

## Public Accounts Committee

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Meeting Venue:  
**Committee Room 3 – Senedd**

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Meeting date:  
**29 May 2012**

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Meeting time:  
**09:00**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

**Tom Jackson**  
Committee Clerk  
029 2089 8597  
[Publicaccounts.comm@Wales.gov.uk](mailto:Publicaccounts.comm@Wales.gov.uk)

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### Agenda

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**Private briefing (9:00 – 9:10)**

**1. Introductions, apologies and substitutions (9:10 – 9:15)**

**2. Grants Management in Wales – Evidence from the Welsh Council for Voluntary Action (9:15 – 10:15)** (Pages 1 – 6)

PAC(4) 09–12 – Paper 1 – Grants Management – WCVA

Graham Benfield, Chief Executive, WCVA  
Phil Jarrold, Deputy Chief Executive, WCVA

**3. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

Item 4.

**4. Consideration of evidence on Grants Management in Wales (10:15 – 10:45)**

**5. Papers to note** (Pages 7 – 8)

## Public Accounts Committee

PAC(4) 09-12 - Paper 1



## Grants Management in Wales

1. Wales Council for Voluntary Action (WCVA) represents, campaigns for, supports and develops voluntary organisations, community action and volunteering in Wales. It represents the sector at UK and national level; and together with a range of national specialist agencies, county voluntary councils, volunteer centres and other development agencies, it provides a support structure for the third sector in Wales. It has 3,000 members, and is in touch with many more organisations through a wide range of national and local networks.
2. The third sector in Wales receives funding from a wide range of sources, including public giving, grant-making trusts, trading, and a large proportion - around 45% of total income in 2008-09 - from public bodies.
3. In recent years, there has been a significant shift in how third sector organisations are funded by the public sector. Where organisations may previously have received grants from local and national government or health bodies, more and more public bodies are using procurement to establish contracts with organisations. Between 2006 and 2009, grant income fell from £428m to £291m; while income from contracts rose from £167m to £378m. This pattern seems to indicate that contracts through procurement are increasingly becoming the default position.
4. WCVA was pleased to have the opportunity to comment on the draft Wales Audit Office report into Grant Management in Wales in November 2011. We were concerned that the draft report put too great an emphasis on shifting from grants to procurement and did not take sufficient account of the unintended consequences that this can have, and has had, on the third sector. We were pleased to see the final report reflect our concerns to some extent but we are still keen to stress that a move to procurement as a reaction to a perceived over-use of grants can have a negative effect on the third sector. We have been urging Ministers to 'rebalance' their approach; we believe that grants can be an effective and efficient funding mechanism and where procurement *is* used we suggest that a preferable approach is that of collaborative commissioning as set out in the Welsh Government's *Fulfilled Lives, Supportive Communities* Commissioning Framework Guidance and Good Practice document.

## Grants, Procurement and the third sector in Wales

5. There is sometimes confusion in the terminology around commissioning and procurement. The two are sometimes incorrectly used interchangeably. As this can be part of the problem we set out below what we understand by the terms.

