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UKGI's Shareholder Role – Articulating the Proposition

1. Background

The 'Shareholder Role' is one of UKGI's core areas of practice. However, it is not a widely understood concept within Whitehall and it is not obvious how the term maps on to the bespoke world of government arm's length bodies ("ALBs"). UKGI therefore wishes to define better the parameters of its Shareholder Role, as well as articulate it more clearly with other departments and ALBs.

2. UKGI view on what makes government an effective steward of its ALBs

For government, ALBs represent an important alternative to policy delivery being carried out within departments or being contracted out. As per the CO Public Bodies 2017 report, 'most government departments are supported by ALBs, ... separate bodies with delegated authority and capability to deliver services on behalf of the department'. In 2017 the landscape consisted of approximately 300 ALBs with a gross annual expenditure of £203bn. ALBs, as defined in their widest sense, therefore play a material role in the delivery of public services. They must be fit for purpose and represent an appropriate and effective use of public funds – and so they must also be set up and managed, internally and by government, in a way that maximises their ability to deliver their services.

There is significant central government guidance and controls mandating and guiding the activities of ALBs, as well as how their home departments must manage them (eg Managing Public Money, Cabinet Office Code of Good Practice 2017, CO Tailored Review processes etc). Departments themselves also regularly reassess what it means to provide effective sponsorship for their ALBs (eg BEIS and MHCLG publications).

In applying these rules and guidance it is important to recognise that government on behalf of the taxpayer has a number of *distinct roles* with regards its ALBs: customer, policy setter, funder (of ALB programmes and projects), and also owner. For each of these roles, government has different interests and accountabilities, ultimately all to ensure that public resources are used appropriately.

The government's interests in an ALB as owner (or 'shareholder') can be described as the department's and minister's interests in *how* an ALB is *managed and performs as an organisation* - and government is responsible for ensuring it executes its role as owner as effectively as possible.

As government must manage its ALBs through these various lenses, it can be required to make trade-offs between them – for example, to reconcile policy delivery versus compliance with ALB controls, or versus having an organisation which is run effectively. The more trade-offs that are needed, the more government needs to be able to surface and manage them. In this case it may be appropriate to manage the minister's and department's interests in how the ALB is run (ie the shareholder function) separately from their other interests in the ALB.

3. UKGI articulation of what the 'shareholder's interests' are

Government as owner of an ALB is likely to want, as a minimum, for that ALB to be managed effectively in its delivery of its policy objectives and sustainably in terms of its resources. As MPM states, 'the autonomy of each organisation needs to be buttressed by sufficient accountability to give parliament and the public confidence that public resources are used wisely.'

This may mean that government simply expects the ALB to deliver the policy outcomes set for it, within the confines of its budget, operating appropriately as a public sector organisation. However, there may be expectations on an ALB beyond this. For example, it may be going through a period of transformation, or particular efficiency drives, or intended to become self-funding within a specified period – these all relate to *how* the organisation itself is run, and need to be considered separately

from how successfully the policy itself is performing. In this context, it is helpful for there to be a clear understanding on two key aspects of an ALB:

1. the policy and/or client objectives for an ALB, and
2. the strength of its performance *as an organisation*

Delineating between these two aspects should help government to act as an effective and proactive shareholder or owner, and therefore to promote its shareholder's interest in the organisational performance of its ALBs, supporting successful delivery of the policy.

4. UKGI view as to what carrying out the 'shareholder role' should involve

As arm's length bodies are by their very nature organisations which are not under the same controls as central government departments, government's control over an ALB is through a number of external levers, many of which form part of the corporate governance of the organisation. In the Shareholder Role for any given ALB, UKGI acts as a proactive shareholder on behalf of the relevant department, challenging and supporting the organisational performance of the ALB.

Annex A details the core activities we perform in the Shareholder role. If Shareholder teams intend to perform activities outside this scope, this should be explicitly agreed, and would need to be recognised in UKGI internal assurance processes eg our risk registers.

5. Outcomes for which UKGI should be accountable in the shareholder role

When UKGI takes on a shareholder role, its responsibility is to represent the minister's interest in the ALB as a proactive shareholder. However, UKGI will not be part of the minister's department and so has to act as *an agent* in the shareholder role. This naturally limits our direct accountability unless that accountability is explicitly given to us – and in any event departments cannot wholly delegate their responsibility for ALBs to UKGI.

In this context UKGI should be accountable to the relevant DG, Perm Sec and Minister for challenging and supporting the organisational performance of the ALB through delivery of the activities in Annex A, and providing advice to the department accordingly. To note the use of the words "challenge and support" – we should not describe UKGI as 'holding the ALB or ALB board to account' as this implies an authority over ALBs which UKGI does not have.

It is proposed that delivery of the Annex A activities is viewed as the 'target role' for what any UKGI shareholder team should be accountable for on a given asset. This 'target role' should be considered separately from the strategic objectives that each UKGI team should set for themselves annually in relation to their relevant asset.

