

The Strange Case of Non-Ministerial Departments

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1. A government mystery

In our 2010 report on arm's-length governance, *Read before Burning*¹, we argued for a new, more rational, taxonomy of the arm's-length bodies through which government conducts much of its business. We argued that form should follow function and be determined by the freedom the body needed from ministerial control credibly to perform that function.

We proposed four new groupings, but noted that there was one current classification which had already outlived its usefulness. We argued: 'The cross-cutting category of NMD (non-ministerial department), where accountabilities are particularly unclear, would disappear, with such bodies migrated into one of the new categories.' We went on to note, 'Interestingly, a hypothetical exercise suggests that NMDs would map to all points of the spectrum'.

In this brief paper, we take a deeper look at non-ministerial departments.

1.1. Who are these guys?

The government's own website, Gov.uk, listed 20 non-ministerial departments,² set out in the table below. Gov.uk describes these as:

Figure 1: Non-ministerial departments

Name	Department	Date established	Comment
Competition and Markets Authority	BIS		2014 yet to launch
Crown Prosecution Service	AGO		1986 Took over police prosecution functions
Food Standards Agency	DH		2000 reaction to BSE
Forestry Commission	Defra		1919 also reports to Scotland; Wales now with Natural Resources Wales
Government Actuary's Department	HMT		1919 first GA appointed 1917
HMRC	None declared		2005 replaced IR and HM C & E
NS & I	HMT		1969 PO savings Bank 1861; made Executive Agency 1996
Office of Fair Trading	BIS		1973 will go with creation of CMA
Office of Rail Regulation	DfT		2004 replaced rail regulator created on privatisation
Ofgem	DECC		1999 merger of Ofgas and OFFER
Ofqual	DfE		2008 replaced QCA
Ofsted	DfE		1992 predecessor Inspectorates
Royal Mint	HMT		1066 also a GoCo since 2009 and a charity
Serious Fraud Office	AGO		1988 established following Roskill report on fraud trials
Supreme Court	None declared		2009 to make independent of House of Lords
The Charity Commission	None declared		2006 charity regulation started in 1853
The Crown Estate	HMT		1961 replaced arrangements set up since 1829/1936
The Water Services Regulation Authority	Defra		1989 aka Ofwat
UK Statistics Authority	None declared		2008 ONS as executive office of UKSA
UK Trade and Investment	BIS + FCO		2003 formed from British Trade International and Invest UK

One immediate point to note is that this list is both incomplete and inaccurate. The National Archives, Ordnance Survey, the UK Land Registry and Treasury Solicitor's Department are also non-ministerial departments, but are listed on Gov.uk as executive agencies. This puts

¹ Gash, T., Rutter, J., Magee, I., Smith, N., *Read Before Burning*, Institute for Government (July 2010).

² This list was published in mid-August 2013. Treasury Solicitor's Department was added to the list in September.

them in exactly the same category as National Savings and Investment (NS&I) – what used to be called National Savings. In addition, the Public Works Loan Board and the Commissioners for the Reduction of the National Debt are also NMDs operating within the Debt Management Office.³ The Debt Management Office itself is a Treasury Executive Agency.

One NMD in the list does not yet exist – the Competition and Markets Authority – and when it does, the Office of Fair Trading (OFT) will disappear. The Government also announced at the beginning of September that the new National Crime Agency would be an NMD⁴. For the purposes of this document, we are using the August 2013 Gov.uk list, notwithstanding its oddities and imperfections.

