



Office of the Comptroller and Auditor General

Governance – A Thinkpiece

18 December 2019



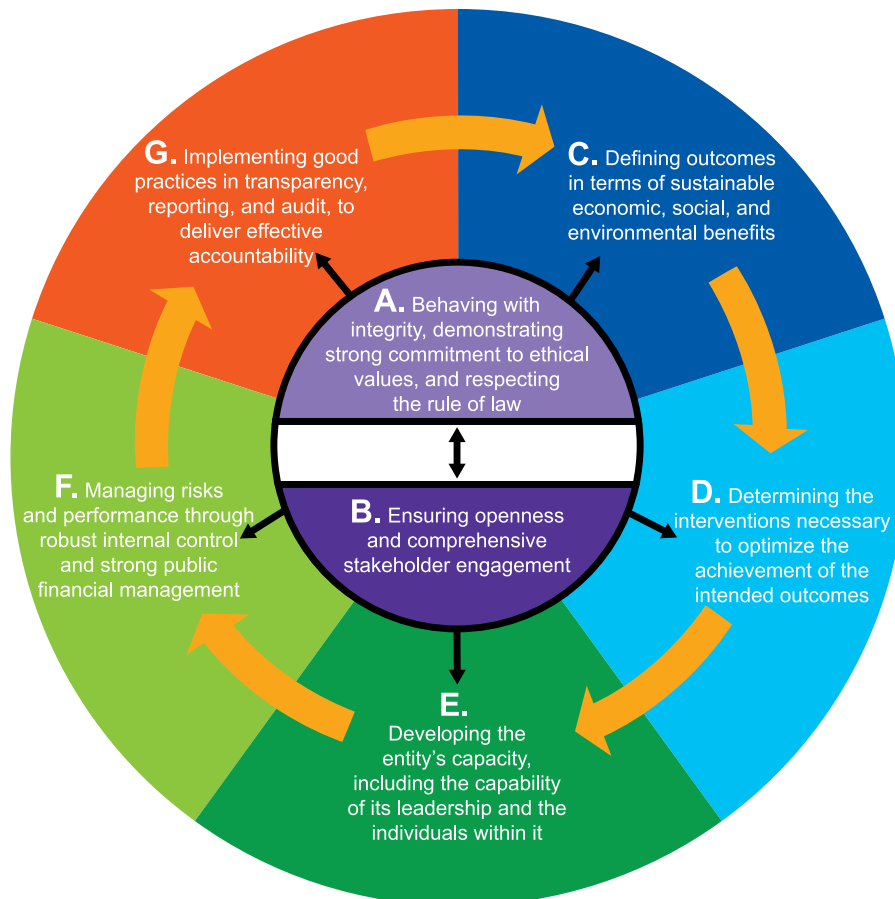
JERSEY AUDIT OFFICE

Governance – A Thinkpiece

Introduction

- 1.1 Good public services are underpinned by good governance – effective, transparent processes for making and implementing decisions. Good governance facilitates effective decision making and reduces the risks of things going wrong. When things do go wrong it maximises the chances of early identification that they have gone wrong, allowing prompt and effective corrective action. Good governance embraces sound processes but is underpinned by ethical behaviour and a commitment to openness (see Exhibit 1).

Exhibit 1: Good Governance in the Public Sector



Source: *International Framework: Good Governance in the Public Sector*, International Federation of Accountants/ Chartered Institute of Public Finance and Accountancy, 2014

- 1.2 Good governance does not grab headlines; but failures in governance are often at the heart of poor quality public services. Good governance is not inherently complex: indeed, the best governance arrangements are accessible, readily understandable and easily applied.

- 1.3 Good governance reflects context. It involves learning from what works elsewhere but adapting that to specific circumstances, including Jersey's traditions. It involves recognising that:
- Jersey is an island;
 - it is a relatively small jurisdiction with one tier of government providing most services; and
 - governance models from larger jurisdictions with multiple tiers of government may not be appropriate without adaptation.
- 1.4 The governance arrangements within Jersey have evolved over time and are complex. In many respects they are more developed than those in other Crown Dependencies and Overseas Territories. Ultimately, accountability for the use of resources is to the States Assembly but the mechanisms by which that accountability is secured vary (see Appendix A).
- 1.5 I have repeatedly addressed governance issues in the reports that I have presented to the States Assembly. Some reports, such as my reports on the *Governance of the States of Jersey Police* (March 2018) and *Governance Arrangements - Health and Social Care* (September 2018), were exclusively about governance. Others, such as my report on the *Role and Operation of the States Employment Board* (March 2019), were substantially about governance.
- 1.6 This Thinkpiece draws on my previous reports to the States Assembly on corporate governance, internal control and value for money but is different from them. It is not based on original research. Instead it relies on my experiences over nearly seven years as Comptroller and Auditor General, drawing together observations both from reports that I have issued and from the wider learning I have gained whilst undertaking my role.
- 1.7 In drafting this Thinkpiece I reflect the significant improvements in governance that the States have made and that are planned. But good governance is not a static or absolute concept. It evolves and the best performing organisations continually strive to improve, including in their governance. It comprises guiding principles that need to be interpreted and applied in a local context.
- 1.8 Much of this Thinkpiece reflects potential legislative, structural or procedural changes that might enhance governance. However, such changes cannot be seen in isolation from one another as there are vital interdependencies between the different elements of an overall governance framework. Nor can they be seen in isolation from the culture within which public services operate. It is only with the right culture that such changes will secure the benefits they are designed to deliver.
- 1.9 Unlike my other reports, this Thinkpiece does not make detailed recommendations for change. Instead it identifies areas for consideration and discussion in the States Assembly and beyond. This difference in approach for my final report reflects the wide-ranging nature of the issues that I have reviewed over the last seven years and that these issues go to the heart of the way in which the States operate (see Exhibit 2).

Exhibit 2: Areas considered in this Thinkpiece

Conduct	Constitutional framework	The Legislature (States Assembly)
Interaction between the Legislature and the Executive	The Executive (Government of Jersey)	Accountability of bodies and officers making decisions independently
Bodies acting at arm's length	Complaints	Public audit

1.10 I consider each of these areas in the remainder of this Thinkpiece.

1.11 I would like to emphasise that this Thinkpiece only relates to matters within my jurisdiction as Comptroller and Auditor General and focusses on areas with practical rather than only theoretical consequences.

Conduct

- 2.1 Good governance is underpinned by the highest standards of conduct of all those in public service, whatever role they play – politician, appointee or officer – and in whatever part of the public service they work.
- 2.2 In the United Kingdom, the Committee on Standards in Public Life (‘the Nolan Committee’) developed seven overarching principles of public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership – that have subsequently been widely applied across public services.
- 2.3 A comprehensive framework, including clear codes of conduct, transparent mechanisms for promoting understanding, effective mechanisms for monitoring compliance and periodic review, reinforces core values. Such a framework also provides assurance to stakeholders about an organisation’s integrity and commitment to ethics.
- 2.4 There is no comprehensive framework in place for conduct within the States. Instead there is a patchwork of arrangements that does not cover everybody:
- members of the States Assembly are covered by a statutory Code of Conduct and are subject to the jurisdiction of a Commissioner for Standards. However, no corresponding Code applies to the independent members of the Public Accounts Committee;
 - a statutory framework, including independent oversight, governs the conduct of police officers. However, the Code of Conduct for public servants is on a non-statutory footing and there are no arrangements for oversight; and
 - unlike in the United Kingdom, there is no Code of Conduct for members of public bodies.
- 2.5 In my view the absence of clear and comprehensive arrangements, with appropriate oversight, could undermine public confidence and should be addressed as a matter of urgency.

