

The Future Governance of the Northern Ireland Audit Office
Written Evidence to the Audit Committee of the Northern Ireland Assembly
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Introduction

1. I thank the Committee for the invitation to present evidence on the future governance arrangements for the Northern Ireland Audit Office (NIAO). A convenient place to start is to summarise my relevant experience:

- When planning was underway for the re-establishment of the Scottish Parliament, I was a member of the Financial Issues Advisory Group (Scottish Office, 1998). Its recommendations were enacted in the *Public Finance and Accountability Act 2000*, including a complex governance arrangement for Audit Scotland and the Accounts Commission for Scotland²
- When the Northern Ireland Assembly was suspended, the Estimates for the NIAO were approved by The Public Accounts Commission (TPAC) of the UK Parliament, for which I was a specialist adviser from 2002 to 2008
- When the 2010-15 UK Coalition Government abolished the Audit Commission, I publicly opposed that decision (Heald, 2011)
- When the UK Parliament was considering the future *Budget Responsibility and National Audit Act 2011*, I opposed the corporatisation of the National Audit Office (NAO) which had been recommended by the Tiner Report (2008) but supported the non-renewable term limit for the Comptroller and Auditor General (Heald, 2008, 2009)
- When the Welsh Assembly was considering what became the *Public Audit (Wales) Act 2013*, I supported a non-renewable term limit but opposed corporatisation (Heald, 2012).

These experiences influenced the development of my ideas on the role of public audit and of desirable governance arrangements, as articulated in my academic article on the role of transparency and trust in public audit (Heald, 2018).

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² The Auditor-General for Scotland is an office holder of the Scottish Parliament, nominated by the Parliament and appointed by the Crown, but not a corporation sole. Audit Scotland is statutorily established by the *Public Finance and Accountability (Scotland) Act 2000*, and its board members are appointed by the Scottish Parliament. The Accounts Commission for Scotland is an Executive Non-Departmental Public Body of the Scottish Government. Its staff transferred to Audit Scotland and its expenditure is recovered by charges to local authorities and associated public bodies. The reasons for this complex structure were that (a) Scotland was considered to be too small a jurisdiction to have two public audit bodies, and (b) the dual structure respects the separate democratic accountability of Scottish local authorities which have extensive spending responsibilities.

2. In my view, the two main issues for this inquiry should be:
 - a) Whether the ‘corporation sole’ model for the Comptroller and Auditor General of Northern Ireland (C&AGNI) should be retained, or replaced by a corporate board structure, or whether the two governance models should run side by side, as is the case for the NAO
 - b) Whether the next C&AGNI should be appointed on the basis of a term limit, and, if so, how many years should that be, and should renewal be allowed

This memorandum explores these issues, by examining the purposes of public audit and by emphasising the vital importance of audit independence.

Purposes of Public Audit

3. Public audit is more extensive than private audit, and the setting is much more complex. Its main purpose is to ensure transparency around both the resources used by governmental bodies and their achievements (Heald, 2018). Enhancing trust in government is not a direct objective, but might be achieved if such trust is shown to be justified. Public audit plays a vital role in securing democratic accountability. It is not to be expected that elected politicians or most citizens will be knowledgeable about detailed regulations or procedures, but the demonstration of financial competence and trustworthiness by public sector entities is a legitimate expectation. Government financial reporting is important (sharing much with the private sector as accounting systems and auditing standards have converged), but there are further requirements: propriety (standards should be high as taxes are compulsory levies); regularity with appropriations (parliamentary accountability); and value-for-money.
4. Public audit always operates in a delicate environment strongly influenced by constitutional arrangements and political culture. Historically, most Supreme Audit Institutions were part of the Executive (as was the NAO until 1983) but in industrialised democracies they are now mostly linked to the Legislature.³ They are vital to effective scrutiny, both because of their resourcing and because, unlike elected representatives and the public, they have access to internal government processes and documentation. To perform this role public audit offices require independence from the Executive, but also a substantial degree of operational independence from the Legislature, otherwise they would be caught up in partisan controversies. Political realities can markedly diverge from formal institutional positions: the International Organisation of Supreme Audit Institutions (INTOSAI) for example, has 195 full members, many from countries where autonomy from the Executive is not established or respected.

