

STATES OF JERSEY



REMUNERATION OF BOARD MEMBERS (R.132/2019): EXECUTIVE RESPONSE WITH COMMENTS OF THE PUBLIC ACCOUNTS COMMITTEE

**Presented to the States on 19th December 2019
by the Public Accounts Committee**

STATES GREFFE

FOREWORD

In accordance with paragraphs 64–66 of P.56/2018, the [Code of Practice](#) for Engagement between ‘Scrutiny Panels and the Public Accounts Committee’ and ‘the Executive’ (February 2018), the Public Accounts Committee presents the Executive Response to the Comptroller and Auditor General’s (“C&AG”) Report, ‘[Remuneration of Board Members](#)’, R.132/2019 presented to the States on 24th October 2019.

Comments

1. The C&AG’s Report evaluates the adequacy of the arrangements by the States to oversee and secure transparency of the remuneration and terms and conditions of the directors (or equivalent) of executive and non-executive directors of States owned companies, statutory bodies and bodies with substantial funding from the States of Jersey. The PAC concurs with the C&AG that an effective relationship between the States and the bodies that it owns, creates and substantially funds is essential for the delivery of high-quality public services. The lack of a clear framework, together with weaknesses in oversight of the various bodies funded by the States, can lead to poor relationships and a damaging impact on services. This is illustrated by the tense exchanges between Andium Homes and the Government of Jersey, a dispute which is still not resolved satisfactorily.
2. The C&AG recommends the development of an overarching policy, including a framework within which –
 - the envelope for Board remuneration is established;
 - individual Board member remuneration is established, taking into account relevant factors, including comparable roles and market forces; and
 - the components of pay packages, including in particular the nature and terms of bonus schemes, are determined.

The PAC agrees with the C&AG that there is a need for enhanced transparency about the remuneration of Board members of some of the bodies. This would provide the Public with readily accessible information on Board remuneration in a similar way to that for senior States officers.
3. The PAC considers that remuneration of the Boards’ chairs and members should be appropriate to their circumstances. Variation in remuneration across the many Boards of different entities is, of course, inevitable, given the many different purposes they serve. The PAC would like to know whether the Executive draws a distinction between Boards of organisations that contribute to the public purse and those that do not. The former may be incentivised to maximise their contribution, whereas the latter to minimise their needs. The PAC concurs that, in any event, remuneration of Board members should be commensurate with other similar posts and should be objectively justifiable.
4. The PAC welcomes the comprehensive response to the C&AG’s report and is pleased to see that the Executive team accepts the C&AG’s recommendations in full. The PAC is also pleased to note that the Executive understands the link to the C&AG’s previous challenges to current governance arrangements. It also welcomes the Executive’s acknowledgement that it is looking to apply the lessons from the C&AG’s reports to consider the wider implications of its relationship with all States owned entities.

5. However, in its formal response to the report, the Executive uses the term ‘States Owned Entities’ (“SOEs”). The PAC seeks clear definitions from the Executive on the distinctions between Arm’s-Length Organisations (“ALOs”) and other SOEs – for example, the Executive should clarify whether the term SOE embraces only 100% wholly-owned entities such as Ports of Jersey, or whether it also encompasses those in which the States has a controlling interest, for example, the Jersey Electricity Company (“JEC”).
6. Currently there is no single part of Government with responsibility for oversight of Board remuneration, and it is not obvious where such a responsibility would lie. It falls outside the remit of Treasury and Exchequer, Growth, Housing and Environment, the States Employment Board and the Jersey Appointments Commission. The PAC is pleased to see that the Executive has plans to progress the development and subsequent oversight of such a framework, and that it is necessary to establish and empower an appropriate body or group to do so.
7. Notwithstanding that the Executive has accepted the need for an oversight Board, the PAC remains concerned that it has not given sufficient consideration to the membership and composition of such a Board. The Executive has stated that the Board would be chaired by the Chief Executive and its membership would include senior officers across Government. The PAC would like to know whether consideration been given to the appointment of external expertise or whether any benchmarking has been or will be undertaken against other ‘Shareholder Executives’ in other jurisdictions to help identify best practice that could be applied to Jersey. The PAC would also like to know what became of the Treasury and Exchequer plans for a Shareholder Advisory Panel.
8. The PAC is pleased to note that, in the case of SOEs, a review of the Memoranda of Understanding (“MOUs”) is already well-advanced. It notes that a new draft memorandum accompanied by a Governance Framework has already been shared with the Boards of the companies for their comment. However, it wishes to remind the Government that, having listened to the reasonable arguments of the companies, it (or the designated Minister) does have the final say in those agreements as the representative of the principal or sole shareholder. Similarly, the widening of shareholder objectives is welcomed, where those objectives align with the States’ and therefore, ultimately, the Public’s interests. The States’ objectives should always be maintained throughout each States owned organisation from the Board members through to the executive management teams.
9. The PAC is cognisant of the fact that incorporated companies have responsibilities under the [Companies \(Jersey\) Law 1991](#) which limits the States (as a shareholder) in dictating certain terms. Notwithstanding those limitations, the PAC is firmly of the belief that the States as a shareholder should exercise its power to benefit the Public. To that end, the PAC is pleased to see that Terms of Reference for an oversight Board will be ready by the first quarter of 2020, but it would urge the Executive to ensure that those terms include matters such as decision-making authority/ powers (and any limits thereto, including the circumstances in which the States takes into account the comments made in paragraph 7 above.

