

EDUCATION AND LIFELONG LEARNING COMMITTEE**ASSEMBLY MINISTER'S REPORT TO THE EDUCATION AND LIFELONG LEARNING COMMITTEE ON 21 NOVEMBER 2002.**

This report updates the Committee on the specific issues upon which it wished to be kept informed since my previous report of 24 October 2002. **Annex A** sets out my major engagements since the last report.

1. CONTRIBUTION ON NARROWING THE GAP AND 'THE SCHOOL OF THE FUTURE'

I launched the Narrowing the Gap in the Performance of Schools Report, which is the result of work carried out by the joint task group drawn from the Assembly, the Welsh Local Government Association and key education organisations, at Sandfields School, Neath Port Talbot on 16 October. The report has now been issued to all schools, Local Education Authorities and education partners and a conference has been arranged to disseminate the findings. This conference is taking place today, at the Baverstocks Hotel in Merthyr Vale on 21 November and will be opened by Councillor Jeff Jones of the Welsh Local Government Association. I shall also be speaking.

The report focuses on secondary schools and shows that successful outcomes can be achieved even where school circumstances are challenging. Four major themes emerged in the findings of the report. They were the importance of effective teaching and learning strategies, effective use of assessment data, the importance of key personnel in lead roles on school improvement and the role of the community in driving up school standards.

As I said when launching the report "One of the aspirations shared by the National Assembly and local authorities in Wales is to offer our children true equality of opportunity in their education. We do not achieve that at present. The challenge now for the Assembly, local authorities and schools is to share the good practice which has been identified so that all our children have excellent opportunities and no child is disadvantaged because of where they grow up."

Work is beginning with the Welsh Local Government Association and other key education organisations on the second phase of the project. This will focus on the primary sector. The intention is to complete this second phase by October 2003.

I hope the Committee will find the Narrowing the Gap report a valuable contribution to its study of the School of the Future.

2. ICT UPDATE/BROADBAND ROLLOUT

Welsh Lifelong Learning Network

The installation of the national network was completed on target by Logical UK in August. Welsh Networking Ltd, the Assembly's managing agents, are working hard to connect each of the 22 local authorities to the network and to its Internet Service Provider (ISP). The ISP will be provided by UKERNA using the internet service known as "JANET". We expect all of the authorities to be connected to the WLLN by the end of this financial year.

In tandem with the technical installation process the new Broadband Unit is working with its lawyers to develop a framework of contracts and agreements to govern the running of the network.

Funding for Local Networks

The Assembly's funding of £10m over 3 years is proving a powerful catalyst to the rollout of local authority broadband networks. **The proportion of learning sites which will reach our broadband benchmark will rise dramatically from 7 to 47% by the end of this year.** The benchmark is 8 Mb for secondary schools and libraries, and 2 Mb for primary schools.

Following approval by ministers last month the Broadband Unit has issued approvals to the LEAs for their local network plans. The Broadband Unit has shared its initial analysis of the plans with the unitary authorities to encourage the adoption of best practise. The outputs given in the plans may also be subject to change as the authorities complete their tendering exercises. The Broadband Unit plans to publish detailed statistics, by authority, on broadband connectivity early in the New Year which we will make available to the committee.

Bringing all sites up to our broadband benchmark will remain a challenge, particularly for rural authorities, to avoid the creation of a digital divide. Authorities willing to make substantial local investments have shown that an authority can move rapidly from a low base to 100% of sites at 2Mb or 8Mb, for example Rhondda Cynon Taff and Neath Port Talbot.

The Ministers for Economic Development (including E-government), Education and Lifelong Learning, and Finance, Local Government and Communities have asked officials to review the allocation formula for funding local networks with the WLGA and SOCITIM to ensure that it fully reflects the increased costs associated with rurality. Broadband unit officials will also work closely with the ICT Task Force during this review.

3. RESPONSE TO CALLS FOR CONDUCTIVE EDUCATION

For all children with severe and complex difficulties each local education authority is under a duty to carry out a statutory assessment of the child's needs and then draw up a statement of special educational need. This statement sets out the needs of the child and how those needs are to be met. It also sets out the school which will meet those needs. If parents do not agree with any aspect of the statement including the school they can appeal to the SEN and Disability Tribunal. The SEN and Disability Tribunal will consider

the evidence presented by the parents and/or their representatives and the LEA. It will then come to a decision which is binding on the parents and the LEA. If the parent wishes the option for conductive education the LEA must provide it as long as they are certain that it is suitable for the child, is not detrimental to other children and is an efficient use of resources. If the LEA considers that conductive education is appropriate they can set this out in the statement. They will then have to ensure that this approach is made available to the child. Similarly if the SEN and Disability Tribunal specifies a child requires a conductive education they can state that in their ruling. The LEA must then comply.

4. BASIC SKILLS EMPLOYER PLEDGE

The Basic Skills Employer Pledge is part of the National Basic Skills Strategy for Wales, and is one of a variety of measures aimed at reducing the substantial number of adults in Wales with poor literacy and numeracy skills. The Pledge scheme, which I launched on 6 November, aims to raise awareness among employers of the consequences of poor basic skills and to encourage them to invest in training for their staff.

The Permanent Secretary has signed the Basic Skills Employer Pledge on behalf of the National Assembly for Wales. Signing the pledge sends out a signal that the Assembly, as an employer, is committed to helping its employees improve their basic skills.

5. ELWa SENIOR STRUCTURE REVIEW

As indicated in my letter to Members in July, I put in hand a review of the joint arrangements for senior executive support to the two ELWa Councils. That review has been undertaken within the Assembly by Dr Hugh Rawlings. Dr Rawlings has submitted his report that proposes separate posts of chief executive and finance officer for the two Councils to service our expanding learning agenda. I am considering the recommendations with the Chairmen of the Councils. A copy of the report is attached at Annex B. I shall report further to the Committee when I have fully considered the practical implications.