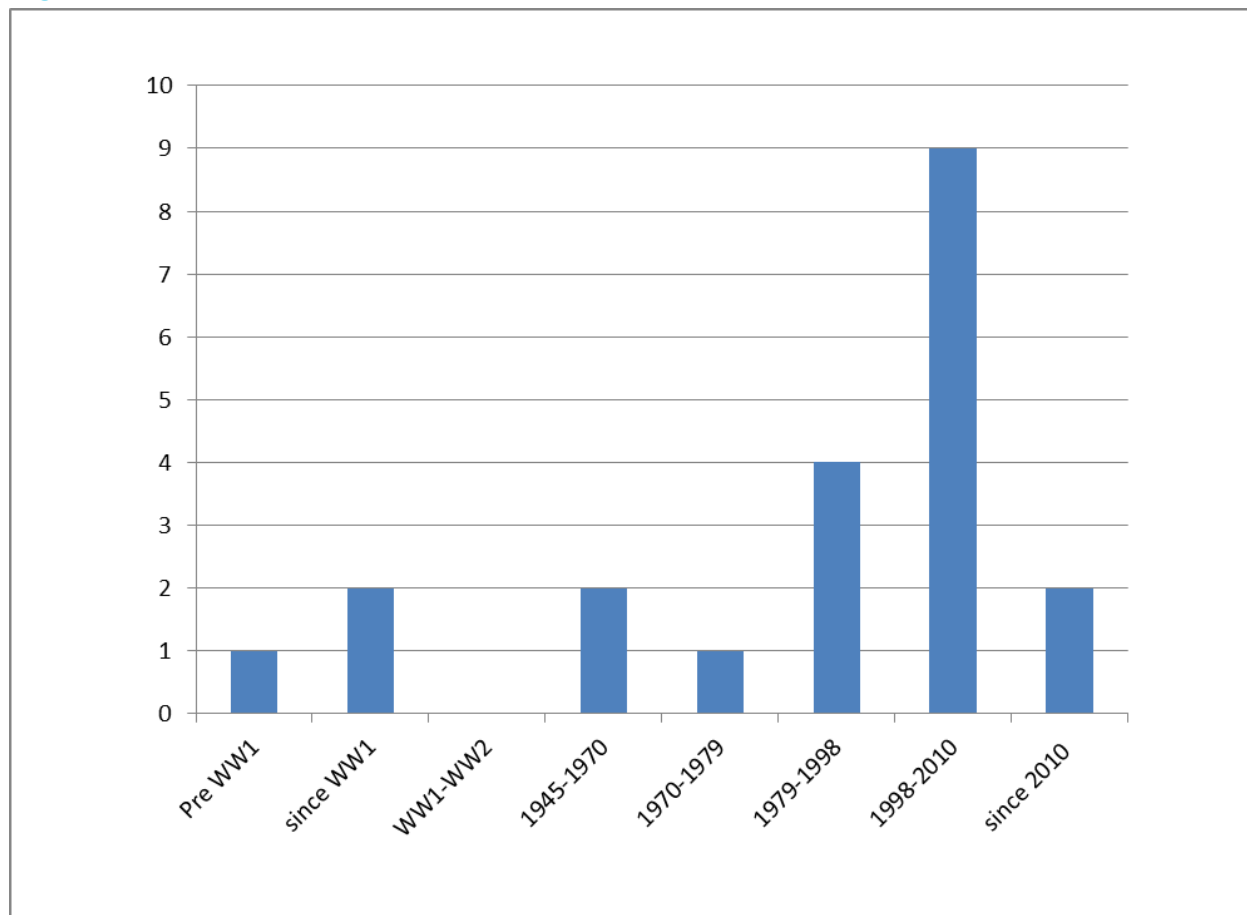
Some points to note:

- Some of these bodies are very venerable indeed and their establishment predates the emergence of other forms of public body: the Royal Mint claims to have been in existence for over 1,100 years; the Forestry Commission and Government Actuary's Department were both established shortly after the end of World War One. Charity regulation started in the 1850s.
- Some of the bodies which appear to be more recent are in fact the result of mergers of older predecessor NMDs. This applies to Her Majesty's Revenue and Customs (HMRC) which was formed out of a merger of the Inland Revenue and HM Customs and Excise, both non-ministerial – or more usually termed 'Chancellor's' – departments. It also applies to the merged regulator, the Office of Gas and Electricity Markets (Ofgem), which replaced the separate gas and electricity regulators, set up in the 1980s (Ofgas and OFFER) following the 2000 Utilities Act.
- Others are of much more recent creation. In particular, a consequence of privatisation is that many of the regulators were established as non-ministerial departments. The last Labour government also used this form for bodies as diverse as the Supreme Court, the UK Statistics Authority and the Office of Qualifications and Examinations Regulation (Ofqual), which took over examination regulation from the Qualifications and Curriculum Authority.

³ Communication with the Public Bodies team in the Cabinet Office. Gov.uk list used as at 30 July 2013. For purposes of this report, we are using the Gov.uk list.

⁴ *Hansard*, written answer from Jeremy Browne MP, Minister of State at the Home Office, 2 September 2013. Retrieved from <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130902/wmstext/130902m0001.htm#13090225000016>. The National Crime Agency (NCA) came into operation on 7 October 2013 and is included in the diagram on date of creation.

Figure 2: Date of creation of non-ministerial departments



There is also considerable difference in the use that departments make of NMDs. Not all NMDs in the Gov.uk list mention a parent department, but it seems reasonable to ally the Supreme Court with the Ministry of Justice and, at the moment, to associate the Cabinet Office with the Charity Commission and the UK Statistics Authority. In addition, the Treasury has four of the listed NMDs and HMRC reports through Treasury ministers. The Attorney General's Office, Department for Education and the Department for Environment, Food and Rural Affairs (Defra) have two. The Department for Business, Innovation and Skills (BIS) has one full one and shares UKTI with the Foreign and Commonwealth Office (FCO). A number of government departments have no associated NMDs including the Department for Communities and Local Government (DCLG), Home Office, the Department for Culture, Media and Sport (DCMS) and the Department for Work and Pensions (DWP).