10. The PAC is disappointed to note that, although the Executive has accepted the need to develop oversight policy principles as early as Quarter 2 in 2020, it does not envisage the implementation of those principles by an oversight Board until September 2021. The PAC considers that the Executive should instigate the necessary changes much earlier, by the end of 2020. The Executive could and should be considering matters such as the policy and process of appointments of Board members and, of course, their removal if necessary, throughout 2020.
11. The PAC notes the response to recommendation 4 of the C&AG's report, namely that the Executive should establish mechanisms for reflecting the oversight Board's remuneration policy, in partnership agreements with SOEs. Although the Executive accepts this recommendation, it states that relevant Accountable Officers will be responsible for ensuring that partnership agreements are updated and for monitoring compliance. The PAC has sought clarification on this issue and understands that the Accountable Officer of the department, which provides funding to an Arm's-Length Organisation, is responsible for ensuring that the agreements and relationships with that body meet the corporate-set standards, e.g. in the Public Finances Manual, as well as requirements established by the new oversight Board. For the wholly-owned companies listed in Schedule 2 to the [Public Finances \(Jersey\) Law 2019](#), the Accountable Officer would be the Treasurer. However, the PAC is concerned that this would mean potentially multiple Accountable Officers holding shareholding responsibilities, and it is unclear how they would then work with the oversight Board. It requests that this matter is clarified further.
12. Similarly, where monitoring implementation of compliance with corporate governance standards is delegated to individual Directors General, the PAC request that a central log is maintained.
13. The PAC wishes to emphasise the urgency to establish and empower an oversight Board and increase the transparency of arrangements between the Public and public-owned or funded entities, The PAC also advises that Memoranda of Understanding should be published, and remuneration of Board members can be made public. The PAC will follow up on this matter throughout 2020, and will be holding hearings with relevant senior officers in due course.

Senator S.C. Ferguson
Chairman, Public Accounts Committee

Response from The Chief Executive and Treasurer of the States/Director General of Treasury and Exchequer to Comptroller and Auditor General report on Remuneration of Board Members

November 2019

Glossary of Terms

C&AG – Comptroller and Auditor General

COO – Chief Operating Office

OneGov – One Government

JP – Jersey Post

JT – Jersey Telecom

PAC – Public Accounts Committee

PFM – Public Finances Manual

SOE – States Owned Entity

MOU – Memoranda/um of Understanding

TOM – Target Operating Model

Response from the Chief Executive and Treasurer of the States/Director General of Treasury and Exchequer

Review title: C&AG Review: [Remuneration of Boards](#)

Summary of response

1. INTRODUCTION

The C&AG's report "Remuneration of Board Members" was published on 24th October 2019 and provides a review of remuneration and how it is reported at the Government's majority-owned and wholly-owned companies alongside some of the largest grant-funded bodies and organisations. The report also provides helpful challenge to Government regarding wider governance arrangements and oversight of such bodies and is linked to other previous reviews undertaken by the C&AG – specifically relating to shareholder governance, oversight of arm's length organisations and the role of the States Employment Board.

