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Chair of the Audit Committee

The National Assembly for Wales

JBB/1482/02

Cardiff Bay

CF99 1NA

3 May 2002

## **AUDITOR GENERAL FOR WALES REPORT ON *THE ARTS COUNCIL OF WALES: CENTRE FOR VISUAL ARTS***

I am now in a position to respond to the written reservations that the Audit Committee has received from Sir Richard Lloyd Jones, Emyr Jenkins, Joanna Weston and Robert Edge regarding my report on *The Arts Council of Wales: the Centre for Visual Arts*.

### **Background**

On 22 November 2001, the Audit Committee took evidence on this report from the current Accounting Officer for the Arts Council of Wales, Peter Tyndall. Following that meeting, the Committee decided to invite as witnesses the four people above. All had previously worked, in various capacities, in the Arts Council of Wales and had been involved in earlier, key stages of the Centre for Visual Arts project. At that second meeting of the Audit Committee, on 13 December, these four witnesses agreed with the main conclusion of my report; that the Centre for Visual Arts project had failed to achieve its visitors target and that this had led to its closure. But they questioned the factual accuracy of some aspects of my report. They subsequently set out their specific concerns in correspondence to the Committee. It would not have been appropriate for me to respond to these reservations during the Committee meeting but I am pleased to do so in this letter.

I note too, that Peter Tyndall, the current Accounting Officer for the Arts Council of Wales, and who was not present at the Committee's meeting on 13 December, subsequently provided the Committee with a commentary and some supporting information to correct a number of the points made by the four witnesses in their oral evidence to the Committee. It is clear from this commentary that some of the evidence provided by the four witnesses is either inaccurate or is not supported by documentary evidence contained within the records of the Arts Council for Wales. I have referred to this information within my letter.

### **Arrangements for confirming the factual accuracy of reports**

Before I turn to the points raised by the four witnesses, the Committee might find it helpful if I set out the standard procedures followed in preparing my reports. The National Audit Office Wales prepare a draft report based on an extensive and rigorous audit of all relevant evidence. In the case of the Centre for Visual Arts project this audit included detailed examination of all the reports, grant applications, minutes and correspondence relating to the Centre and interviews with all key Arts Council staff. (Contrary to the assertion by Joanna Weston, this review of papers and interviews involved all key divisions, including Access and Artform.)

A vital part of the process before a report is finalised, however, is to agree its factual accuracy, as well as its tone and balance, with the organisation concerned. The purpose of investing substantial time and effort in ensuring that the final report is agreed in this way is to facilitate constructive Audit Committee examination of witnesses that enables the Committee to draw out the lessons to be learnt, and to prevent the Committee from becoming involved in disputes over facts. This process of agreeing factual accuracy culminates in my personally obtaining written confirmation from the current Accounting Officer that he is content with the facts as set out in my report, although the conclusions and recommendations are my own. In the case of this particular report, I obtained confirmation of factual accuracy not only from Mr Tyndall as the Accounting Officer of the Arts Council of Wales, but also from the Accounting Officer of the Department for Culture, Media and Sport (who is responsible overall for lottery funds). I also obtained confirmation of factual accuracy from the Permanent Secretary of the National Assembly for Wales in respect of his role as the Assembly's Accounting officer. Also, on an exceptional basis, I obtained confirmation from him in respect of the matters for which he had personal responsibility during the period when he acted as Accounting Officer of the Arts Council immediately prior to the current incumbent taking over in September 2001.

In addition, again in line with my normal practice, the clearance process for this particular report also involved clearing all relevant extracts of the report with all third parties named in my report. This included two trustees of the Cardiff Old Library Trust (including the Chairman), all four external assessors involved in the Centre for Visual Arts project (AEA consultants, McCann Matthews Millman, Siarllys Evans and David Elford), and the named sponsors of the project including Cardiff County Council. Thus, in total my report was referred to and agreed for factual accuracy with all thirteen of the third parties named in it. The witnesses have questioned my report's statements on some aspects of the roles of some of these third parties. However, I can confirm that all such references had been cleared directly with those parties themselves.

The system of Accounting Officer's responsibility in Wales (as in the rest of the United Kingdom) is set out in the memorandum issued by the Assembly to each Accounting Officer in Wales when taking up his or her post. It provides that the Accounting Officer is responsible to the Assembly for the action of predecessors as well as his or her own. The Accounting Officer has access to the records and accounts which his or her predecessor had the duty to prepare and maintain, and leave as the record of his or her stewardship. The Accounting Officer also has the responsibility for taking remedial action in response to the Audit Committee's recommendations. Retired Accounting Officers are not in this position. The current Accounting Officer of the Arts Council, Mr Tyndall, had been in post a short time when he cleared my report. But he had full access to and understanding of all relevant Arts Council records, and the briefing and advice of the staff responsible for discharging Arts Council responsibilities in respect of the Centre for Visual Arts project. He has confirmed that, having re-examined the papers relating to the Centre for Visual Arts project, he stands by his evidence to the Audit Committee and considers the conclusions drawn by my report to be sound and supported by the facts of the case.