The size of NMDs varies enormously: HMRC is one of the biggest government departments, directly employing 63,850 full-time employees in March 2013⁵ and with a planned spend of £ 47.2 billion in 2012-13 – the bulk of which is tax credit and child benefit).⁶ At the other end of the spectrum, the Government Actuary's Department (GAD) had only 145 employees at the end of March 2013 with expenditure of £15 million.⁷ Because GAD charges for its services it made a small surplus.

However, government does seem to have at least an implicit size threshold. When the Treasury Select Committee proposed NMD status for the proposed Office for Budget Responsibility (OBR),⁸ the Treasury rejected the proposition on the grounds that the OBR was too small – notwithstanding the fact that the UK Statistics Authority was similarly tiny. The OBR has 17 permanent staff.⁹

1.2. Why create an NMD?

The above analysis suggests that the decision to create a non-ministerial department is *ad hoc*. But NMDs have two distinguishing features from other forms of public body, as set out in the Cabinet Office's own guidance on public bodies:^{10, 11}

Non-ministerial departments (NMDs) are government departments in their own right – but they do **not have their own minister**. They are usually headed up by a statutory board.

- NMDs are, however, accountable to Parliament through their sponsoring ministers.
- Their powers are generally (but not always) derived from underlying statute.
- They are staffed by civil servants.
- **They have their own estimate (money voted directly by Parliament) and separate resource accounts.**

Staff of executive agencies and some non-departmental public bodies (NDPBs) are civil servants so this does not distinguish NMDs. Many other public bodies have a statutory basis, though some do not. The two distinguishing features of an NMD are that it has its own source of finance nominally at least, negotiating that sum directly with the Treasury, independent of its 'sponsor' department – and that it does not have its 'own minister'. We discuss what how the latter point works in practice in a later section.

⁵ Institute for Government, 'Civil Service staff numbers, Q2 2013', *Whitehall Monitor* 11 September 2013. Retrieved 10 October 2013 from <http://www.instituteforgovernment.org.uk/our-work/whitehall-monitor/inputs/people-civil-service/civil-service-staff-numbers-q2-2013>

⁶ Institute for Government, Departmental spending 2012/13, *Whitehall Monitor*, 20th August 2013. Retrieved 10 October 2013 from <http://www.instituteforgovernment.org.uk/our-work/whitehall-monitor/inputs/money-revenue-expenditure/departmental-spending-201213>.

⁷ The Government Actuary's Department, *Annual Report and Accounts 2012-2013*. Retrieved 10 October 2013 from [http://www.gad.gov.uk/Documents/Resource%20Accounts/2012-13 Annual Accounts and Report.pdf](http://www.gad.gov.uk/Documents/Resource%20Accounts/2012-13%20Annual%20Accounts%20and%20Report.pdf)

⁸ Treasury Select Committee, Office for Budget Responsibility report, 21 September 2010, section 4, Retrieved 10 October 2013 from <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/385/38507.htm#a19>

⁹ Office for Budget Responsibility, 'Who we are', September 2013. Retrieved 10 October 2013 from <http://budgetresponsibility.org.uk/about-the-obr/who-we-are/>

¹⁰ All italics in the quotes in the report are IFG italics to emphasise key points

¹¹ Cabinet Office, *Categories of Public Bodies: A guide for departments*, December 2012. Retrieved 10 October 2013 from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80075/Categories_of_public_bodies_Dec12.pdf

Budgetary independence has made the NMD an attractive form for bodies that require the appearance of a degree of independence from ministerial intervention. That explains why it has been used so often for the regulators. Most recently, the Treasury used this argument with the Department of Business, Innovation and Skills to argue that the new Competition and Markets Authority could not be less independent of BIS than the Office for Fair Trading it was replacing, and that this would ensure that BIS did not cut its budget when needing to reduce expenditure. (The other predecessor body, the Competition Commission, was an executive NDPB and no less clearly independent than OFT).

It was this financial security which led the Treasury Select Committee to recommend that the planned Office for Budget Responsibility be made a non-ministerial department in its 2010 report, based on the analogy with the UK Statistics Authority. The Treasury rejected the arguments as set out above, but put in place special arrangements to ring-fence the OBR's budget for a number of years to protect it against potential Treasury raids.