Area to consider

- A1** Development of comprehensive arrangements for establishing, promoting and securing compliance with appropriate standards of conduct in public life for all those in the public service.

Constitutional framework

- 3.1 Traditional constitutional theory distinguishes clearly between the branches of government:
 - **a judiciary** that adjudicates on the law;
 - **an executive** that implements the law; and
 - **a legislature** that enacts the law and holds the executive to account.
- 3.2 Clarity of roles and accountabilities is an essential component of good governance.
- 3.3 The current constitutional relationship of the branches of government stems from the introduction of Ministerial government. Jersey's constitution is unwritten and derives only in part from statute. However, the key legislation that underpins Ministerial government is:
 - the States of Jersey Law 2005;
 - the Employment of States of Jersey Employees (Jersey) Law 2005; and
 - the Public Finances (Jersey) Law 2019 (that replaced the Public Finances (Jersey) Law 2005).
- 3.4 Major amendments to the relevant legislation were made by the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018.
- 3.5 In previous reports, such as my reviews of the *Role and Operation of the States Employment Board* (March 2019), *Financial Management – Part 1* (April 2015), *Financial Management – Part 2* (February 2016) and *Financial Management and Internal Control* (September 2019), I commented on elements of the legislation.
- 3.6 The accountability framework draws substantially on the British parliamentary model with:
 - Ministers having political accountability to the States Assembly; and
 - the Principal Accountable Officer and Accountable Officers having direct accountability to the Public Accounts Committee for the use of resources.
- 3.7 The legislation also has important checks and balances:
 - it embraces the role of the Treasurer of the States with wide responsibilities. The Treasurer, although within the executive branch of government, has responsibilities that, in contrast to the Chief Executive, extend beyond the Government of Jersey, with wide powers to report to the States Assembly. The legislation prohibits the direction of the Treasurer in the discharge of his functions and permits the revocation of their appointment only by the States Assembly on specified grounds. In my view this role provides a counterbalance to that of the Chief Executive as Principal Accountable Officer. I am, however, concerned that the important statutory protections of the Treasurer are not reflected in his contract of employment; and
 - there are important safeguards for the Non-Ministerial Departments that fall outside of the Government of Jersey, including in relation to budget

setting. I have considered the arrangements for Non-Ministerial Departments in more detail in my report *Non-Ministerial Departments* (December 2019).

3.8 However, there are also ambiguities in the relationships and gaps in the arrangements. For example:

- the Public Finances (Jersey) Law 2019 imposes duties on the Principal Accountable Officer to ensure the regularity, probity and value for money not just of States funds and Ministerial Departments but also of companies wholly owned by the States (consistent with the practice for some similar bodies in the United Kingdom). This duty includes the appointment of Accountable Officers for such bodies. The concept of Accountable Officers was developed in the United Kingdom in respect of bodies directly funded by parliamentary votes. The application to companies that are not funded in this way is novel and the mechanisms by which the duties will be discharged have not been fully developed;
- the Public Finances (Jersey) Law 2019 imposes duties on the Principal Accountable Officer (for the Government of Jersey) and Accountable Officers (for Non-Ministerial Departments) for securing propriety, regularity, economy, efficiency and effectiveness in the use of resources. However, the Employment of States of Jersey Employees (Jersey) Law 2005 imposes a similar duty on the States Employment Board (SEB), the statutory employer of States of Jersey employees, comprising members of the States Assembly, to ensure that 'the public service conducts itself with economy, efficiency, probity and effectiveness'. I highlighted in my report on the *Role and Operation of the States Employment Board* (March 2019), that such duplicated responsibilities detract from clear accountability. I recognise that in practice, given the very broad range of responsibilities of the SEB, the risks of duplication are low; and
- the Jersey Appointments Commission provides oversight of the process for appointment of senior officers and States appointees. However, as I highlighted in my report on the *Role and Operation of the States Employment Board* (March 2019) there is no corresponding independent oversight of the arrangements for termination of employment, despite their often contentious nature, other than through the courts.

3.9 The Public Finances Law has rightly been reviewed and updated in 2019. In March 2019 the Council of Ministers commissioned a complete review of the Employment of States of Jersey Employees Law. However, it is 14 years since the key constitutional legislation underpinning Ministerial government was adopted. In my view, the three key pieces of legislation to which I refer above – the States of Jersey Law, the Public Finances Law and the Employment of States of Jersey Employees Law - should be reviewed alongside one another and amended as appropriate to ensure clear, consistent, comprehensive and unambiguous accountabilities.

Areas to consider

- A2** Reflection of the statutory protections of the post of the Treasurer of the States in his contract of employment.
- A3** A fundamental review of the key constitutional legislation for Jersey to ensure clear, consistent, comprehensive and unambiguous accountabilities.

Legislature (the States Assembly)

- 4.1 The States Assembly does more than pass legislation. It scrutinises policy and legislative proposals (acting through Scrutiny Panels), it provides resources to the executive and it holds the executive to account for the use of those resources (acting through the Public Accounts Committee). Good governance requires that the Assembly, Scrutiny Panels and the Public Accounts Committee have the skills and resources to undertake those functions appropriately.
- 4.2 Policy and legislative scrutiny is undertaken through a series of Scrutiny Panels. Those Panels have access to limited resources to engage experts to support them. In my view, there is potential to enhance the value of the vital work of Scrutiny Panels through:
- making the best use of and as necessary enhancing the resources available to support Scrutiny Panels. The demands on Scrutiny Panels are likely to increase. The Government of Jersey has ambitious objectives that are likely to give rise to significant policy and legislative proposals. Many of the proposed developments are likely to be more cross-cutting in nature and involve wider engagement with multiple parties. As a result, the demands on Scrutiny Panels will increase in both volume and complexity. In such circumstances it is vital that the Panels are best equipped to meet those challenges. There should be an increased focus on development of the officers supporting the Panels to meet the new challenges and an increased focus on the use of authoritative independent experts to support the Panels in undertaking incisive scrutiny of policy and legislation; and
 - reviewing the organisation of the work of Scrutiny Panels. Currently the work of Scrutiny Panels predominantly relates to service areas. Key elements of the proposed changes to the Government of Jersey relate to cross-cutting working and the outcomes for citizens that may not readily be picked up through the current organisation of Scrutiny Panels. It is vital that the work of Scrutiny Panels adequately addresses all the dimensions of the Government's policy and legislative proposals. To do so it may be necessary to reconsider the split of work between Panels or strengthen the role of the Scrutiny Liaison Committee in oversight of the work of the Panels or both.
- 4.3 The Public Accounts Committee is not another Scrutiny Panel. Its work is fundamentally different to that of Scrutiny Panels. It focusses on implementation, rather than policy. It holds officers, rather than Ministers, to account. It receives my reports, holds hearings on them and issues its own reports making recommendations for improvement. It monitors the implementation of agreed recommendations. While the Committee holds officers to account for what has happened in the past, its work is forward looking, seeking to support meaningful and lasting improvement.

