THE FUTURE OF ARM’S-LENGTH BODIES
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The Carnegie UK Trust has a long history of work on issues of public accountability, recognising that a healthy, vibrant democracy is an essential prerequisite for both individual and community wellbeing. The Trust’s Commission of Inquiry into the Future of Civil Society highlighted the critical role that governments and public bodies play in creating more participatory and deliberative democracies.

Since the publication of our Commission report, there has been a renewed focus across the UK and the devolved governments on reducing the number of arms-length bodies, often caricatured as a ‘bonfire of the quangos’. This development interested us for a number of reasons.

Firstly, the discourse on arms-length bodies focuses on their unelected nature and therefore, any ‘bonfire’ is seen to be justified in terms of increasing democratic accountability. An organisation like the Carnegie UK Trust would therefore be expected to support the reduction in quangos. But we are not convinced that the issue is so straightforward. The Institute of Government’s analysis of arms-length bodies should leave no one in any doubt that in some cases, where independence is essential, agencies at arms-length from government can be the best way of securing the desired outcome.

Secondly, current governments across the UK are not the first to try this approach to reducing public expenditure. Indeed, public bodies come and go with alarming regularity. But the model of bodies at arms-length from government is resilient, and a constant feature of the public sector. We believe that there are strong and compelling reasons for quangos to remain within the tools that governments have to deliver for citizens and consumers.

Finally, we were aware that the UK and national ‘bonfires’ were co-existing with a significant increase in the number of arms-length bodies being set up at local level. We wanted to understand more about local governments’ attitude to, and interest in, arms-length bodies.

This publication, by the LGiU with funding from the Carnegie UK Trust, highlights the importance of arms-length bodies from a local government perspective and recommends actions to improve the accountability of these bodies.

The report comes from one particular perspective, that of local government. We are aware that there are many other perspectives, not least that of the citizen-consumer. We share the aspiration of the LGiU that this work will contribute to a more constructive debate about the future role of arms-length bodies across the UK.

Jennifer Wallace

Policy Manager, Carnegie UK Trust
Arms-length bodies (ALBs), or quangos as they are commonly known, have an important and historic role in government at all levels across the UK. These bodies, which number around 6000 according to current estimates, have been set up with the aim of making service delivery more effective, taking decisions independently of party political considerations or helping to ensure that relevant professional expertise is brought to bear on public policy making.

ALBs are creatures of government at all levels: local, devolved and Westminster. As such, their future is intrinsically linked to the major changes facing governments. Governments face an efficiency challenge on an unprecedented scale as a result of decreased budgets and increased demand for services. This will require governments to build broad-based support for reform, access the best possible professional advice, organise service delivery in new ways and do more to engage communities in service design and delivery.

This report argues that ALBs can play an important role in helping governments meet the challenges of the changing context for public service delivery. Central government, devolved administrations and local councils are all actively considering the role ALBs could play in meeting the challenges of the future. Research interviews conducted as part of this report with council leaders and chief executives found that councils are planning to use local ALBs to improve the effectiveness and efficiency of services in key delivery areas. The principal areas for expansion were in children’s services (not including education) and housing.

However, the LGiU research also identified a clear need for continuing challenge and reform of ALBs. Particular concern was expressed about the democratic accountability of ALBs. Although there was agreement that ALBs can provide accountability to communities and services users, for instance in housing where a third of arms-length management organisations (ALMOs) are chaired by tenants, there was concern that democratic accountability of ALBs is often unclear. The LGiU report therefore sets out three key challenges for ALBs that apply to them now and in the future and recommendations to help them respond to the challenges effectively.

This report argues that:

1) The functions of ALBs must be located at the lowest efficient level possible. The principle of subsidiarity is important for efficiency, effectiveness and accountability.

2) ALBs must be able to answer a critical test: who are they accountable to? Ultimately, as an organisation carrying out governmental functions in some way, ALBs must have a clear line of accountability to elected leaders, whether that is a council Leader or a Minister. This should, in turn, relate an ALB to the wider democratic state so that councillors, assembly members and parliamentarians are able to hold ALBs to account.

3) We argue that the governance of ALBs must be transparent, for example in the appointments process for those who lead ALBs, so that elected politicians and the public can access information on how public money is spent and functions discharged.
ALBs have been a key feature of government – both local, devolved and Westminster – for centuries. In this report, we aim to take a timely look at the current role of ALBs and their future in a fast changing political, economic and social context across the UK. Our focus is on democracy, both representative and participative.

Our starting point is perhaps different to the recent reviews by governments in the UK of ALBs. The rhetoric of a “bonfire of the quangos” has an underlying assumption that these bodies are bad for democracy. We have approached this research with an open mind about the role of ALBs. We have found sound reasons for government at all levels to organise the discharge of some functions at arms-length. Our case studies show how this can be effective. However, we acknowledge the political and public mistrust of ALBs and the need for continuing challenge and reform. That is why this report concludes with strong recommendations that aim to ensure ALBs are working in the interests of those who give them their funding and mandate: the tax-paying public.

