

Written evidence from The Cabinet Office (NED04)

Public Administration and Constitutional Affairs Committee The Role of Non-Executive Directors in Government inquiry

Introduction

1. Departmental boards have been a feature of the governance of central government departments since 2011. They are chaired by the Secretary of State, and include junior ministers, the permanent secretary, and Non-Executive Board Members (NEBMs). Departmental boards provide strategic leadership for each central government department, as well as advising on/challenging how the department is performing.
2. NEBMs are appointed from the public, private and voluntary sectors. They provide advice, challenge and scrutiny as well as bringing a crucial external perspective into departments on a range of areas, including the implementation of the department's Outcome Delivery Plan and on operational and delivery implications of departmental policy proposals. The breadth and depth of non-executive experience is significant.

The roles and activities of non-executives

3. Government non-executives provide expertise, advice and bring a valuable external perspective to the business of government departments by sitting on departmental boards. However, they do not have decision-making powers. Departmental boards are advisory and supervisory. Policy decisions are the preserve of ministers and the effective administration of those decisions is the responsibility of the Civil Service.
4. In addition to board meetings, NEBMs form committees responsible for audit and risk assurance, and nominations. They also meet regularly with other NEBMs across government and the Government Lead Non-Executive to share best practice and ensure departments learn from each other.
5. The role of NEBMs is set out in the [Corporate Governance Code for Central Government Departments \(2017\)](#). NEBMs use their skills and experience to contribute to the work of the board of which they are a member. However, their contribution doesn't start and end at Board meetings.
6. Each Department is asked to set out the roles and responsibilities of board members, including non-executives, within their Board Operating Framework (BOF). The BOF also sets NEBMs main roles. These typically include:
 - using their experience to challenge and support the board, acting corporately and not simply reflecting their own functions
 - ensuring that the board obtains and considers all appropriate information

- advising on the operational and delivery implications of policy proposals
 - forming an audit and risk assurance committee and a nominations committee
 - involvement in the processes for recruitment and appraisal of senior executives, and succession planning
 - involvement in the processes for recruitment of public appointees
 - reporting their views in their own section of the department's annual report
 - feeding their views back to the Prime Minister
 - contributing to work outside of the board, such as leading independent reviews
7. Beyond their role in board and sub-committee meetings, NEBMs get involved in a wide range of other activities. These reflect the needs of ministers and the priorities of the department. These include, but are not limited to:

Strategy and performance

- Supporting the development of departmental strategies, operating models and reforming organisational structures
- Advise and challenge on performance, operational issues, and on the effective management of the department
- Providing expertise and advice in their specialist area(s)
- Undertaking independent reviews

Reform

- Challenging and supporting the departments' delivery of the Declaration on Government Reform

Major Projects

- Provide challenge, scrutiny and oversight of large investment projects
- Providing advice and challenge on Programme Boards for Major Projects
- Undertaking reviews and assurance of the department's portfolio and project/programme management capability

People and talent management

- Provide support, guidance and challenge in relation to recruiting, appraising and ensuring appropriate succession planning of senior executives
- Talent management
- Undertaking permanent secretary appraisals

Assurance

- Scrutinising departmental governance arrangements
- Audit planning
- Undertaking risk deep dives
- Working with the NAO e.g. input into NAO studies; and, expert panels etc.

Arms Length Bodies (ALBs)

- Leading reviews of ALBs, or participating as a member or chair of challenge group for ALBs reviews
- Ensuring sponsorship and governance arrangements of ALBs is adequate
- Supporting the implementation of the public bodies reform programme

Cross-government activities

- Attending cross-government meetings e.g. Audit Chairs Network etc.
- Undertaking Board Effectiveness Evaluations of other government department
- Leading independent reviews on cross-government matters (e.g. [Boardman Review](#))
- Areas where additional non-executive input and knowledge is sought in departments i.e. the Union, climate change and Levelling Up

8. Each department's priorities and structure place very different demands on their Board and on what is needed from their non-executive cadre.