The Government is already well advanced in making changes to the Memoranda of Understanding with States Owned Entities and will bring forward proposals to improve overall oversight of those entities and grant funded organisations (those which undertake services and activity on behalf of government and whose financial viability relies on that grant aid). These arrangements will go beyond pay policy and shareholder matters relating to States Owned Entities, will include a co-ordinated strategic oversight and will ensure alignment of policy, strategy and activity between the entities and Government. These arrangements will not seek to supplant the responsibilities of Directors or Boards of those entities, nor the statutory and other responsibilities of Ministers

Proposals will be worked up across Government for an officer strategic oversight board, chaired by the Government's Chief Executive Officer with senior membership from across Government to ensure a partnership approach aligning the strategic direction of grant funded entities performing functions on behalf Government and States Owned Entities (SOE's), with wider policy and strategy of government. In particular this will include Shareholder responsibilities, economic policy, Island infrastructure and the commercial relationship with these entities. This will also include the delivery of a remuneration policy and its consistent application in respect of those entities in scope.

Development of the terms of reference for this board will include consultation with relevant entities.

This oversight board will ensure consistency of decisions recommended to Ministers in respect of their statutory and other Ministerial responsibilities. Consideration will be made for a single political oversight body to coordinate across these political responsibilities and hold departments to account. This model will build upon the existing Ports Policy Group.

A working group across government will be established to quickly draw up proposals for this oversight to address the recommendations in the C&AG's review which reinforces messages articulated in previous reports regarding the historic silo departmental mentality that led to less-than-optimal working practices, including an inconsistent approach to SOE's and larger organisations which are aligned to Government.

The Government of Jersey has responded by embarking on a major change initiative to break down silos and modernise the way in the organisation operates as a whole, which has been welcomed by the C&AG in her report on Financial Management and Internal Control. Indeed, the Public Accounts Committee Foreword to the published executive response to their report on Decision Making remarks that

The projects and programmes that are modernising government and driving a change in culture to operate more efficiently and plan for the longer-term in a more joined-up way include:

- The Team Jersey Programme – a programme specifically designed to guide culture change across the organisation informed by staff, States Members and other external stakeholders.
- The co-location of administrative and back-office functions in Broad Street offices, and the intention to move to a permanent OneGov headquarters in the medium-term.
- P.1/2018 – moving away from silo working, to establish a Single Legal Entity for Government (Ministers), and to establish a Principal Accounting Officer to be accountable for overall efficient and effective use of public resources.
- Organisational and departmental Target Operating Models (TOMs) – a significant restructure of the organisation that will break down departmental silos and promote cross-departmental management and decision making

2. SUMMARY OF THE MAIN FINDINGS

The C&AG report makes nine recommendations which can be broadly categorised into three separate sections:

Strengthening existing governance arrangements, including those around remuneration

This section contains two recommendations with a proposal to establish formal oversight and support to Government with its relationships with companies, funded bodies and other organisations. There is also reference to previous reports published by the C&AG which already have established action plans that are being implemented.

Arrangements for overseeing the remuneration of Board members

This section contains five recommendations which focus on the development of a single over-arching policy for remuneration within all organisations. This policy would then be reflected in Memoranda of Understanding (“MOU”) or partnership agreements with each organisation and support provided to officers to ensure the ongoing application of this policy is taking place.

Current arrangements for transparency of remuneration of Board members

This section contains two recommendations proposing greater transparency for the public reporting of Board level remuneration. The C&AG’s report highlights that the current level of reporting varies greatly between organisations, it is more transparent in states-owned companies who already follow the principles of the UK Corporate Governance Code. It is recommended that this level of transparency is extended to other organisations.

3. FACTORS THAT CONTRIBUTED TO THE FINDINGS

This report from the C&AG highlights that there is no single focal point for a number of interactions between Government and organisations which it owns, funds or works closely with on a day-to-day basis. Prior to the implementation of the One Government organisational model, policy determination and the documentation of these relationships was effectively undertaken on a departmental basis.