6. WELSH ADMINISTRATION OMBUDSMAN (JURISDICTION) ORDER 2002

I have agreed to the inclusion of the National Council for Education and Training for Wales and the Higher Education Funding Council for Wales in the list of bodies subject to investigation by the Welsh Administration Ombudsman (WAO). Inclusion in the list will enable individuals to take unresolved complaints to the WAO for review. The WAO may already investigate complaints against a number of public bodies, including the Assembly, WDA, and the Welsh Language Board. He is also the Health Service Ombudsman. Given the close working relationship with a number of bodies already subject to investigation by the WAO, particularly the WDA, it would be preferable to have the same arrangements in place for the National Council and the HEFCW. The National Council and the HEFCW are aware of the proposal. Given the nature of the proposal, wider consultation has not been undertaken.

A copy of the draft Order (Welsh Administration Ombudsman (Jurisdiction) Order 2002) is at Annex C with apologies, this was inadvertently omitted from the forward programme circulated in October. In view of the non-controversial nature of the draft Order, Members

are asked to note the proposal before the Assembly's Business Committee formally considers it. The target date for coming into force is 31 December 2002.

7. ELWa - NATIONAL COUNCIL: CONTROL ENVIRONMENT

Further to my Statement to the Committee in May and my report in June, the Auditor General for Wales will be reporting on procurement procedures operated by the National Council as part of his report on the National Council's accounts for 2001-02. The Assembly's Audit Committee is due to consider the Auditor General's report probably in January. I will arrange for the Auditor General to make his report available to Members when it has been published.

Minister's Engagements from 24th October - 21st November 2002

24th October

MTG - Evidence giving to Richards Commission on Assembly Powers

28th October

SPCH - Launch of the Forest Education Service

SPCH – Launch Water in Schools initiative and meet students from Ceredigion schools taking part in initiative

MTG - Dr Grant/Professor Tomlinson/Sir Graham Davies re: UWCM/CU Merger with Jane Hutt AM

MTG - ProDESKTOP

29th October

SPCH - Launch 'Learning Pathways 14-19 Learning in Wales' Event

PRESENT -Certificates at Youth Work in Wales Excellence Awards 2002

30th October

SPCH - Officially Open Caerphilly CBC Open Day

SPCH - Open 'Drop-in on Teaching' Teacher Training Recruitment Forum

SPCH - Launch Canllaw 'Entitlement' Project

MTG - WJEC

31st October

MTG - Charles Clarke MP

MTG - Give Oral Evidence to STRB

PHONE INTERVIEW - Sarah Moore re: Learning Pathways

VISIT - Gorseinon College

1st November

SPCH - Open Partnership Learning Centre

4th November

VISIT - University of Wales College of Medicine

VISIT – UWIC

SPCH - Open Engineering Team Challenge 2002

MTG - NAHT/SHA

SPCH - Open Art/Language Exhibition

SPCH - Siroptimist International Meeting

5th November

SPCH - Open South West Wales ELWa Office

MTG - Derek Wanless with Andrew Davies AM

PHOTOCALL - Disability Rights Commission re: Launch of SEN Pack

SPCH - NUS Wales Lobby

6th November

VISIT - Trinity College

SPCH - Careers Education and Guidance Conference for West Wales

VISIT - Coleg Sir Gar
SPCH - Basic Skills Employers Pledge Event
PRESENT - Award at the Wales Environment Awards

7th November

SPCH - Launch Sustainable Development Booklet
MTG - September Quarterly Bilateral with Enid Rowlands
MTG - Student Advisers re: ALGs
MTG - WSSA

8th November

SPCH - Officially Open new Youth Gateway Centre
SPCH - HESDA Annual Conference ' Practising Professionalism in Higher Education'
SPCH - 6th Formers at Croseyceiliog School

9th November

SPCH - Present Awards at Wales Pre-School Playgroups Association AGM

11th November

VISIT - Ystrad Mynach College
VISIT - Royal Welsh College of Music & Drama
RECORD – Video Message for Sector Skills Convention
MTG - RNIB

12th November

SPCH - Launch of Funky Dragon website and the Participation guidelines with Jane Hutt AM
MTG - Cymdeithas yr Iaith Gymraeg

13th November

VISIT - Rhondda Cynon Taff LEA
VISIT - University of Glamorgan
MTG – ATL
SPCH - Officially open Cantonian High School Learning Centre

14th November

VISIT - Heronsbridge School
SPCH - Launch Education of young mum's and lone parent's project
SPCH - Award prizes Engineering Employers' Federation Apprentice of the Year Competition for Wales
MTG - FE Students re: ALGs
PHOTOCALL - WMC re: Launch of ArtsExplorer Packs
SPCH - Launch ArtsExplorer Education Resource Packs
MTG - Undeb Cenedlaethol Athrawon Cymru (UCAC)

15th November

SPCH - SCEW Annual Conference

16th November

SPCH - Governors' Wales Autumn Conference

18th November

VISIT - Barry Comprehensive School

MTG – AUT

MTG - Voluntary Sector Partners

VISIT - University of Wales, College Newport

MTG - WLGA Executive

19th November

SPCH - South Wales Crucial Crew Conference

20th November

ATTEND - Launch of Gwent Police Liaison Core Programme

SPCH - Duke of Edinburgh Biennial Annual General Council Conference

MTG - New Zealand High Commissioner

MTG - NATFHE

21st November

SPCH - Education Support & Inspection Service Developing e-Learning for the Future Conference

SPCH - Narrowing the Gap Conference

WELSH ASSEMBLY GOVERNMENT

ELWa: REVIEW OF SENIOR STRUCTURE

REPORT TO THE MINISTER FOR EDUCATION AND LIFELONG LEARNING

September 2002

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Minister

1. Following receipt of letters in May 2002 from the Chairs of the National Council for Education and Training for Wales (“the National Council”) and the Higher Education Funding Council for Wales (“HEFCW”), and subsequent discussion with them, you decided that it would be appropriate to institute a review of the senior staffing structure at Education and Learning Wales (“ELWa”). That decision was formally conveyed to the Chairs in letters you sent on 17 July 2002, with which you included Terms of Reference for the review; these are set out in Appendix 1 to this Report. The context for the review is the heavy and developing agenda for both Councils which derive from the Welsh Assembly Government’s policies for education and lifelong learning set out in “The Learning Country”. I was asked to undertake the review and submit a Report by the end of September.
2. Following an examination of background papers held by the Assembly’s Lifelong Learning Division, I undertook a series of interviews during July and August with the chairs of both Councils and with senior staff. A list of those interviewed is at Appendix 2. I am grateful to the interviewees for the time and trouble they took to assist me.
3. The structure of my Report is straightforward. In the next section I summarise the background to the “constitutional” position of ELWa and the two Councils under the relevant legislation, and set out my understanding of the limits to the Councils’ employment powers. Next I describe the existing senior staffing arrangements in ELWa, and how they are working. Then I consider the case in general terms for making changes to the existing structure, in order to build on what has already been achieved. Finally, I set out my conclusions and recommendations.