1.3. An accountability quagmire

Concerns about NMDs relate not to their budgetary independence but to the accountability consequences of their non-ministerial status. The latest version of the Treasury's guidance to departments, *Managing Public Money*, makes clear that 'only rarely is a non-ministerial department the right choice as NMDs have limited accountability to Parliament'.¹² It sets out the reason why at greater length:

7.9 Non-ministerial departments

7.9.1 A very few central government organisations are non-ministerial departments (NMDs). It is important that there is some clear rationale for this status in each case.

7.9.2 NMDs do not answer directly to any government minister. They have their own accounting officers, their own estimates and annual reports, and settle their budgets directly with the Treasury. However, some ministerial department must maintain a watching brief over each NMD so that a minister of that department can answer for the NMD's business in Parliament; and if necessary take action to adjust the legislation under which it operates. A framework document should define such a relationship.

7.9.3 This limited degree of parliamentary accountability must be carefully justified. It can be suitable for a public-sector organisation with professional duties where ministerial input would be inappropriate or detrimental to its integrity. **But the need for independence is rarely enough to justify NMD status. It is possible to craft arrangements for NDPBs which confer robust independence. Where this is possible it provides better parliamentary accountability, and so is to be preferred.**

The presumption against the creation of NMDs is based on concerns about the confusion of accountability. As *Managing Public Money* says, the minister is responsible, and answerable to

¹² HM Treasury, *Managing Public Money*, July 2013, paragraph 7.2.3. Retrieved 10 October 2013 from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf

Parliament for what the NMD does, but the NMD does not answer directly to a government minister.

Although that is the theory, a cursory look through the websites of individual NMDs shows that, in practice the picture, is even more confused and that they see themselves as having a number of different relationships to their sponsor department.

For some, the relationship described sounds as close as it would be for a government department or an executive agency. The Forestry Commission describes the relationship with Defra and the Scottish Government thus:

Forestry is a devolved matter. The Secretary of State for the Environment, Food and Rural Affairs has responsibility for forestry in England as well as certain activities such as international affairs and plant health which remain reserved by Westminster. Scottish Ministers have responsibility for forestry in Scotland.

Forestry Commission England and Forestry Commission Scotland report **directly to their appropriate Minister**, providing advice on policy and implementing that policy within the relevant country.

A similarly close relationship is implied by UK Trade and Investment, which provides:

Details of the key people involved in the work of UKTI including our minister, CEO, executive board, and our business ambassadors with information on our network of staff across the UK.

HMRC adopts similar language to describe its reporting arrangements:

We report to Parliament through our Treasury minister who oversees our spending.

These NMDs are in a similar position to the chief executive of an NMD we quoted in *Read before Burning* who commented on the anomalous position in which his organisation found itself:

The first thing you need to know about being a non-ministerial department is that you have a minister and you are not a proper department.

However, this very close, almost conventional, accountability arrangement is not the case in other NMDs.

The Crown Prosecution Service (CPS) and the Serious Fraud Office both describe the role of the Attorney General as 'superintending'. The CPS puts it:

The director operates under the superintendence of the Attorney General, who is accountable to Parliament for the Service.

But other NMDs make it much clearer that they work well away from the purview of ministers. The Food Standards Agency – established after the BSE crisis to restore confidence in the integrity of the UK's food supply – strongly asserts its independence from ministers:

The Food Standards Agency is an **independent government department** responsible for food safety and hygiene across the UK...

...The Food Standards Agency represents the UK Government on food safety and standards issues in the European Union. We are also involved in the nutrition and health agenda at a European level...

...As a non-ministerial government department, the Agency is governed by the board, rather than directly by ministers. Day-to-day management of the FSA is delegated to officials through the chief executive.

The Office of Fair Trading uses very similar language, but now posits an indirect line to the public:

The OFT is an independent competition and consumer protection authority, led by Board consisting of a chairman, a chief executive, two executive directors and seven non-executive members...

The OFT is accountable to the public through Parliamentary scrutiny both in Westminster and the devolved administrations, eg through investigations by select committees.

The Charity Commission also stresses its freedom from ministerial influence and the importance of its board and its direct relationship to Parliament:

The Charity Commission for England and Wales is a non-ministerial government department, part of the Civil Service. **The Commission is completely independent of ministerial influence and also independent from the sector it regulates.** It has a number of quasi-judicial functions where it uses powers similar to those of the High Court...

...We are required to report on our performance to Parliament annually...

...Governance responsibilities for strategy and future direction of the Commission rest with its board of non-executive members of the Commission.