Our research draws on interviews with leading contributors to the public debate about the role of ALBs. The LGiU convened two roundtable discussions in Edinburgh and London, a focus group of council leaders and research interviews with council leaders and chief executives on their future plans. The paper also draws on secondary sources, particularly recent reports and commentary. The paper considers ALBs across the UK but draws most on the recent Westminster experience, where the role of ALBs has been a high profile public policy topic in the lead up to, and since, the 2010 General Election.
The UK has a wide range of different types of ALBs. These include: non-departmental public bodies (NDPBs) that provide expert advice to ministers; executive agencies that carry out substantial service delivery for government; public corporations that receive income from trading but are owned wholly or substantially by government; and parliamentary bodies which are accountable to parliament directly rather than to a government department. Eleven types of ALB have been identified by the Institute for Government (see Appendix 1).¹

The number of ALBs has, in general, increased over time despite political commitments to “rein-in” arms-length government. Successive governments have presided over decreases in the number of specific types of ALBs without altering the overall trend of growth in numbers. Between 1979 and 1995, for instance, the number of NDPBs decreased to 320 following a government manifesto pledge. This was outweighed, however, by the creation of non-ministerial departments.² Similarly, between 1997 and 2007, following a government manifesto pledge, nearly 200 NDPBs were abolished or amalgamated. This was counteracted by the creation of other kind of ALBs.³

The current Westminster government has departed from this trend, reducing the number of ALBs following a review. The government’s review was based on four tests. First, whether a body performs a function that it is necessary for the state to perform (the “existential test”). If a body passed this test, then the government used three further tests to determine whether the function needed to be delivered outside a central department. First, whether a body performed a precise technical operation needed to fulfil a ministerial mandate. Second, whether a body took decisions about spending that needed to be politically impartial decisions. Third, whether a body determined facts that needed to be politically independent.⁴

The review abolished nine per cent of ALBs outright and transferred the functions of 26 per cent of ALBs to another ALB or government department. Forty-seven per cent were retained and in addition a small number of new ALBs, such as the Office of Budget Responsibility, have been established.⁵ High-profile ALBs such as the Audit Commission and Regional Development Agencies (RDA) were abolished. Two principal explanations were advanced for this reform: the need to boost accountability and the need to increase efficiency.

In 2009, Prime Minister David Cameron promised a “bonfire of the Quangos” arguing that that “too much of what government does” is done by organisations that were unaccountable and irresponsible.⁶ In October 2010, following the completion of the Westminster government’s review into arms-length government, Francis Maude MP told the House of Commons that “the government has taken decisive action to restore accountability and responsibility to public life”.⁷ The government

¹ Institute for Government, Read Before Burning, 2010
² Flinders, Delegated Governance and the British State, 2008
³ Cabinet Office, Public Bodies 2008, 2009
⁴ Public Administration Committee, Smaller Government: Shrinking the Quango State, 2010
⁵ LGiU calculations
⁷ Hansard, House of Commons Main Chamber Debates, 14 October 2010
pledged that its reforms would save money. Leaked reports in May 2010 suggested that the government’s “bonfire of the Quangos” could save as much as £500m\(^8\).

The motivations of the government’s reforms have, however, been questioned. It has been suggested that the government’s reforms were not intended to strengthen accountability and reduce costs per se but rather strengthen ministerial control. The basis for this critique is the government’s decision to abolish ALBs and incorporate a large number of their functions back into departments. This has had two consequences. First, as Matthew Flinders has argued following previous reforms, it has allowed government to strengthen central control over ALB functions at a time of political controversy.\(^9\) This comes at a cost to accountability to communities, as the Public Administration Select Committee has argued (see below). Second, it has not reduced cost. It has been reported that it could be 10 years before the government sees any significant savings from closing down the Audit Commission.\(^10\)

**ALBs in Scotland, Wales and Northern Ireland**

Pre-devolution, Scotland, Wales and Northern Ireland experienced similar increases in the number of ALBs to England under the aegis of the Scottish, Welsh and Northern Ireland Offices. Post-devolution, however, the devolved administrations have taken different paths to England as management of ALBs was transferred to the devolved assemblies.

In Wales, the National Assembly prefigured the current Westminster government’s 2010 “bonfire of the quangos” by abolishing The Welsh Development Agency (WDA), the Wales Tourist Board and Elwa in April 2006. Professor Kevin Morgan has argued that the bonfire had five key explanations: a tough Spending Review that demanded a reduction in the civil service payroll; the Gershon Review that identified £20.5bn in efficiency savings through merging and rationalising back office functions of public sector bodies; a perceived need for assembly members to assert their status over MPs; a deteriorating relationship between the Welsh government and the WDA; and (as in Westminster) a political drive to “restore accountability”. In 2004, Andrew Davies attacked senior figures in “delivery agencies” who felt that they had the “right to set the priorities and agenda for ‘their’ Quango”.\(^11\)

As in England, however, the impact of these reforms has been debated. Morgan has argued that incorporation of bodies into government reflects the tendency of politicians to interpret accountability “in a narrow and self-referential way. This ignores the wider sense of the term, which involves being accountable to the public forums of civil society”. He points out that Wales Trade International was subject to less public scrutiny after it left the WDA.\(^12\)

In Scotland, the number of ALBs has broadly followed the trend in England of initial increase followed by reduction. Following devolution, but in the absence of a devolved legislature, the number of ALBs increased. Richard Parry has argued that “appointed public bodies were a way of suggesting that policies were determined and implemented in a home-grown way”.\(^13\) This picture has, however, now changed. The number of Scottish ALBs has reduced substantially over the past four years. The government has targeted a reduction from 199 in 2007 to 115. Bodies to have been reformed so far

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8 Daily Mail, ‘Osborne unveils £500m bonfire of the quangos’, 23 May 2010  
9 Matthew Flinders, Delegated Governance and the British State, 2008  
10 Guardian Public, ‘Cost of cutting quangos will equal savings’, 8 October 2010  
11 Kevin Morgan, Bonfire of the Quangos: The Missing Debate, 2004  
12 Kevin Morgan, Bonfire of the Quangos: The Missing Debate, 2004  
13 Richard Parry, ‘Quangos and the Structure of the Public Sector in Scotland’ in Scottish Affairs, 1999
include Learning Teaching Scotland which was merged into Her Majesty’s Inspectorate of Education and 26 Justice of the Peace Boards that were abolished.\textsuperscript{14} SNP MSP Joe Fitzpatrick has argued that “slimming down the public sector landscape will cut bureaucracy, ease regulation and cut costs for Scotland against the £1.3bn of cuts coming from Westminster” although he did acknowledge that “there are some outside agencies that do an excellent job and it is important they are not part of government”.\textsuperscript{15}