As the witnesses who appeared before the Committee on 13 December made clear, they are now private individuals with no involvement with the current affairs of the Arts Council of Wales. Staff of the National Audit Office Wales did have the opportunity to interview Robert Edge before he left the Arts Council, although he was not involved in the Council's agreement of the factual accuracy of my report. However, the other three witnesses had left their posts, on retirement or on moving to other jobs, some time earlier. Should the Accounting Officer have felt it would have been beneficial to speak to a particular individual to gain clarification on a point that was unclear from the official papers and knowledge of current staff, my staff would have been happy to do so.

The Committee is now in receipt of a number of pieces of evidence which do not line up. I trust that the Committee will find the contents of this letter helpful in clarifying the position on the substantive points at issue.

### **The witnesses' reservations**

The reservations expressed by the witnesses were wide-ranging and of a diverse nature. For the most part, the issues they raised are points of detail which do not, in my view, present a challenge to the overall conclusions that I drew. However, they also raised some points which relate to heartland issues in my report and which underpin my conclusions as set out in the Executive Summary of my report. In order to address these issues in a structured manner, it might be helpful to break them down into their five core elements – even though I recognise there are many linkages and overlaps. I have therefore categorised the witnesses' substantive comments in terms of the following broad issues:

- status of the 1992 feasibility study;
- relevance of the comparative visitor attractions;
- swiftness of action by the Arts Council of Wales;
  
- nature of the final programme in comparison to the initial plans; and
- adequacy of the Arts Council of Wales monitoring arrangements throughout the life of the project.

Before turning to consider each of these issues, some of the points of detail raised by the four witnesses demand a response. In particular, the Committee might find it helpful if I respond to the points made by the witnesses on the accountability arrangements for the Arts Council, the nature and timing of roles held by Matthew Pritchard, and the description and roles of the external consultants. The accuracy of all these specific points, as they appeared in my report, was covered as part of the standard clearance process set out above, with the Assembly, the Department for Culture, Media and Sport, Matthew Pritchard personally and all four of the external assessors. All of the named parties were satisfied with the audit assessment and description of their roles as set out in my report. Descriptions of Arts Council of Wales' procedures were agreed as factually correct by current staff.

The witnesses also argued that the National Audit Office's annual financial audit of the Arts Council's accounts did not lead to any warnings about the way that the Centre for Visual Arts project was being managed. However, this is fundamentally to misunderstand the aim of annual financial audit which is quite different from that of a value for money investigation. All the work undertaken as part of a financial audit is designed to support a final opinion on whether the financial statements are materially accurate and that funds have been applied for the purposes intended. Whether expenditure is likely to provide value for money is not an objective of an annual financial audit. Provided the expenditure is regular and is properly shown and accounted for in the financial statements, those statements will correctly attract an unqualified audit opinion.

### **Status of the 1992 feasibility study**

<i>AGW report</i>	<i>Witnesses' opinion</i>
The first application for lottery grant relied on data from the 1992 feasibility study	That it is misleading to use the 1992 feasibility study as the base point – for the Arts Council, this was first lottery grant application in 1995

Mr Jenkins argued that the Arts Council’s starting point for Centre for Visual Arts project was the first lottery grant application in 1995, and that it is misleading to refer to the 1992 feasibility study as the base point. From our examination of the relevant documents surrounding the first lottery grant application [in 1995], there is no doubt whatsoever that the 1992 feasibility study was an integral element of the first application and was intended to be used as part of the Arts Council’s decision-making process. This is also confirmed to the Committee by Mr Tyndall in his supplementary written evidence. The feasibility study was attached as an annex to the lottery application and provided key data that would otherwise have been lacking in the application itself. For example, the application does not itself provide full details of projected visitor numbers or audience profile; instead it directs the Arts Council to the feasibility study. [Mr Tyndall has provided to the Committee a copy of this section of the first lottery application.] Indeed, at the December Audit Committee, when Ms Weston was asked how the visitor numbers were arrived at, she responded that they were based on demographic research. The only demographic data available on the Centre for Visual Arts at the time of the first application was the 1992 feasibility study.

