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Annwyl Llyr

Post-legislative scrutiny of the Public Audit (Wales) Act 2013

Thank you for your letter of 26 March 2019 informing us that the Committee is undertaking post-legislative scrutiny of the Public Audit (Wales) Act 2013. We welcome the Committee's decision, particularly given the issues that we have raised regarding the 2013 Act in our letter of 21 June 2018.

You ask whether there is any additional evidence that we would like the Committee to consider. As you might expect, we think that the material that we set out in our letter of 21 June 2018 addresses the key issues from our perspective and we would urge the Committee to refer to that again. But it may be helpful to provide a summary update in respect of your terms of reference, along with some additional material. We therefore attach such a summary in the annex to this letter.

We should like to put our comments in context by saying that, with the exception of the matters we have drawn to your attention, the governance arrangements brought in by the 2013 Act have worked well and been effective. The Auditor General's audit independence has been protected by such measures as the Code of Practice required by Schedule 2 to the Act, and the transfer of staff and other resources to the corporate body WAO has not caused any problems. We would therefore emphasise that it is in a few particular, but nevertheless significant, areas that we see a need for revision of the Act.

We hope that this is helpful. We should be very happy to discuss these matters further.

Yn gywir



Adrian Crompton
Auditor General for Wales



Isobel Garner
Chair, Wales Audit Office

Annex: Issues relating to the Public Audit (Wales) Act 2013

Fee charging

1. Section 23 of the Public Audit (Wales) Act 2013 (“PAWA 2013”) and other relevant provisions set a “no more than full cost” rule (the “rule”). This rule continues to act as a disincentive to improving audit efficiency and continues to be complex to administer for the reasons set out in paras 3.2 to 3.6 of the of the explanatory paper appended to our letter of 21 June 2018 (“the explanatory paper”). In short, the rule means that auditors do not benefit from any savings that can be made in audit activity. Indeed, at the individual level such savings may lead to personal loss (e.g. through loss of work), which dampens enthusiasm for efficiency. And the casting of the rule in terms of individual functions (i.e. particular statutory elements of work) at individual bodies, means that there is very extensive record keeping and reconciliation work to be done to ensure that we comply with the rule. This activity is inevitably at the expense of work that adds value.
2. On that point, and in addition to the points in the explanatory paper, a further example of how the rule impedes efficiency is the barrier it presents in terms of moving away from staff having to fill out detailed timesheets. In looking to improve efficiency in the way we work, we have compared our practices with commercial firms and found that such firms are increasingly moving away from timesheets and time-based pricing. Our view is that such a move has the potential to improve productivity and staff morale. Currently, we estimate time recording costs us at least £135,000 a year. We are continuing to explore the possibility of such a change in practice, but at the moment it appears that the rule prevents it.
3. In terms of the complexity of administration caused by the rule, a further unfortunate development has been audited bodies making formal written complaints about the amount of fee charged. While few in number, and usually involving small amounts of fee, such complaints take a considerable and often disproportionate amount of time to deal with.
4. For example, a community council complained that its fee of £495 for 2017-18 was more than double that of the previous year (£240.30), that unnecessary work was being undertaken and that the council was being asked for more information than in previous years. We investigated the complaint, which necessitated examining the work undertaken by the audit firm involved, whether the work was necessary and proportionate, the time recorded and the calculation of the fees. The investigation took 2.5 days of WAO staff time, costing some £1,100. We concluded that while the firm had made a typographical error in the hourly rate for the trainee grade leading to an overcharge of £6.30, overall the work was necessary, and the time spent was proportionate to the audit requirements. We refunded the overcharge. It is clear that the no more than full cost rule creates a situation where individual audited bodies may be incentivised to query audit fees so

as to get them reduced but, in the process, incur wider disproportionate public expenditure.

5. We should also update the Committee on our proposal to address some of the burden of our complex fee arrangements by funding the audits of directly-funded bodies (i.e. directly funded from the Welsh Consolidated Fund) by supply from the Welsh Consolidated Fund. Such an approach replaces cash fees with notional fees. We have been looking at piloting the arrangement with the Public Services Ombudsman for Wales but have found that the approach would merely shift the administrative burden from the WAO to the Ombudsman in terms of making the necessary accounting adjustments. We will therefore be reconsidering whether to proceed with this proposal, which in any case would address only a fraction of the administrative burden that we face as most audited bodies are not directly-funded.

Quorum arrangements of the WAO

6. As set out in paragraphs 3.9 to 3.13 of the explanatory paper, the statutory non-executive majority quorum requirement makes the WAO rather prone to being inquorate. Paragraph 28(3) of Schedule 1 to the PAWA 2013 contains a requirement that “in all circumstances a quorum cannot be met unless a majority of the members present are non-executive members”. This is problematic because with a WAO membership of nine containing a majority of only one non-executive member, any non-executive absence leads to inquoracy.
7. Since our June 2018 letter, the problem has continued with one of the four WAO meetings being inquorate because of non-executive absence. In that case, one of the elected employee members left the meeting to enable a quorum to be reached. Given this unsatisfactory situation, we obtained independent legal advice, which confirmed that in the absence of amendment of the PAWA 2013, removal of employee members from meetings is required to prevent decisions being held to be invalid.
8. This example confirms the point made in our June 2018 evidence that the contribution of employee members, including the elected members, is from time to time reduced (paragraph 3.13 of the explanatory paper). We would add that this effect is at odds with the Government’s stated support for elected employees at the time of the Bill’s consideration by the Assembly¹.