Public reporting on non-executive areas of focus

9. A Non-Executive Director's Report has been a feature of each department's Annual Report and Accounts since 2011. These reports provide a vehicle for the Lead Non-Executive of each department to set out where non-executives have focused their time and added value throughout the year. These are publicly available on GOV.UK.
10. Additionally, the Government Lead Non-Executive's annual report provides a public summary of the key concerns of the NEBM community and collates examples of best practice in the work of boards and NEBMs. These reports can be found [on GOV.UK](#).

Supporting the Declaration on Government Reform

11. NEBMs have played an important role in supporting the development and implementation of the Declaration on Government Reform. Reform has been a regular feature of discussion at departmental boards and in Lead Non-Executive Network meetings.
12. In addition to focusing on the reform agenda overall, enhancing the effectiveness of NEBMs formed an integral part of the action plan. Action 13 of the Declaration is to "implement consistent Non-Executive Director challenge of departmental

performance, under the leadership of the Government’s Lead Non-Executive Director.”. Under his guidance, departments and non-executives have received further support including, for example, a model role description, improved induction, a buddying scheme for new NEBMs and a reinvigorated non-executive network. We will be monitoring progress via annual surveys.

Experience and expertise

13. One of the greatest strengths of NEBMs is the breadth of skills and experience they bring to support delivery of the government’s agenda.
14. The Corporate Governance Code seeks to provide each department with flexibility to ensure that the skills and deployment of NEBMs meets their distinct needs, rather than providing a one-size-fits-all approach. Flexibility here is a key strength that enables departments to fine-tune the skills of their boards.
15. The mix and balance of skills and understanding is reviewed at least annually, as part of the board effectiveness evaluation, to ensure they remain appropriate.
16. It is the responsibility of the permanent secretary to support the chair to ensure that board members have the skills, knowledge and familiarity with the department required to fulfil their role on the board and its committees.
17. The Code supports this approach and sets out that each board should include people with a mix and balance of skills and understanding to match and complement the department’s business and its strategic aims (para 3.11).

Audit and Risk Committees

18. Skills requirements for Audit and Risk Committees are set in the [Audit and risk assurance committee handbook](#), including that the “Committee should corporately own an appropriate skills mix to allow it to carry out its overall function”. The chair of that committee should be a Non-Executive Board Member (NEBM) with relevant experience. The handbook goes on to specify that “Because of the importance of financial management and reporting to every organisation, at least one member of the Committee should have recent and relevant financial experience.”

The range of skills and experience brought by NEBMs

19. In a recent survey of NEBM skills and experience carried out by the Cabinet Office, it was identified that NEBMs come from a range of current or former senior backgrounds:

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| Chair or CEO of a FTSE 250 company or similar scale | 42% |
| NED of a FTSE 250 company or similar scale | 48% |
| Chair | 65% |
| Chief Executive | 48% |

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| Executive | 73% |
|-----------|-----|

20. NEBMs have experience spanning a wide range of sectors, including:

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| Charity | 48% |
| Government (central) | 47% |
| Financial and Insurance Activities | 45% |
| Technology | 32% |
| Retail | 28% |
| Consumer Goods & Services: Consumer services | 25% |
| Professional and business services: Management consulting | 25% |
| Arts, Entertainment and Recreation | 22% |
| Education | 22% |
| Health and Social Work Activities | 22% |
| Media | 22% |
| Consumer Goods & Services: Consumer non-durables | 20% |
| Online Retail | 20% |
| Government (other) | 18% |
| Information and Communication | 18% |

Note: Top 15 reported sectors (out of 47 listed sectors/sub-sectors)

21. Almost all NEBMs have experience across multiple sectors (averaging 7.4). Only one NEBM with prior experience of government did not report experience in multiple other sectors.