Annex A – UKGI’s Core Activities in the Shareholder Role

The following sets out the proposed core activities for our Shareholder teams, including how the Shareholder board representative role fits within those activities. The wording below should serve as the core description of our role, to be complemented by additional internal documents (including a new UKGI Operating Manual on the Shareholder Role) and external documents (including external communications on our role).

Establish and maintain appropriate and effective corporate governance foundations which govern the department-ALB relationship

1. work with the department and ALB to **establish and maintain appropriate corporate governance documents and systems**, ie up to date and fit for purpose governance documents, including FWD, Articles of Association, board ToRs, chair letter etc

Promote effective objectives, business planning and performance against business plan

2. assess and challenge the ALB’s **Business Plan** from an owner’s perspective, advising the department and minister on the clarity of the objectives, the quality of the Business Plan and the financial, and where relevant commercial, strength underpinning it, and its effectiveness as a tool for the ALB (the department, potentially with HMT, should approve the Business Plan, albeit taking UKGI advice in to account. UKGI should not compromise its ability to advise on shareholder issues by writing a Business Plan on an ALB’s behalf)
3. monitor and challenge the ALB and its board as to the **performance** against its Business Plan, in terms of how the ALB is performing as an organisation (as opposed to monitoring the success of the policy delivery itself), and advise the department and minister accordingly
4. challenge ALB Business Cases, and other HMG approvals outside the ALB’s executive delegations, through our NED position on the ALB board *only* (this would be limited to the degree of challenge that any non-exec board member can provide. UKGI, and the relevant shareholder team, should not be responsible for formally reviewing such business cases, providing advice to the department and ministers, or obtaining HMG approval for Business Cases, unless explicitly agreed on an asset-by-asset basis)

Promote strong corporate capability

5. through the shareholder team, as well as through the UKGI shareholder representative on the ALB board, promote the **strength of the ALB systems which support organizational performance** by providing high level challenge to the ALB (and its board), and comment to the department, on:
 - a. governance framework compliance – defined as the ALB’s view on its compliance with its governance framework (as set out in its Framework Document, delegated authorities, and any other specified governance documents)¹, and
 - b. the adequacy and strength of the ALB’s reporting to the department on these issues.

Promote effective leadership (high quality boards and senior management)

6. promote and advise the department on the **effectiveness of the ALB’s leadership**, specifically through:

¹ Whilst risk will be considered as part of overall governance framework compliance, a specific UKGI role in relation to an asset’s risk management should not be volunteered and our advice on this area should not go beyond commenting on the asset’s governance framework as described in this 5a. However if it is agreed that UKGI is to take on an explicit role in relation to an asset’s risk management, UKGI legal must be consulted, and the maximum that can be offered is that UKGI ‘provides high level challenge to the ALB (and its board), and comments to the department on how risk is reported to and considered by the ALB board and relevant subcommittees’.

- a. promoting high quality and diverse boards, challenging the board's capability and effectiveness, and monitoring succession planning
- b. advising the department and ministers on and implementing effective board composition, recruitment, remuneration and appointment processes
- c. acting as the shareholder non-executive director on the ALB board
- d. giving a view on the ALB's board level executive capability in relation to its responsibilities, and remuneration

Promote effective relationships between the department and the ALB

- 7. support effective relationships between the department and ALB, including through:
 - a. (UKGI) building effective relationships with the ALB's board and senior management
 - b. promoting effective interfaces and communications between the department and ALB, including through regular shareholder meetings
 - c. maintaining an effective regular meeting "rhythm" with the ALB chair, board and executive to ensure appropriate flow of information (management information) between the ALB, UKGI and the department, including effective reporting to the department

Supporting and supplementing the activities above by providing an experienced Shareholder NED on the ALB board

- 8. act as government shareholder representative on the ALB board, through:
 - a. providing an appropriately skilled board member to carry out the non-executive director role effectively, drawing on the support and analysis from the UKGI shareholder team
 - b. attending the ALB's board committees as appropriate, but usually Remuneration Committee, Audit and Risk Committee, and Nominations Committee
 - c. acting as an interlocutor between the department and the ALB board
 - d. providing a view to the department on the strength of the ALB board

[**TO NOTE:** This description obviously does not cover the detailed requirements and responsibilities of a shareholder NED sitting on the board of an ALB – this is covered in the UKGI NED induction pack. Unless stated otherwise by constitutional documents or legislation, the duties of the UKGI NED on an ALB fiduciary board must be the same as those of all the other directors, including any other directors appointed by ministers. Broadly, those are to act in a way s/he considers, in good faith, most likely to promote the success of the organisation for the benefit of its shareholders as a whole. However, UKGI directors by virtue of their HMG-facing roles have a special ability to facilitate relationships and understanding between Departments and their ALBs, to act as interlocutor between them as necessary, to give HMG better insight as to the quality of the Board in the performance of its governance function, and to promote HMG perspectives and information flow at the ALB Board. This role is critical in helping to deliver all of the objectives above.]