

Written Response by the Welsh Government to the report of the Children, Young People and Education Committee entitled Pre-appointment hearing report – the preferred candidate for the post of Children’s Commissioner for Wales

Thank you for the Children, Young People and Education Committee’s report in relation to the pre-appointment hearing for the new Children’s Commissioner for Wales on 17 December.

We would like to thank members of the Children, Young People and Education Committee for the scrutiny of the preferred candidate. This is an extremely important part of the process and we are pleased you were able to endorse the preferred candidate, Ms Rocio Cifuentes.

We would also like to extend our thanks to Laura Ann Jones MS and Sian Gwenllian MS, who were part of the Welsh Government’s cross-party recruitment panel, which included shortlisting, interviewing and scrutinising the shortlisted candidates.

The First Minister wrote to Ms Cifuentes on 20 December 2021 inviting her to formally serve as Children’s Commissioner for Wales. Ms Cifuentes accepted the post on 22 December 2021, and will commence her duties on 20 April 2022.

We would also like to thank members of the committee for their specific recommendations which are addressed below.

Detailed Responses to the report's recommendations are set out below:

Recommendation 1

The Welsh Government should involve Senedd committees more meaningfully in the recruitment process associated with ministerial appointments. This will require the government to engage with the relevant Committee at the start of the recruitment process. Depending on the post and the views of the relevant Committee, this could include:

- Providing Committee members with the application forms, CVs, etc. of any shortlisted candidates.
- A representative of the recruitment panel briefing the Committee before the pre-appointment hearing to give an overview of the recruitment process, discuss the field of applicants and respond to any questions from Committee members.
- Involving the Committee more formally in the recruitment (e.g. by Committee representatives being observer-members of the recruitment panel).

Response: Accept in principle

The current approach to public appointments was agreed by Welsh Ministers and the Senedd Commission¹. Guidance about pre-appointment hearings (i.e. the preferred candidate going forward for a pre-appointment hearing) is in line with conventional practice elsewhere in the UK.

The wider public appointment process is overseen by the Public Bodies Unit. In April 2022, a joint review will be held by the Welsh Government and the Senedd Commission to see how it can best support Senedd committees in ensuring effective pre-appointment scrutiny of Ministerial appointments. This review will consider the findings of this report.

Learning from this recruitment, we will consider updating the guidance to include confidential briefings to the chair of the relevant committee at important points in the recruitment timetable. This will provide:

- Information a recruitment campaign is being considered and to outline the proposed recruitment timeline;
- Information when the advertisement closes, including the number of applicants who applied;
- The names of the long-listed and/or shortlisted candidates and their diversity breakdown; and
- A list of shortlisted candidates invited to interview and their relevant application documentation.

We will also consider including in the guidance an expectation the chair of the recruitment panel provides a briefing to the relevant committee prior to the pre-

¹ Pre-appointment Scrutiny Guidance attached as a separate document.

appointment hearing. This will enable the chair to clarify any issues on behalf of the committee ahead of the pre-appointment hearing.

Recommendation 2

The Welsh Government should transfer responsibility for the appointment to the position of Children’s Commissioner for Wales to the Senedd.

Response: Reject

We understand the views of the committee on this topic. However, on balance, we remain of the view that the current arrangements for all commissioners are working well and we do not see the need to change these.

We do not believe the independence of the Children’s Commissioner or the Office of the Children’s Commissioner, is undermined by the Welsh Government being involved in the recruitment of the Children’s Commissioner for Wales, or transferring responsibility for the Children’s Commissioner’s appointment to the Senedd would produce any significant difference in the recruitment process followed.



**Mark Drakeford, MS
First Minister**

and



**Jane Hutt, MS
Minister for Social Justice**

PRE-APPOINTMENT SCRUTINY BY NATIONAL ASSEMBLY FOR WALES COMMITTEES

Pre-appointment hearing by the National Assembly for Wales' Committees

Purpose

This document sets out the arrangements by which pre-appointment scrutiny of Welsh Government Ministerial public appointments will be undertaken by the National Assembly for Wales. These arrangements will apply to some Chair appointments and have been prepared by Welsh Ministers and the National Assembly for Wales.

Background

Welsh Ministers make a range of public appointments across all aspects of public life. These appointments are high profile and offer the opportunity to shape and inform many of the public services accessed by the people of Wales. Welsh Ministers must make regulated public appointments in accordance with the principles set out in the Governance Code on Public Appointments. The Commissioner for Public Appointments is responsible for providing independent assurance that appointments comply with the Code.

More about the Governance Code on Public Appointments, the role of the Commissioner and regulated appointments can be found on the Commissioner's website:

<https://publicappointmentscommissioner.independent.gov.uk/>

Welsh Ministers and the National Assembly for Wales have agreed to introduce pre-appointment scrutiny of some Chair appointments by National Assembly for Wales Committees in order to further improve the scrutiny and transparency of the public appointment making process. Pre-appointment scrutiny will take the form of a pre-appointment hearing of the preferred candidate conducted by the relevant National Assembly for Wales Committee.

Pre-appointment scrutiny criteria

Assembly Committees will have the option to conduct a pre-appointment hearing for significant Welsh Government Ministerial appointments to recruit a Chair to the board of a public body. The full list of posts is set out in Annex A.

The Welsh Government will notify the relevant Assembly Committee of all upcoming Chair Ministerial public appointments. A forward look will be provided at the outset of each financial year and/or by exception should a Chair vacancy arise unexpectedly.

By exception, the National Assembly for Wales can also request pre-appointment hearings for the recruitment of a Chair to a public body that meet the following criteria:

- The appointment is of significant public interest, and;
- The appointment will have a significant impact on the public.