In Northern Ireland, the number of ALBs increased overall under direct rule. However, under Northern Ireland Secretary of State Peter Hain, a Review of Public Administration reduced the number of ALBs from 154 to 75 in 2006. Hain announced that there would be “fewer public bodies, with wider remits and the ability to deliver better co-ordination of services”.\textsuperscript{16} Given historic tensions between communities, ALBs had an important role in politically sensitive areas such as housing. However, as part of a broader effort to reduce duplication of services as a result of segregation, it was decided that housing would now be an ‘essentially local issue’. The Northern Ireland Housing Council, an advisory body represented on each of Northern Ireland’s 26 councils, was abolished. The Northern Ireland Housing Executive was retained until 2009 pending changes to local government. After the establishment of the Stormont Executive, the 2011 draft Budget signalled that the executive would continue to exert downward pressure on the number of ALBs, pleading to “take action on Quangos”.\textsuperscript{17} It has now been announced that the next stage of the Reform of Public Administration programme will deliver £400m of saving over the next 25 years. The major change to ALBs will be the merging of the five education boards into the Education and Skills Authority.\textsuperscript{18}

**ALBs in local government**

Local government has a complex relationship with ALBs. On the one hand, local authorities have in general supported some of the arguments advanced by national governments in favour of reducing the number of ALBs. The local government associations in England, Wales and Scotland have supported moves by central government to reduce the number of ALBs. This may reflect the fact that, in some cases, councils have been impinged on by ALBs such as the Audit Commission which was responsible for a performance regime that some authorities found restrictive. Further, central government has in some cases required councils to establish ALBs. To meet the previous government’s Decent Homes target, for instance, local authorities were required to choose one of three investment options: stock transfer; private finance initiative (PFI); and ALMOs for high-performing authorities. ALMOs, in effect, placed council investment in housing at arms-length.

On the other hand, local government has in many cases led the creation of local ALBs in recognition of the benefits of the ALB model in resolving key public policy challenges. Council leaders and chief executives interviewed as part of this research had established local authority trading companies, ALMOs, partnership boards and charitable trusts. There is, moreover, some evidence to suggest that councils are set to increase the number of ALBs. In England, Selby District Council has announced that it will reduce staffing levels to 14 and deliver all services at arms-length. Council leaders and chief executives interviewed by the LGiU as part of this research reported plans to use local ALBs to improve the effectiveness of services and create ALBs to improve the efficiency of services. The principal areas for expansion were in children’s services (not including education) and housing.

\textsuperscript{14} www.scotland.gov.uk
\textsuperscript{15} www.snp.org
\textsuperscript{16} www.nio.gov.uk
\textsuperscript{17} www.nothernireland.gov.uk
\textsuperscript{18} Belfast Telegraph, ‘Quangos cull could save £400 million’, 22 September 2011
2. What are the potential benefits of ALBs?

There is a growing body of evidence showing that ALBs can help governments meet the challenge of reforming services as resources become more constrained. ALBs have a track-record of helping government to innovate in service delivery largely because they can be more flexible in their structures and organisation and operate across different spatial levels to generate efficiencies. There is also evidence that ALBs can in some cases be more effective in engaging communities of stakeholders, service users and citizens than other branches of government. The introduction of independent expertise in to decision making is another, and perhaps most widely accepted, potential benefit of the ALB model.

ALBs can innovate in public service delivery

The ALB model can provide governments with greater flexibility in organising service delivery. The Prime Minister’s Efficiency Unit 1988 report argued that spinning out government services was the solution to inefficient provision by departments for two reasons. First, it was argued that departmental structures were restrictive. Independent agencies were freer to create separate agency-specific systems for personnel, recruitment, careers, resource use and patterns of working that were focused on the task at hand. Second, the Efficiency Unit argued that it was challenging for ministers and senior civil servants to take their own departments to task. Independent agencies, however, could be subjected to the rigours of the service commissioner and contractor relationship.

LGiU research found broad agreement among elected politicians, civil servants and independent experts that the ALB model still offered benefits to governments. Supporting the flexibility that ALBs have over recruitment, one elected member argued that “we need to get the kind of people who really understand service delivery in and hold them to account”. On the benefits of the commissioner and contractor relationship, meanwhile, one trade body representative argued that “governments struggle to be both consumer-driven providers and democratic bodies representing the best interests of tax-payers. There is a benefit in separating these two roles out”. Council leaders and chief executives interviewed by the LGiU as part of this research agreed that the ALB model provided helpful flexibility in resourcing and recruitment.

The case study below demonstrates the benefits that can accrue to governments from harnessing the ALB model. It discusses Greenwich Leisure Limited which was established by Greenwich Council to help ensure the survival of leisure services in the face of budget cuts. As one respondent to the LGiU research commented, “Greenwich Leisure Limited works as it has a direct responsibility to save the council money. It shows that governments can benefit from reforming services by mutualising them. What’s more, the model can be exported to other governments so that everyone benefits”.