In addition, shortly before it closed, the Centre for Visual Arts was the subject of an independent review by David Elford of Do It Online Limited, an arts consultancy firm. His report came to the same conclusion as the National Audit Office Wales in that the business plan for the Centre – being the 1992 feasibility study, and a consequent plan in 1997 – was fundamentally flawed and that this was the key reason for the project’s failure.

*Relevance of the comparative visitor attractions*

<i>AGW report</i>	<i>Witnesses’ opinion</i>
Some of the museums and galleries used as comparators differed markedly from the Centre for Visual Arts in key respects	The comparators were close enough in nature to the Centre for Visual Arts to provide a reasonable visitor forecast number

We not only found these figures to be poor comparators but found no evidence that they had been challenged or discussed in any detail. There was no evidence whatsoever on the files of the Arts Council of a questioning of what would happen if these figures were not achieved and the forecast income fell. Although the witnesses’ written submissions to the Committee provide comparator figures for 1993-1994, there is no evidence that these figures were considered by the Arts Council at the time when assessing the lottery application for the Centre for Visual Arts. The only comparator figures provided by the grant applicant to the Arts Council in support of the first application included those in the feasibility study (see above).

After examination of all available documentation, the current Accounting Officer of the Arts Council agreed with my conclusions on comparators and visitor numbers. In giving evidence, Mr Tyndall said that were those figures put forward today, they would not survive the analysis of the business case. He believed that they were not reasonable figures and said that it was difficult to see that there were robust systems in place at the time actually to permit an analysis. In his supplementary evidence to the Committee concerning the evidence of the four witnesses, he confirms that "research [on visitor numbers for 1993-94] was not undertaken at the time to inform any decision made".

It is, of course, a matter of judgement as to which cultural organisations might have proved to be meaningful comparators to forecast the visitor numbers for the Centre for Visual Arts. And, as my report recognises, it is intrinsically difficult to forecast visitor numbers for a new public attraction. However, and this is I think the key point, I found no evidence that the Arts Council recognised that there was a risk that the Centre for Visual Arts might not attract the forecast visitor numbers or challenged the applicant on how the Centre might cover the subsequent funding deficit.

## *Swiftness of action by the Arts Council of Wales*

<i>AGW report</i>	<i>Witnesses' opinion</i>
The Arts Council failed to act in response to warnings about weaknesses in the applications.	The Arts Council did act. The second application for lottery funding stated that a new business plan had been produced with revised admissions targets.

Independent assessments commissioned by the Arts Council of the first application for lottery funding in 1995 and subsequently in the life of the project pointed to significant weaknesses in the proposals. The four witnesses state that all the independent assessments were copied to the applicant for action. However, we could find no evidence on file of any action being taken by the Arts Council to assess whether these weaknesses had been addressed by the applicant, until the project was very well advanced. In particular, as set out above, there is no documentary evidence to show that the Arts Council of Wales considered the impact of a fall in visitor numbers, nor even discussed the issue with the Cardiff Old Library Trust in the two years between the first and second lottery applications. And the external assessment carried out by McCann Matthews Millman in January 1998 continued to raise serious concerns: that it would take several years for the level of ambition shown to be achieved; that the Old Library's market share may have been over-estimated; and that the exhibitions would have to be of outstanding quality for the admission charge not to be a deterrent. History has proved that these concerns were very real but they were not acted upon by the Arts Council at the time.

Ms Weston highlighted that the Arts Council of Wales had obtained confirmation in June 1998 that a new business plan was to be produced for the Centre for Visual Arts. However, by this point all three capital lottery awards had been granted. My view remains that the development of a new business plan after 87 per cent (£3.24 million) of total Arts Council funding has been awarded does not constitute swift action in response to clear and repeated warnings about weaknesses in the grant application.

In his supplementary evidence to the Committee, Mr Tyndall notes that, in respect of concerns raised by the assessor about the marketing of the Centre for Visual Arts, "there is a singular lack of documentary evidence to show that the assessor's report was acted upon in any way. The document was circulated amongst the Senior Management Team and Lottery Division staff, yet no further action was taken despite the serious misgivings held by the assessor".

In Ms Weston's oral evidence to the committee (and subsequently by the other witnesses in their written evidence), the witnesses stated that the Arts Council had acted swiftly to learn the lessons from its experience with the Centre for Visual Arts and changed its procedures for handling other lottery applications, in particular by introducing in 1997 the three stage application process and, within a year of operation, a formal risk assessment at the appraisal stage. My report does not specify the exact timing of these changes to the Arts Council's procedures; my point was simply that there were procedural weaknesses which were later remedied. However, as set out in the evidence provided by Mr Tyndall to the Committee, although there were some procedural changes in 1997, these changes were not applied consistently to all applications until 1999. These comments by the current Accounting Officer are consistent with the information obtained by the National Audit Office Wales during their review of the papers of the Arts Council for Wales which they undertook in preparing my report.

