

Reforming the QUANGOS

The organisations known as *Non-Departmental Political Bodies (NDPB)*, *Quasi- Autonomous Non-Governmental Organisations (QUANGO)* and *Semi-Autonomous Political Bodies (SAPB)*, lack accountability, and a number suffer from deficiencies in their government structures. I will refer to these as Quangos.

It is recommended that the Quango's are restructured in order to adhere to the standards of, or become, Companies Limited by Guarantee, in order to increase efficiency and accountability. This has already been recommended for the Big Lottery Fund in the course of its Triennial Review in 2014, and should be applied to all Quasi- state organisations.

Being subject to the Companies Act provides enhanced governance and board-level accountability while maintaining the not-for-profit purpose. For example a CLG must comply with the statutory duties set out in the companies articles, is subject to legal reporting requirements and its directors have fiduciary duties, whereas an NDPB alone only reports to the relevant Minister who is, in turn, accountable to Parliament. There are no fiduciary duties and accountability is not strong.

A CLG is no more commercial than an NDPB, there is no share capital raised, and so there is no conflict of interest. Control remains in the hands of the CLGs members (one or more Departments of State), and corporate oversight and accountability is achieved through the reporting requirements that all companies are subject to.

CLGs are subject to a full and proper audit, and can have restrictions placed upon them to prevent profit distribution.

In their report *ACA-to-YJB: a Guide to Britain's Semi-Autonomous Political Bodies* on the expenditure of quasi-state organisations, the Tax-Payers Alliance (TPA) found there was total UK Government funding of £91bn (2007-2008) for Quasi-state organisations. This is spread across 1,148 such organisations who spent an additional £41bn (raised through their operating activities) to bring total expenditure to £132bn.

Strikingly, this TPA report was claimed (at the time) to be the only comprehensive and accurate guide to the UK's public bodies sector. Such low levels of accountability and public scrutiny allow bad governance to creep in and become accepted and standardised.

By restructuring the Quango's into a fit-for-purpose CLG, the Quango's would be forced to comply with applicable legislation, which is designed to ensure good governance,

accountability and efficiency. By introducing greater oversight in this way, and with the subsequent efficiency rewards, this will result in a significant step in finding further savings in public expenditure.

Mark Florman

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1. Criteria for comparison	Executive Non Departmental Public Body (NDPB)	Company Limited by Guarantee (CLG)
<p>Overview of what they are</p>	<p>The government’s presumption is that if a public function is needed then it should be undertaken by a [public] body that is democratically accountable at either national or local level.</p> <p>An NDPB is an administrative classification for public bodies which are part of central government but which are not a government department, or part of one, and which operate to a greater or lesser degree at ‘arm’s length’ from Ministers.</p> <p>To be an NDPB, a public body must pass one or more of three tests:</p> <ol style="list-style-type: none"> 1. it performs a technical function 2. its activities require political impartiality 3. it needs to act independently to establish facts. 	<p>Can be public or private sector.</p> <p>If public sector, it might be an NDPB, public corporation or “unclassified” within the central government sector if it does not have the characteristics of a specific classification (as defined by the Office for National Statistics).</p> <p>A company limited by guarantee is much like an ordinary private company limited by shares. It is registered at Companies House, must register its accounts and an annual return each year, has Directors, etc. A major difference is that it does not have share capital or any shareholders, but rather Members who control it.</p>

2. Governance appointments	Executive Non Departmental Public Body (NDPB)	Company Limited by Guarantee (CLG)
Appointment of Members	Not applicable unless NDPB is also one of the other structures (with Members).	A CLG must have one or more Members. Initially this would be the sponsoring Minister(s), who may choose to remain the only Member(s) or appoint others.
Appointment of Chairperson	Usually by a Minister in Sponsoring Department	Normally appointed by Directors, but flexible, as Members may also have power to appoint if specified in Articles. As a Minister is likely to be the/a Member, in effect this would be same as the status quo.
Appointment of Board/Directors	Normally the Minister appoints the balance of NDPB Boards. For some, recommendation from Chair, approved by Minister. Non-Executives appointed via public appointments process.	One or more Directors, normally elected and appointed by Members. As a Minister is likely to be the/a Member, in effect this would be same as the status quo.
Appointment of CEO	Appointed by Board, with Ministers consulted.	Normally appointed by Directors but Members may also have power to appoint if specified in Articles
Creation of committees and subcommittees	This will usually be the Board, subject to their having authority to do so.	Directors may create and delegate powers to committees / subcommittees
Removal of Chairperson	Usually by a Minister	By Directors, but Members may also have the power to remove if specified in Articles
Removal of CEO	By the Board, with consultation with Minister.	By Directors, but Members may also have the power to remove if specified in Articles
Removal of Directors/Trustees	Usually by a Minister for non-executive Directors, or by the Board for executive Directors	By Members
Removal of the Members	Not applicable unless NDPB is also one of the other structures with Members.	Not applicable
Duties of the decision making body	No statutory duties for the Members, but the actions of the NDPB must be justified to ministers who are ultimately accountable to Parliament – a weakness.	Clear and separate statutory duties: Directors must comply with their general statutory duties to act within their powers as prescribed by the articles of the company, promote the success of the company having regard

to the interests of members, stakeholders and regard to the long term consequences, exercise reasonable care, skill and diligence in the exercise of their authority and independent judgement (and higher standards are imposed where the director has specific qualifications), duty to avoid conflicts of interest, disclose self-dealing and take no third party benefits.

