

10th September 2012
GH/WAO/PAWB

Public Accounts Committee - invitation to provide evidence on the Public Audit (Wales) Bill – Response of Prospect Wales

Prospect is an independent trade union representing over 120,000 members in the public and private sectors. Our members work in a range of jobs in both sectors in a variety of different areas, including aviation, agriculture, communications, defence, energy, environment, heritage, industry and scientific research.

We are the largest trade union in the Wales Audit office (WAO), representing staff in all areas of the organisation.

We are grateful for the invitation of the Public Accounts Committee to provide evidence to support the work of the Committee in scrutinising the Public Audit (Wales) Bill.

Over several years Prospect has called for the governance arrangements of the Wales Audit Office to be improved and for more effective measures to be introduced to hold the Auditor General to account. These calls were prompted by Prospect's long-standing concerns regarding the actions and behaviours of the former Auditor General for Wales and the former Chief Operating Officer, and the lack of formal legislative measures to hold these individuals to account.

We know our concerns were shared within the Assembly, and we believe the proposed legislation has cross party support within both the Assembly and Westminster.

We welcomed the appointment of the current Auditor General and believe that he has sought to engage constructively with staff and their representatives since his appointment.

We also welcomed the decision of the current Auditor General to voluntarily introduce improved governance and accountability measures. Nevertheless, the effectiveness of these measures is wholly dependent on each appointee to the role of Auditor General being prepared to comply with the measures. We therefore support the intention to legislate to *"strengthen and improve the accountability and governance arrangements*

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relating to the Auditor General for Wales (AGW) and the Wales Audit Office (WAO) whilst protecting the AGW's independence and objectivity."

There are many elements of the proposed legislation which we support and welcome in principle. These include:

- The establishment of a statutory Board to provide independent and objective oversight and scrutiny of the Wales Audit Office and Auditor General. We consider that providing for a statutory Board with non-executive functions would have the potential to provide improved overview of public audit on a permanent basis. However, we have some concerns that the functions and membership of the Board as detailed in the Bill are not conducive to safeguarding the independence of audit and improving accountability.
- The proposals for the National Assembly and its Committees to have an increased role in scrutinising the way in which the Auditor General and Wales Audit Office have used their resources.
- The proposal for an employee member to sit on the Board. However, we have some concerns regarding the proposal as worded in the Bill.
- The proposal that the Auditor General should become the auditor of local government bodies. The current arrangement, whereby the Auditor General appoints auditors, does not provide for consistency of approach in the delivery of audit and weakens accountability as the Auditor General can distance himself from responsibility for the delivery of the audit functions.

Whilst there is much in the proposed legislation which we support, we have some fundamental concerns regarding some of the provisions. These are as follows:

- The workability of proposed governance structures;
- staffing issues; and
- The role of the employee member.

Our concerns in each of these areas are set out below:

Workability of proposed governance structures

We see sound governance as very much in our members' interests. The Auditor General's staff have suffered as a direct result of poor governance and the unethical behaviour of some of those who led the organisation during the tenure of the former Auditor General.

We fully support, therefore, the stated intention of the Bill to *"strengthen and improve the accountability and governance arrangements relating to the Auditor General for Wales (AGW) and the Wales Audit Office (WAO) whilst protecting the AGW's independence and objectivity."*

Achieving this aim is not straightforward, as any accountability arrangements have to recognise that the Auditor General has the authority and resources to perform his/her statutory functions with objectivity and independence. The Auditor General must have the freedom to take what actions he/she considers necessary and to reach what judgements he/she considers correct. Whilst this freedom is a pre-requisite of independent audit, the Auditor General can still be held to account for his/her actions by implementing statutory overview and scrutiny arrangements whereby the Auditor General

can be required to justify his/her actions and to account for the exercise of his/her functions.

However, the proposals as set out in the Bill for the creation of a new corporate body with a statutory Board, do not effectively reconcile the need for audit independence and the need for real accountability. The proposals have the perverse effect of undermining both the independence and the accountability of the Auditor General. The fundamental problem with the proposed arrangements lies with the functions of the proposed Board itself provided within the Bill.

The Bill proposes that the Board would have both executive and non-executive functions. The Board would be the employer of staff. The Auditor General would have to agree his own work programme with the Board (**Clause 25**) and the Board would effectively control the resources required by the Auditor General to deliver his/her functions (**Clause 26**). The Bill contains no effective recourse for the Auditor General if the Board rejects his/her request for the resources he considers necessary and/or the Board rejects his/her annual work programme. The Auditor General's freedom to undertake his/her audit functions independently would therefore be significantly undermined. The model would not lead to greater accountability as the Auditor General, if challenged on the way in which he/she had delivered his/her functions, would be able to argue that his/her ability to deliver effectively had been undermined by the decisions of the Board (the same Board tasked with the non-executive overview of the Auditor General).

The proposal to create a Board with both executive functions and non-executive functions for scrutinising and providing overview of the exercise of the Auditor General's functions will have the unintended consequence of creating an inherent conflict of interest for the Board itself. The Board will potentially have to scrutinise matters which have arisen due to executive decisions made by it.