In some cases, documenting these relationships was relatively consistent, e.g. the use of similarly worded MOU for wholly-owned companies, but there was little sharing of best practice and centralised policy setting did not take place. As a result of the progress that has been made through this restructure and the cross-organisational working practises it promotes, the Government of Jersey has an opportunity to resolve previous weaknesses in a joined up and more consistent manner. The new Target Operating Model is designed to break down the barriers that existed in the past and deliver a more collaborative approach to how Government interacts with all stakeholders. This joined up approach is reflected in the action plan and how Government intends to respond to the C&AG’s report.

4. OUTLINE OF ACTIONS ALREADY TAKEN

Delivery against some of the actions from the previous reports published by the C&AG (recommendation 9) is well advanced and the Executive responses to these reports are already published.

For the purposes of this report we summarise some of the key activity that has been undertaken.

The States as Shareholder – Jersey Telecom

A thorough review of the fitness and purpose of the MOU for Jersey Telecoms and Jersey Post has been undertaken. A robust framework/governance structure has been created following workshops facilitated by independent consultants, which included several government stakeholders. These documents are currently being considered by the companies prior to implementation before the end of 2019, after which they will be extended to the other wholly-owned companies (i.e. Ports of Jersey, Andium Homes and States of Jersey Development Company)

The new MOU and Governance framework will strengthen the Government's relationship with SOE's with a clearer set of requirements for informing and/or consulting Government and for when specific shareholder approval is required. The new framework will also strengthen shareholder rights to information on governance and risk management and widens the shareholder's objectives from solely financial returns to include the wider concept of social, environmental and economic benefits.

Arm's Length Organisations

R.149/2018 contains the Executive response to the C&AG's review of Visit Jersey. Many of the actions within this report will be addressed through the establishment of a Partnership function within Government, ensuring a coordinated approach between government and arm's length organisations in the delivery of government policy.

The report includes proposals for much clearer arrangements to ensure that the business plans of Visit Jersey are aligned to the Common Strategic Policy, Government Plan and, when adopted, the Enterprise Strategy. Future performance reporting will be standardised and the procedures for the Directorate to satisfy itself that the internal controls and governance within Visit Jersey are robust have been reviewed.

States' Employment Board

R.35/2019 sets out the Executive Response to the C&AG's report. Some quick wins were identified within that report but the timescale for the delivery of the action plan makes clear that work will commence in 2020 and is likely to take 2 to 3 years before the real, sustainable benefits are seen to be having a positive effect.

The report notes that a review of the Employment of States of Jersey Employees (Jersey) 2005 Law will be undertaken to reflect the changes in employment matters which have evolved since the legislation was first introduced 14 years ago. This review will address a number of governance arrangements which need to be modernised as a result of changes in best practice that have occurred. The States Employment Board will be actively involved in this review as a key stakeholder.

5. DEPARTMENTAL PLANS FOR REMEDIAL ACTION

As mentioned in the introduction, this response puts forward a One Government approach to the observations and recommendations of the C&AG's report, rather than a departmental response. This reflects the shift in organisational culture and corporate learning that the Government of Jersey continues to embed, so as not to return to the historic silos of the past. The Public Accounts Committee is already aware of the work that has been undertaken to collate and monitor progress of over 500 recommendations from previous C&AG and PAC reports, so that the wider implications of recommendations can be understood, and actions applied across the organisation.

The board to be created to oversee the strategic coordination of wider issues relating to these entities will include in that work the creation of an overarching policy to cover the wide range of diverse organisations as recommended by the C&AG. This is not without its challenges and will be built from a set of core principles aligned to Government's own pay policy and structure. These policies would be enhanced to reflect industry specific requirements and the need to attract or retain specific skills and experience where it cannot be developed within the island workforce. When developed in detail, these policies will be shared with the Public Accounts Committee.

It is also important to acknowledge the C&AG's view that it is not obvious where responsibility for oversight of Board remuneration would lie within Government. The creation of the cross-government board for oversight, will include membership from the Chief Operating Office, People Services team to ensure an objective and expert approach to the establishment of remuneration policy. This board will also consider the role that the States Employment Board could play in future remuneration policy decisions. It would be appropriate to set guidelines for when adherence to the policy of transparent reporting will apply. The setting of criteria which balances the cost and administrative burden of reporting with the business turnover or level of grant provided from public funds might be appropriate.