**Case study: Greenwich Leisure Limited**

In 1993 Greenwich Council was faced with the closure of two or three leisure centres and a 28 per cent loss of permanent staff as a result of budget reductions. A review instigated by Cllr Bob Harris, Chair of Leisure Services Committee, London Borough of Greenwich, recommended the establishment of a not–for–profit...
ALBs can operate at the most appropriate spatial level

Government exists in its formal structures at European, UK, devolved and local level in all parts of the UK. ALBs, however, can provide a more flexible model to organise the discharge of government functions at different spatial levels. ALBs exist at every level, from local housing trusts or ALMOs that work across a neighbourhood, to those that operate across the nations of the UK or indeed across EU countries. It should be noted that, just because ALBs can operate at different spatial levels, it does not mean that they are currently organised in the most effective way.

Local government associations in both England and Wales have argued that centralised ALBs spend more on salary costs, administration costs and offices in comparison with local councils. Consequently, they have argued for services to be transferred to local government or to new, more local, ALBs. Respondents to the LGiU research have argued that ALBs should be subject to a “subsidiarity test” where the assumption is that they will be most effective and accountable if they operate at the most local appropriate spatial level. However, contributors to the LGiU research were also clear that scaling-up some functions would be more efficient and effective.

Economies of scale, as one contributor to the LGiU research argued, are a significant problem for local and devolved government. The case is particularly compelling in the case of small bodies that provide specialist services, such as the Gambling Commission that employs 60 compliance and enforcement managers who work across the UK. One senior ALB manager interviewed by the LGiU argued “that we are very small and specialist. In theory, some of our functions could be devolved to local government but, shared between 152, there would be no savings and possibly costs. Some central expertise would doubtless need to be kept.” Reaction to reforms of ALBs underlines this point. In Wales, the prospect of the economic development ALB being devolved to local government triggered a private letter from all four main Welsh business organisations to Andrew Davies arguing that such a transfer “would result in twenty-two miniature WDAs” that would harm efficiency.

It should be noted that, despite press comment, ALB overheads are relatively low in comparison with central government. The Institute for Government has pointed out that 75 per cent of NDPB cost is grant for other bodies such as university funding and legal aid. The Higher Education Council for England (HEFCE), for instance, employed 267 staff with running costs of £16.74m. However, it distributed some £7.5bn of public funding.

20 www.gamblingcommission.gov.uk/
21 Kevin Morgan, Bonfire of the Quangos: The Missing Debate, 2004
22 Institute for Government, Read Before Burning, 2010
In England, Kent County Council has suggested that local government could create sub-regions that have the capacity and capability to take on the range of functions from ALBs and regional government. The establishment of Local Enterprise Partnerships (LEPs) are one example of this. LEPs work across county and regional boundaries and have taken on some functions that were previously carried out at the regional or local level. Another emerging example we heard about is the increasing joint work of the Association of Greater Manchester Authorities.

Contributors to the research suggested that a new “local Quango state” is being created at the same time as central ALBs are being reformed or disbanded. The drive towards ‘localism’ across the UK – but particularly in England following the Localism and Decentralisation Act – will lead to a fresh look at local ALB arrangements. As noted above, research interviews conducted as part of this report with council leaders and chief executives found that councils are planning to use local ALBs in a bit to improve the effectiveness and efficiency of services in key delivery areas. In some cases, these organisations may be established in a way that is wholly separate from government such as the Community Land Trust model that has been pioneered in rural Scotland. In many cases where organisations are carrying out statutory duties or are receiving revenue funding from government, however, there will need to be new ALB arrangements.

**ALBs can engage communities and stakeholders**

There is a growing recognition that good democracy relies on an on-going relationship between decision-makers and service users as a vital adjunct to a politician’s democratic mandate. The Work Foundation has argued that the challenge for providers of public services is to deliver “what the public deems valuable” and ensure that members of the public “are fully involved in determining desirable outcomes”.\(^\text{23}\) In recognition of this fact, providers of public services have increasingly instigated public consultation exercises as part of the establishment of a public service. However, many government, charity and private-sector provided services lack the robust, representative governance structures that would allow on-going accountability to take place.

ALBs tend to be better at involving the public in decision-making than government, the private sector and charities providing public services. Contributors to the LGiU research argued that many ALBs have a strong track-record in user-driven governance and could provide a useful model for charities and private providers. It was pointed out that ALBs had for a long-time being trying to make services more accountable to communities. Council leaders and chief executives interviewed by the LGiU as part of this research agreed that the ALB model can enhance engagement of communities and other stakeholders in decision-making.

ALBs have complained about being diverted from their community focus by top-down direction. Research conducted by JRF found that ALBs frequently complained that they were excessively focused on “up-line” accountability to the funding and regulatory authority, the Public Accounts Committee and Parliament. Funding authorities were relatively uninterested in accountability to the public beyond imposing a minimum duty to publish an annual report or hold one open meeting, for instance. Some housing associations said that they needed to “be more accountable to private funders than to the community we serve”.\(^\text{24}\)

Respondents to the LGiU research flagged up three strengths of ALB governance. First, ALBs have devised modern structures that emphasise public involvement in decision-making in comparison

\(^{23}\) The Work Foundation, Deliberative democracy and the role of public managers, 2006

\(^{24}\) The Joseph Rowntree Foundation, The governance gap: quangos and accountability, 1994
with traditional structures. Sixty-five councils have, for instance, ALMOs that manage more than one million council properties on a not-for-profit basis. On ALMO boards, tenants make up at least one third of members and, in over a half of ALMOs, tenants are in the Chair.\textsuperscript{25} Tenants arguably have a greater say in how their properties and environment is managed, and how their money will be spent, than under other models. The remit of this model is being expanded. The London Borough of Barnet, for instance, is pioneering a joint venture with a local social landlord to deliver adult social services. Its ALMO will establish a new local authority trading company to “forge a new relationship with citizens by giving people greater control over services”\textsuperscript{26} The Public Administration Select Committee (PASC) echoed the view that ALBs can support community engagement in its response to the government’s plans to bring functions previously conducted by ALBs into departments:

“We believe that bringing functions back into sponsor departments is likely to undermine other channels of accountability, particularly with relevant stakeholder groups, and risk leaving policies fighting numerous other priorities for ministerial attention. This will mean less effective accountability and challenge on a day-to-day basis.”