Areas to consider

- A4** Enhanced support for Scrutiny Panels, including through investment in development of staff and drawing on external expertise.
- A5** Review of the organisation of the work of Scrutiny Panels and the Public Accounts Committee:
- in response to an increased focus by the Government of Jersey on cross-cutting initiatives and the outcomes for citizens; and
 - to reinforce the different focus of Scrutiny Panels and the Public Accounts Committee.

Interaction between the Legislature and Executive

5.1 Public services work best where there is a clear, consistent, mutually understood and respected relationship between the executive and legislature that facilitates:

- high quality scrutiny of policy and proposed legislation by the legislature; and
- clear, timely and relevant accountability of the executive to the legislature.

Scrutiny

5.2 The executive arm of government takes the lead role in policy development. I recognise that a desire to improve the development of policy by including a wider range of views was a key driver for the establishment of Policy Development Boards. These Boards include States Assembly members who are outside of the Government of Jersey. The Boards have been established on a non-statutory basis and give rise to potential threats to independence: where a politician has been involved in policy development, there are undoubted perceived threats to independence in performing any role in subsequently scrutinising policy or consequent legislative proposals in the same area. In my view, the role of Policy Development Boards and the management of perceived conflicts of interest require careful review to ensure that integrity of the scrutiny process is maintained.

5.3 I also believe that the scrutiny process would be enhanced by:

- clear, agreed principles on when 'green papers' (initial consultations on policy or legislative proposals) and 'white papers' (detailed proposals for legislation) should be prepared. These would in turn trigger the opportunity for timely review by Scrutiny Panels in advance of preparation of draft legislation;
- clear and consistent standards for instructions for legislative drafting. Drafting instructions provide a clear statement of the policy intentions underpinning proposed legislation. They provide rigour in the legislative drafting and facilitate effective scrutiny of the extent to which policy objectives have been captured in draft legislation. I note that in the case of the Draft Public Finances (Jersey) Law 201-, a major piece of legislation, no such detailed instructions had been prepared and therefore could not be shared with the Sub-Panel scrutinising the draft legislation;
- establishing clear standards for preparing marked up versions of legislation, comparing the existing legislation and draft legislation, highlighting the differences and reasons for them. Such an analysis facilitates effective scrutiny of draft legislation, including facilitating scrutiny of matters not specifically referred to in other documents made available by the Government to a Scrutiny Panel. I note in the context of the Draft Public Finances (Jersey) Law 201-, despite extensive engagement by officers with the Sub-Panel scrutinising the draft legislation, no such comparison was available to the Sub-Panel; and

- strengthening the scrutiny of propositions (including propositions by backbenchers) that do not contain draft legislation. Such propositions are an important part of the way in which the States work. They have in instances been subject to valuable scrutiny, as in the case of the proposition establishing the Jersey Innovation Fund. However, there is no systematic consideration of whether such scrutiny is needed. Indeed, the Standing Orders of the States make no explicit reference to propositions. In my view, there should be a structured and transparent process to consider whether such scrutiny is required.

Accountability of the executive to the legislature

- 5.4 The relationship between the legislature and the executive does not end with scrutiny of legislation.
- 5.5 I have seen enhancements in, and ongoing plans to enhance, accountability. These include:
- improvements in the States' audited accounts that now include, and give prominence to, reporting of expenditure against the sums allocated by the States Assembly. The value of this reporting has been enhanced by the extension of the external auditor's report on the States' accounts to cover the 'regularity' of income and expenditure – their compliance with relevant legislation and rules and application in accordance with the intentions of the States Assembly;
 - the development of enhanced reporting of performance. Historically the States' accounts were presented to the States Assembly without structured reporting of what had been achieved for the money spent, including performance against targets. There have been enhancements in arrangements:
 - an Annual Report is now presented with the States' accounts, including elements of performance reporting. However, more work is required to develop relevant measures of the outcomes of public expenditure and to ensure that robust arrangements are in place to report performance against them; and
 - the Public Finances (Jersey) Law 2019 requires the Minister for Treasury and Resources to present a six monthly report to the States Assembly detailing, for example, reallocations from one head of expenditure to another; and
 - the work undertaken by the Chief Executive's Chief of Staff to develop monitoring mechanisms and the sharing of information on progress with the Public Accounts Committee. Historically, monitoring of and therefore reporting on implementation of my recommendations, those of the Public Accounts Committee and those of other external review bodies have been weak.
- 5.6 I am, however, concerned that ongoing cultural change is required to embed within Government a strong sense of accountability to the States Assembly:

- as I reported in my review of the *Jersey Innovation Fund* (January 2017), officers concluded that it was not practicable to comply with the terms of a document presented to the States Assembly and underpinning a Proposition that was adopted. Officers proceeded on a different basis without either reporting back to or seeking the endorsement of the States Assembly to a different approach. In my view, such an approach is entirely inappropriate and fosters distrust between the Government and the States Assembly; and
- in some instances, officers have failed to respond to requests for information by the Public Accounts Committee, including responses to reports, by target dates. Where recommendations have been accepted, in many cases implementation has not progressed in accordance with the timetables reported to the States Assembly. In my view, provision of comprehensive responses within reasonable timescales, implementation of recommendations in accordance with the timetables notified to the States Assembly and reporting back to the States Assembly where a change in timetable is required are key underpinnings of the relationship between the Government and States Assembly. I know that the Chief Executive is committed to change and responsiveness is improving. But a culture of ensuring that comprehensive, timely responses are consistently provided and that agreed recommendations are implemented has yet to be embedded.

5.7 One of the mechanisms by which the executive is accountable to the legislature is through regular independent inspection where a recognised, relevant and independent inspection regime exists. Such inspection leads to public reports evaluating services and making recommendations for improvement.

5.8 In previous reports, such as my report on *Community and Social Services* (December 2015) and my report on the *Governance of the States of Jersey Police* (March 2018), I recommended the use of independent inspection. However, in Jersey there is no consistent approach to inspection:

- for some services, such as police, prisons and children's social services, legislation puts inspections on a statutory footing;
- for some others, such as fire, inspections by United Kingdom inspectorates have been undertaken on a non-statutory basis;
- the process for deciding whether to undertake inspections varies. For example, the decision on whether there should be an inspection of the States of Jersey Police rests with the Minister. In contrast, decision on inspection of health and social care establishments rests with an independent Care Commission; and
- the maximum period between inspections is not prescribed.