ELWa, the National Council and HEFCW

4. ELWa is the collective brand name for the National Council and HEFCW, both of which are Assembly Sponsored Public Bodies (ASPBs). The two Councils are formally independent of each other and derive their powers and functions from separate Acts of Parliament. The National Council was established under the Learning and Skills Act 2000, and became operational on 1 April 2001. It took over functions from six predecessor bodies: the Further Education Funding Council for Wales (FEFCW), four Training and Enterprise Councils (TECs), and the Council of Welsh TECs (which had some staff of its own). It also took over from local authorities the responsibility for adult and continuing education, and this year it has become responsible for the funding of school sixth forms. The National Council’s mission is to consolidate and improve post-16 education and training in Wales. Its budget in 2002-03 is £489m., and it therefore has by some considerable way the greatest financial resources available to it of any public sector agency in Wales. Its Chief Executive is the appointed Accounting Officer for the National Council.
5. The National Council’s responsibility for post-16 education is however subject to one major exception. It has no powers or functions in respect of higher education in Wales; HEFCW is responsible for this. HEFCW was established under the Further and Higher Education Act 1992, and as its name implies, is primarily concerned with the funding of

Welsh higher education. Insofar that it has any strategic or planning role, this has derived from its “power of the purse” rather than from any more formal statutory remit. It has a budget of £322m in 2002-03 (and again the Chief Executive is the Accounting Officer for the Council). HEFCW’s strategic interventions in the structure of Welsh higher education have in the first ten years of its life been limited. That, however, is already changing, in consequence of the Welsh Assembly Government’s policy document “Reaching Higher” (March 2002). This envisages a significant role for HEFCW in promoting the reconfiguration of the sector and collaboration between institutions which the Assembly Government considers necessary. Paragraphs 67 and 69 of Reaching Higher recognise both that HEFCW will need to adopt a more proactive strategic planning role for the HE sector and that its staff structure will have to be strengthened if it is to be able to implement this new policy agenda.

6. As has been said, ELWa is a brand name for the two Councils; strictly speaking there is no separate entity of that name, and it has no legal status. Each Council’s activities are conducted under the title “National Council-ELWa” or “HEFCW-ELWa” as appropriate, although there is a strong tendency outside the Councils to associate the ELWa brand only with the National Council element. The existence of the brand is however illustrative of the key policy requirement for close working between the Councils. The background to this requires some further explanation.
7. Prior to the establishment of the National Council, the further education sector in Wales was funded by FEFCW under powers conferred by the Further and Higher Education Act 1992. It was however intended that there should be effective co-ordination between the activities of HEFCW and FEFCW, and the two agencies were together badged as the “Welsh Funding Councils”, and were supported by a joint secretariat headed by a Chief Executive. Provision was made in section 82 of the 1992 Act for joint exercise of functions by the Councils where it appeared to them that such arrangements would be more efficient or would enable them to discharge any of their functions more effectively. A practice of “joint employment” subsequently developed, whereby individuals were described as being “employed by the Further Education and Higher Education Councils for Wales, whose umbrella title is the Welsh Funding Councils....”.
8. This was the state of play when the Education and Training Action Group submitted its Report. The Group was convened and chaired by Welsh Office Ministers. Its Report was published in March 1999, shortly before the Assembly came into existence. The Report recommended “a coherent, integrated and progressive all-Wales post-16 education and training system”, with responsibility for funding of institutions and activities being shared between the proposed National Council and HEFCW. The two Councils were to work closely together in this enterprise, and the Report further recommended that “the existing joint secretariat embracing Higher Education and Further Education should be maintained and built upon. Indeed, we recommend that it be used as a means of sustaining joined-up connections and a productive overarching umbrella for all post-16 education and training, giving effect to Assembly policies and priorities” (ETAG Report, para 7). Given the overall policy thrust of the Report in favour of a holistic approach to post-16 education, this was an entirely logical conclusion for the Group to have reached, and in subsequent discussion of the Report in committees and plenary sessions during the early days of the Assembly, the case for maintaining

joint secretariat arrangements in support of the National Council and HEFCW commanded general support.

9. In the next section I review the way in which this recommendation has been implemented, but it is necessary first to say something about the legal position on the employment of staff by both the National Council and HEFCW. Both are bodies corporate, can enter into contracts in their own name, and can employ staff to enable them to perform their respective statutory functions. However, there appears to be no scope for individuals to be “jointly employed” by the National Council and HEFCW; each is to employ its own staff (and employment with an overarching body such as ELWa is impermissible, as it has no legal personality). This conclusion remains true even though the two bodies are empowered to exercise their functions jointly with each other. “Joint employment” would require specific statutory authorisation, and that does not exist.
10. The statutes do allow the Councils to co-ordinate the exercise of their respective employment functions. For example, it would be permissible for them to undertake joint recruitment exercises, or work together to establish common terms and conditions. The Councils can also in particular circumstances together offer complementary employment contracts to an individual so that his or her combined time commitments add up to a full-time post, but the outcome of such an arrangement will be that the individual has two separate (part-time) employment contracts, one with each Council, rather than a single contract with both.
11. Finally, in normal circumstances there is no power for one Council to second its staff to the other (even if the individual’s contract of employment permitted that) to enable that other Council to perform its functions. Staff deployment (including secondment) is for the purpose of enabling the employing Council’s functions to be performed, not those of some other body (such as the other Council). That would particularly be relevant if a Council purported to employ an individual not on account of its own needs but primarily with a view to seconding that person to the other Council to assist it; this would not be an appropriate use of the employment power.