The Committee suggested that, instead of being abolished, some ALBs should become executive agencies to “allow ministers direct responsibility for policy, combined with the ability to influence it, while still enabling high quality ‘day-to-day’ accountability to stakeholders.”\textsuperscript{27}

A second benefit of ALBs is that their governance tends to be more representative than other forms of government. The Office for the Commissioner of Public Appointments Board monitors the membership of ALB boards for gender, ethnic background and disability against figures for the population as a whole. The Institute for Government points out that successive governments have made ALB boards more representative. Boards are more representative than the cabinet, the senior civil service and the boards of the FTSE 100.

A final potential benefit is that ALBs can make public officials more accountable. LGiU is clear that elected politicians are the primary source of accountability. However, it should be recognised that senior public officials have significant public-facing roles and responsibilities. ALB chairs and chief executives are often more visible than council officers and civil servants. One commentator on reform of ALBs in Wales argued that the re-incorporation of ALBs into the Welsh government has shielded civil servants from “the glare of the media spotlight and open and transparent public debate.”\textsuperscript{28}

### Case study: Food Standards Agency

The Food Standards Agency’s (FSA) role is to protect the public’s health and consumer interests in relation to food. Following a number of damaging media stories that shook public faith in government’s regulation of food standards, the FSA decided to introduce open board meetings that are available on-line. These meetings give the public access to on-going discussions about the FSAs policies, debate about the best approach to current issues and challenges and planning of the organisation’s future strategic direction.

\textsuperscript{25}www.almos.org.uk
\textsuperscript{26}www.barnet.gov.uk
\textsuperscript{27}Public Administration Committee, Smaller Government: Shrinking the Quango State, 2010
\textsuperscript{28}Kevin Morgan, Bonfire of the Quangos: The Missing Debate, 2004
ALBs can bring independence and expertise to decision-making

Colin Talbot, Professor of Public Management at Manchester University Business School, argues that the creation of independent decision-making bodies is a prerequisite for a functioning democracy. He suggests that democracy relies on “losers’ consent”. In order for this to operate, Talbot argues that decisions about core public concerns need to be placed beyond the influence of politicians. Different countries draw this line at different points. The US, for instance, has elected judges. Almost all modern democracies, however, place decisions about who pays tax and at what rate at arms-length of politicians. Council leaders and chief executives interviewed by the LGiU as part of this research said that the ALB model could be used to introduce useful independence and expertise in decision-making.

Matthew Flinders has pointed out that ALBs have been used extensively in recent years to navigate politically difficult issues:

- the disagreement between the Chancellor of the Exchequer and the Health Secretary over foundation hospitals led to the creation of the Office of the Independent Regulator for NHS Foundation Hospitals
- tensions between the Home Office and senior members of the judiciary over sentencing led to the creation of the independent Sentencing Guidelines Council
- plans to increase the capacity of universities to raise tuition charges led to the establishment of the Office of Fair Access
- concerns regarding the proceeds of crime led to the setting up of the Assets Recovery Agency
- the government’s response to terrorist attacks led to the creation of the Independent Reviewer of the Anti-Terrorism, Crime and Security Act 2001
- the programme of constitutional reform led to the establishment of the Electoral Commission, Office of the Information Commissioner, and Independent House of Lords Appointments Commission
- tensions in Ireland saw the creation of the Parades Commission and Sentence Review Commission
- financial difficulties in the nuclear energy sector led to the creation of the Nuclear Decommissioning Authority
- disputes between Transport for London and the various private contractors working on the redevelopment of the London Underground system were delegated to the Office of the Public Private Partnership Arbiter.

It should be noted, however, that concern has been expressed about the “teeth” of independent bodies. The Transport Select Committee has expressed concern about the disparity between the amount of information available under the terms of the Public Private Partnership (PPP) on the performance of the private contractor Tube Lines on the Jubilee, Northern and Piccadilly lines and the amount of data available on the performance of the Transport for London subsidiary London Underground which is responsible for most of the network. The Select Committee called in the strongest possible terms for the government to give the PPP Arbiter, an ALB, stronger powers to collect information on the works undertaken across the entire underground network to allow the PPP Arbiter to make more informed judgements on the issues. However, government did not support these calls.
3. The future challenges for arms-length government

For ALBs to be rehabilitated in the political and public consciousness they will need to meet a series of tough challenges. They will need to undergo continued reform that is rooted in key tests of efficiency, effectiveness and accountability. We have identified three key challenges that apply to ALBs now and in the future and recommendations to help them respond effectively.

Challenge 1: ALBs should operate and be accountable at the lowest efficient spatial level

The UK’s flexible constitutional arrangements allows for considerable freedom in the location of public services. Services can be passed between local government, central government and ALBs with relative ease. At times, government has used this freedom to centralise power. In Scotland, in the 1980s, Richard Parry has argued that the creation of local public spending bodies by central government was used to create “an alternative territorial system to the local authorities whose political affiliation in Scotland moved completely away from the party”.

In another example, in England regional and national bodies involved in planning and housing, such as the Planning Inspectorate, have been seen by some commentators to undermine the role of local authorities in determining local policy.