It makes no mention of any ministerial relationship on its website, but its framework makes clear that the commissioners are appointed by the Minister for Civil Society in the Cabinet Office. Other regulators, for example the Office of Rail Regulation (ORR), are less vague about this ministerial role. ORR stresses the limited circumstances in which ministers can dismiss board members, but is equally emphatic about their independence:

As independent regulator we operate within the framework set by UK and EU legislation and are accountable through Parliament and the courts...

...We are an independent statutory body led by a Board. The **Secretary of State for Transport appoints board members** for a fixed term of up to five years. The Secretary of State can only dismiss a member of the board on the grounds set out in paragraph 2 of Schedule 1 to the Railways and Transport Safety Act 2003.

Ofwat (the Water Services Regulation Authority) suggests a rather more ambiguous relationship with Defra:

We make our decisions independently of the Government...

...As a non-ministerial government department **we are not subject to direction from ministers in our day-to-day work**. However, we are accountable to Parliament and where required will give evidence to select committees. Each year we provide an annual report to the Secretary of State for the Environment, Food and Rural Affairs and the First Minister of Wales, which is laid before Parliament and is published.

The table below summarises these (self-declared) accountability relationships:¹³

Figure 3: Self-declared accountability relationships

Name	Minister	Relationship to Government	Relationship to Parliament
Crown Prosecution Service	Attorney General	"superintends"	through AG
Food Standards Agency	Not mentioned	"Governed by Board not directly by ministers"	Not mentioned
Forestry Commission	Defra/Scottish Ministers	"report directly to their Minister"	through Ministers
Government Actuary's Department	Not mentioned	"supplier" to govt departments	Not mentioned
HMRC	Treasury Minister	"Oversees our spending"	report through Tsy Minister
NS & I	Treasury Minister	"accountable to HM Treasury"	Chancellor "answerable"
Office of Fair Trading	Not mentioned	"led by Board"	accountable to public through Parliament
Office of Rail Regulation	Sa for Transport	appoints Board members	accountable through Parliament and the courts
Ofgem	Not mentioned	work "with but independently of" government	Not mentioned
Ofqual	Not mentioned	"independent of govt ministers"	we report directly to Parliament
Ofsted	Not mentioned	"independent and impartial"	we report directly to Parliament
Royal Mint	Not mentioned	"GOCO" to provide more operating freedom	Not mentioned
Serious Fraud Office	Attorney General	"superintends"	through AG
Supreme Court	Not mentioned	"complete separation" from upper house	not applicable
The Charity Commission	Not mentioned	"completely independent" of Ministers	report annually to Parliament
The Crown Estate	Not mentioned	"work supportively with government"	Not mentioned
The Water Services Regulation Authority	Defra/Welsh Ministers	provide annual report	accountable to Parliament
UK Statistics Authority	Not mentioned	"independent, operating at arm's length"	directly accountable
UK Trade and Investment	Trade Minister	"our Minister"	through Minister

As becomes clear from this list, there are two very distinct categories:

- NMDs who, despite their name, have a very clear ministerial relationship and see this as their principal accountability route to Parliament
- NMDs who set much store by the 'non-ministerial' aspect of their name and stress their independence from ministers and their direct reporting relationship to Parliament.

As a footnote, it is worth noting the strangest category – bodies that have dual status, as both non-ministerial departments and executive agencies. As is clear from above, even the government's own website is unclear how to treat them. Executive agencies were a form of body developed as part of the Next Steps reforms in the late 1980s. This carved out parts of departments with more transactional functions and gave them separate and more focused management, while they remained part of the department and still answerable through a minister. There was much debate at the time about the apparent diminution of ministerial accountability and, in particular, whether it was acceptable for a chief executive to deal directly with MPs on individual cases.

The Cabinet Office's guidance to departments makes clear that this dual status is possible: 'Some NMDs operate along executive agency lines, i.e. they have structured themselves in line

¹³ The sources here are the bodies' own websites. Since CMA is not yet operational it has been excluded from this list.

with the executive agency model but they remain a separate government department. Where there is a statutory board, appointments are usually made by ministers.¹⁴

This makes it look as though the body has chosen an executive agency model under its own steam. But the key thing about being an executive agency is that a body is constitutionally part of the department, as the Cabinet Office's own guidance makes clear: 'Executive agencies are part of a government department.'¹⁵ So it is difficult to see how it can make governance or accountability sense to be two constitutionally quite distinct types of organisation simultaneously. If the rationale for an NMD is the need to underline distance from government, dual status should not be a possibility.