We consider that the creation of a Board to exercise non-executive supervisory, scrutiny, overview and advisory functions with regards to public audit in Wales could provide strong and effective accountability, as long as the Board was invested with sufficient authority to:

- obtain whatever information it considers necessary to hold to account;
- require auditors to account for their actions and the use they have made of public resources; and
- Report findings and conclusions to the National Assembly for Wales and its Committees.

The membership of the proposed Board is essentially a non-executive membership. The Auditor General is the only executive member proposed for the Board. The composition of the proposed Board is far better suited to a Board with non-executive functions. It would be highly unusual for a Board with an essentially non-executive membership to be expected to exercise executive functions. We consider that it would be preferable for both the functions and membership of the Board to be non-executive. The Auditor General would therefore not be a member of the Board but would be required to attend Board meetings when asked to do so by the Board.

We acknowledge that some public bodies in Wales have boards which exercise both executive and non-executive functions. Where this is the case (e.g. in the NHS), the boards of these organisations do not face the complexity of holding other statutory, independent entities to account. Moreover, the membership of these boards provides a

balance of executive and non-executive members to reflect the joint executive and non-executive functions of the board.

If it is decided to create the Wales Audit Office as a corporate body controlling audit resources and employing audit staff, we consider the draft legislation should be amended to safeguard the independence of the Auditor General. This could be achieved by the inclusion of additional provisions within the Bill which enable the Auditor General to procure the resources he/she considers are required to undertake his/her functions, should these resources not be provided by the Board of the Wales Audit Office. Furthermore, the Auditor General should have the freedom to undertake whatever audit activities in Wales he/she considers necessary, without the agreement of the Wales Audit Office Board. If the Auditor General decides to act without agreement of the Wales Audit Office Board, the legislation could require the Auditor General to account directly to the Public Accounts Committee for these decisions.

Staffing Issues

The following comments are predicated on the basis that there will be a transfer of staff from the employment of the Auditor General for Wales to an incorporated Wales Audit Office.

The draft provisions of the Bill do not provide the protection for staff that we wish to see in a statutory transfer. Schedule 3, Part 5(2) offers less protection than would be the case under the Transfer of Undertakings (Protection of Employment) [TUPE] Regulations.

We are disappointed that the Explanatory Memorandum provides no assurance on this matter and the lack of detail on staff transfer has already caused significant concern to our members. These concerns have been exacerbated by the fact that the previous statement, contained in Paragraph 242 of the consultation document, has not been met in the draft Bill, nor has the commitment been repeated in the Explanatory Memorandum: *"provision will be made so that the transfer of employment will be on no less favourable terms than would be the case if TUPE applied"*.

In order for staff to be reassured we consider it would be helpful if the following clarifications were included in the Bill, with specific provisions as appropriate:

- That the transfer will be explicitly classified as a *'Machinery of Government'* transfer;
- Any transfer will be on no less favourable terms than would be the case if TUPE applied; and
- any periods of employment for staff previously employed by the Audit Commission and National Audit Office who transferred to the employment of the Auditor General under previous statutory transfers will be included for continuity of employment purposes. This is not apparent from Schedule 3, Paragraph 5(2)

There appears to be a conflict in the draft legislation between Schedule 3, paragraph 5(2) and paragraph 20(5) of Schedule 1 which requires the Wales Audit Office to ensure that terms of employment are *"broadly in line"* with those of the Welsh Government. It is unclear at what point staff terms of employment must be broadly in line with the Welsh Government. We are unclear whether this means that from the first day of the Wales Audit Office staff terms would be required to be amended to comply with this provision or whether terms must be brought broadly into line over a period of time; or whether this will only apply to new staff of the Wales Audit Office who were not part of the

statutory transfer. The lack of clarity on these matters is a cause of anxiety to our members.

We are also concerned that the term 'broadly in line' is not defined and this leaves considerable scope for subjective judgement to be applied which is open to challenge. These matters could only be resolved through the courts or employment tribunals. We therefore consider that either the provision should be removed or statutory guidance on its application be provided. If the provision is to remain, we consider that it would be more appropriate to provide for broad alignment to National Assembly terms in order to emphasise the independence of the audit function from the Government.

Employee Member

We welcome the proposal to have an employee member on the new Board. We consider that an employee representative who is able to represent the views of the workforce could make a valuable contribution in providing perspective and understanding of issues affecting the organisation.

However, we have some concerns regarding the proposal as drafted. Neither the Bill nor the Explanatory Memorandum provide sufficient information on the role that the employee member is expected to perform. If the purpose of the employee member is to represent employee experience, the proposed appointment procedures are inappropriate. It would be crucial that the workforce considers that the employee representative is representative of the staff body. This is unlikely to be the case if the individual is nominated by the Auditor General and approved by the Board. We consider it would be more appropriate for the employee representative to be a nominated trade union representative or someone elected by the staff.

The draft Bill requires the employee representative to be appointed on merit. If the purpose of the role is to represent the staff experience, we are unclear of any objective criteria which could be used to assess this, other than that the majority of employees had elected the individual to represent their experience.



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