

HISTORIC SCOTLAND BOARD

HISTORIC SCOTLAND BOARD: CONSTITUTION AND OPERATION

Purpose

1. To provide the Historic Scotland Board (HSB) with suggestions for how it could respond to the Minister's request that we consider how the Board could be democratised.

Decisions/Actions required of Historic Scotland Board

2. The Board is invited: to have a broad discussion on what "democratisation" could mean in the context of the Board of an Executive Agency; to identify any general issues or concerns it would wish to have drawn to the Minister's attention; and to comment on the specific points in this paper, identifying any which proposals it would wish to be promoted to the Minister and suggesting any others members believe are missing. The Board is also asked to note the relevant work being undertaken by Audit Scotland (para 19), for which Audit Scotland intends to use the HS Board as one of its case studies.

Background

3. The Minister has asked the Chief Executive to consider how the HS Board could be "democratised", suggesting that we should look in particular at proposals in the Health Boards (Membership and Elections) (Scotland) Bill.

4. We have discussed the proposals in the Health Bill with colleagues and established that the Bill is concerned wholly with the introduction of directly elected members onto local health boards. There will be some accompanying pilot projects, which we understand are aimed at encouraging under-represented constituencies to come forward for election.

What is the "democratic deficit"?

5. Anything we do here will have to take account of our constitutional position. As an executive agency we are ultimately responsible to Ministers, meaning HS officials cannot take instructions from another source. The Board therefore can only function in an advisory capacity to the Chief Executive, who is ultimately accountable to Ministers and, as the organisation's Accountable Officer, to the Scottish Parliament.

6. We think it is unlikely that the Minister's reference to the health proposals indicates a concern about the absence of direct elections to the Board, as such. The Public Bodies Unit has confirmed that there are no plans elsewhere of which they are aware for the introduction of elections for an agency board. It is probably therefore more useful to look at the general context for that Bill. The Policy Memorandum for the Bill (available on the Scottish Parliament's website) highlights Ministers' desire to increase public engagement and involve people more in key decisions about the design and delivery of services, as well as improving information on how to access services. Some of this agenda, particularly the final point, is already being pursued in projects underway within the agency and goes beyond the specific issue of the role of the Board.

7. In other words, it would make sense to interpret this as a more general instruction to include scrutiny of the role of the Board as part of the modernisation programme. The two most obvious ways to look at this are who sits on the Board and how the Board engages with a wider constituency and makes its work visible to those outside it.

Membership

8. 6 of the Board's 14 members are non-Executive Directors. The remaining 8 are senior members of staff. As is usual for an agency, the Chief Executive chairs the Board. Non-Executive directors are appointed in accordance with public appointment principles, by open advertisement as far as possible. The skills mix of the present group of NEDs is deliberately chosen to provide a mix of expertise in HS's business areas and in corporate governance more broadly. The area where we have had most difficulty recruiting has been local authority planning, but that has now been successfully addressed.

9. The question here is how far membership of the Board should be driven by a technocratic view of what mix provides the best practical input to the agency's governance and how far by more symbolic issues - how the Board *appears* to the outside world. We are hampered here by having no data on perceptions of the *Board* as distinct from the agency.

10. The proportion of NEDs is already high for an agency. The only way to develop this further would be for NEDS to make up the majority of members, which would probably mean reducing the number of SMT members present, to avoid the group becoming too large. Do we want to look further at the balance of NEDs to executive members?

11. We could look again at what the range of backgrounds we are aiming to bring in via the NEDS, but we would need to be clear about what change we were trying to achieve in doing so. Are there types of voice that we think are missing round the table as directors?

12. The Scottish Prison Service has representatives of 2 other organisations on its board ex-officio (COSLA and the Association of Directors of Social Services). That is more about joining up than democratisation: nevertheless is that a model we would want to explore further, drawing on the experience of the SPS?

13. The only national constituency which provides an obvious base *in practical terms* for any election is the Friends of Historic Scotland. Aside from whether this would be an appropriate constituency to have represented on the Board (which is a significant question), it is impossible to predict what practical impact a person recruited by that means would have on the governance of the agency or on perceptions of us as an organisation. It would be a radical thing to offer, and likely to generate some publicity. An election would require significant work, with financial consequences. Would we want to offer the Minister further exploration of that?

14. In terms of opening up membership, an alternative to making changes at the main Board level would be to have one or more sub-committees of the Board, with wider membership, looking at specific issues. This could be an alternative way of achieving what we are already seeking to achieve in certain areas through the use of reference groups, but with a stronger constitutional tie-in. Would we want to experiment with that model?

How the Board operates

15. Another way of looking at this is to consider whether the way we operate could be more transparent and how vulnerable we are to accusations in particular of being overly secretive.

16. The papers of every Board meeting are made available on the website, as soon as possible after the subsequent meeting has approved the minutes, with some redactions (we do not redact extensively). Information on the membership of the Board is available on the website, with brief details about each director. Meetings are held in private. We do not publish any papers or agendas in advance.

17. There are ways we could further open up the operation of the Board, such as:

- Looking again at the accessibility and clarity of basic material about the Board on the website – there is scope to improve here
- Clearing minutes more quickly by email, to reduce the time lag between holding meetings and making information available about what we have been discussing - a reasonably easy change of practice
- Holding an annual open meeting and/or open meetings as part of each tour - a common technique, although often attracting limited interest – we would need to work hard to make it rewarding on all sides
- Putting the agendas for meetings on the web in advance or immediately after a meeting, so those who wish can see what we are discussing - might raise the temperature around the handling of certain difficult subjects and/or mean that we felt the need to redact more heavily, to preserve the organisation's space for discussing issues which are hot topics.
- Publish the dates (and location) of future meetings – we might expect at least on occasion the presence of protestors
- Raising the profile of NEDS – providing each with an HS mailbox; giving some or all an explicit brief to be a voice for people outside HS – might be a difficult role to carry off and would depend entirely on NEDs being willing to extend their role in this way, including increased potential to be targeted by campaigners
- Inviting non-members (who are not HS staff) in for specific discussion on particular items where that was not felt likely to constrain discussion – the issue here would be when, why and who, avoiding creating an unmanageable expectation in the sector and avoiding accusations of bias in our selection of who we invite and (in the worst) case failure of due process as a result. This might be tied in with the suggestion of sub-committees, above.

18. What do Board members think about these suggestions? What others do they have, if any?

Audit Scotland Study

19. Audit Scotland has just launched a study of the operation of the Boards of Public Bodies – recent correspondence from Audit Scotland, including the project brief, is attached as an Annex. You will see that Audit Scotland is undertaking a number of detailed case studies as part of this and that HS has been identified as one of these. Audit Scotland will be

interviewing the Chief Executive, a sample of non-exclusive members and staff who support the Board, examining key corporate documents and may ask to attend a Board meeting. Separately, they will also be surveying all public body board members in Scotland. The work will take place from this month through to November. It looks relevant here, but may be a little slow for the Minister – final conclusions are not due until April 2010.

Conclusions

20. The challenge here is to be clear about the nature of any democratic deficit and to identify specific proposals for the Minister which are consistent with the agency's status. We probably should seek further clarification of what the issue is, but it might be better to do so with some accompanying suggestions for ways we can see straightforward scope to do things differently and some proposals for further exploration. The Board is invited to consider what the advice to the Minister should say, and to note the plans by Audit Scotland to include us as a case study in its current project (para 19).

Policy Group
August 2009