Further, but even more confusing, light is shed on this by an intriguing statement on the NS&I website. NS&I grew out of the old Post Office Savings Bank, became National Savings, which was a non-ministerial department, but in 1996 was also granted executive agency status. To an external observer, that would look like the Treasury asserting an additional degree of control, but that is not how NS & I claim to have seen it: 'While NS&I remain accountable to HM Treasury, **agency status has given us greater autonomy in day-to-day management.**'

1.4. Relationships under pressure

With more conventional arm's-length bodies, departments have a sponsorship relationship. With executive agencies, departments have a line management relationship with the chief executive often reporting directly to the permanent secretary or, in the case of smaller bodies, to a director-general or lower-ranked official. In 2011, Institute for Government¹⁶ noted that some government departments had hollowed out their capacity in policy areas where execution had been delegated to an executive agency.

The right relationship between a department and a non-ministerial department is far from clear. In the case of those with dual status, the department tends to regard them as having executive agency status. The Treasury, for instance, has two representatives on the board of NS&I – possibly as far removed from the notion of independence from departments as its possible to manage.

Guidance about the correct form of relationships with these very heterogeneous bodies is scant. NMDs, as a class, are exempted from the Cabinet Office's triennial review procedure which applies only to executive NDPBs – and in any case those reviews focus on the body, not the relationship. There is evidence of problems getting the relationships right. the Forestry Commission's status is under review (and it has already lost responsibility for forestry in Wales to the merged environmental body, Natural Resources Wales). The Secretary of State broadly accepted recommendations for independent management of the Public Forest Estate, but the response made it clear that Defra was rethinking the way government made and managed forest policy:

¹⁴ Cabinet Office, *Categories of Public Bodies: A guide for departments*, December 2012. Retrieved 10 October 2013 from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80075/Categories_of_public_bodies_Dec12.pdf

¹⁵ *Ibid.*

¹⁶ Jenkins, K., and Gold, J., *Unfinished Business*, Institute for Government, July 2011. Retrieved 10 October 2013 from <http://www.instituteforgovernment.org.uk/publications/unfinished-business>

We are equally clear that the structural and organisational arrangements required to deliver such functions need to change to be sufficiently strong and resilient to deliver government's forestry priorities and statutory obligations in the short and longer term. Some functions may best be delivered closer to government, by Defra ministers, while others may be better delivered at arm's length from government so that they have the necessary degree of independence.¹⁷

In part this reflects the problems with the department having little capacity on UK forestry policy within the department as opposed to within the Forestry Commission.

Another recent problem has manifested itself in the Serious Fraud Office (SFO). The SFO had their accounts qualified by the National Audit Office (NAO) after it became clear that the outgoing director had not sought or received the necessary approvals for exit payments for a number of staff.¹⁸ The subsequent Public Accounts Committee (PAC) report, following a hearing with the director and his successor, concluded: 'The reputation of the Serious Fraud Office has been undermined by a catalogue of errors and poor judgement and the morale of its staff has suffered as a result.' It concluded it was a 'case study in how not to run a public body'.¹⁹

The former director, Richard Alderman's decisions showed a disregard for the proper use of taxpayers' money and a woefully inadequate grasp of the importance of *Managing Public Money*, HM Treasury's guidance document on the role of an accounting officer. By deciding the size of severance packages, and not seeking alternative placements for staff, he failed to follow due process. This was an issue on which the Attorney General had to answer for in Parliament²⁰ as part of his superintendence role, despite the fact that he was completely unaware of the payments being made by the former director:

As an independent body, the director of the SFO is the accounting officer for that organisation and as such is directly accountable to Parliament for the money the SFO spends. Details of redundancy payments were not disclosed to superintending ministers by the former director.

The SFO suffered from very weak governance, with the director taking decisions with no challenge. Part of the Attorney General's response was to propose putting inspection of the SFO on the same statutory basis as the Crown Prosecution Service.

1.5. Like bodies

Guidance from both treasury and Cabinet Office makes it clear that NMDs should be the exception rather than the rule – a form of last resort. As the guidance says, there are usually ways to secure the benefits of NMD status without its compromises. A cursory inspection shows that many other bodies perform like functions with more conventional governance forms, as set out in the table below. This does not imply that the status of the other body is 'right',

¹⁷ Defra, *Government Forestry and Woodlands Policy Statement*, 31 January 2013. Retrieved 10 October 2013 from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221023/pb13871-forestry-policy-statement.pdf

¹⁸ NAO report on SFO accounts, retrieved 10 October 2013 at http://www.nao.org.uk/wp-content/uploads/2012/11/SFO_2011_12.pdf

¹⁹ Public Accounts Committee, 10th Report - Serious Fraud Office – redundancy and severance arrangements, 17 July 2013; retrieved 10 October 2013 at <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/360/36002.htm>

²⁰ Attorney General written statement, 4 December 2012 retrieved at <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121204/wmstext/121204m0001.htm#12120443000005>

simply that other forms than NMD exist for similar activities – and the bodies themselves are a very heterogeneous category which defy any organising logic.