In the case of SOE's, a review of the MOU is already well advanced. A new draft memorandum accompanied by a Governance Framework has already been shared with the Boards of the companies for their comment. As a result of this particular C&AG review, further consideration will be given to the requirements in relation to remuneration approval to ensure they make appropriate reference to the pay policy that will ultimately be developed. The relevant elements of this Governance Framework can be replicated in partnership agreements with Government funded bodies; such agreements will also be standardised as part of the update.

Ongoing support to ensure the pay policy is being followed and the production of consistent partnership agreements will sit within the COO department, People and Commercial services teams. This might include the use of drawdown contracts to establish the appropriate industry specific pay policies and a centralised library and database of partnership agreements

The C&AG's report highlights that in the majority of cases the annual reporting for states-owned companies provides a sufficient level of transparency in relation to Board remuneration. The Assistant Minister for Treasury & Resources reinforced this requirement in correspondence

to these companies in January 2019. It is proposed that the relevant Directors General will write to grant funded bodies to outline Government's similar expectations for transparency of remuneration reporting.

The Treasury & Exchequer had drawn together plans for the creation of a Shareholding Advisory Panel ("the Panel"). It was proposed that the Panel would provide the Minister for Treasury and Resources with independent advice on a wide range of matters relating to the States' shareholdings. The Panel was intended to comprise of individuals with Board level experience of the governance of companies from industries such as, but not limited to, utilities, infrastructure, transportation and private equity.

Building on the principles underpinning those plans, in considering the terms of reference for the Strategic Oversight Board and the associated political board, consideration will be given as to how best to ensure the work of those boards can be informed by expert advice and/or the inclusion of external expert membership. It should be noted that further resource has been added to the Shareholder relations team as part of the new Treasury & Exchequer target operating model, with 2½ full time staff now dedicated to coverage of states-wholly owned companies.

The wider One Government re-structure includes a model of partnership liaison to supplement the Shareholding activity and whilst this is still to be fully established, the proposals are anticipated to provide more effective arrangements for both the shareholder and the client side of Government's relationships with grant funded or self-funding organisations.

Action Plan

Recommendation	Action	Target date	Responsible Officer
<p>R1 Assign responsibility for the development and oversight of a policy for Board remuneration covering companies, statutory bodies and funded bodies.</p>	<p>ACCEPT</p> <p>A One Government approach will be adopted in establishing a strategic oversight board, chaired by the Chief Executive Officer. Its work will include the development and oversight of a policy for Board remuneration.</p> <p>Terms of reference for Oversight Board proposed and agreed</p>	<p>Q1 January 2020</p>	<p>Government Chief Executive</p>

<p>R2 Develop an overarching policy for remuneration of Boards of companies, statutory bodies and funded bodies detailing principles to take into account in determining:</p> <ul style="list-style-type: none"> • the level of remuneration; and • the composition of remuneration, including the nature of reward schemes 	<p>ACCEPT</p> <p>Overarching policy principles will be developed, which will be a priority of the strategic oversight board once established.</p> <p>Policy principles will take account of the diverse range of organisations the policy is expected to cover, which may lead to different policies dependent on an organisation's funding model and the industry in which it operates.</p>	<p>Q2 2020 for completion of policy with implementation from September 2021</p>	<p>Government Chief Executive</p>
<p>R3 Review and revise as necessary memoranda of understanding with companies in light of the Board remuneration policy, when agreed.</p>	<p>ACCEPT</p> <p>A thorough review of the MOU is already underway and will be further revised once the pay policy is agreed</p> <p>The Governance Framework which accompanies those MOU is the most relevant document to be revised</p>	<p>Implementation with JT & JP by December 2019 with remaining companies in 2020.</p> <p>End Q3 2020</p>	<p>Directory of Treasury & Investment Management, Treasury & Exchequer</p>
<p>R4 Establish mechanisms for reflecting the Board remuneration policy, when agreed, in partnership agreements with statutory bodies and funded bodies.</p>	<p>ACCEPT</p> <p>The strategic oversight board will be charged with establishing remuneration policy, which will build upon States of Jersey pay policy and structure. Responsible Accountable Officers will then be responsible for ensuring partnership agreements are updated and compliance with them, monitored.</p>	<p>Q2 2020 for completion of policy with implementation from September 2020</p>	<p>Government Chief Executive</p>
<p>R5 Provide support to officers overseeing the relationship with statutory bodies and funded bodies on</p>	<p>ACCEPT</p>	<p>Q2 2020, ready for policy implementation</p>	<p>Group Director, People Services</p>