Areas to consider

- A6** Clear, agreed criteria for preparation of 'Green Papers' and 'White Papers' to facilitate early scrutiny.
- A7** Formal, written drafting instructions for all major legislation available to Scrutiny.
- A8** Comprehensive comparisons of existing and proposed legislation with reasons for proposed changes available to Scrutiny.
- A9** A structured process to determine whether Scrutiny Panel review of propositions is needed.
- A10** Enhanced, validated quantitative reporting of performance against strategic objectives in the Annual Report.
- A11** Agreed and observed principles for the circumstances when it is necessary to report back to the States Assembly or seek its consent for an approach other than that set out in an adopted Proposition.
- A12** Further action to embed within the Government of Jersey a culture of providing comprehensive and timely responses to States Assembly Committees and Panels.
- A13** A comprehensive, consistent approach to independent inspection for all services where a recognised, relevant and independent statutory inspection regime exists.

Executive (the Government of Jersey)

- 6.1 The executive branch of government comprises both politicians (the Council of Ministers and Assistant Ministers) and officers (working in Ministerial Departments). The distinct and unified identity of the executive branch of government has been strengthened by:
- the adoption of the term ‘Government of Jersey’ distinguishing it more clearly from the States Assembly;
 - the designation of the Chief Executive as Principal Accountable Officer with a public accountability for the use of funds voted by the States Assembly and to whom Directors General of Ministerial Departments, as Accountable Officers, are accountable. This reflects the arrangements put in place for the devolved administrations in both Scotland and Wales; and
 - the adoption of a new principles-based Public Finances Manual, issued under the Public Finances (Jersey) Law 2019, as the means of providing consistent arrangements for financial management, replacing an overly-prescriptive, rules-based and unwieldy approach in Financial Directions. I note that Accountable Officer letters issued were not updated to reflect the coming into force of the Public Finances (Jersey) Law 2019. However, plans are in place to issue revised letters to coincide with the coming into force of the Public Finances Manual.
- 6.2 There remain areas that warrant review.
- 6.3 Firstly, there has been an increase in the extent to which the allocation of responsibilities at officer level (by the Chief Executive as Principal Accountable Officer and Head of Public Service to Directors General) and at political level (by the Chief Minister to Ministers) does not always align in an obvious way. I recognise that there may be compelling reasons for differences but, in my view, simplicity and clarity facilitate good governance and minimise the risk of confusion. Such confusion was evident in the findings of my review of the *Jersey Innovation Fund* (January 2017). In my report *Decision Making: Selecting a Site for the Future Hospital* (November 2017) I noted a potential confusion between the political accountability for major capital projects (where the Minister responsible for the service area usually addressed the States Assembly) and the officer accountability (where the Director General for Growth, Housing and Environment is usually accountable). In my view, the allocation of Ministerial portfolios deserves review in light of the restructuring of Ministerial Departments. I recognise that there may be circumstances where differences are fully justified but believe that there should be a clear, documented case for such differences and unambiguous documentation of responsibilities.
- 6.4 I recognise that Part 4 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018 amends the States of Jersey Law 2005 to establish the Government of Jersey as a ‘corporation aggregate’ the functions of which could be exercised by any Minister. However, Part 4 has yet to come into force. If and when it comes into force, it is important that administrative arrangements are in place to clarify accountability lines from Directors General to Ministers.

- 6.5 Secondly, more work is needed to develop high quality, accessible corporate standards. Such standards are necessary for good governance but of themselves are not sufficient. Maximum value is derived in a culture where the standards are embraced and valued as an integral part of working in the public service. I welcomed the new principles based Public Finances Manual in my report on *Financial Management and Internal Control* (September 2019). However, it is only a start. In my report on the *Role and Operation of the States Employment Board* (March 2019), I highlighted weaknesses in the corresponding arrangements for human resources policies and procedures. In my view a consistent principles based approach governing all corporate standards, not just for finance but for human resource management, procurement, information management and asset management, is needed and I welcome Government's plans to put such arrangements in place in 2020. Such an approach should have clear statutory force but, at the moment, legislation only provides for such corporate frameworks for finance and human resources.
- 6.6 I welcome the review of the governance framework being led by the Director General for Strategic Policy, Planning and Performance. It is important that this is completed with urgency and drives effective change. In completing the work it is important to recognise that, whilst it is being undertaken by and in the context of the Government of Jersey, it affects Non-Ministerial Departments that sit outside the Government and the Accountable Officers for which are not accountable to the Principal Accountable Officer. It is important that in developing the governance framework the different accountability arrangements for Non-Ministerial Departments are appropriately reflected and that Non-Ministerial Departments are appropriately consulted.
- 6.7 Central to the delivery of an effective corporate approach are culture and behaviours. The role of a corporate centre includes setting frameworks and monitoring their implementation. However, it is much more than that. It is about developing the systems to help in their implementation and providing the support and encouragement to do so.
- 6.8 Thirdly, the development of an identity of 'Government of Jersey' has brought into sharp contrast the extent of the distinction between the Government and other elements of the wider States that, for good constitutional reasons, sit outside the Government. Trust and confidence between the Government and those diverse functions that sit outside the Government are engendered by mutual respect. To engender that respect it is essential that differences in statutory arrangements are recognised and there is clarity about which corporate arrangements do and do not apply. The inappropriate use of the term 'Government of Jersey' can create alienation and mistrust. I have addressed these issues in my report on *Non-Ministerial Departments* (December 2019).

Areas to consider

- A14** Both now and after any coming into force of Part 4 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018:
- review of the allocation of Ministerial responsibilities in the context of the revised structure of Ministerial departments; and
 - preparation of clear documentation for the allocation of Ministerial responsibilities.
- A15** Adoption of a comprehensive, principle-based approach to all corporate standards with statutory force.
- A16** Prioritisation of completion of the Government of Jersey review of the governance framework, having regard to the different accountability arrangements for, and consulting with, Non-Ministerial Departments.
- A17** Consistent reinforcement of the boundary of the Government of Jersey and respect for the States bodies that are outside it.

Accountability of bodies and officers making decisions independently

7.1 There are elements of public services which, for strong and compelling constitutional reasons, must have an element of independence from the executive branch of government with an element of autonomy in decision making. I have reported on aspects of arrangements for such bodies, for example in my reports:

- *Governance of the States of Jersey Police* (March 2018);
- *Remuneration of Boards* (October 2019); and
- *Non-Ministerial Departments* (December 2019).

7.2 I am concerned that there is a complexity and diversity in arrangements that have developed over time in the absence of clear principles on which to base those arrangements:

- in some instances, separate statutory bodies are established, as highlighted in Appendix 1. Some of these have a power to levy fees to cover their costs whereas others are dependent in whole or part on grant funding from the Government;
- in some instances, office holders head Non-Ministerial Departments for which funding is directly provided by the States Assembly; and
- other functions sit within Ministerial Departments, sometimes with formal statutory independence and sometimes without (see Exhibit 3).