22. When examining the skills or areas of expertise reported by NEBMs, the highest responses were:

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|-----------------------|-----|
| Corporate leadership | 87% |
| Strategy | 82% |
| Governance | 77% |
| Change management | 75% |
| Risk management | 73% |
| Commercial | 68% |
| Operational expertise | 63% |
| Regulation/Compliance | 63% |

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| Human Resources/Talent Development | 62% |
| Equality/Diversity | 60% |
| M&A | 55% |
| Customer insight | 53% |
| Technology/Digital | 53% |
| Audit | 47% |
| Media/Marketing | 45% |

Note: Top 15 reported skills or areas of expertise (out of 27 listed skills/expertise)

23. All NEBMs demonstrated multiple skills (averaging 13.4).

Maintaining objectivity

24. NEBMs are bound by the [Code of Conduct for Board Members of Public Bodies](#) and Ministers are responsible and accountable to Parliament for the appointments that they make and for the activities of their departments, including those appointed to provide advice. All board members must also uphold the [seven principles of public life](#).
25. The principles set out in the code apply to all non-executive members on the boards of government departments, non-ministerial departments, executive agencies, non-departmental public bodies (NDPBs) and national public corporations. The Code should be observed alongside the [12 Principles of Governance for all Public Body Non-Executive Directors](#).
26. As the Code of Conduct for Board Members of Public Bodies sets out, non-executives should be, and be seen to be, politically impartial. They must not occupy a paid party political post or hold a particularly sensitive or high-profile role in a political party. They should abstain from all controversial political activity.
27. While Lead Non-Executives and NEBMs, are largely drawn from the commercial private sector¹, the Corporate Governance Code (para 2.19) clarifies that previous or current political activity should not be an automatic bar to appointment. However, in line with the general principles in place for non-executives, they need to exercise proper discretion and avoid engaging in controversial political activity or making political statements on matters directly related to the work of the department.

The NEBM appointment process

¹ <https://www.gov.uk/government/publications/ministerial-code>

28. All NEBM and Lead NEBM appointments must comply with the [Code of Good Practice for Corporate Governance in central government departments \(2017\)](#) and [associated guidance](#). (paras 2.12-2.21).
29. NEBMs are appointed by the Secretary of State. The appointment of Lead NEBMs also requires the approval of the Prime Minister. Appointments follow the principle of selection based on merit. To achieve this, the process set out in the Governance Code is to be open and transparent, meaning that information must be provided in the public domain about vacancies, the process of appointment and the appointments made. Roles are advertised on the HM Government [Public Appointments website](#).
30. The Code is based on principles and operates on a comply or explain basis and departments apply the principles of the code to meet their business needs. Departures from the code may be justified if good governance can be achieved by other means. For example, in a small number of cases, NEBMs have been appointed directly where their skillset and experience qualify them as a suitable candidates and the appointment has helped to meet the requirement 'The board should include people with a mix and balance of skills and understanding to match and complement the department's business and its strategic aims.' In such cases, the reasons should be explained clearly in the governance statement accompanying the annual accounts.
31. Candidate NEBMs must demonstrate that they are committed to, and have an understanding of, the value and importance of the seven principles of public life. Candidates are also asked to disclose any actual, potential or perceived conflict of interest. These are then discussed with the candidate to establish whether and what action is needed to avoid a conflict, or the perception of a conflict.
32. The Cabinet Office supports departments by providing guidance; induction materials and sessions; and, buddying opportunities for new non-executives to familiarise themselves with the workings of government.

Regulation

33. The appointments of NEBMs have not historically been regulated by the Office for the Commissioner of Public Appointments (OCPA). The Committee on Standards in Public Life's ['Upholding Standards in Public Life - Report'](#) (November 2021) included the recommendation (no.25) that: The appointments process for Non-Executive Directors of government departments should be regulated under the Governance Code for Public Appointments.

34. The recommendation has been considered by ministers and will be implemented in due course. The government is currently working through the detail and timing and will provide further updates to guidance.

Diversity

35. Inclusive and diverse boards are more effective, better able to understand their customers and stakeholders, and benefit from fresh perspectives, new ideas, vigorous challenge and broad experience.
36. As set out in the [Government Lead Non-Executive's 2021-22 report](#) (as at 31 March 2021):
- ethnic minorities appointees made up 8% of NEBMs
 - women made up 42% of NEBMs (and made up 41% of all non-executives appointed in the period April 2020-March 2021).
37. These figures are higher than in FTSE 250 companies where in 2020 female non-executive board members made up 37.6% of non-executive board members. 38% of lead non executive Director appointments are now filled by women.
38. An important area of concern for the Government Lead Non-Executive is to ensure the best talent is brought into the non-executive cadre to support departmental boards. An important element of this work is to ensure that recruitment processes encourage candidates from a wide range of backgrounds.