The relevant Committee will notify the Welsh Government requesting to conduct a pre-appointment hearing for a chair appointment that is not classified as a significant appointment but meets the criteria above. The request from the relevant Committee will be considered by Welsh Ministers who will ultimately decide if a pre-appointment hearing should be held in the circumstances. If Welsh Ministers do not consider it appropriate to hold a pre-appointment hearing with the relevant Committee, they must outline the reasons.

The Committee will usually take evidence from the preferred candidate before the appointment is confirmed, but after the selection process has taken place.

The Welsh Government should engage the relevant Committee early on in the process to identify a suitable date for the eventual hearing to take place. Wherever possible, the end of the selection stage should not coincide with the beginning of any long Assembly recesses. If an incumbent is being reappointed the Committee is to be informed. However, re-appointments will not form part of the pre-appointment hearing process.

Pre-appointment hearings will normally be held in public and involve the Committee taking evidence from the candidate. The Committee will publish a report, usually within 48 hours, of the hearing setting out its view on the candidate's suitability.

Before the hearing takes place

All those involved in the selection process for a public appointment, designated as subject to a pre-appointment hearing should be made aware of the possibility of a pre-appointment hearing. This should be stated clearly in all publicity relating to the post so that all applicants are aware.

At least one week in advance of the scheduled date for the hearing, unless otherwise agreed, the Welsh Government should provide the Committee with the name and relevant details (CV, personal statement, declaration of interests etc) of the Welsh Government's preferred candidate for the appointment, together with information about the role, as well as a short outline of how the recruitment was conducted. This note should contain details of the interview panel and anonymised background information on the field of applications, for example the numbers applying, the numbers shortlisted and the number deemed appointable.

The Welsh Government should ensure that candidates are aware that the Committee may publish all information submitted to it, unless explicitly agreed otherwise. Confidential information relating to the appointments process – for example, personal information on other applicants should therefore not be shared with the Committee unless the Welsh Government recognises that these documents may be published.

The Welsh Government should ensure that candidates are properly briefed and supported before they attend a pre-appointment hearing, particularly if it is their first time in front of an Assembly Committee. Candidates should be encouraged to speak directly to the Clerk of the Committee to discuss the Committee's likely approach.

The candidate will need to be able to withstand parliamentary and public scrutiny should they take up post and the Committee may wish to test this. While the content of the questioning of the candidate during the hearing is a matter for the Committee, it is usual practice for the questions to be relevant to a candidate's professional competence, personal independence and how the individual would plan to undertake the role and the experience and expertise they would bring. Candidates would not be expected to understand the intricate workings of the body for which they would have responsibility, though such questioning may feature in evidence sessions after an individual has taken up post.

The Committee report and the Ministerial decision

Following the evidence session, the Committee will prepare a report to be laid before the National Assembly for Wales containing its views on the suitability of the candidate. The candidate and the Minister will usually receive the report under a 24 hour embargo to allow the candidate and the Minister time to consider the report and prepare a response to any specific points it contains. The report will usually be published within 48 hours of the hearing.¹

On receipt of the Committee's report, the Minister will consider the report before deciding whether to proceed with the appointment.

Concerns about an appointment of a preferred candidate should be raised in private correspondence or discussion with the Minister, prior to issuing a report. The Minister will want to consider whether or not it is advisable to approve the appointment. In these circumstances the Committee can agree that the Minister shall inform the candidate of the Committee's reservations before a formal report is published.

In a scenario where the Committee, the candidate and the Minister cannot reach any compromise (for example, the candidate choosing to withdraw), then the Committee can be expected to issue its report and the Minister will then proceed to make his or her decision.

In relation to the findings of the Committee, the Minister should weigh the views of the Committee carefully against the evidence from the appointments procedure to reach a final view to ensure that the decision is made fairly and taking all relevant considerations into account.

It is for the Minister to decide whether or not to accept a Committee's recommendations relating to an appointment. The Minister must consider any relevant observations made by the Committee before deciding whether to go ahead with the appointment. If a Committee recommendation in relation to an appointment is not accepted, the Minister should respond to the Committee explaining the reason(s) why.

If the Committee recommends against the appointment of a candidate, and where the report of the assessment panel has identified more than one appointable candidate and the Minister decides not to proceed with the appointment, the Minister may alternatively propose one of the candidates from that list for appointment. In this instance a further pre-appointment hearing would most likely be held to assess the Welsh Government's new proposed candidate. The Welsh Government should make an early approach to the Committee clerk to identify a suitable date for a second hearing. Another option open to the Minister would be to choose not to proceed with the appointment and to re-run the competition.

¹ The timescales refer to working days

Annex A

This list sets out which posts will be subject to pre-appointment hearing. It will normally be updated every year.

- Chair of National Infrastructure Commission
- Chair of Welsh Revenue Authority
- Chair of Transport for Wales
- Chair of Development Bank for Wales
- Chair of Natural Resources Wales
- Chair of Qualifications Wales
- Commissioner for Older People in Wales
- Children's Commissioner for Wales
- Commissioner for Future Generations
- Welsh Language Commissioner
- Chair of Arts Council of Wales
- Chair of Social Care Wales
- Chair of Higher Education Funding Council for Wales
- Chair of Sport Wales
- President of the Board of the National Library of Wales
- President of the Board of the National Museum of Wales
- Chair Abertawe Bro Morgannwg University Health Board
- Chair Aneurin Bevan University Health Board
- Chair Betsi Cadwaladr University Health Board
- Chair Cwm Taf University Health Board
- Chair Hywel Dda University Health Board
- Chair Cardiff and Vale University Health Board
- Chair Velindre NHS Trust
- Chair Welsh Ambulance Service NHS Trust