6. Commissioning is the process of specifying, securing and monitoring services that meet people's needs. It is essentially a planning and delivery cycle which involves considering the capacity, location, cost and quality of services, together with who will deliver them.
7. Welsh Government guidance on social care commissioning states that commissioning plans "should have been developed with partners have involved all stakeholders including users, carers, citizens and service providers in the statutory, private and third sector." The guidance makes it clear that consultation and engagement at the early stages of commissioning are expected: "Effective commissioning requires a collaborative, mature dialogue between different partners."
8. Having established *what* is to be commissioned, a key decision in the commissioning process is *how* to secure services: which financial instrument to choose. There are a number of options, including renewing or extended existing contracts. For new services, the two main options are whether to grant fund services, or to follow the procurement route and invite tenders.
9. Procurement is the acquisition of services or goods from suppliers under legally binding contractual terms. Usually, procurement involves public bodies inviting organisations to submit written tenders, and a contract is established with the organisation that has best demonstrated that it meets the contract criteria.
10. Grants are a means of offering financial assistance to third sector organisations to enable them to undertake activities that public bodies wish to support. Grants may assist with the core costs of an organisation or help it carry out a particular project. The grant giver is not contracting for a service that forms part of its own business, but supporting or investing in an organisation.
11. The widespread use of procurement rather than grants has caused considerable problems for the third sector:
  - 11.1 The competitive nature of tendering means that engagement and dialogue at the earlier stages of commissioning is often prohibited - preventing the contribution of the third sector to the design and delivery of public services.
  - 11.2 Procurement creates competition not collaborative approaches to service design and delivery.
  - 11.3 Procurement is about sourcing goods or services from the open market. For many third sector organisations, this has meant the loss of funding to large private companies with tendering capacity and experience.
  - 11.4 Procurement is often a lengthy, bureaucratic and highly prescriptive process.
  - 11.5 A procedure used for purchasing commodities cannot be a suitable mechanism to secure services for people with complex needs.
12. There are a number of widespread misconceptions about procurement, which are used to justify its use, but are not always accurate. Although procurement is appropriate and legally necessary for all categories of goods it is only legally necessary for *some* categories of service.

13. EU law does not always require procurement - while procurement is required for certain services, other categories of service (e.g. health, social care, education) are exempt from the full application of European procurement law. Services under certain financial thresholds are exempt from procurement law.
14. Welsh Government does not require procurement - The Code of Practice for Funding the Third Sector states that where services are bought under OJEU limits and within internal thresholds, Welsh Government can use grants.
15. Standing financial instructions should not prohibit grants - Public bodies establish their own standing financial instructions, and such instructions should be flexible enough to fund appropriately and proportionately.
16. Furthermore, Welsh Government guidance about grants and procurement states that if the proposal has been initiated by a third party, rather than by Welsh Government, this an indication that the appropriate funding mechanism is likely to be grants.
17. Public bodies can give grants where they have the legal power to do so. For example, Welsh Government can give grants under Section 71 of the Government of Wales Act 2006, and Local Authorities in Wales can give grants under the Local Government Act 2000.
18. Grants can offer the following benefits for funders, third sector organisations and service users:
  - They are more accessible for smaller providers.
  - Grants are less bureaucratic than procurement exercises, enabling money to be allocated efficiently.
  - They can be used to support or invest in the capacity of organisations through funding core costs.
  - Grants can be used to fund one-off or time-limited projects / pilot initiatives.
  - They can enable support for strategically-important or specialist organisations.
  - As grants are exempt from procurement law, it is possible to engage in dialogue with organisations during the funding process.
  - Without the restrictions of prescriptive service specifications associated with tendering, grant funding can allow opportunities for innovative proposals from organisations.
  - Grants can enable investment in preventative or early-intervention work (investment in preventative work, for example, could result in significant cost savings or the public purse in future years).
  - Grants can lever in additional funding, very often doubling the amount or even increasing it more, which is unlikely to happen with a service delivery contract.
  - Grants can be awarded on the basis of a competitive process.
  - Awards of grant funds can be subject to as rigorous an assessment and robust conditions as the scale, risk and nature of the work requires. Procurement is not the only way to establish value for money.
  - Grants can be unrestricted (enabling investment in the general aims of an organisation) or restricted (enabling conditions to be imposed by the funder and ensuring that the grant is only used for a specified purpose).

- If grant funds are not fully used, monies can be 'clawed back': thereby returning the investment to the funder. (Contracts are not subject to claw-back, enabling profits to be generated from public service contracts).
19. As procurement law derives from prevention of anti-competitive practices, and is therefore primarily designed to ensure a level playing field and open competition, procurement is not a useful vehicle to advance a public body's policy aims. Although there are opportunities to include social clauses within contracts, these have to operate within procurement law and be related to the subject of the contract.
  20. For example, it is hard for a purchaser to procure locally, as procurement law prevents the exclusion of providers from EU member states. Contracting authorities must treat economic operators equally and in a non-discriminatory way. As grants are not subject to the EU procurement rules, they are therefore far more suited to delivering policy objectives. Grants can be used to invest in local organisations, communities and economies: thereby retaining resources locally.