Figure 4: Like bodies

Body	Key functions	'Like' body/ies	Key functions	Status
UKTI	Promotion of trade and investment in the UK	UK Export Finance	Support to UK exporters	Government department
Ofsted	Schools Inspectors	Care Quality Commission HM Inspectorate of Constabulary	Quality regulation of health and social care providers Inspects police forces	Executive NDPB
Charity Commission	Charity regulator	Equality and Human Rights Commission	Oversees performance including by government of equality legislation	Executive NDPB
Forestry Commission	Manages and regulates forests and advises on forestry policy	Natural England	Manages nature reserves and ensures environmental standards are met	Executive NDPB
UK Statistics Authority	Maintains independence and integrity of UK statistics	Office for Budget Responsibility	Independent provider of fiscal forecasts	Executive NDPB
Royal Mint	Producer of coinage; government company	Royal Botanical Society Kew	Manages Kew Gardens and national plant collection on a trading fund basis	Executive NPDB
Ofwat, Ofgem, ORR	Independent economic regulators	Ofcom	Independent economic regulator	Public Corporation
Government Actuary's Department	Professional actuarial advice to government	Office of Parliamentary Counsel	Expert legislative drafting advice for government	Part of Cabinet Office

2. A four-step approach to reform

This Government has set much store on the need for ministers to have the powers they need in areas for which Parliament holds them accountable. That has led to a view that the ‘default model’ is for executive agencies to be the preferred model for arm’s-length bodies.

The Institute for Government has argued that there needs to be a clear link between form and the freedom a body needs to perform its particular function. Non-ministerial departments, as constituted at the moment, fail this test. As the section above showed, even under the Government’s current (though, as we have argued before, not very helpful), approach to organising arm’s-length bodies, NMDs are an incoherent grouping.

The following suggestions would allow abolition of this antiquated category and pave the way for clearer governance based on the degree of freedom from ministerial involvement that bodies need to perform their functions – with like bodies being treated in a like way.

Step One: Enforce the presumption against new NMDs – and include those that exist in the regular review process

Recent developments have shown that the presumption in existing guidance is not enough. Ideally the government should simply say that it will ‘retire’ this option. That would deal with the creation of new NMDs – but leave the existing stock untouched. NMDs have been exempted from the triennial review process because the Cabinet Office decided that only executive NDPBs should be in scope. Many NMDs are, as the table above shows, performing very similar functions to NDPBs who are subject to the review process. They should be included in future triennial reviews.

Step Two: Remove dual status from the dual-status bodies

There can be no logic, other than history, for the dual status of bodies such as NS&I and Ordnance Survey. Accountability arrangements would be much simplified if they simply became executive agencies. Since they already have this status, there should be no objections to this.

Step Three: Transform ‘ministerial’ NMDs into executive agencies or merge with departments

The NMDs that have a strong ministerial relationship should generally become executive agencies or part of the department. Beyond its dual governance, there is no rationale for UKTI being a non-ministerial department when it clearly reports directly to the Trade Minister and through him to both the Business and Foreign Secretaries. The Royal Mint looks like an executive agency trading fund. The Government Actuary’s Department also looks like a technical body supporting departments, similar to the Treasury Solicitor’s department which has dual status or the Office of Parliamentary Counsel which sits as an expert body within the Cabinet Office (and whose head doubles up as Permanent Secretary at the Cabinet Office).

Similarly, HMRC is also a clearly ministerial department in all but name. There was a debate – resisted by the Treasury at the time – that its two constituent departments (Inland Revenue and