A new obligation should be placed on government to ascertain the lowest level a function could be delegated to, within the bounds of efficiency, when proposing the creation or reform of a public body. ALBs created under this system would have a clear rationale. Meanwhile, it would leave the way clear for proposals, such as those from Kent County Council, for local government to create sub-regions that have the capacity and capability to take on some of the functions of ALBs.

That is not to say, however, that the efficiency benefits of the ALB model should be negated by the transfer of functions to local government. Rather, it is an argument for ensuring that ALBs are accountable to politicians located at the appropriate spatial level. At present, a number of ALBs that relate to the core business of local government are accountable to central and not local politicians. The Homes and Communities Agency (HCA), the most important local government ALB, invests a capital budget of nearly £7bn in new affordable housing, regeneration, improvements to existing social housing, land purchase and provision of expertise. These are among the most important, long-term decisions that communities make. Local politicians do not, however, have powers over the appointment of chief executives and board members to this and many of the ALBs that are most relevant to local councils. The HCA board is composed of nine members appointed by the Secretary of State for Communities and Local Government.

Contributors to the LGiU research strongly argued that lack of local political influence over ALBs was damaging. As one respondent argued, “it is critical to engage local people in big decisions that will transform communities. Councillors must be able to play a pro-active community leadership role. They (therefore) need a stronger accountability role over local public spending bodies.”

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29 Richard Parry, ‘Quangos and the Structure of the Public Sector in Scotland’ in Scottish Affairs, 1999
30 www.homesandcommunities.co.uk
commented that “we need local politicians to be able to play a stronger community leadership role as shapers of place and orchestrators of delivery”.

**Recommendation 1: The principle of subsidiarity should apply to ALBs**

A ‘subsidiarity test’ should be applied:

a) where ALBs are abolished so that functions are transferred to the most appropriate level of government

b) where ALBs are reformed or are established so that they operate and are accountable at the most appropriate spatial level.

**Challenge 2: ALBs should be clearly accountable to elected politicians**

ALBs must be accountable to democratically-elected representatives for two important reasons. First, to provide strategic focus, expertise and continuity. As one contributor to the LGiU research argued, “public deliberation is not good at joining small points and intricacies up. Only politicians can do this as representatives of the consumer”. An international expert pointed out that “the UK has a highly distributed system of public service delivery. There is a risk that, as a result, you have many actors who work in silos. Politicians are needed to provide strategic oversight”.

Second, and most importantly, to ensure that significant sections of the public sector are subject to democratic accountability. Functions discharged by ALBs include the protection of the constitution, the regulation of big business, delivering a wide range of executive functions and providing expert advice. The Institute for Government has estimated that ALBs account for around 13 per cent of government expenditure.

There is considerable evidence to support the argument that ALBs are accountable to communities (see above). However, accountability to politicians is not sufficiently clear. Council leaders and chief executives interviewed by the LGiU as part of this research reported that ensuring that new local ALBs had robust mechanisms in place to ensure accountability to elected members was a key consideration. In theory, ALBs are accountable to democratically-elected representatives. Ministers remain accountable for ALBs, Select Committees can scrutinise their activities and Civil Servants monitor their performance. Democratic scrutiny of ALBs is, however, more robust in theory than in practice. This is for three principal reasons outlined below.

Ministers often argue that ALBs are answerable for individual decisions. One Minister recently said that most government departments do not manage their public bodies because “the whole point is these are meant to be autonomous and not accountable, so if there’s a justification for the function being carried out in a way that’s independent of a department, then the ability of the sponsoring department to interfere with its management is strictly limited”. However, as several contributors to the LGiU research pointed out, ministers often exert tight control over the ALBs that they are responsible for. The NHS, for instance, is subject to tight political control through a target-based regime and political “soft power” over appointments. As one respondent argued, “where there is a political will, there is a way”.

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31 Institute for Government, Read Before Burning, 2010

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A second problem is that the large number of bodies, coupled with the limitations on Parliamentary time and interests, mean that “consistent Parliamentary scrutiny of ALBs is the exception rather than the rule”. The Institute for Government points out that the Health Select Committee has subjected the National Institute for Clinical Excellence (NICE) to in-depth review but not the foundation trust regulator Monitor.32

A third issue is that accountability of ALBs to Departments is unclear. This is due in some cases to shortcomings in governance and performance management arrangements. The Institute for Government found that managers of ALBs complain of either micro-management or neglect by their sponsors. PASC found that this confusion may be down to the fact that different ALBs are subject to different levels of involvement with their parent department. Lack of clarity about their role is leaving departments unsure about what approach to adopt.

These issues do not mean, however, that governments should “throw the baby out with the bath water” and bring ALBs back in to departments. As argued above, that would result in reduced accountability to communities and possible losses in efficiency. Rather, it is an argument for improving current arrangements. Contributors to the LGiU research identified two key operational weaknesses that could be targeted to tackle the issues identified above: lack of clarity over aims and objectives; and lack of clarity about lines of accountability.

Lack of clarity over aims and objectives is the most fundamental issue. The basis for accountability is a shared understanding embodied in a formal service level agreement or contract that expresses agreed outcomes, success criteria and risk-mitigation processes in the event of service failure. At present, however, these shared agreements are too focused on process and not rigorously enforced. As one independent expert who contributed to the LGiU research argued, “the key challenge around ALBs is holding them to account. The basis for this should be an annual statement of intent. We then need to be tough enough to ask if the intent at the beginning is being matched by the value delivered at the end”.

Lack of clarity about lines of accountability is an issue for even those ALBs with clear performance agreements in place. A series of reports by the Committee on Standards in Public Life and PASC have identified accountability problems associated with delegated governance. The 1999 PASC report argued that government should bring “greater clarity and consistency” to the “confusing network of bodies which play a crucial role in British government”33 It suggested that it should publish a map that classified bodies, stated who was responsible for appointments at each ALB and identified the transparency arrangements that applied to it. PASC has pointed out that lack of understanding about the democratic accountability of ALBs has caused their “lack democratic of legitimacy and popular respect”.