Exhibit 3: Different constitutional and financial accountability arrangements for bodies with an element of independence from government

Type	Examples	Financial accountability to the States Assembly
Corporate body outside the States with power to levy fees to cover costs	Jersey Financial Services Commission, Jersey Gambling Commission	Audited accounts for the corporate bodies laid before the States Assembly annually
Corporate body outside the States without power to levy fees to cover costs	Jersey Advisory and Conciliation Service	Audited accounts for the corporate bodies laid before the States Assembly annually
Corporate body funded by States Assembly vote	Jersey Overseas Aid Commission	Audited accounts for the Commission laid before the States Assembly annually
Non-Ministerial Departments	Law Officers', Viscount's, Judicial Greffe, Probation and After-Care Service,	Financial performance identified separately in the States' Annual Accounts

Type	Examples	Financial accountability to the States Assembly
	Official Analyst	laid before the States Assembly
Statutory establishment within the States of Jersey with separate Accountable Officer	States of Jersey Police	Financial performance included in the States' Annual Accounts laid before the States Assembly but not separately identified
Statutory establishment but funded by/within Ministerial Department	Commissioner for Children and Young People, Statistics Jersey, Charity Commissioner	Commissioner for Children and Young People: Separate accounts laid before the States Assembly annually Statistics Jersey, Charity Commissioner: Financial performance included in the States' Annual Accounts laid before the States Assembly but not separately identified
Non-statutory arrangements for independence in discharge of functions	Planning, Health and Safety	Financial performance included in the States' Annual Accounts laid before the States Assembly but not separately identified

7.3 I am concerned that a multiplicity of different arrangements has developed without a clear rationale. The piecemeal development means that there are unexplained differences in, for example:

- the extent of oversight. In some instances, there are Boards with Non-Executive Directors performing oversight functions, including through Audit Committees. In the case of the Commissioner for Children and Young People, there is a statutory Audit and Risk Advisory Panel. In the case of the States of Jersey Police the Police Authority performs an important oversight role, although in my report *Governance of the States of Jersey Police* (March 2018) I recommended strengthening its role. In many instances there is no similar oversight; and

- corporate bodies outside government have to prepare their own accounts and lay them before the States. In some instances, such as the Data Protection Authority, there is a statutory timescale for doing so; in others there is none. Generally, bodies within the States' accounting boundary do not have to prepare separate accounts but the Commissioner for Children and Young People is required to do so.
- 7.4 Differences in arrangements may be justifiable. But I do not believe that they have been justified. In my view this could only be achieved by:
- adoption of clear principles for the governance and accountability of bodies and officers responsible for activities where an element of independence from the Government is required; and
 - systematic review of arrangements in light of those principles.
- 7.5 Operational independence is a constitutional necessity. However, it should not be an excuse for the perpetuation of a multitude of inherently inefficient support services characterised by diseconomies of scale. It is not necessary for each small corporate body established by the States to set up its own finance, HR, IT and facilities management functions. Co-operation in provision of such functions, between bodies and between the Government and such bodies, may facilitate more efficient and effective public services without in any way compromising constitutional independence. However, moving to a collaborative model requires a fundamental cultural change leading to a clear customer focus and meaningful consultation.
- 7.6 Another consequence of complexity of arrangements is that there is an increased risk of failure to understand the complexity of the arrangements and make the necessary and important adaptations required to reflect them. For example, one effect of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018 and Public Finances (Jersey) Law 2019 was to create two classes of Accountable Officers – those for Ministerial Departments (accountable to the Chief Executive as Principal Accountable Officer) and those for Non-Ministerial Departments (directly accountable to the States Assembly). However, the wording of the letters issued to Accountable Officers for Non-Ministerial Departments has yet to be updated to reflect the new arrangements. I understand that revised letters to the Accountable Officers of Non-Ministerial Departments are scheduled to be issued to coincide with the coming into force of the Public Finances Manual.
- 7.7 As discussed in section 5 above, independent inspection is an important means for demonstrating the quality of public services and driving improvement. That principle is just as applicable to bodies and officers outside the Government of Jersey. I welcome the recent independent inspection of the Jersey Family Court Advisory Service. However, this inspection was undertaken on a non-statutory basis. I also note that there are other services that would fall within the remit of H M Criminal Justice Inspectorates in England and Wales but for which no recent inspection has taken place in Jersey.

Areas to consider

- A18** Adoption of clear principles for the governance and accountability of bodies and officers responsible for activities where an element of independence from Government is required.
- A19** A systematic review of arrangements for the governance and accountability of such bodies in light of those principles.
- A20** Promotion of customer-focussed collaborative arrangements for support services for public bodies without impinging on operational independence.
- A21** Issuing of appropriate, updated Accountable Officer letters for Non-Ministerial Departments.
- A22** A comprehensive, consistent approach to independent inspection on a statutory basis for public services outside the Government of Jersey.

Bodies acting at arm's length

- 8.1 There are other bodies operating at arm's length, whether as companies controlled by the States or bodies substantially funded by and economically dependent on States funding. I have previously reported on the operation of such bodies and their interaction with the Government, including in my reports on:
- *The States as Shareholder – Jersey Telecom* (July 2014);
 - *The States as Shareholder – Follow-up* (March 2019);
 - *Oversight of Arm's Length Organisations* (June 2017); and
 - *Remuneration of Boards* (October 2019).
- 8.2 There is a risk that where bodies operate at arm's length there is a disparity of knowledge and expertise between the arm's length bodies and those responsible for their oversight. Effective oversight of such bodies requires resources and expertise. My previous reports highlighted weaknesses and inconsistencies in arrangements, with a stronger focus on some financial aspects of oversight and an absence in some cases of a clear rationale for oversight or funding that would, in turn, drive the oversight of the body.
- 8.3 The new Target Operating Model included the development of a Partnerships function within Growth, Housing and Environment. However, this remains distinct from the shareholder function managing elements of the relationship with controlled companies within Treasury and Exchequer.
- 8.4 In my view a more radical reform may be justified. I believe that the most effective oversight is likely to be secured where:
- the skills and expertise for oversight are concentrated; and
 - a consistent approach to oversight is adopted, whether the relationship is derived from an ownership interest (in the case of States owned companies) or funding (in the case of States funded bodies).
- 8.5 In my report, *Remuneration of Boards* (October 2019), I therefore recommended strengthening the arrangements for oversight of the States' relationship with companies, statutory bodies and funded bodies, including through:
- 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.

Complaints

- 9.1 Establishing effective mechanisms for receiving, considering and resolving complaints from the public, staff and other stakeholders promotes a learning culture, reinforces a commitment to ethical behaviour and facilitates continuous improvement. Effective arrangements include:
- appropriate protection for ‘whistleblowers’ so that staff, contractors and service users can raise concerns in good faith without fear of recrimination; and
 - an element of genuine independence so that, where complaints cannot be resolved by the Government of Jersey or another element of the public service, there is a non-adversarial mechanism for resolution.
- 9.2 I have previously highlighted the need for:
- improvements in the handling of complaints in my reports on *Community and Social Services* (December 2015), *Governance arrangements for Health and Social Care* (September 2018), and *Community and Social Services for Adults and Older Adults: Follow-up* (April 2019); and
 - enhanced arrangements for whistleblowing in my report on *Community and Social Services* (December 2015). I recognised the improvements made in this areas in my report on the *Role and Operation of the States Employment Board* (March 2019).
- 9.3 In addition, I am currently undertaking a review of the arrangements for handling and learning from complaints within the Government of Jersey that is due for publication next year.
- 9.4 In many jurisdictions Ombudsmen independent of government investigate complaints about poor administration of public services, with wide powers to report publicly. In some their remit is wider, allowing investigations on their own initiative and review of internal complaints handling processes.
- 9.5 I welcome the in principle decision of the States Assembly in March 2018 to establish a Public Services Ombudsman for Jersey, the subsequent research by the Jersey Law Commission and the consultation paper issued on behalf of the Chief Minister earlier this year.
- 9.6 In my view, establishment of a Public Services Ombudsman, with wide powers reflecting modern legislation in other jurisdictions, sends an important message about transparent, accountable services that embrace feedback and a commitment to improve.