³ Posner and Shahan (2014) analyse different models of public audit offices, while emphasising the importance of path dependence.

5. Even in industrialised democracies, the pressures on the leadership of public organisations has intensified. ‘Autonomy within the state’ has come under greater threat, as ‘higher’ political mandates are asserted, thereby reducing the independence and accountability of public organisations. Several factors can be discerned:

- a) Notwithstanding the expectation that democracy would flourish across the world after the collapse of the Soviet Union, democratic institutions are under pressure from governments which regard scrutiny as obstructive and are determined to hide ‘bad news’. Authoritarian governments proclaim their strength and effectiveness, while governments in some traditionally democratic countries take more authoritarian stances to opposition and become intolerant to judicial intervention in defence of the rule of law. Public audit offices often bring bad news, a factor accentuated by the media not being interested in hearing about positive government performance
- b) In many countries, political divisions have deepened, with governments determined to get their own way and to brush aside what is seen as obstruction. In the United Kingdom, power has shifted away from the Legislature towards the Executive.⁴ Unlike the Scottish and Welsh Parliaments,⁵ the House of Commons votes the Estimates four months after the beginning of the financial year, which maintains constitutional symbolism but makes the vote irrelevant. The Procedure Committee’s recommendations (2017) for reforming the Supply Procedure would only gain traction under minority governments when Executive power is qualified
- c) While the United Kingdom has robust democratic traditions, complacency should be avoided. Intra-party conflict has increased, with those in control taking unprecedented disciplinary measures against internal dissidents, including exclusion. Elected representatives face purges or are intimidated by threats of them. Civil servants and the leaders of public organisations, whose roles deny them the right of public reply, are targeted by derogatory briefings to affiliated traditional media and through social media. The judiciary and legal profession are targeted, directly and through surrogates. Sir Alex Allan resigned as the Prime Minister’s Independent Adviser on Ministers’ Interests after his report on breaches of the Ministerial Code was initially not published and then ignored. Allegations about ‘chumocracy’ in public

⁴ For example, the prorogation of the UK Parliament to stop it delaying Brexit legislation, reversed by the UK Supreme Court, after High Court judges had earlier been branded ‘enemies of the people’ in some sections of the media. Another example is the derisory amount of time that was allowed for scrutiny of the legislation implementing the Trade and Cooperation Agreement with the European Union, signed on 24 December 2020 and implemented on 1 January 2021.

⁵ In contrast, the Northern Ireland Assembly budget process continues to be based on the inherited process of Supply Estimates in May/June and Supplementary Estimates in January/February. Interruptions, for example from suspensions, have diverted attention from modernisation of procedures.

appointments and about the awarding of COVID-related public procurement are a reminder of the continuing relevance of the Nolan Committee's Principles of Public Life (Nolan, 1995). Institutions that are vital to the health of UK democracy are called into question, the most obvious one being the Electoral Commission⁶

- d) The austerity of the 2010s has been a contributory factor in the reduction of UK state capacity. Both public service delivery and audit have faced new challenges resulting from constitutional disputes over the future of the Union, the implementation of Brexit, and the financial, economic and social effects of the COVID-19 pandemic. There are concerns about the degradation of administrative competence and of regulatory capacity, including whether laws and regulations are effectively enforced. The emergency response to COVID, for example in hastily designed IT systems and the necessary extent of home-working, exposes public organisations to fraud and corruption on a much greater scale (Cairns, 2020). The (UK) Public Accounts Committee's (1994) report on the *Proper Conduct of Public Business*, published during an earlier economic crisis, still resonates.