ELWa’s Senior Staff Structure

12. My Terms of Reference make specific mention of the Chief Executive’s post and those at second tier levels in the two Councils. I am therefore concerned with 11 posts in total (although I am aware that there are other staff working in various Directorates within the ELWa structure who may be affected by whatever recommendations I make in this Report). The posts are set out in the following Table, which also sets out for purposes of apportioning costs between the Councils the notional amount of time each officer has been assumed to give in 2001-02 to the work of each Council. The third column notes the Council with which the individual post-holder has his or her contract of employment.

Post	% time NC/HEFCW	Employing Council
Chief Executive	80/20	“WFC”
Director of Higher Education	0/100	HEFCW
Director of Strategy and Learning Development	95/5	NC

Director of Finance and Risk	80/20	“WFC”
Director of Participation and Communication	80/20	NC
Director of HR and Organisational Design	95/5	NC
Director of Performance and Knowledge Management	100/0	NC
Director North Wales Region	100/0	NC
Director South West Wales Region	100/0	NC
Director South East Region	100/0	NC
Director Mid Wales Region	100/0	NC

13. There are some points to note about the information in this Table. First, the Chief Executive and the Director of Finance and Risk are said to be employed by the “Welsh Funding Councils”. This badge is inappropriate following the creation of the National Council, and for present purposes these two officers would be likely, if the issue ever came to be considered in court, to be regarded as employed under two separate contracts, one with each Council. Exactly what their responsibilities to each Council are in terms of time commitment is however unclear; it is noteworthy that the attribution for accounting purposes of 80% of the Chief Executive’s time to working for the National Council probably significantly understates his true time commitment to that Council during 2001-02, whereas it is a higher figure than the 70/30 split of time which was envisaged when he was originally appointed. It is also not clear whether these contracts would be found to be inter-dependent; in other words, if one Council lawfully terminated one of these officer’s contracts, would the other Council be either entitled or compelled to regard its contract with that officer also to be at an end?

14. Of the remaining nine officers, one has a contract of employment with HEFCW and eight are employed by the National Council. Of those eight, three have the bulk of their time attributed for cost purposes to the National Council but are also recognised as devoting proportions of their time to HEFCW (and the two officers in this category to whom I spoke were both clear that they needed to give time for HEFCW-related work, and expected their annual performance assessments to include reference to it). The remaining five are said to be fulltime employees of the National Council, with no commitments to HEFCW. In practice, however, matters are not so simple, because the Regional Directors each have national lead responsibilities on certain matters and

expect to have dealings with HE institutions in relation to those. Their Regional Committees also have representation from HE institutions in their areas.

15. If anything is clear in all this, it is that the contractual position of the individual officers in these posts is not in full alignment with what each of them is actually doing; and there is no mechanism of which I am aware that guarantees that each Council can be sure of securing the amount of officers' time for which it is paying. The overall cost to both Councils of the senior staff structure in 2001-02, taking account of employers' "on costs", was just under £1.03m. Of this, around £860,000 was attributed to the National Council, and £170,000 to HEFCW. From what I have seen, I could not say for certain that either Council was "short-changed"; for example, HEFCW probably has not received the full amount of the Chief Executive's time for which it was charged, but conversely the HE sector may have received at least some benefits from the work of the Regional Directors for which it makes no contribution. Nevertheless, there is an opacity about these arrangements which must be a matter of concern.

How is it Working?

16. My Terms of Reference require me to consider the nature and weight of the existing and prospective workload for the Chief Executive and the character of the existing and prospective workloads of second tier level officers in the two Councils. Looking first at existing workloads, it is clear to me that the Chief Executive cannot, given the present two Council structure, be expected to continue to do all that is being asked of him. The load is just too much for one person to carry. The immediate response to that assertion may be that it was possible for a single person to serve both HEFCW and FEFCW highly effectively before the National Council was created, and so why is it not possible for such an arrangement to continue now? I think that there are several reasons for this:

- First, the National Council is a very different animal both from what HEFCW is now and what FEFCW was then. Before 2001, the Welsh Funding Councils encompassed two organisations with a common raison d'être, the formula distribution of resources to institutions. That implied, it seems to me, a relatively "passive" role, with only limited obligations or powers to seek to mould or shape the sectors for which they were each responsible. Until the publication of Reaching Higher, that has remained HEFCW's mission. The National Council, on the other hand, has been established to implement fundamental changes to the world of (non-HE) post-16 education in Wales; it must be pro-active, innovative and prepared (responsibly) to take risks. The two Councils are already quite different in terms of organisational culture, based on different responsibilities for funding on the one hand and for planning and promoting radical change on the other. I do not believe that it has been, or could be, possible for a single Chief Executive effectively to serve both simultaneously.
- Secondly, and following from the previous point, it is clear that the National Council has adopted a rather different approach to member involvement in the work of the organisation. Many of those to whom I spoke emphasised that there was a very strong officer lead under the Welsh Funding Councils regime, and that the two Councils both adopted a "hands off" style in relation to the Chief Executive. That tradition may have continued, at least until recently, in HEFCW, but it has emphatically not done so in the

National Council, where there has from the outset been a high level of chair and member engagement. This has considerable implications for the Chief Executive's position, and makes considerably more complex his task of serving both Councils.