## **The role of intermediary bodies**

21. WCVA believes that it is vitally important for the public, private and third sectors, to work in partnership to make the best use of limited resources. Third sector groups have a particular role in complementing elected government by involving people in local democracy and acting as partners in delivering services. By partnership we mean an agreement to work together toward a common set of goals, based on equality in terms of ownership, decision-making and recognition of each party's distinctive contribution.
22. Access to independent sources of funding can be critical to the achievement of real and equal partnership. Whilst many organisations do have access to their own resources (funds, staff and volunteers, facilities etc.), many still depend on public sector funding, particularly for their core costs. The more that third sector organisations have to negotiate with their potential partners for the funding for their contribution to the partnership, the more the inequality of the relationship is emphasised.
23. If we are serious about recognising the distinctive and independent contribution that third sector organisations can make to society - by providing services, identifying needs and enabling communities and individuals take positive action - we must increase their ability to access and manage their own resources. This will enhance their bargaining power in local negotiations, and help to ensure that they become involved at the inception of local initiatives as equal partners.
24. For these reasons the role of intermediary bodies such as WCVA and the County Voluntary Councils as funding distributors is essential to creating and maintaining a vibrant Welsh third sector. We are able to understand the needs of the communities that can make best use of funding and engage them effectively. We have a strong track record of this in relation to Welsh Government, UK Government and European Funding.

## **Recent Developments**

25. We are aware of a number of recent developments in relation to grants and procurement issues that we would like to bring to the attention of the committee in relation to this inquiry.
26. We have noted that some parts of the Welsh Government do appear to be giving a much more considered view about when grant or procurement is used. However, there is still confusion in parts of government and the public sector in general over the appropriate usage of procurement and a perception that processes are in some way following Welsh Government guidance which makes procurement the default or desired option.
27. We are aware of the work of the Rapid Response Team established to support policy divisions across Welsh Government in taking a holistic view of whether funding should be provided via a grant or procurement route. We are pleased that the Welsh Government is taking steps to address this issue and reassured by correspondence that we have received from the Minister for Finance to the effect that procurement is not the Welsh Government's default or desired option. However, we would like further information and clarity over the role of the Rapid Response Team and the criteria that they use to make their decisions. It would be desirable if that criteria were transparent and, if possible, subject to public consultation. We would like to see Welsh Government and the Rapid Response Team agree a list of activities which do and do not need to be procured (so that in most cases it is clear from day one).
28. We have also recently been made aware that a number of concerns within the sector about the impact of the work of the Grants Centre for Excellence. Some Welsh Government departments have made changes to their grant conditions on the advice of the Grants Centre for Excellence, some of these changes are causing confusion and worry within the sector, for example:
- 28.1 Requests for organisations to set up a separate bank account for receipt of Welsh Government money.
- 28.2 The requirement of a business case to qualify for payment of the grant in advance - whilst we accept this in principle we believe that as this "business case" will be identical for most organisations, it should be possible to apply a simple universal test which would ensure consistency and fairness, and avoid increasing administrative burdens on both WG officials and grant recipients. The following straightforward test can therefore be used. If payment of a grant in arrears would reduce an organisation's freely available reserves to less than six months normal running costs (based on recent accounts), grants will be paid in advance.
- 28.3 It is unclear how new criteria set by the Grants Centre for Excellence have been decided and the sector was not consulted on these changes which goes against the Funding Code of Practice for the third sector.
- 28.4 For some organisations requests for a business case and a separate bank account, along with other new criteria, have come very late in the funding cycle and could have jeopardised funding due to be received for the April 2012 - March 2013 financial year.