<p>the application of the Board remuneration policy, when agreed.</p>	<p>Whilst oversight will be provided by the strategic oversight board, People Services will provide formal support to officers with the application of the policy and Commercial Services will provide support with the production of consistent partnership agreements.</p>	<p>from September 2020.</p>	
<p>R6 Require funded bodies to publish an Annual Report and Accounts, including through making them available on their websites.</p>	<p>ACCEPT</p> <p>Guidance will be developed to ensure transparent Annual Reporting, including publication, appropriate to size and scale of organisation concerned.</p> <p>Mandatory requirements to be included within partnership agreements will be published within the Public Finances Manual.</p> <p>Monitoring implementation will then become the responsibility of Directors General responsible for respective grants.</p>	<p>PFM Update by Q2 2020.</p> <p>Implementation within partnership agreements by Q4 2020:</p>	<p>Director of Risk & Audit, Treasury & Exchequer</p> <p>Directors General</p>
<p>R7 Require companies, statutory bodies and funded bodies to include, as a minimum, within their Annual Report and Accounts:</p> <ul style="list-style-type: none"> total remuneration broken down between basic pay, bonus payments, benefits in kind and employer pension contributions for non-executive and executive 	<p>ACCEPT</p> <p>Requirements for SOEs will be included within current revisions of MOUs</p> <p>Requirements for grant funded and statutory bodies will be included within the above update to the PFM for implementation through partnership agreements thereafter</p>	<p>All MOUs by Q4 2020</p> <p>PFM Update by Q2 2020</p> <p>Inclusion in Partnership</p>	<p>Director of Treasury & Investment Management, Treasury & Exchequer</p> <p>Director of Risk & Audit</p>

<p>directors with comparative figures for the previous year; and</p> <ul style="list-style-type: none"> • a short statement of policies in place in respect of remuneration, including the key features of any bonus scheme. 		<p>Agreements by Q4 2020</p>	<p>Directors General</p>
<p>R8 Strengthen arrangements for oversight of the States relationship with companies, statutory bodies and funded bodies, including through:</p> <ul style="list-style-type: none"> • determining and monitoring compliance with minimum corporate governance standards; and • establishing a high-profile Board, drawing together senior officers with an interest in finance, policy, delivery and governance, to provide a focus for the oversight of companies, statutory bodies and funded bodies. 	<p>ACCEPT</p> <p>This will be implemented through the establishment of a strategic oversight board, which will ensure a coherent, joined up and consistent relationship with these entities.</p> <p>It will be chaired by the Government Chief Executive and its membership shall include Senior Officers from across Government, responsible for oversight of governance, relevant economic policy, Island Infrastructure and commercial activities with these entities</p>	<p>Terms of reference in Q1, 2020</p>	<p>Government Chief Executive</p>
<p>R9 Implement the recommendations contained in this report carefully considering and in the context of the recommendations made in my reports:</p> <ul style="list-style-type: none"> • <u>The States as Shareholder - Jersey Telecom (July 2014);</u> • <u>The States as Shareholder - Follow-up (March 2019);</u> • <u>Oversight of Arm's Length Organisations (June 2017);</u> • <u>Arm's Length Organisations - Visit Jersey (December 2018);</u> and 	<p>ACCEPT</p> <p>Action plans for previous C&AG reports are recorded and monitored in the C&AG and PAC recommendation tracker. Progress against each of the Government of Jersey's proposed actions is reviewed quarterly.</p> <p>For the Shareholder reviews 2 recommendations have been implemented, 4 have been partially implemented and the remaining 5 are being implemented as a result of the improved governance arrangements.</p> <p>For the Visit Jersey review, of the 10 recommendations specifically for Government 2 have been implemented, the remainder have a 2020 implementation date.</p>	<p>See individual action plans for target dates</p>	<p>See individual action plans for officers responsible</p>

<ul style="list-style-type: none"> • <u>Role-and-Operation-of-the-States-Employment-Board-Report.pdf</u> 	<p>For the States Employment Board review the timescale for delivery of the action plan commences in 2020.</p>		
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Recommendations not accepted

	Recommendation	Reason for rejection
	None	None