- Thirdly, the advent of the National Assembly has transformed the landscape in which the Councils must now operate. There are two aspects to this, the policy agenda and the contribution to Assembly deliberations. So far as the policy agenda is concerned, it suffices to note that the National Council's remit letter for 2002-03 draws its attention to sixteen Assembly Government strategies and initiatives where the Council is expected to have a significant contribution to make; it is also asked "to take account of the Assembly's development and refinement of its policies, decisions and statements of strategic intent as published from time to time". This is a very different world from that obtaining when the Welsh Funding Councils were in operation, and it is one in which the Chief Executive must inevitably play a strong leading role. When one adds to this the contribution which both Councils, frequently acting through the Chief Executive, must make to Assembly processes (whether in meetings with Ministers or in appearances before subject committees), it can be seen that the responsibilities of the Chief Executive now are of both a different kind and a different order to what was expected of his predecessor.
 - Finally, there is the creation of the National Council as a functioning organisation. The inheritance is exceptionally complex, with six predecessor organisations' staff and systems to incorporate into one (and it was made clear to me in discussions that the four former TECs were all very different from each other in approach and operations). The Chief Executive is therefore being asked to develop one organisation into an effective operation, and then lead two organisations with very different degrees of institutional maturity, one of which combines regional and thematic directorates in a quite complex way.
17. The consequence of all this, I believe, is that the demands placed on the Chief Executive cannot effectively be discharged to the satisfaction of both Councils; this is not the universe formerly inhabited by the Welsh Funding Councils, and there is also simply too much to do. In these circumstances, the demands of the new organisation, both to become properly established and ambitious to address its radical policy agenda, will inevitably force the Chief Executive to give that Council very much of his attention, to the inevitable disadvantage of the other, and I believe that to have occurred.
18. It might of course be argued that at least the last factor noted above is of a temporary or transitional character, and that in due time the Chief Executive might be able better to balance the demands being made on him by the two Councils. That would be over-optimistic, in my view. In addition to the considerable demands already being made of it, the National Council is now embarking on a review of planning and funding arrangements in its sector which may have very considerable implications indeed for providers; it was described to me by one of my interviewees as potentially the most important policy development in this field in the last 25 years. If it is to result in real changes on the ground, it will require a substantial investment of time by senior staff , including the Chief Executive, in dialogue with the very many providers such as the LEAs, and the private and voluntary sectors. I note too Mr Peat's conclusion in his report on The Control Environment in ELW that the National Council "faces continuing

major operational and organisational challenges over the next couple of years". The demands likely to be made on the National Council's Chief Executive in the coming period are therefore likely to continue to be intense.

19. To that must be added the changes which will now be required of HEFCW, and which will have considerable implications for the Chief Executive of that Council. Reaching Higher sets out a wide-ranging and long-term agenda for reform in Welsh HE. Central to this is a requirement for much more collaboration between institutions, ranging from the establishment of networks of excellence through strategic alliances up to and including institutional mergers. All Welsh HE institutions are being required to submit Collaboration and Reconfiguration Plans, and these will form the basis for intensive dialogue between each individual institution and HEFCW; in addition, institutions may submit bids for financial support from a newly-created Reconfiguration and Collaboration Fund, and these will require careful analysis by HEFCW. Dialogue between institutions and HEFCW is not of course new, but set in the context of the Assembly Government's expectation for a reshaped sector to emerge in due course, it will take on much greater significance and also greater "edge". Institutions will expect to be able to engage both with Council members and (directly relevant to this review) with the Council's most senior officers. This all implies a step-change in HEFCW's relations with the sector and an increasingly pro-active role for the Council in moving institutions forward in line with the Assembly Government's expectations; and it has obvious implications for the demands which will be made on its Chief Executive.
20. Turning now to the workloads of officers at second tier levels, I draw attention to two posts in particular where the burdens seem to me intense and which are not likely to reduce in the foreseeable future. First, the responsibilities placed on the post of Director of Finance and Risk seem to me to be considerably greater than those of the equivalent post in Welsh Funding Council days. The principal responsibility for integrating financial systems from the predecessors of the National Council falls here, and that will be a continuing obligation. Further, as has been noted, under the WFC there were two organisations of a broadly similar character, and many of the Finance issues to be addressed were common to both. Given the very different remits of the National Council and HEFCW, that is no longer true, and the postholder will be faced with problems of considerable complexity. For example, purchasing services from private sector providers (with all the issues of propriety and accountability that might arise), as the National Council will expect to do extensively, will involve a very different set of processes from the funding of institutions, largely by formula, which will continue to be a key concern for HEFCW. Each in my view will require separate attention. Both Councils dispose of substantial amounts of public funds, and the Chief Executives of each are appointed as (subordinate) Accounting Officers. In practice, the Chief Executive of each Council will look in the first instance to the Director of Finance for advice and support on the discharge of these functions and, particularly in the case of the National Council, these will be substantial and complex responsibilities.
21. Finally, the key policy developments in each Council impact directly on the Finance function. The National Council's reform of planning and funding will raise major issues both for policy and for financial systems, and the Reaching Higher agenda will necessitate close analysis of individual institutions' financial health in the context of collaboration up to and including merger (whereas there has recently been minimal support of this kind for HEFCW as the Director's attention has inevitably been on

National Council affairs). I cannot see that a single Director of Finance will be able effectively to serve both Councils in these key areas which will be central to their respective concerns.

22. The other post which should be mentioned here is that of the Director of Higher Education. He has of necessity been required to assume many of the responsibilities which would in normal circumstances be for HEFCW's Chief Executive to discharge (and this in turn has added very considerably to the demands made on the staff below him). The Reaching Higher agenda will inevitably exacerbate this situation; and it is no reflection on the post-holder to say that in future, HE institutions will look for dialogue with the most senior of HEFCW staff as they contemplate reconfiguration.

Building on the Achievement

23. I am clear that an enormous amount has been achieved over the last two years in establishing the National Council and developing the ELWa brand while maintaining efficient operations in HEFCW. This is largely due to individuals giving service above and beyond the call of duty, but that cannot be the foundation for long-term success; what is urgently needed now is to put in place better arrangements for supporting the two Councils so that those achievements can be built upon. My Terms of Reference make clear (and it was common ground among my interviewees) that there is a continuing need for an inter-relationship between the Councils "to deliver effectively on the substantive policy agenda"; the question is whether that is best sustained by them continuing to operate a joint executive. In paragraph 8 above I noted that when ETAG reported, it was common ground on all sides that the existing joint secretariat arrangements should be maintained and built upon when the National Council was established in parallel with HEFCW. As the Welsh Funding Councils put it in responding to the Group's draft Action Plan:

"The benefits that have emerged from the establishment of the two Welsh funding councils with a joint executive are numerous and well documented...the establishment of a number of common services – audit, finance, estates, statistics – has introduced a value-added element to these functions, through efficiencies and cross-fertilisation of ideas, which would not have occurred had they appeared as separate entities. But the jointness of operation goes well beyond the integration of support functions. Significant steps have been taken to extend the linkages that exist between the further and higher education sectors.....".