¹ “The debate sums up my approval of not only Oscar’s amendment, but the fact that there will be strength in having three employee members of the board. The contributions made by Julie Morgan and Jenny Rathbone express clearly how that can strengthen the representation of staff, which of course, is very important.” [ROP, 28 January 2013, para 21]

WAO reporting arrangements

9. As set out in paragraph 3.14 of the explanatory paper, the PAWA 2013 requires the AGW and the Chair of the WAO to prepare interim reports on the work of the AGW and the WAO. We noted that no other public bodies were subject to such a requirement, and that the Committee's limited consideration of the report and WAO website statistics indicated little interest in such reports. Given an estimated cost of £20,000 for preparing each report, we questioned the proportionality of the requirement. Since our June 2018 letter, we published a further interim report in October. This received 66 page visits in the fortnight following publication. We continue to consider the requirement disproportionate.

Issues with laying reports and accounts

10. Paragraphs 3.17 to 3.19 of our explanatory paper set out that there are overlapping annual reporting requirements—those arising from paragraph 33 of Schedule 1 to the PAWA 2013, in conjunction with the Treasury Financial Reporting Manual, requirements and those arising from paragraph 3 of Schedule 2 to the PAWA 2013. We work around this by laying the same document twice, once by the external auditor and once by the AGW and the Chair of the WAO. However, it is unsatisfactory that the legislation leads to such duplication, and it is not conducive to clarity of responsibility.

Other aspects of the PAWA 2013 that may benefit from revision

The appointment of the auditors of the WAO's accounts

11. Colleagues in the National Assembly for Wales Commission will be aware that the process for appointing the auditors of the WAO's accounts is rather onerous. Paragraph 34 of Schedule 1 to PAWA 2013 requires the National Assembly to appoint the auditor of the WAO, while allowing the WAO to recommend an auditor. In practice, this means the WAO undertakes a procurement exercise and puts forward the successful tenderer for appointment. However, significant contractual complications arise because the appointing authority (the Assembly) and the "client" (in the usual commercial audit sense) are different bodies. This necessitates a side agreement to cover, for example, the provision of indemnity should the WAO fail to pay the auditor's remuneration.
12. Some revision of paragraph 34 could help reduce the burden on all concerned. We suggest that a sensible approach would be to make provision for the engagement of the auditor of the WAO to be a contractual matter between the WAO and the auditor (including as to terms of appointment and monitoring of performance), but with appointment subject to the approval of the Assembly.

The appointment of non-executive members of the WAO

13. Paragraph 5 of Schedule 1 to PAWA 2013, requires the Chair of the WAO to be selected from among the non-executive members. This raises a question about the role that an incumbent Chair might play in the process for appointing and re-appointing non-executive members of the WAO. The views of the Chair of a board as to the skills needed, particularly in terms of the balance of complementary skills, are an important factor in ensuring the maintenance of a well-functioning board. So we are pleased that a pragmatic approach has been taken -- involving the Chair in the selection process while protecting the independence of the Committee and Assembly in taking decisions on appointment.

Problematic aspects of the AGW's functions

14. While not strictly an aspect of the PAWA 2013 that requires amendment, it may helpful to consider using the opportunity of amending legislation to tidy up and update other audit-related legislation. The AGW wrote to the Committee on 5 April 2017 setting out the need for such updating to address the inconsistency in provisions across various bodies. Before summarising these problems, we would like to thank the Committee and the wider Assembly for addressing the worst of these issues in its dealings with the audit provisions of the new Public Services Ombudsman (Wales) Act 2019 ("PSOWA 2019"). That Act contains the best central government audit provisions.

15. In brief, the main problems are:

- (a) **The lack of a value for money conclusion duty on the AGW in central government bodies** (with the recent exception of PSOWA 2019). This is in contrast to the requirement in respect of local government and health bodies (under sections 17(2)(d) and 61(3)(b) of the Public Audit (Wales) Act 2004 respectively). The absence of such a duty means that scrutiny of central government bodies is generally somewhat less extensive than that of the NHS and local government.
- (b) **The absence of explicit provision in statute for regularity opinions among many central government bodies**—this means that a fundamental element of Assembly control of central government expenditure is missing from statute in respect of such bodies. The Committee will understand that one of the key functions of the National Assembly is the approval, following scrutiny, of budget motions to authorise government's use of resources. To complete the cycle of control, it is necessary that the National Assembly receives reports on whether the resources it has voted have been used in accordance with its intentions.
- (c) **The inflexibility of certification deadlines**—as illustrated by the case of NRW in 2017, deadlines are sometimes not sufficiently flexible when significant problems arise. With the recent exception, again, of the

PSOWA 2019, for Welsh public bodies, there is no provision in legislation to appropriately vary deadlines as there is, for example, for UK resources accounts under the Government Resources and Accounts Act 2000.

- (d) **Overlapping laying requirements**—the problems mention above in relation to the annual reports of the WAO also apply to some other audited bodies.
- (e) **Welsh data matching powers are now falling behind** those in other parts of the UK. This presents risk of:
 - (i) It not being possible to run complete UK-wide data matching exercises in Wales;
 - (ii) the potential financial benefits of data matching to identify errors and inaccuracies, and assist debt recovery will not be available to Wales;
 - (iii) the potential to achieve additional savings through the inclusion of new mandatory participants not being realised.