Specific Issues in Northern Ireland

12. The NIAO works for the benefit of the Northern Ireland Assembly which is a unicameral devolved legislature. While the principles set out above can be applied to all democracies, there are particular issues to address in relation to Northern Ireland. Its political history has been troubled and the Assembly, restored in 1999 at the same time as the creation of the Scottish Parliament and the National Assembly for Wales (now Welsh Parliament), has had long periods of suspension. Moreover, the legislative requirement for the Executive to have majority support from both communities means that there is never a conventional opposition, as in most parliamentary systems. Oppositions force into the public domain material that Governments would prefer not to disclose. This makes the Assembly and the Northern Ireland public even more dependent on the work of the NIAO than it would otherwise be. Indeed, the NIAO has not only served the Assembly when it has been functioning, but also kept scrutiny going through periods of suspension.
13. I am not in a position to judge the quality of the NIAO's work. During the 2000s when my role at TPAC brought me into periodic contact with the NIAO, I was impressed by its professionalism. It successfully took over National Health Service and local government audit. My understanding

⁶ The 2020 US presidential election demonstrates the damage to legitimacy if significant sections of the public lose confidence in the impartiality of key institutions. "Over 70 percent of Republicans said they agreed with President Trump's contention that he received more votes than Joe Biden." (Zilinsky et al., 2021).

is that the NIAO is highly regarded in Northern Ireland. If the Committee subscribes to this view, I suggest reflection when making institutional or governance changes.

14. 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.

Developments in Other UK Jurisdictions

15. I am not in a position to assess how the 2011 governance changes to the NAO have worked, and this is a matter on which the Audit Committee may wish to take evidence. My concerns in 2009 were that piling up governance mechanisms (corporate board on top of the corporation sole status of the C&AG) would lead to confused accountability. A key issue is how well the Code of Practice setting out respective roles has worked. I supported the non-renewable term limit of ten years for the office of C&AG which applied to Sir Amyas Morse's tenure (2009-19).⁷
16. I am not in a position to assess how the 2013 governance changes to Audit Wales have worked, and this is a matter on which the Audit Committee may also wish to take evidence. The term limit for the Auditor General for Wales is now eight years, non-renewable.
17. Given that I was a member of the Financial Issues Advisory Group (Scottish Office, 2008) which designed the Scottish public audit arrangements, I am not the best person to pronounce judgement on how the complex governance arrangements have worked. However, my general impression is positive, in that Audit Scotland has established itself as a vital element of the devolved financial architecture. There have been two transitions of Auditor General for Scotland: from Robert Black (2000-12, not subject to a term limit) to Caroline Gardner (2012-19, 8-year non-renewable), then to Stephen Boyle in 2019.
18. In my view, the abolition of the Audit Commission was a disaster for public audit and for English local authorities.⁸ I vigorously opposed this decision (Heald, 2011). My main concerns then were (a) that there would be a breach of the Sharman Committee (2001) principle that public bodies should not appoint their own auditor, and (b) that the valuable financial and performance overviews of the English local government sector would disappear. This pushback of public audit

⁷ "None of this would have happened but for media criticism of the expenses of Sir John Bourn, the C&AG from 1988 to 2008." (Heald, 2008, p. 22).

⁸ For the purpose of transparency, I record that I was a member of the Audit Commission's Technical Advisory Group from 2003 to 2010, after which it never met.

reminded me of an earlier experience of privatising public audit, later reversed, in the Australian state of Victoria (English, 2003).

19. What was most striking about those events was that the Audit Commission's stakeholders (particularly local authorities) had abandoned it and that the private audit firms to which it contracted a proportion of its audit work saw commercial gain. The Coalition Government focus was on driving down the cost of local audit, without consideration of the effect on the quality of financial management or performance. Local authorities had been alienated by what they perceived to be Audit Commission arrogance and its excessive closeness to the 1997-2010 Labour Government, for which it had effectively become a performance improvement agency (Timmins and Gash, 2014). The move from Comprehensive Performance Assessment to Comprehensive Area Assessment was particularly alienating, as local authorities felt they were held accountable for the performance of public bodies that they did not control. The limited role of the NAO in relation to the Local Authority Code of Audit was never going to be sufficient.
20. It is now evident that the austerity imposed on local authorities in England was seriously damaging to their financial health and capacity to provide public services. The extent of funding reductions to English local government has recently been documented by the Institute for Fiscal Studies (Harris et al., 2019), without there having been the real-time surveillance previously exercised by the Audit Commission. The dysfunctionality of the local authority audit market in England was vividly documented in an Institute of Chartered Accountants in England and Wales webinar (ICAEW, 2020) and by the Redmond Review (2020). The existing market is unstable and a narrow conception of public audit has been the result. Conduct that would not have been tolerated under Audit Commission surveillance has not been checked: some councils became speculators in commercial property markets outside their jurisdiction in order to generate new streams of revenue, borrowing from the Public Works Loans Board (eg Spelthorne Borough Council); some engaged in risky energy supply undertakings (eg Nottingham City Council); and some councils are on the verge of financial collapse (eg Croydon Council and Northamptonshire County Council). Without the early warning systems of the Audit Commission, the Treasury and the Department of Housing, Communities and Local Government have been asleep at the wheel.⁹
21. If public audit is starved of resources, financial competence and probity are threatened. The tactic of reducing audit costs without regard to audit quality is misguided, whatever the motivation. This is the wrong target for cost reduction. Moreover, there is evidence that audit is becoming