24. There is therefore much that could be lost if changes to the senior support arrangements for the two Councils were to lead to divergences in their strategies or operations, and any such development would clearly run counter to the need for the two Councils to work together to deliver their part of the Assembly Government's plans as set out in its paving document, The Learning Country. Nevertheless, I do not think that it is now possible to maintain the status quo, for three reasons:
- I believe that the two Councils are insufficiently resourced at the most senior management level to enable them to meet the requirements that have been placed upon them. And as I have explained above, that is not in my view a temporary or

transitional problem but likely to be a continuing one which, if left unaddressed, will significantly inhibit each Council's capacity to deliver. The two jobs are now and will continue to be too big for one person to perform to the full satisfaction of each Council;

- It is not possible in my view for the Chief Executive (and the Director of Finance and Risk) to be asked to serve two masters when those two masters (unlike HEFCW and FEFCW) are now of a significantly different character, in terms both of role and of organisational maturity. There will inevitably be differences of view or of emphasis between the two Councils, even within the holistic framework for post-16 education which the Assembly Government has set for them. At present, these cannot be subject to a process of negotiation at officer level, but ultimately will fall to be resolved through the Chief Executive's reconciliation of his competing loyalties. That confuses accountability, and makes the position of the Chief Executive vis-à-vis one or other of his Councils excessively difficult;
- There are considerable legal difficulties associated with the present arrangements. As was noted in the discussion about the Councils' employment powers, there is no scope for the two Councils jointly to employ individuals, and so anyone serving both Councils must be doing so under two separate contracts, one with each Council. However, as the table in paragraph 12 illustrates, several Directors appear to be serving both Councils to greater or lesser degrees although only being in a contractual relationship with one of them. (Alternatively, it might be argued that one Council has agreed to make some of its employees' time available to assist the other, but as was pointed out in paragraph 11, it is strongly arguable that that would amount to an improper use of the "loaning" Council's employment power). Further, although the Chief Executive and the Director of Finance and Risk may well be regarded as working under two contracts, these appear to lack clear provisions about the extent of each officer's service obligations to each Council and how far the two contracts which each has are inter-dependent (see paragraph 13 above). All in all, these contractual arrangements do not appear to establish a firm foundation for the employment of the senior staff generally in ELWa.

25. If all that is right, the outcome must be that

- (a) additional resources must be made available for senior management in each Council;
- (b) individuals' contractual arrangements must be brought into line with what they are expected (and themselves expect) to do for the Councils; but
- (c) all necessary steps should be taken to ensure that there is no divergence between the Councils resulting from these changes, and that if necessary new collaborative structures must be put in place to ensure that the Councils continue to work together in pursuit of the Assembly Government's holistic approach to post-16 educational provision in Wales.

These propositions are elaborated in the concluding section.

Conclusion and Recommendations

26. My central conclusion is that additional resources must be made available for senior management in each Council if they are to be able to meet the requirements now being placed upon them. Specifically, that means, first, that each should have a full-time dedicated Chief Executive; and secondly, that there should be a reinforcement of the Finance capacity for each Council by making the Director of Finance and Risk post a full-time appointment within the National Council and by authorising a separate senior Finance appointment in support of HEFCW. On the figures I have seen, these changes would imply additional running costs for the National Council of approximately £50,000 per annum (taking account of employer on-costs), and it is for consideration whether the National Council should be asked to absorb this relatively small sum within its overall running cost envelope or whether additional resources should be made available. The implications for HEFCW will be larger, but cannot be quantified precisely now in advance of the salaries to be determined for each post in light of their assessed job weights, but it would be reasonable to assume an additional requirement (with on-costs) of perhaps £170,000. Some of that might however be offset if it were decided that the appointment of a fulltime Chief Executive for HEFCW should lead to the post of Director of Higher Education (currently filled by way of the postholder's secondment from an English HE institution) being filled at a lower salary level after that secondment comes to an end.

27. If this approach is accepted, each of the individuals holding the four posts in question (a Chief Executive and a lead appointment on Finance for each Council) will have employment contracts with one Council only; but it should be clearly understood that each postholder's duties must include substantial co-operation with his or her opposite number in the "other" Council. I return to that in paragraph 32 below.

28. Turning then to the other Directors, they already have contracts of employment with the National Council (only) and those should continue, but at least some of these contracts (and this will need to be a matter of considering each case individually) should include provisions to the effect that the postholders are expected to undertake duties in respect of HEFCW; the contractual position needs to be brought into alignment with the reality of the situation, and indeed the expectations of the postholders themselves. That however raises another difficulty. Given the statutory provisions under which the Councils are working, it would not normally be appropriate for a person to be employed and paid to work for the National Council and yet be expected to spend a significant proportion of his or her time working for HEFCW's benefit. Therefore, it will be necessary for amendments to be made to the primary legislation before these contracts can be aligned with the reality. A possible model for this might be found in section 41 of the Government of Wales Act 1998, which allows arrangements to be made between the National Assembly and any relevant authority for "(a) any functions of one of them to be exercised by, or by members of staff of, the other, or (b) the provision of administrative, professional or technical services by one of them for the other".

29. Subject to a further point made in paragraph 30 below, this sort of provision might give the Councils the necessary flexibility to reach formal operational agreements between them (as well as allowing the National Council, in pursuit of such agreements, to seek

to include in individuals' contracts of employment the sort of provision referred to in paragraph 28). Such agreements are, I believe, the key to ensuring that the two Councils continue to work together. What is needed is formal understandings whereby the National Council agrees to provide a range of "administrative, professional or technical services" to HEFCW, in such matters as audit, estates, human relations, communications and finance. These service agreements will need to specify levels of performance by the National Council to HEFCW.