Recommendation 2: ALBs must be subject to an accountability test

A political accountability test should be applied to all ALBs. This test will consider how and where accountability by elected politicians is exercised and how it is understood by the public. ALBs should be clearly identified by the sponsoring branch of government, whether UK, national or local, as either “independent” or “politically accountable”. “Independent” ALBs are those whose primary purpose is to provide independence of decision making or advice. All other ALBs should be considered...
politically accountable to end the (sometimes convenient) confusion over who is responsible for the performance of an ALB.

**Recommendation 3: Political accountability must be clearly communicated**

For those ALBs that are clearly ‘politically accountable’, the identity of the sponsoring politician – whether that is a councillor or a minister in the devolved or UK governments – should be prominently communicated, for instance in public documents and on websites.

**Recommendation 4: ALBs must operate with a clear mandate**

For “politically accountable” ALBs, there should be a requirement for the accountable elected representative to mandate the ALB annually through a ‘letter of mandate’. This would mandate the ALB to discharge a function of government and spend or distribute public money.

**Challenge 3: ALBs should be transparent about their operation, finances and governance**

Transparency in governance is an important source of political legitimacy. The governance of ALBs is, however, in some cases unclear. Dr Chris Skelcher has argued that ALB board members are selected using a system of public appointment which enables governments to exert a degree of influence and control. He contends that the system of public appointment allows the boards of ALBs to be composed to fit the demands of the current orthodoxy, to satisfy particular needs or to provide particular expertise by dint of the ability to select individuals on the basis of expertise, experience, objectivity and professionalism. This is very different to the more haphazard, less manageable election of local councillors and MPs.

Particular concern about this issue has been expressed in Scotland. In the 1999 election, Richard Parry points out that the manifestos of all but the Labour Party had an anti-ALB tinge. Scottish Homes, the Scottish Sports Council and the Scottish Arts Council attracted particular concern. After the election, the appointment of a former MEP as chairman of a Quango attracted headlines about “cronyism”. However, as Parry emphasises, there is a strong counter-argument that these appointments are a low-cost way to access a small pool of busy people with the skill-set and inclination to advise government.

Devolved and central governments have introduced several measures to ensure the integrity and good practice of ALBs. The governments of John Major, and then Tony Blair, introduced a Code of Practice for Public Appointments and established the post of Commissioner for Public Appointments to ensure adherence to this Code. In 2008, a system of pre-appointment hearings by select committees was introduced for certain public body appointments. In Scotland, the Code of Practice for Public Appointments Procedures was taken over by the Scottish Executive.

It is not clear, however, that these reforms represent total commitment from the government to reducing political influence over appointments. In its response to the 2003 PASC Report, for instance, the government rejected a proposal to give the Commissioner for Public Appointments whistle-blowing powers to report suspected breaches of the Code of Practice.

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34 Richard Parry, ‘Quangos and the Structure of the Public Sector in Scotland’ in Scottish Affairs, 1999
Contributors to the LGiU research argued that a lack of clear understanding between governments and ALBs is the principal weakness in current arrangements. At present, politicians are reluctant to hand ALB chairs and chief executives status independent of their own authority. However, this ultimately results in a damaging lack of legitimacy for decisions taken by ALBs. This is a lose-lose situation. Contributors to the LGiU research were agreed that, in the best examples, ALBs can develop strong business processes that allow them to take complex decisions within a framework set by democratically-elected politicians. Where agreement cannot be reached, as has happened with the New Zealand equivalent of NICE, politicians retain the freedom to ignore the direction of an ALB. The integrity of its decision-making process, however, must not be undermined. The case study below demonstrates how a well-constituted ALB can help politicians make tough decisions about public policy.

Case study: NICE

The National Institute for Clinical Excellence (NICE) was created to assess new drugs and treatments to make sure that they benefit patients, help the NHS and are cost effective. This latter consideration has been particularly challenging. NICE weighs the estimated health benefits that could be gained from a new treatment against the fact that other patients will lose out as other procedures are necessarily curtailed or not undertaken. Perhaps inevitably, given the emotive nature of the decisions it takes, NICE has drawn some strong criticism for its decisions. In 2000, British Medical Journal Editor Richard Smith accused Nice of “not being very good”. He argued that “a government with spine would learn from the failings of NICE and move on”. Few of its critics, however, have questioned the independence of NICE. NICE is well-respected for consulting medical and health professionals, patients, patient organisations and drug companies when making its decisions.

Recommendation 5: Presumption of accountability

There should be a ‘presumption of accountability’ that makes all ALBs subject to the highest levels of transparency, scrutiny and accountability that applies to their sponsoring branch of government. This would mean that codes of practice, ethics, and mechanisms for accountability would be presumed to apply to an ALB in the same way as to a local authority or government department except where there is a specific exemption, for instance in relation to legal ALBs.

Recommendation 6: Requirement to publish an annual report

It is common practice for ALBs to publish an annual report but we recommend that this is made a requirement and relates to their ‘letter of mandate’. The annual report should show how the ALB has discharged its functions and spent public money.

Recommendation 7: Requirement to review the mandate of ALBs

Government at all levels should be required to review the mandate of ALBs annually. This review would check performance against planned outcomes. Every five years the sponsoring branch of government should report on the rationale and efficiency of continuing an ALB delivery model, relative to other models such as direct delivery, or transfer of powers or functions to other branches of government.
Conclusion

Through our research we have found that ALBs have a number of advantages that should ensure their survival: they can be flexible in their structures and governance; they can bring ‘independence’ efficiency and innovation to government; and they can enhance some aspects of accountability and participation.