⁹ The Public Works Loans Board facility is operated by the UK Debt Management Office, an Executive Agency of HM Treasury.

more difficult, as evidenced by the Financial Reporting Council’s critical reports on the audit of private corporates. Accounting standards are becoming more difficult to implement and audit; changes in the composition of assets and liabilities mean that more estimation is required; and digitalisation of accounting systems introduces not only opportunities for better information but also new exposures to fraud and disruption. Reports from the Competition and Markets Authority (2018), Kingman (2019) and Brydon (2020) registered extensive dissatisfaction with the quality of corporate audits, and the public sector has to be alert. Then came COVID, bringing unexpected tests of resilience.

Conclusion

22. Thankfully, public audit in the devolved jurisdictions does not share the dysfunctionality evident in English local government. That is not to underestimate the financial vulnerabilities of their local authorities after the decade of severe spending cuts in the 2010s.¹⁰ The English experience should serve as a warning about institutional changes imposed without sufficient prior thought or scrutiny.
23. 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. My reservations about corporatisation concern what a Board of the NIAO would actually do:
- a) Provided it was restricted to governance ‘housekeeping’, that is acceptable. In terms of its relationships with audit clients, the NIAO being seen to follow modern corporate governance might be advantageous
 - b) 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, I become worried that the operational independence of the C&AGNI would be constrained. How Code of Practice arrangements have worked in the NAO and Audit Wales are issues that the Committee may wish to examine. Moreover, it is not just a question of roles, but of the people appointed to those roles, in terms of: their calibre; board experience; understanding of the special circumstances; and external perceptions of their independence

¹⁰ For historical reasons, local government expenditure is a much smaller part of public expenditure in Northern Ireland than it is in England, Scotland and Wales. Because of complex definitional changes and functional reallocations between tiers of government (particularly the creation of academy schools in England), it is difficult to achieve satisfactory data series, even separately for the nations of the United Kingdom. The best data are Harris et al. (2019) for England and Eiser et al. (2019) for Scotland.

- c) I accept that a Government has the right to issue directions or remove Boards and Chief Executives of public bodies in which it does not have confidence, something more likely to occur when there is a change of government. However, the constitutional status of the NIAO as one of ‘Parliament’s watchdogs’, to use the terminology of Gay and Winetrobe (2008), means that the protection of procedural transparency is essential. In the case of the C&AG, removal from office requires resolutions in both the House of Commons and House of Lords, and the C&AG gains institutional protection from TPAC and from the standing and media visibility of the Public Accounts Committee. It is not practical to institute equivalent layers of protection in a unicameral legislature.

24. On the basis of my present knowledge, my preferred position is that:

- a) The next C&AGNI should be appointed on the basis of a non-renewable term of eight or ten years
- b) There should be a clear mechanism for the removal of the C&AGNI which requires a high threshold of support in the Northern Ireland Assembly; the corporation sole status has a degree of constitutional symbolism differentiating the role
- c) If the present Advisory Board is to be replaced by a corporate board (analogous to the NAO), 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
- d) The reforms at the NAO and Audit Wales were both responses to internal crises. This Committee has the opportunity to reflect on what modifications need to be made to the governance of the NIAO in a context where the challenges are external, including those from Brexit and COVID.

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