

2017/18 audits

Notes for guidance

Openness and transparency



 AUDIT SCOTLAND

Prepared by Professional Support for appointed auditors

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Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. We help the Auditor General for Scotland and the Accounts Commission check that organisations spending public money use it properly, efficiently and effectively.

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Introduction

1. The public sector in Scotland involves over 200 bodies working on wide-ranging activities and in different contexts to determine policy and deliver public services. Regardless of purpose, location or scale, there is a common expectation for good governance. People want to know that public services are managed well and that public money is used wisely.
2. In the public sector, governance centres on the arrangements in place to ensure intended outcomes are defined and achieved. It is complex, and many components need to work well together to secure good governance; openness and transparency is a key component.
3. There are increasing public expectations for more openness and transparency reflected in, for example, Scottish Parliament enquiries. Also, citizens want to understand how public money is used and to support their participation in local service design and delivery.
4. This note provides auditors with background on openness and transparency and guidance for them to consider during their reviews of governance in 2017/18 audits and beyond.

Background

5. There is a lot of guidance available on the principles of good governance, including openness and transparency. This includes cross sectoral guidance such as the ['International framework: good governance in the public sector'](#), IFAC/CIPFA¹, and the Scottish Government's ['On board – a guide for members of statutory boards' guidance](#)². It also includes sector specific guidance which is listed at Appendix 1.
6. This guidance note draws on these to provide auditors with a summary of some of the key aspects of openness and transparency.

Openness

7. It may be helpful for auditors to view openness as an attitude. It is about behaviours, centred on a preference for sharing information about how and why decisions are made. In the public sector it is based on the recognition that public services are delivered for the public good using public money.

¹ International framework: good governance in the public sector, IFAC/CIPFA, July 2014

² On board – a guide for members of statutory boards, Scottish Government, March 2017

Exhibit 1

Being open: taking an open approach to business can support good governance



Source: Audit Scotland

8. The guidance that exists across all sectors indicates that public sector organisations need to develop a culture that encourages openness and demonstrates a commitment to openness. They need to instill the sense that openness is an integral part of business, for people working in the organisation and people working with the organisation. That will include attitudes towards meeting in public and engaging with stakeholders.
9. Guidance also indicates that an individual's conduct is important in fostering a culture of openness. Boards, elected members and senior managers set the tone. They have a responsibility to create an environment where openness is promoted and is the default position. How they conduct themselves has a strong bearing on openness, for example by encouraging debate and the free and frank exchange of views. The [Nolan report](#)³ said

³ The Scottish Govt report 'On Board' has a concise summary of the Nolan committee recommendations on page 18.

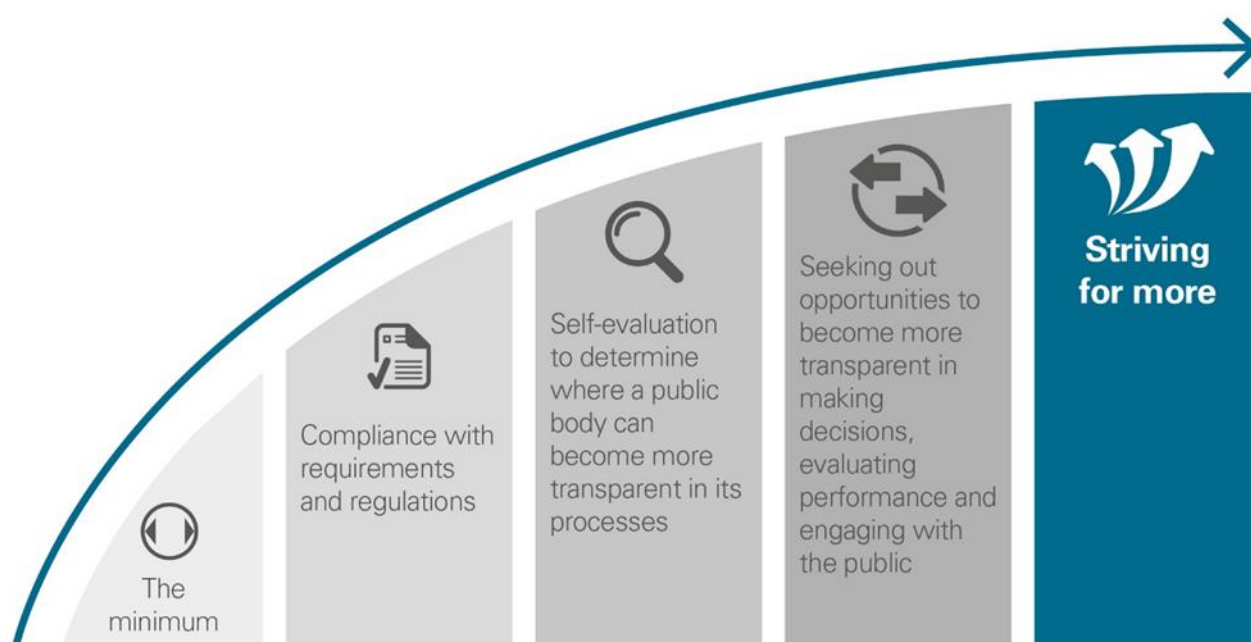
"Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands".