Area to consider

A23 Establishment of a Public Services Ombudsman, reflecting modern legislation from other jurisdictions.

Public audit

- 10.1 Public audit – a wide ranging audit that extends beyond published accounts to include consideration of value for money and with a strong emphasis on public reporting – is an important component of good governance. It is a recognised feature of most independent jurisdictions and is governed by recognised international standards. It provides a mechanism that assists the legislative branch of government to hold the executive branch of government to account for the use of the resources allocated to it. Public audit helps to promote worthwhile change.
- 10.2 Public audit was embraced by Jersey in its constitutional reforms of 2005 with the establishment of the Office of Comptroller and Auditor General. Jersey can be proud that, uniquely of the Crown Dependencies, it has established such a position.
- 10.3 My report *Public Audit in Jersey* (July 2013) compared the arrangements for public audit in Jersey to recognised international standards and made recommendations for change. I was impressed that my recommendations were accepted and necessary legislative changes, through the adoption of the Comptroller and Auditor General (Jersey) Law 2014, were made. In my view Jersey has up to date, appropriate public audit legislation that meets international standards. There are, however, three areas to which I draw attention.
- 10.4 Firstly, it is imperative that a public audit institution is, and is seen to be, independent from the executive branch of government. The Comptroller and Auditor General (Jersey) Law 2014 unambiguously states that the Comptroller and Auditor General is not subject to direction in the discharge of their functions. It excludes my Office from review by the Chief Internal Auditor, a necessary and important exclusion as my responsibilities include evaluation of the adequacy of the system of internal audit. But my Office is, quite rightly, not exempt from oversight and accountability. Its use of resources is overseen by a Board of Governance with a majority of independent members appointed by the States Assembly. I have an obligation to present audited accounts to the States Assembly.
- 10.5 However, there are statutory provisions that in theory give rise to an element of oversight of my Office by the executive branch of government. In law I am designated as an Accountable Officer responsible for provision of information to the Treasurer of the States and compliance with the Public Finances Manual. These elements of potential circular review by those who I scrutinise are a theoretical threat to my independence. In many jurisdictions this threat is recognised and avoided. Any accountability of the Auditor General to the executive branch of government is replaced with an accountability to an arm of the legislature. For example, in the United Kingdom, the Comptroller and Auditor General is required to comply with an Accounting Officer letter issued by the Public Accounts Commission, a committee of Parliament. A relatively small legislative amendment could facilitate an analogous arrangement for Jersey with an Accountable Officer letter issued by the Public Accounts Committee following consultation with the Board of Governance of the Comptroller and Auditor General.

- 10.6 Secondly, in my 2013 report, I highlighted the importance of the appointment of external auditors of public bodies being independent of the Government of Jersey. The 2014 Law amended many pieces of legislation to transfer the duty to appoint external auditors from a Minister to the Comptroller and Auditor General. However, the practice is not yet consistent:
- it was envisaged that the legislation that made the Treasurer of the States responsible for the appointment of the external auditor of the Jersey Teachers' Superannuation Fund would be amended to transfer that responsibility. In anticipation of such legislation the Treasurer of the States delegated the statutory function to me but, five years later, no legislative change has been made;
 - there is a statutory duty on the Chairman of the Jersey Overseas Aid Commission to present audited accounts to the States Assembly but the legislation is silent on who appoints the external auditor; and
 - recent legislation has adopted inconsistent approaches. When the Data Protection Authority was established, the legislation made the Comptroller and Auditor General responsible for the appointment of the external auditor. However, the legislation to establish the Commissioner for Children and Young People entrusted the appointment of an external auditor of the accounts of the Commissioner (and even a decision on whether to have an external audit at all) to the Commissioner.
- 10.7 The 2005 reforms established a Public Accounts Committee, consistent with the arrangements in place in many jurisdictions that adopt a British parliamentary model. It performs a vital role in receiving my reports, holding hearings on those reports, taking evidence, holding to account officers responsible for the use of public money and reporting, making its own recommendations. It is a vital component of the way in which the legislative branch of government holds the executive branch of government to account.
- 10.8 Thirdly, the effectiveness of a Public Accounts Committee is dependent on the support that it receives. Jersey's Public Accounts Committee is ably supported by an officer within the States Greffe. I have a statutory duty to attend meetings of and liaise with the Committee. Through the Jersey Audit Office, I provide further support to the Committee, including by briefing the Committee on my reports and suggesting potential lines of questioning.
- 10.9 However, the support that I provide is more limited than that provided by my counterparts in other jurisdictions. In many jurisdictions, the Auditor General routinely supports the Public Accounts Committee in preparing briefings in advance of hearings, drafting potential questions and drafting reports for the Committee. Adopting this approach in Jersey would inevitably have resource implications but would also have the potential to enhance the effectiveness and impact of the Committee in holding the executive branch of government to account.

Areas to consider

- A24** Legislative amendments to ensure that, whilst maintaining adequate scrutiny of the governance and use of resources of the Office of the Comptroller and Auditor General, there is no actual or perceived accountability to the executive branch of government.
- A25** Legislative amendments to transfer the duty for appointment of the external auditors of all public bodies (other than companies) to the Comptroller and Auditor General.
- A26** Resources to allow the Comptroller and Auditor General to provide enhanced support to the Public Accounts Committee in preparing briefings in advance of hearings, drafting potential questions and drafting Committee reports.