30. It must however be recognised that this suggestion has real dangers for HEFCW unless the agreements reached are properly reinforced. It will require, if HEFCW is not to receive second-best services provided only once all the National Council's needs have been met, an explicit understanding by the most senior figures in the National Council that provision of services to HEFCW will be a key part of National Council staffs' responsibilities, and which cannot be allowed to be squeezed out by National Council pressures. (There may indeed be a case for this to be bolstered by a Ministerial Direction to the Council "relating to its management" under section 47(2)(c) of the Learning and Skills Act 2000, although one would not expect that that would prove necessary). Similarly, it should be a specific obligation on senior managers in the National Council to ensure that service level agreements with HEFCW relevant to their areas of responsibility are delivered in accordance with agreed performance standards. Thirdly, it may be appropriate to put in place arrangements whereby specific staff employed by the National Council are designated with responsibilities for provision of services exclusively to HEFCW. This should be kept at least as an option; and in order to keep it so, the amendment to primary legislation mentioned in paragraph 28 should make it clear that one Council, in exercising functions on behalf of the other or providing it with administrative, professional or technical services, can incur costs and employ staff for those purposes.
31. There is one further point to make. It seems almost certain that the provision of services from one Council to the other under service level agreements will create a liability to VAT. It is not possible, in advance of the making of the necessary arrangements, to be certain how much might be involved, but one figure quoted to me was £70,000 per annum (falling to HEFCW to meet, presumably). If the recommendations I am making in this report are accepted, consideration will need to be given to this issue and whether any additional resources are to be provided to HEFCW to meet it.
32. The issues discussed in paragraphs 28-31 are all concerned with maintaining close working between the two Councils at the operational level. Equally important will be the need to ensure a continuing collaboration on policy. The Councils already have a joint work programme, with a "sounding board" structure drawn from the membership of the two Councils to oversee its progress; and the two Human Resources committees work closely together. I make the following suggestions to build on this. First, it could be made explicit to each Council that the Corporate Plans which they are required to produce annually, and the bids they submit during the Assembly Government's budget round, must be prepared in close consultation with each other and be consistent one with another in the strategies they are elaborating. Secondly, the Minister could require the two Councils, as a condition of proceeding with any of the recommendations in this Report, jointly to submit to her their proposals for further developing collaborative machinery at Council level to take forward specific areas of common interest; and it

would of course be open to her to suggest other areas where collaboration should be developed. Key areas here will include the widening participation agenda and bilingual provision in all parts of the post-16 educational world, but there will be several others. To ensure that it produces real effects on the ground, the Minister could perhaps reinforce the fundamental requirement for collaboration by earmarking particular resources for the Councils for use to deliver specific joint projects (although caution may be appropriate here; if this idea were taken forward it would be important not to put in place major new bureaucratic processes of oversight by the Assembly Government). If arrangements along these various lines are put in place, it will be clear that the senior management teams in the two Councils will need to be working closely together on a wide range of issues, and while it would not necessarily be appropriate for this to be formally specified, the expectation could be made plain that there would be a regular programme of meetings of the two teams, tied into the meetings of their respective Councils.

33. Summarising all this, my recommendations therefore are as follows:

- (i) The posts of Chief Executive and Director of Finance and Risk at the National Council should become full time as soon as possible, with consideration given to whether it is necessary to make additional resources available to the Council to cover the additional costs of this (estimated at around £50,000 per annum);**
- (ii) The post of Chief Executive of HEFCW should also become full time as soon as possible, and a new senior post in Finance should be created in HEFCW with particular responsibilities for the financial aspects of the Reaching Higher agenda (but with the grading for this appointment taking account of the National Council's provision of many finance services under a service level agreement). The postholder might also be given responsibility for acting as the "intelligent customer" in respect of the provision of services to HEFCW by the National Council under the service level agreements mentioned in (vi) below;**
- (iii) Additional provision should be made available to HEFCW for the posts mentioned in (ii) above (initial estimate £170,000 per annum, but with a possibility of offsetting savings later on the Director of Higher Education's salary);**
- (iv) The earliest opportunity should be taken to make new legislative provision enabling the Councils to make arrangements with each other for discharge of each other's functions and for the provision of services to each other; and this should allow for one Council to incur costs and/or to employ staff for the purpose of performing those functions or providing those services for the other Council;**
- (v) The contracts of employment of those Directors employed by the National Council but expected both by the Councils and themselves to contribute to the work of HEFCW should (by agreement) be amended to reflect that;**

- (vi) **Service level agreements should be put in place for the provision by the National Council to HEFCW of a range of administrative, professional and technical services, with endorsement of the arrangements at an appropriately senior level within the National Council and its managers charged with ensuring delivery to HEFCW to the specified standards;**
- (vii) **Consideration should be given to additional provision for HEFCW to meet VAT liabilities in relation to the operation of the service level agreements;**
- (viii) **Arrangements should be put in place to ensure continuing close working between the Councils on policy matters. These might include any or all of a requirement for co-ordinated corporate planning and budgetary submissions; further development of collaborative machinery at Council level, subject to Ministerial approval, to take forward specific areas of common interest; and perhaps provision of earmarked resources for delivery of specific joint projects (but avoiding excessive supervision relating thereto). There should be an expectation of continuing close working between the senior management teams in the two Councils.**

Action relating to the Chief Executive and Finance posts, together with whatever is deemed necessary to ensure the maintenance of continued close working between the Councils, can, and in my view should, be taken forward as soon as possible; those recommendations depending on amendments to primary legislation will inevitably have to be on a slower track.

34. In conclusion, I should make clear that I have prepared this Report on the basis that there will continue to be two Councils responsible for the planning and funding of post-16 education in Wales, and that arrangements must therefore be in place to enable them to work together effectively. Very early in my researches, however, I was struck by the awkwardness of formulation of ETAG's key recommendations, that the Assembly should establish "a National Council....which , *together with the HEFCW*, will have powers to fund all post-16 education and training programmes;....the [National Council] *and the HEFCW* [should] implement the Assembly's policies and strategic priorities..... the [National Council] *and the HEFCW* [should] take the lead in promoting lifelong learning at the all-Wales level....".(italics added). The Group, it seems to me, was struggling to avoid the logic of its own policy prescription for a holistic vision for post-16 education, which may well be thought to imply a single organisation responsible for this whole area. I note too that combining the two Councils of ELWa was floated as a possibility in *The Learning Country*. Any such proposal would raise issues going far beyond the scope of this Report. On the other hand, in the normal course of events the roles and operations of the two Councils will be for review in some three years' time. If the recommendations in this Report are accepted and implemented, it should be clear by then whether they are providing a firm foundation for continuing close and effective working between the Councils, or whether a more radical approach may prove to be necessary if the Assembly Government's expectations are to be realised.