Transparency

10. It may be helpful for auditors to view transparency as a process. Access to information provides insight into decision-making and how the organisation works. Public sector governance guidance indicates that an organisation that is transparent shows the basis for its decisions and shares information about performance and outcomes, including when targets have and have not been achieved.
11. Transparency in the public sector is supported by statutory requirements and regulations. For example, the local government legislation provides rights of access to council documents. Other bodies are required to publish information on expenditure in certain categories (e.g. spending on external consultancy) or where expenditure exceeds set amounts (e.g. payments during the financial year that exceed £25,000). There are also requirements across the public sector for declarations of interest, disclosures on remuneration and severance payments.
12. These are minimum requirements and it is for individual organisations to decide whether the content and volume (in terms of quantity and amount of detail) of the information that they make available contributes to increased understanding. There are judgements to be made, and an approach designed to increase transparency rather than comply with minimum standards is more likely to satisfy the good governance test.

Exhibit 2

Being transparent: a progressive approach can support good governance



Source: Audit Scotland

Openness and transparency

- Openness (attitude) and transparency (process) are individually important, and working well together they help demonstrate that public organisations are acting in the public interest. Documenting the commitment to openness and transparency helps establish the culture. Communicating that to stakeholders sets expectations. Governance guidance indicates that applying openness and transparency well in practice builds trust and confidence in the organisation and in those leading and managing.
- When the approach works well, scrutiny and accountability are more visible and effective and, overall, governance is and is seen to be more effective. This is important in day-to-day business but it also provides a platform for more difficult decisions that public bodies increasingly have to make in deciding how to use the money available for services.
- For example, faced with difficult choices about the services they can afford to deliver, organisations with a good track-record on openness and transparency are more likely to have the support of local people and communities. Providing clear information about the options and considerations helps service-users and taxpayers understand the issues and potential consequences. People may not like the decision, but they are likely to have more confidence that the organisation is 'doing the right thing' if they have access to the decision-making process and the under-pinning information on which decisions are made.

16. As the Accounts Commission [states](#) ⁴ 'Good governance involves councils being accountable and accessible to the communities they serve. Councils must be transparent about the decisions they make and the quality of the services they provide. The council's leadership must be scrutinised and held to account for its plans and performance. This requires a culture that recognises the importance of scrutiny and is open to candid discussions about risks'.

Guidance for auditors

17. Appointed auditors have a unique insight into governance across the public sector in Scotland. The evidence indicates that governance in the public sector in Scotland is generally effective but where problems emerge there is often some failure in openness and transparency.
18. Governance and accountability frameworks vary across sectors and auditors will be aware of the associated approaches to openness and transparency. In local government there are well-established legal requirements regarding access to council meetings and minutes. Council meetings are held in public and private items and papers are by exception. The approach is more varied across central government and the NHS. Many organisations hold meetings in public and make some or all of the related papers available. Others start from the position that business is commercially sensitive or confidential and tend towards private meetings and limited or no access to papers.
19. Meeting in public and making papers publicly available does not guarantee that the organisation is truly open and transparent. Board or committee meetings which do not involve debate and challenge but are held in public may only be or seen to be 'rubber-stamping' and might fail the good governance test.
20. Many public sector organisations do not regularly review their position on openness and transparency, nor do they compare their approach with others in their sector or in other sectors. The public sector is stretched as it deals with increasing demands and reducing budgets. As a result, systematic reviews of governance, including openness and transparency, may be deferred. There is a risk that organisations are not keeping pace with public expectations and good practice. Auditors should expect to see public bodies considering the issues and reaching a reasonable position through a process of consultation, debate and good decision-making.
21. Additionally, the public service landscape in Scotland continues to evolve with new organisations being established such as Arms-Length External Organisations (ALEOs) and Integration Joint Boards (IJBs) and new models for financing and delivering services. These add to the already complex structures and require careful consideration to ensure that

⁴ How Councils Work report 'roles/responsibilities, still getting it right', Accounts Commission, 2016

appropriate governance is in place from the start and, within those new arrangements, that openness and transparency is maintained.