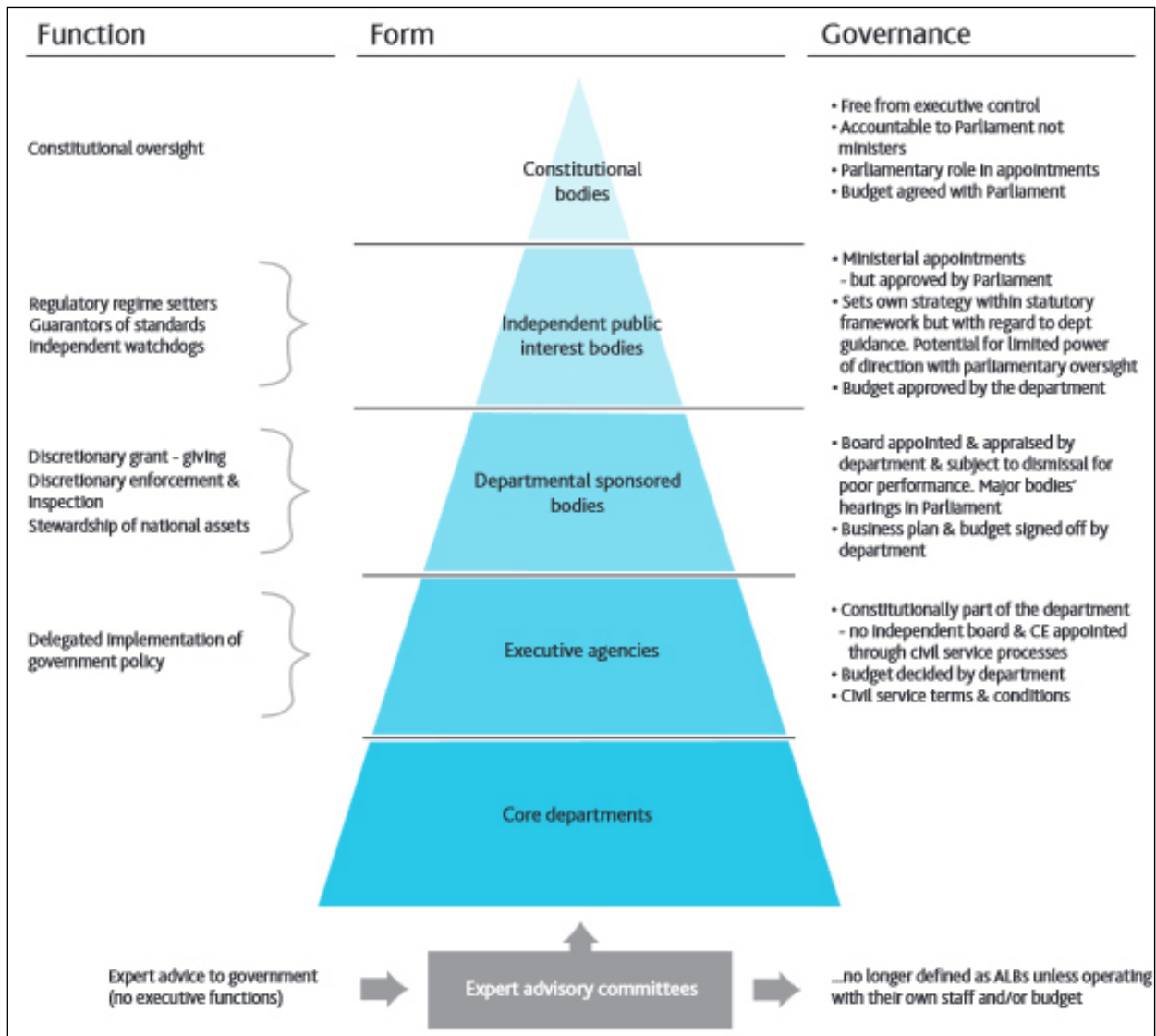
HM Customs and Excise) should become Next Steps agencies when the programme was first introduced in the late 1980s. There is an issue of keeping ministers out of decisions about individual taxpayers. But that confidentiality should also apply to decisions on benefits which have been managed by DWP executive agencies, and are now being managed directly within the department.

Step Four: Recognise the need for a new category of 'public interest body'

One thing that does emerge from the categorisation is that there is a number of bodies which share very distinct characteristics, and set great store by their independence from ministers and direct accountability to Parliament. This applies to the economic regulators, but also to bodies such as the UK Statistics Authority and the Food Standards Agency, whose credibility depends on their independence from government. However it is clear from the list in Figure 4 there are a number of other bodies which have an equal requirement for independence from government, but which are lumped together in the more general category of executive NDPBs.

In *Read Before Burning*, we suggested that the Government should create a new category of 'public interest body' to include all the regulators and watchdogs who need to be very clearly independent from government to perform their functions credibly. These bodies would have consistent governance, a role for Parliament in appointments and could, if it were felt to be important, also have separate estimates as NMDs do now. The diagram from *Read Before Burning* is reproduced below.

Figure 5: A new taxonomy for public bodies



Public interest body status might not offer sufficient protection to the Supreme Court. In *Read Before Burning* we suggested that there should be another category of 'constitutional and judicial bodies' which would encompass the very few bodies who need to be completely independent of ministers.

3. Conclusion

NMDs are a misunderstood and obscure part of our governance landscape. This paper has attempted to shine a light on them and show the benefits both of some incremental tidying up – but also more comprehensive reform. The decision of the government to make important new bodies like the National Crime Agency and the Competition and Markets Authority non-ministerial departments has given the need for reform more impetus.

These are themes we will return to again in our future work on arm's-length bodies.

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