Some assumptions have also been called in to question. We have seen that strengthening accountability to ministers can result in ALBs becoming less accountable to the general public, that reducing the number of ALBs can result in costs rather than savings and that the motives for the reform and creation of ALBs is more complex than it would appear at first glance.

Some aspects of the current system, however, make the position of ALBs precarious. Through our research, engaging with leading experts and commentators, we have noted there is a lack of popular respect for a vital part of the modern British state. To improve this situation, this paper finds that there is a need to improve the accountability of ALBs, help create a surer operating environment for them and clarify the rationale for the location of a function with a certain body at a certain level. Our eight recommendations aim to provide a way forward.

Overall what is needed is for ALBs to be regarded more neutrally on their merits. One contributor to our research put it like this: “ALBs should be considered a useful model among many other models for delivering services in a mixed-market of providers”. We agree. Looking forward we recognise though that this will require a marked shift in the quality of the current media and political debate: a move away from easy assumptions to more constructive and informed debate. We hope this paper has been stimulating in this respect and we would welcome your feedback and comments.
Advisory NDPBs: committees or boards which provide expert advice to ministers on specific policy issues. Usually set up without legislation and supported by staff from the parent department, with no significant budget.

Executive NDPBs: bodies which play a role in national government but are not part of any department, deliberately established to operate at arm’s length from ministers. Usually set up by statute, they can hire their own staff and the chief executive is accounting officer for the budget allocated to them. They are, however, sponsored by a parent department which holds the body to account and whose ministers are responsible for appointments of board members. Most executive NDPBs receive a significant grant-in-aid from their parent department to fund all or some of their work. Some also raise funds from other sources (e.g. regulatory levies).

Independent monitoring boards (other’ NDPBs): every prison and immigration removal centre (and some short-term holding facilities) has an independent monitoring board which monitors day-to-day life to ensure proper standards of care and decency.

Tribunal NDPBs: these bodies have jurisdiction in a particular area of law. They are coordinated by the tribunals service, an executive agency, and supervised by the Administrative Justice and Tribunals Council.

Executive agencies: agencies carry out services or functions with a focus on delivering specific outputs. They usually have no statutory basis and, in law, are indistinguishable from their parent department. However, their chief executives are accounting officers and responsible for their expenditure; they will also have a separate organisational identity from the parent department and often have more human resources and financial flexibilities available to them than the parent department.

NMDs: a department not headed by a government minister but represented by the minister of another department in Parliament. NMDs are normally set up under legislation and funded through the Treasury.

Public corporations: market bodies that derive more than 50% of their income from the sale of goods and services. Some charge for regulatory activities where these provide a significant benefit to the person paying the fee. They are owned or controlled by central government but they have substantial day-to-day operating independence so that they should be seen as institutional units separate from their sponsor departments. Otherwise may have similar features to executive NDPBs as detailed above.

Independent statutory bodies: these bodies (which include the five HM inspectorates) enjoy statutory powers and are not part of government departments but receive their budget through a departmental vote.

Special health authorities: special health authorities are health authorities set up to assume a delegated responsibility for providing a national service to the NHS or directly to the public. They are
established under statute. Ministers retain a formal power of direction to ensure ultimate control over their activities. In terms of governance, they are in most respects akin to an executive NDPB.

**Parliamentary bodies:** there are currently five independent parliamentary bodies or ‘constitutional watchdogs’: Comptroller and Auditor General, Parliamentary Ombudsman, Parliamentary Commissioner for Standards, Electoral Commission and Office of the Information Commissioner. These are formally independent institutional units that review the actions of government on behalf of (and report to) Parliament rather than the executive.

**Central bank:** the Bank of England appears to have a unique constitutional position.

*(Source: Institute for Government)*
Appendix 2: Interviewees

Robert Black, Auditor General for Scotland

Cllr Roderick Bluh, Leader, Swindon City Council

Vernon Bogdanor, Research Professor, Institute for Contemporary History, King's College London

Richard Henderson, Chairman, Scottish Committee of Administration Justice & Tribunal

Cllr Tony Jackson, Leader, East Hertfordshire Council

Cllr Bob Lanzer, Leader, Crawley Borough Council

Cllr Sophie Linden, Hackney Council

Cllr Tony McDermott, Halton Borough Council

Peter McKinlay, Director, Local Government Centre, Institute of Public Policy, Auckland University of Technology

Gerald McLaughlin, Chief Executive, NHS Health Scotland

Dr Daryl Mead, Director of Collections and Research, National Library of Scotland

Sarah Philips, Deputy Director, Centre for Public Sector Partnerships

Cllr Colin Rosenstiel, Cambridge City Council

Jill Rutter, Programme Director, Institute for Government

Alison Scott, Assistant Director Local Government, CIPFA

Dr Chris Skelcher, INLOGOV

Lucille Thirlby, National Officer for Local Government, Unison

Cllr Bob Wheeler, Leader, South Derbyshire District Council

Cllr Dave Wilcox, Derbyshire County Council
About the LGiU

The LGiU is an award winning think-tank. Our mission is to strengthen local democracy to put citizens in control of their own lives, communities and local services. We work with councils and other public services providers, along with a wider network of public, private and third sector organisations. Through information, innovation and influencing public debate, we help address policy challenges such as demographic, environmental and economic change, improving healthcare and reforming the criminal justice system. We organise the Children’s Services Network (CSN) and Local Government Flood Forum (LGFF) and are the host organisation for Local Energy Ltd.