22. A prescriptive approach to openness and transparency could be viewed as unhelpful. That might, for example, result in decision-making taking place outwith established structures and a tendency to risk-aversion. There also needs to be the opportunity for full and frank discussions, involving non-executives or elected members, so there are opportunities to discuss complex and emerging issues before proposals are considered in public. Auditors should therefore expect to see a balance between the need for discussion opportunities and the need for decisions to be taken in public.
23. At the Justice sub-committee on policing in March 2017 the Auditor General for Scotland said *"The guidance in 'On Board - A guide for Board members of Public Bodies in Scotland' is clear about the expectations around openness and transparency. The guidance does not go as far as requiring boards to meet in public, but that is increasingly common for boards that provide public services and is seen as good practice. Equally, it is important that each board strikes the right balance on what happens in public and that it is genuinely accountable to the public in that way and builds confidence. It is important for boards to have space for full and frank discussions about difficult issues where there will be preliminary views that need to be worked through"*.
24. The over-riding objective is how best to serve the public interest, achieved by consideration of openness and transparency and what that means in the context of the public organisation's business. That starts with the presumption that all key decisions made by public bodies are debated and made in public and that the material that is prepared (background briefing, options appraisal, financial analysis and other relevant material to inform the decision-making process) should be public. Inevitably, there may be occasions where organisations want to consider options or issues that are commercially sensitive or matters relating to individuals. In those circumstances, clear statements as to why business and related papers are not public can in themselves contribute to openness and transparency.
25. In conclusion, auditors should bear in mind that openness and transparency is about much more than whether an organisation meets in public. There is no right or wrong answer – it's about public organisations getting a balance that achieves proper and effective public business and meets the public's reasonable expectations for openness and transparency.

Questions/prompts for auditors for 2017/18 audits (and beyond)

How does the organisation approach openness and transparency?

- What is the organisation's attitude to openness and transparency?
- Is there evidence of a culture that supports openness and transparency?
- Does the organisation foster a culture of openness and show staff it values openness?
- Is it clear to the public how the organisation conducts its business and makes decisions?
- Has the organisation sought views from others on how open and transparent it is?
- How does the organisation seek opportunities to widen public understanding of the issues facing it and how it has responded to these?
- Is the information necessary to make transparent decisions available to the relevant people and presented in an appropriate form?
- Is there an audit trail for decisions and are related documents accessible to the public?
- Where meetings are in private and/or documentation is withheld/redacted, is the rationale clearly recorded and understandable?
- When alternative ways of delivering services/new delivery vehicles are established, does the parent organisation set out its expectations for openness and transparency?

How good is the organisation's information?

- Does the organisation have a system for ensuring compliance with specific requirements relating to the sector in which it operates?
- Do papers provide a fair and balanced commentary on the issues faced by the organisation?
- To what extent are plans and performance information made available to the public?
- Overall, does the organisation provide an appropriate level of information?

Does the organisation demonstrate commitment to improving openness and transparency?

- Are the governance framework and arrangements regularly reviewed and updated to ensure they reflect good practice in openness and transparency?
- Has the organisation conducted a review where it has identified actions which have secured or will lead to improvements in openness and transparency?
- Are improvements identified that will help stakeholders and the public understand how decisions are made and how they can engage with the organisation?
- Is there evidence that the organisation is challenging how it could improve on openness and transparency?

Appendix: Additional information

The following sources of additional information on Openness & Transparency may be helpful for auditors.

Cross-sector

[UK Corporate Governance Code \(the Code\)](#)

[International framework: good governance in the public sector](#)

[On Board - A Guide for Members of Statutory Boards](#)

Local government

[Delivering good governance in local government framework 2016](#)

The Scottish Government have a section of their website on [guidance for local government](#). It includes codes of conduct, covering topics such as financial disclosures and registers of interests.

NHS

[Being effective – what NHS non-executive directors need to know](#)

[Governance for Quality Healthcare in Scotland - an agreement](#)

[The Healthy NHS Board 2013](#)

Education

[Code of Good Governance for Scotland's Colleges](#)

[College Board Member Guide \(2015\)](#)

[Scottish Code of Good Higher Education Governance \(2017 edition\)](#)

Police

[Review of Governance in Policing](#)

[SPA Corporate Governance Framework](#)

[Thematic Inspection of the Scottish Police Authority - Phase 1 Review of Openness and Transparency](#)

Fire

[Fire and Rescue Framework for Scotland 2016 \(September 2016\)](#)

[Scottish Fire and Rescue Service \(SFRS\) – Governance And Accountability Framework Document](#)

[SFRS Code of Corporate Governance](#)