Appendix 1

REVIEW OF THE HIGH LEVEL SUPPORT FRAMEWORK APPROPRIATE TO THE ELWA COUNCILS.

Background

1. The National Council for Education and Training for Wales and the Higher Education Funding Council for Wales operate together under the common brand 'ELWa' and with a shared executive. The posts of chief executive in the two Councils are occupied by one individual. Other senior officers also have contracts with both Councils.

2. The NC has a heavy and developing agenda, set in motion by the Education and Training Action Plan endorsed by the National Assembly. Following the publication of the Welsh Assembly Government's strategy for HE – Reaching Higher – the nature of the business to be addressed by HEFCW is also evolving,

Terms of Reference

3. Against that background it is timely to take stock. Thus the remit for the required study is as follows.

In the context of an objective Review, to consider:

- the nature and weight of the existing and prospective workload for the chief executive posts in the two Councils;
- the character of the existing and prospective workload of posts in the two Councils at second tier levels and the extent to which the structure is capable of providing the necessary support for the way ahead;
- the degree to which the inter-relationships between the Councils needed to deliver effectively on the substantive policy agenda is best sustained by continuing to operate a joint executive;
- the financial and other implications for both Councils of creating separate executive structures, including options for senior structures to provide cost-effective and adequate support to both Councils, and the sharing of facilities where appropriate;
- such changes as might be made to statutory or other arrangements to facilitate effective links between the Councils and ensure value for money;

and to offer conclusions and recommendations.

4. Following discussion with the Minister, a final report setting out the considerations, conclusions and recommendations is to be prepared by the end of September 2002.

Appendix 2

INTERVIEWS CONDUCTED

Date	Name	Position
22 July	Steve Martin	Chief Executive
23 July	Roger Williams	Chair, HEFCW
26 July	Brian Clarkson	Former Member, HEFCW
26 July	Richard Hirst	Director of Finance and Risk
29 July	Ann Hughes	Head of Funding and Research, HEFCW
30 July	Enid Rowlands	Chair, National Council
30 July	Keith Mcdonogh	Member, National Council
31 July	Haydn Edwards	Member, National Council
31 July	Andrew Clark	Head of Finance
31 July	Donna Hill	Head of HR (Corporate)
1 August	Richard Hart	Director, South West Wales
1 August	George McKechnie	Director, Communication and Participation
6 August	Grenville Jackson	Director, Strategy and Learning Development
27 August	Phil Gummett	Director, Higher Education
27 August	Steve Martin	Chief Executive

NATIONAL ASSEMBLY FOR WALES

STATUTORY INSTRUMENTS

2002 No. (W.)

CONSTITUTIONAL LAW

DEVOLUTION, WALES

Welsh Administration Ombudsman (Jurisdiction) Order 2002

EXPLANATORY NOTE

(This note is not part of the Order)

Paragraph 14 (1) of Schedule 9 to the Government of Wales Act 1998 provides that the bodies that are subject to investigation by the Welsh Administration Ombudsman (the Ombudsman) are the National Assembly for Wales (the Assembly) and the bodies listed in paragraph 14 (2) of that Schedule.

Paragraph 14 (3) of that Schedule provides that the Assembly may by order amend paragraph 14 (2) by adding or deleting any body or by altering the description of any body.

This Order adds the National Council for Education and Training for Wales (in respect of which see Part 2 of the Learning and Skills Act 2000) and the Higher Education Funding Council for Wales (in respect of which see Part 2 of the Further and Higher Education Act 1992) to the bodies listed in the said paragraph 14 (2).

Paragraph 15 (1) of that Schedule contains notes that limit the extent of the Ombudsman's investigatory functions in respect of some or all of the bodies referred to in paragraph 14 (2).

Paragraph 15 (2) provides that the Assembly may by order amend paragraph 15 (1) by adding, omitting or amending any note.

This Order adds a Note to paragraph 15 (1). That Note provides that the Ombudsman may not investigate any complaint against the National Council for Education and Training for Wales where the complaint relates to action originally taken by the Further Education Funding Council for Wales and which is only treated as having been taken by the National Council for Education and Training for Wales by virtue of paragraph 11 or 12 of Schedule 10 to the Learning and Skills Act 2000.

STATUTORY INSTRUMENTS

2002 No. (W.)

CONSTITUTIONAL LAW

DEVOLUTION, WALES

Welsh Administration Ombudsman (Jurisdiction) Order 2002

Made

Coming into force

The National Assembly for Wales makes the following Order, in exercise of the powers conferred upon it by paragraphs 14 (3) and 15 (2) of Schedule 9 to the Government of Wales Act 1998⁽¹⁾:

1. This Order may be cited as the Welsh Administration Ombudsman (Jurisdiction) Order 2002 and shall come into force on

2. Schedule 9 to the Government of Wales Act 1998 shall have effect subject to the following amendments:

(a) In paragraph 14 (2) of the said Schedule after “the Forestry Commissioners,” insert -

“(da) the Higher Education Funding Council for Wales,

(db) the National Council for Education and Training for Wales,”

(b) In paragraph 15 (1) of the said Schedule, after note 2 add -

“2A. In the case of the National Council for Education and Training for Wales no investigation may be conducted by the Welsh Administration Ombudsman in respect of action taken by virtue of paragraph 11 or 12 of Schedule 10 to the Learning and Skills Act 2000.”⁽²⁾.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998

Date

The Presiding Officer of the Assembly

⁽¹⁾ 1998 c.38; paragraph 14 (2) of Schedule 9 was amended by section 6 (3) of, and paragraph 27 (c) of Schedule 1, to the Care Standards Act 2000 (c.14) and by section 73 (1) and (3) (a) of the Learning and Skills Act 2000 (c.21).

⁽²⁾ 2000 c.21.