Conclusion and next steps

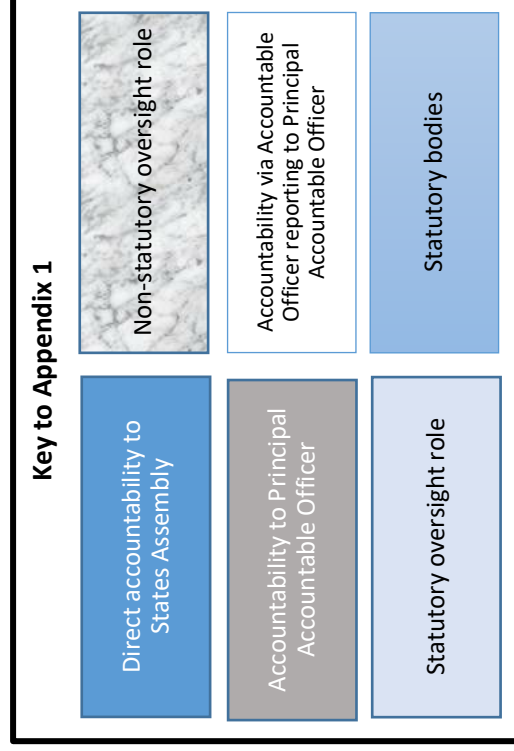
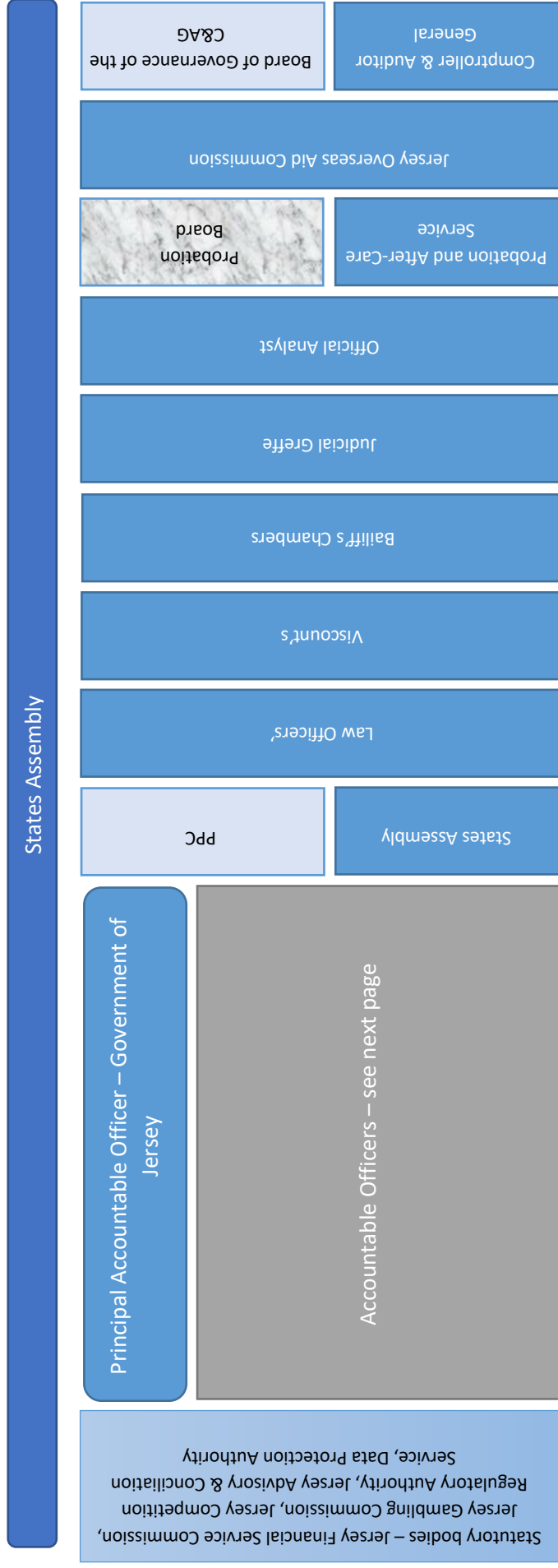
- 11.1 Good governance is at the heart of effective delivery of public services. It is not a bureaucratic burden but an essential component of effective, accountable delivery of public services. It is of increased importance during a period of unparalleled change.
- 11.2 Good governance is characterised by clarity. That clarity facilitates understanding and in turn acceptance as an integral part of the way in which an organisation works. But for well-designed governance structures to be consistently operated as intended, there needs to be an unambiguous tone from all in leadership positions, including politicians and officers, that reinforces to all those in public life the importance of good governance.
- 11.3 Good governance embraces a series of interconnected strands that cannot be considered in isolation. It is vital that, when making changes to one element, the impact on other elements is considered and understood.
- 11.4 Good governance reflects context. It involves learning from what works elsewhere but adapting it in light of:
- Jersey's traditions and constitution;
 - the limited scale but substantial range and complexity of the services provided by the States; and
 - the circumstances of the island and its government, including, for example, considering wider economic factors in procurement decisions and the development of the capital programme.
- 11.5 As part of the ambitious reforms that the States have embarked upon there have already been changes in governance. Legislative change has clarified the role of the Chief Executive within the Government of Jersey. A principles-based Public Finances Manual is replacing rules-based Financial Directions. Financial and non-financial reporting to the States Assembly about the application of the funds voted by the States Assembly has improved.
- 11.6 But there is much more to do to refine, clarify and simplify the governance arrangements in place. In the individual chapters of this report I have identified areas where I believe that change should be considered:
- to set, reinforce and monitor compliance with appropriate standards of conduct for all those in public life;
 - to ensure that key constitutional legislation provides clear, consistent, comprehensive and unambiguous accountabilities;
 - to enhance the effectiveness of Scrutiny Panels and the Public Accounts Committee, including by clarifying their remit and strengthening the resources available to support them;
 - to enhance the processes that allow for meaningful scrutiny of policy, legislation and propositions;
 - to enhance accountability by the Government of Jersey to the States Assembly;

- to review the allocation of Ministerial responsibilities in the context of changes in officer responsibilities;
 - to embrace external inspection of public services;
 - to respect the constitutional status of those parts of the States outside the Government of Jersey;
 - to reconsider and strengthen the arrangements for the governance and accountability of bodies and officers that have to act with an element of independence from government. I recognise in Appendix 1 the complexity of the current arrangements;
 - to establish a Public Services Ombudsman for Jersey, reflecting modern legislation in other jurisdictions;
 - to make all appointments of external auditors of public bodies (other than companies) the responsibility of the Comptroller and Auditor General; and
 - to strengthen the support available to the Public Accounts Committee.
- 11.7 I recognise that this Thinkpiece is wide ranging. I have deliberately avoided making prescriptive recommendations. I recognise the issues that I have identified are in many cases inherently complex and inevitably interconnected.
- 11.8 Considering them will require careful thought, at political and officer level, within the Government of Jersey, the wider States and beyond. Genuine engagement and debate will be needed to determine whether, how and how fast to move forward on the matters I have identified.
- 11.9 There is no obvious forum to take forward consideration of these matters. However, I think that the Public Accounts Committee would be well placed to commence the process, holding a series of hearings on the matters that I have raised, calling witnesses from within and outside the Government of Jersey.
- 11.10 Whatever structural arrangements are adopted for consideration of the matters that I raise in this report, the quality of that consideration will itself demonstrate the States' commitment to good governance.