29. We have been taking these issues up through the Funding and Compliance sub-committee of the Third Sector Partnership Council and the ministerial meeting with the Finance Minister. We are pleased that many of the sector's concerns have been taken on board and that it has been agreed that in future changes should not be made without the agreement of the Funding and Compliance sub-committee but it is regrettable that this was not done in the first instance. It is essential that the purpose and work of the Grants Centre for Excellence is communicated effectively internally to officials who offer grants to ensure no further unintended consequences or confusion. It is also essential that the sector is consulted and its independence respected in relation to any changes to grant conditions.

## Conclusion

30. We believe that there is a need for simpler systems that enable effective commissioning and provide support for third sector organisations. The current situation indicates that things are becoming more rather than less complex and the move from grants to procurement is having a detrimental effect on the sector in some cases.

We look forward to discussing these issues with the Committee and would be happy to provide any further information as required. For further information please contact Michelle Matheron, Senior Public Affairs Officer: [mmatheron@wvca.org.uk](mailto:mmatheron@wvca.org.uk) / 029 2043 1720

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May 2012

# Agenda Item 5

## Public Accounts Committee

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Meeting Venue: **Committee Room 3 – Senedd**

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Meeting date: **Tuesday, 22 May 2012**

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Meeting time: **09:00 – 10:45**

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This meeting can be viewed on Senedd TV at:

[http://www.senedd.tv/archiveplayer.jsf?v=en\\_400000\\_22\\_05\\_2012&t=0&l=en](http://www.senedd.tv/archiveplayer.jsf?v=en_400000_22_05_2012&t=0&l=en)

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### Concise Minutes:

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#### Assembly Members:

**Darren Millar (Chair)**  
**Mohammad Asghar**  
**Mike Hedges**  
**Julie Morgan**  
**Gwyn Price**  
**Jenny Rathbone**  
**Aled Roberts**  
**Lindsay Whittle**

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#### Witnesses:

**Katrina Febry, Performance Specialist**  
**David Rees, Wales Audit Office**  
**Thomas, Auditor General for Wales, Wales Audit Office**  
**Dave Thomas, Wales Audit Office**

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#### Committee Staff:

**Tom Jackson (Clerk)**  
**Daniel Collier (Deputy Clerk)**  
**Joanest Jackson (Legal Advisor)**

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### **1. Introductions, apologies and substitutions**

1.1 The Chair welcomed Members and members of the public to the meeting.

### **2. Briefing from the Auditor General for Wales on the Wales Audit Office report National Fraud Initiative 2010–2011: Ensuring the proper use of public funds**

2.1 The Chair welcomed Huw Vaughan Thomas, Auditor General for Wales; David Rees, Governance Manager; and Katrina Febry, Performance Specialist.



2.2 The Auditor General for Wales briefed the Committee on the findings of his report National Fraud Initiative 2010–2011: Ensuring the proper use of public funds.

### **3. Advice from the Auditor General for Wales on the Welsh Government's response to Hospital Catering and Patient Nutrition**

3.1 The Chair welcomed Huw Vaughan Thomas, Auditor General for Wales and Dave Thomas, Director of health and Social Care.

3.2 The Committee discussed the Welsh Government's response to its report on Hospital Catering and Patient Nutrition and the associated advice from the Auditor General for Wales.

3.3 The Committee agreed to write to the Welsh Government in relation to issues of concern in the Welsh Government response to the Committee's report on Hospital Catering and Patient Nutrition, as identified by the Auditor General for Wales.

### **4. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

Items 5 to 7.

### **5. Consideration of options for handling the Wales Audit Office report National Fraud Initiative 2010–2011: Ensuring the proper use of public funds**

5.1 The Committee discussed their handling of the Auditor General's report on National Fraud Initiative 2010—2011: Ensuring the proper use of public funds.

### **6. Follow-up of recommendations made by the third Assembly's Public Accounts Committee**

6.1 The Committee discussed how it wished to proceed with receiving updates on particular reports and recommendations made by the Public Accounts Committee in the third assembly.

### **7. Papers to note**

7.1 The committee ratified the minutes of the meeting on 8 May 2012.