The duties are owed to the company and may only be enforced by the company.

Remedies for breach of duty could include an obligation on the director concerned to pay compensation to the company if it can show it has suffered loss, to restore property of the company that has been misappropriated, or to account to the company for profits he has made as a result of the breach. In certain circumstances it may be possible for a contract to be set aside (for example, where a director has failed to declare an interest before a contract is entered into with the company). If a director is found to be in breach of the duty to exercise reasonable care, skill and diligence he may be required to pay the company damages for losses it has suffered as a result of the breach.

3. Decision making	Executive Non Departmental Public Body (NDPB)	Company Limited by Guarantee (CLG)
Purpose and strategy	Set by Ministers	Set by Members – in effect this would be the same as the status quo
Policy directions	Set by Ministers	Set by Members – in effect this would be same as the status quo
Power and control of the Members over Directors/Trustees	Not applicable unless NDPB is also one of the other structures with Members.	<p>The Members of the CLG control it, in the same way as shareholders control a share company.</p> <p>Degree of powers and control depends on what is written into the governing document.</p>
Power of the Board	Generally oversight of strategies developed to translate ministerial policy directions into practice	Powers will depend on the terms of the CLG’s Articles, but typically they are given very wide powers of management, conferred on the Directors collectively, when they are sitting as a Board and passing resolutions for the management of the company.
Day to day management	CEO reporting to Board.	Directors are responsible, but typically delegate day-to-day management to CEO
Funding decisions (grant-making)	Funding committees in each country. UK Board not involved.	CEO / Directors / funding committee; in addition, Members may have reserve powers to make funding decisions if included in Articles
Reserved rights of Members	Not applicable unless NDPB is also one of the other structures with Members.	<p>Meet at the Annual General Meeting. May be different classes of Members, e.g. with or without voting rights.</p> <p>May include power to direct Directors to take, or refrain from taking, specified action</p> <p>Only Members can resolve certain key constitutional decisions (e.g. purpose, appointments, winding-up), but the governing document may give them more powers.</p>

4. Individual accountability	Executive Non Departmental Public Body (NDPB)	Company Limited by Guarantee (CLG)
Chair	Performance Appraisal with Perm Sec of Sponsor Dept	To Members
CEO	Performance Appraisal with Board	To Directors
Board	Performance Appraisal with Chair	To Members
Financial liability of Directors	None unless created as one of the other structures described. A weakness.	Directors are fully protected by limited liability, ie. to amount of the guarantee set out in the CLG's Articles (typically just £1). Directors only liable for CLG debts if guilty of some wrongdoing, such as wrongful or fraudulent trading.
Committees	To Board	To Directors
Members	Not applicable unless NDPB is also one of the other structures with Members.	Not applicable

5. Corporate accountability	Executive Non Departmental Public Body (NDPB)	Company Limited by Guarantee (CLG)
Statutory	Act of Parliament	Companies Act 2006
Registration	None – part of public sector unless NDPB is also one of the other structures.	Companies House
For Public Money	Subject to HM Treasury and Cabinet Office controls. CEO is the Accounting Officer, reporting to the Perm Sec.	Chairman reports to members in effect
Annual reporting	Annual Report and Accounts to be approved by Sponsor Department in Accounting Officer reporting line (DCMS) and NAO	Clear and mandatory statutory reporting requirements: Annual return and set of accounts to be filed with Companies House.
Transparency	NDPBs should make an explicit commitment to openness in all its activities. Expectation of online publication of Board minutes and other corporate documents. Subject to Freedom of Information (FOI) requests as a public body, and the requirement to maintain a publications scheme.	Transparent statutory reporting requirements : Annual report and accounts available from Companies House for a fee. If an NDPB would be subject to FOI.
Effectiveness	Performance against policy directions Performance management by departmental sponsor team	Not applicable, but can be specified in Articles

6. Financial management	Executive Non Departmental Public Body (NDPB)	Company Limited by Guarantee (CLG)
External independent auditor	Usually NAO unless NDPB is also one of the other structures	Standard company law requires full audit.
Subcommittee to control accounts	Audit committee can be set up by the Board	Directors can form Audit committee
Property ownership	Can own property, subject to CO/HMT controls	Can own property.
Borrowing and lending	Not usually able to borrow/lend from the private sector due to HMT controls.	Can borrow money and may issue debentures or debenture (loan) stock.
Profit distribution	Not applicable – must operate on a cost recovery model	CLGs are not prohibited from distributing profits by the Companies Act or any other law, but it is possible for restrictions to be put on profit distribution in the company's Articles (although these can be amended by Members).

7. Freedoms	Executive Non Departmental Public Body (NDPB)	Company Limited by Guarantee (CLG)
To publicly campaign on issues	No – not appropriate for an NDPB	No restriction, unless specified in Articles
To challenge Government policy	No – not appropriate for an NDPB	No restriction, unless specified in Articles
To contribute to and/or influence Government policy	Yes – in consultation with Minister	No restriction, unless specified in Articles
To deliver grant-making services for third parties	Allowed	Has legal capacity to enter into agreements and transact business with third parties in its own name