## *The nature of the final programme in comparison to earlier plans*

<i>AGW report finding</i>	<i>Witnesses' opinion</i>
The programme displayed by the Centre for Visual Arts differed markedly from that envisaged in the 1992 feasibility study, which included blockbuster exhibitions	The original concept for the Centre for Visual Arts was for exhibitions by contemporary artists, and this is what happened

The key point of the comparison between the concept for the Centre for Visual Arts as originally envisaged and the exhibitions that were in practice mounted is not a question of the period of the art displayed, but its stature, international importance and likely appeal to paying visitors. The original concept for the Centre for Visual Arts, as set out in the 1992 feasibility study, and which underpinned the forecast visitor numbers contained in the first application for lottery grant, was that the Centre for Visual Arts would include blockbuster exhibitions by world-renowned artists of the sort likely to attract large audiences. In the period that the Centre for Visual Arts was open it did not display such works, which undoubtedly contributed to the shortfall in visitor numbers.

The 1992 feasibility study was prepared by Adrian Ellis Associates. During our examination we were in contact with Mr Ellis. In his words, there was no relationship whatsoever between the subject of his 1992 feasibility study and the project as subsequently realised, in terms either of scale of programming or its content. Indeed, he went so far to comment that in his view the visitor number projections were kept for their convenience in legitimising a funding case, but the assumptions underpinning them were progressively abandoned.

### *The adequacy of the Arts Council of Wales' monitoring*

<i>AGW report</i>	<i>Witnesses' opinion</i>
Monitoring by the Arts Council for Wales was ineffective	Regular monitoring was in place throughout the life of the project

We found no evidence of formal monitoring procedures in place by which the Arts Council could have ensured the security of their investment in the Centre for Visual Arts. No formal reports were submitted by the Cardiff Old Library Trust to the Arts Council to provide an update on the progress of the project. The Trust itself wrote to the Arts Council after the second capital lottery award to remind them that the monitoring schedules had never been provided and recognised that this was not helpful. The Trust also said that they were keen to have a clear structure and process in place for monitoring, not only for the accountable expenditure of funds but also the construction process and management methods. There is no evidence of any response by the Arts Council to these points.

Ms Weston points to 35 letters as evidence of monitoring. However, these include seven letters regarding the delay in funding from Cardiff County Council, letters providing confirmation of meeting arrangements, a grant offer letter and letters regarding problems that had already occurred. In my view these letters do not constitute evidence of a formal monitoring programme which had been designed to cover the specific risks associated with the project.

Mr Tyndall's supplementary written evidence to the Committee confirms my own finding that Arts Council officers "for both the capital and revenue aspects of the project faced immense difficulties in obtaining financial information".

Without the regular flow of reliable and up to date financial information, effective monitoring is, of course, impossible.

A final point is that some of the individuals referred to in the witnesses' correspondence as those responsible for monitoring the Centre for Visual Arts project, such as Craig Blundell and Dr Katherine Davies, were involved at all stages of the preparation of my report, including the final clearance meetings. The final report reflects their views on the Arts Council of Wales' monitoring procedures and was agreed with them.

## **Conclusion**

Many of the reservations expressed by the witnesses, in giving evidence to the Committee and subsequently in correspondence, are more to do with the interpretation of events rather than the black and white of their factual accuracy. This is perhaps inevitable in view of the complete failure of the Centre for Visual Arts project to proceed as planned and the passage of time that has since elapsed. Moreover, relatively few of the reservations raised by the four witnesses are relevant to the core issues on which my report reaches audit conclusions.

Notwithstanding the points made by the witnesses, I am forced by the evidence available to me, as held by the Arts Council of Wales and from my discussions with Arts Council staff, to stand by both the facts as presented in my report and their interpretation. It remains the fact that the project ultimately failed; independent reviewers who assessed the quality of the project during its lifespan alerted the Arts Council of Wales to the very same weaknesses in the proposals that I highlighted in my report. I remain fully satisfied that these events have not identified any weaknesses in my normal, very rigorous procedures for agreeing the factual accuracy and the balance of my audit reports. And the current Accounting Officer of the Arts Council of Wales, Peter Tyndall, stands by his agreement with my original report and this letter. Jon Shortridge, the Assembly's Permanent Secretary, also stands by his agreement in respect of those aspects of the original report relevant to his period as the Arts Council's Accounting Officer.

**JOHN BOURN**