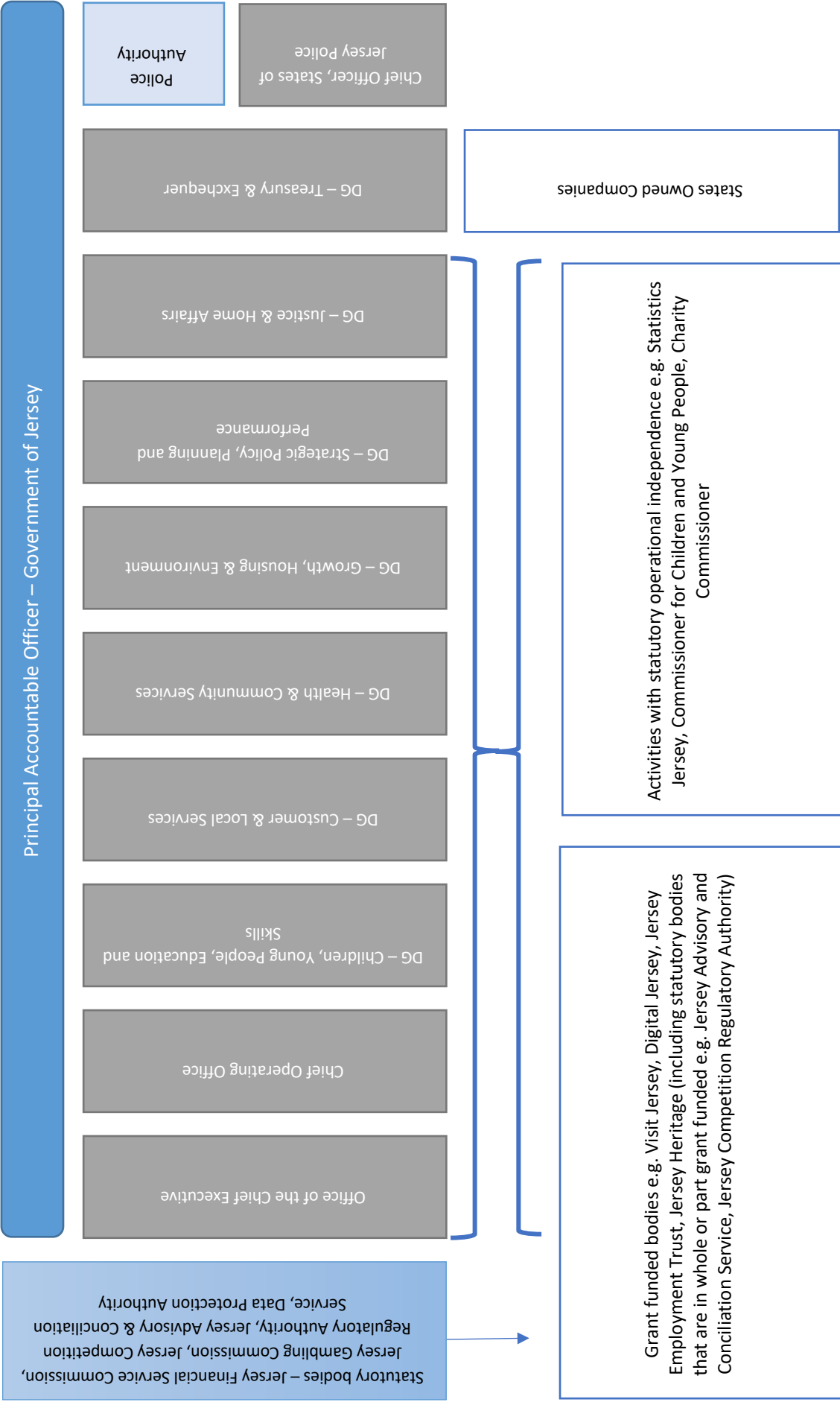
Area to consider

A27 A series of Public Accounts Committee hearings on the governance issues raised in this report with witnesses from within and outside the Government of Jersey.

Appendix 1: States of Jersey - Financial accountability (simplified)



States Assembly



Appendix 2: Summary of areas to consider

Conduct

- A1** Development of comprehensive arrangements for establishing, promoting and securing compliance with appropriate standards of conduct in public life for all those in the public service.

Constitutional framework

- A2** Reflection of the statutory protections of the post of the Treasurer of the States in his contract of employment.
- A3** A fundamental review of the key constitutional legislation for Jersey to ensure clear, consistent, comprehensive and unambiguous accountabilities.

Legislature (the States Assembly)

- A4** Enhanced support for Scrutiny Panels, including through investment in training and development of staff and drawing on external expertise.
- A5** Review of the organisation of the work of Scrutiny Panels and the Public Accounts Committee:
- in response to an increased focus by the Government of Jersey on cross-cutting initiatives and the outcomes for citizens; and
 - to reinforce the different focus of Scrutiny Panels and the Public Accounts Committee.

Interaction between the Legislature and Executive

- A6** Clear, agreed criteria for preparation of 'Green Papers' and 'White Papers' to facilitate early scrutiny.
- A7** Formal, written drafting instructions for all major legislation available to Scrutiny.
- A8** Comprehensive comparisons of existing and proposed legislation with reasons for proposed changes available to Scrutiny.
- A9** A structured process to determine whether Scrutiny Panel review of propositions is needed.
- A10** Enhanced, validated quantitative reporting of performance against strategic objectives in the Annual Report.
- A11** Agreed and observed principles for the circumstances when it is necessary to report back to the States Assembly or seek its consent for an approach other than that set out in an adopted Proposition.

- A12** Further action to embed within the Government of Jersey a culture of providing comprehensive and timely responses to States Assembly Committees and Panels.
- A13** A comprehensive, consistent approach to independent inspection for all services where a recognised, relevant and independent statutory inspection regime exists.

Executive (the Government of Jersey)

- A14** Both now and after any coming into force of Part 4 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018:
- review of the allocation of Ministerial responsibilities in the context of the revised structure of Ministerial departments; and
 - preparation of clear documentation for the allocation of Ministerial responsibilities.
- A15** Adoption of a comprehensive, principle-based approach to all corporate standards with statutory force.
- A16** Prioritisation of completion of the Government of Jersey review of the governance framework, having regard to the different accountability arrangements for, and consulting with, Non-Ministerial Departments.
- A17** Consistent reinforcement of the boundary of the Government of Jersey and respect for the States bodies that are outside it.

Accountability of bodies and officers making decisions independently

- A18** Adoption of clear principles for the governance and accountability of bodies and officers responsible for activities where an element of independence from Government is required.
- A19** A systematic review of arrangements for the governance and accountability of such bodies in light of those principles.
- A20** Promotion of customer-focussed collaborative arrangements for support services for public bodies without impinging on operational independence.
- A21** Issuing of appropriate, updated Accountable Officer letters for Non-Ministerial Departments.
- A22** A comprehensive, consistent approach to independent inspection on a statutory basis for public services outside the Government of Jersey.

Complaints

- A23** Establishment of a Public Services Ombudsman, reflecting modern legislation from other jurisdictions.

Public audit

- A24** Legislative amendments to ensure that, whilst maintaining adequate scrutiny of the governance and use of resources of the Office of the Comptroller and Auditor General, there is no actual or perceived accountability to the executive branch of government.
- A25** Legislative amendments to transfer the duty for appointment of the external auditors of all public bodies (other than companies) to the Comptroller and Auditor General.
- A26** Resources to allow the Comptroller and Auditor General to provide enhanced support to the Public Accounts Committee in preparing briefings in advance of hearings, drafting potential questions and drafting Committee reports.

Conclusion and next steps

- A27** A series of Public Accounts Committee hearings on the governance issues raised in this report with witnesses from within and outside the Government of Jersey.



JERSEY AUDIT OFFICE

KAREN McCONNELL
COMPTROLLER and AUDITOR GENERAL

JERSEY AUDIT OFFICE, DE CARTERET HOUSE, 7 CASTLE STREET, ST HELIER, JERSEY JE2 3BT
T: 00 44 1534 716800 E: enquiries@jerseyauditoffice.je W: www.jerseyauditoffice.je