Managing conflicts of interest

39. Managing conflicts of interest are of the utmost importance in making appointments and in ensuring effective boards. All NEBMs are required to complete a Declaration of Interest as part of appointment. All NEBMs are also responsible for declaring interests to their departments in the usual way.
40. The Corporate governance code states that: (para 4.1) "All potential conflicts of interest for non-executive board members should be considered on a case by case basis. Where necessary, measures should be put in place to manage or resolve potential conflicts. The board should agree and document an appropriate system to record and manage conflicts and potential conflicts of interest of board members.
41. There is also transparency in conflicts identified. Each board publishes, in its governance statement, all relevant interests of individual board members and how any identified conflicts, and potential conflicts, of interest of board members have been managed.

Governance and accountability

Accountability

42. NEBMs carry out an advisory role as non-statutory office holders. They do not have decision-making powers. There are no plans to change the advisory nature of NEBMs either within the Cabinet Office or in other departments.
43. NEBMs are bound by the Code of Conduct for Board Members of Public Bodies and Ministers are responsible and accountable to Parliament for the appointments that they make and for the activities of their departments, including those appointed to provide advice.
44. Departmental NEBMs are not subject to pre-appointment hearings by select committees.
45. Appointments which are subject to pre-appointment scrutiny are those set out in the [Cabinet Office's guidance on pre-appointment by House of Commons Select Committees](#).
46. The guidance sets criteria to assess whether a public appointment should be subject to pre-appointment scrutiny. In most instances, such posts will be the chair of the board of an organisation or an individual office, rather than all non-executive members of that organisation. The government does not feel that NEBMs meet the criteria for these roles to be subject to such scrutiny.

Transparency

47. Transparency of the work of NEBMs is supported in a number of different ways:
 - The appointment of all NEBMs follows the principle of selection based on merit. To achieve this, the process will be open and transparent, meaning that information must be provided in the public domain about vacancies, the process of appointment and the appointments made.²
 - NEBMs report their views in their own section of the department's annual report³; and
 - Every year the Government Lead Non-Executive has produced an annual report outlining the work of NEBMs across government. The most recent report can be found [here](#) and the record of previous reports (2011-2021) are available [here](#).

Monitoring effectiveness

² Paragraph 2.13, Corporate governance in central government departments: code of good practice - guidance note:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609668/PU2076_corporate_governance_guidance.pdf

³ Paragraph 3.6, bullet 4. Corporate governance in central government departments: code of good practice - guidance note:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/PU2077_code_of_practice_2017.pdf

48. An effective Board is crucial and delivers better outcomes for the public. Each year the Lead non-executive board of each department undertakes a board effectiveness evaluation, carried out annually on behalf of the Chair. At least every three years this is undertaken with independent input⁴. The findings of these evaluations are summarised in the governance statement of the department's annual report and accounts.
49. Board effectiveness evaluations seek to identify whether Boards are operating effectively, and what improvements are required. They are not a compliance exercise, and the methodology is tailored to the individual needs and circumstances of the department. Regular internal and external Board Effectiveness Reviews are critical to their effective operation.

Reviewing the Corporate governance in central government Departments: code of good practice

50. The *Corporate governance in central government Departments: code of good practice* was first published in 2011 and updated in 2017. It lays out the model for departmental boards and is accompanied by a guidance note, which provides guidance on how departments may practically implement the requirements laid out in the code.
51. The Declaration of Government Reform includes an action (no. 29) to: Complete a review of Civil Service governance, including consideration of the appropriate roles for senior officials, Non-Executive Directors and Ministers. That review is due to take place in the coming months. Further changes may be made to the Corporate governance in central government Departments: code of good practice subject to the review outcomes.

July 2022

⁴ Para 4.12:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/PU2077_code_of_practice_2017.pdf