prior to submission for audit, levels of error identified, and management's letter of representation to the external auditors.

In my previous submission to you, I highlighted the need for an update to the MoU to reflect the current arrangements, including the new governance structure within my Office. This will be required whether you decide to establish a corporatized board or not. I would be happy to work with the Committee to address this and any other matters to provide clarity on the role of the Board.

As part of this process, you may wish to consider arrangements for overseeing me in my role as AO. This would include responsibility for both the appointment and removal of the C&AG from Office. It is worth noting that my AO letter of appointment was issued by the Department of Finance (signed by the then Treasury Officer of Accounts). It is important that any future AO letters of appointment should come from the Northern Ireland Assembly, in recognition that the C&AG is independent of the executive arm of government and is an Officer of the House. This is an issue the Committee would wish to consider going forward, irrespective of the Board structure.

2. Membership

NIAO Advisory Board - My Advisory Board, comprises both executives (myself and my Chief Operating Officer) and four non-executive members. I appointed the Chairperson of the Advisory Board following an open competition, based on merit. Had the NI Assembly not been in suspension at the time, this appointment would have been considered by the NIAAC. In the Committee's absence, I invited the CEO of the NI Assembly and the former Chairperson of the Public Accounts Committee (PAC) to join me on the selection panel.

The non-executive members were similarly selected by a panel made up of me, the newly appointed Chairperson and the CEO of the NI Assembly.

Each member has been appointed for a three year period, which I will potentially look to extend for a three further years with the endorsement of the NIAAC. The non-executives have appropriate and relevant financial experience.

NAO Statutory Board – The NAO Chairperson is appointed by HM the Queen through an address to the House of Commons. The Prime Minister, with the agreement of the Chairperson of the PAC, moves the motion for the address. This appointment is initially for three years and may be extended for one additional three year term. The Chairperson can only be removed by the Queen on an address to both Houses of Parliament.

Four further Non-executive Board members are appointed by TPAC, upon the recommendation of the Chairperson, for an initial term of up to three years. It may appoint the person(s) nominated by the Chairperson or require the Chairperson to recommend other individuals until a vacancy is filled. Non-executive Board members may be re-appointed for one additional term.

Three Executive board members are appointed by the non-executive members upon the recommendation of the C&AG for a renewable period of 12 months. The C&AG is also a non-executive member of the Board. There is no limit upon the number of times such an appointment can be renewed; however, non-executive members and/or TPAC may remove an executive member if considered unable, unfit or unwilling to carry out the member's functions.

A critical part of the recruitment process of both the Chairperson and the non-executive directors, whether it is for a statutory board or for an advisory board, is the appointment of the interview panel. Occasionally, panels across the UK included non-executive members from sister organisations, the Chairpersons of PAC, and the CEOs of the legislatures. For example a former chair of our Advisory Board sat on the panel for the appointment of the first statutory board chair in Audit Wales. In the future, previous C&AGs, who understand the governance structures and the role a board plays within a supreme audit institution, is an option the Committee may also wish to consider.

In the recruitment process itself, the panel will need to address how conflicts of interest should be dealt with. Given the quality of candidates being sought, their skills may be engaged by other public sector organisations; however, to have an absolute bar on all such applicants may be counterproductive, as it could potentially reduce the pool of quality candidates. In such circumstances, I would propose that each conflict should be considered on its own merit, as we do currently, to ensure that we capitalise on the skills and experience of individuals, where possible. Circumstances can also change post-appointment, so there will be an ongoing need to monitor conflicts; indeed we have previously had occasion to release a non-Executive member when a potential conflict of interest arose.

The success, or otherwise, of the recruitment exercise will only be confirmed in the subsequent operation of the board. Its membership will need to have credibility with key stakeholders, including my team of senior finance professionals. The Chairperson may also need to attend your Committee in the presentation of the Office's budget and/or the Office's annual report – similar to the protocol adopted by TPAC in Westminster.

As part of any move to corporatisation, your Committee would need to decide how often the Board will meet, and the level of remuneration, which currently varies considerably across the audit institutions. A key consideration here would be proportionality of any new arrangements,

given that NIAO is much smaller than the other audit institutions. In my view some aspects of the NAO arrangements would seem over-elaborate in a Northern Ireland context (the arrangements in Audit Wales would appear to be even more elaborate than NAO).

In summary, I consider the main differences between a statutory board and an advisory board to be:

- the accountability model;
- the independence of the Board; and
- the appointment process.

The crucial issue is the human factor. A flawed appointment process that selects the wrong individuals would negate a good governance structure and associated arrangements. A positive, yet challenging, working professional relationship between my SMT and the Board is key and can be best achieved through a rigorous recruitment process from advertisement to appointment, with input from appropriately skilled and experienced individuals. In recognition of this, in the latest recruitment exercise for our board membership, we invested heavily in both time and resources to ensure that we attracted the talent required with the appropriate skills. This has resulted in the appointment of an excellent Chairperson and Board who have contributed enormously to the operation of my Office.

Should you need any further information, or clarification, please do not hesitate in contacting me.

Yours sincerely



KIERAN DONNELLY CB
Comptroller and Auditor General