

Mr Darren Millar
Chair of the Public Accounts Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

11 September 2012

Dear Mr Millar

Public Accounts Committee - invitation to provide evidence on the Public Audit (Wales) Bill

1. Thank you 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. I am responding on behalf of the WAO branch of the Public and Commercial Services Union (PCS), which has agreed this letter.
2. PCS agrees with the Government's view that the governance arrangements of the WAO need to be strengthened, and that the creation of a single board to oversee the work of the AGW is the best way of doing this. We agree with the objectives of the Bill as stated in paragraph 21 of the Explanatory Memorandum, and we welcome many of the provisions contained in the Bill. However, we have serious doubts that the governance proposals in the Bill are the best way of meeting its stated aims. We also have concerns about the transfer provisions and the requirement for the WAO's staff's terms and conditions to be broadly in line with those of the Welsh Government.

Governance arrangements

3. The WAO Board will have executive responsibility for running the WAO, including the employment of staff and the deployment of other resources. At the same time, it has important scrutiny and oversight functions, and a membership that seems more suited to a non-executive board. The functions of the board are not entirely clear, and we do not understand how it can ensure greater oversight of the Auditor General and the WAO in the form currently proposed. We have several specific concerns about the proposals, which are set out below.

Independence of the Auditor General

4. The Board will need to approve the AGW's annual plan, as well as its own, creating a potential threat to the Auditor General's independence and a conflict of interest for the Auditor General. We do not understand how these plans will differ when the WAO's resources are deployed almost exclusively in the service of the AGW's statutory duties. The content of the respective plans is not made clear in the Bill and there is a risk that the WAO may seek undue influence over the AGW's programme of work to the detriment of the Bill's avowed intention of preserving the Auditor General's independence.
5. The WAO and AGW are required to agree a joint financial estimate, creating a further risk to the AGW's independence, in particular in terms of his or her requirement for sufficient, adequately trained staff to undertake audits. The Bill does not say how any conflicts are to be resolved. This is a worrying omission as any legal proceedings would be highly damaging to the reputation of public audit in Wales and would be debilitating for the WAO as an organisation. Any conflict would cause considerable difficulty for our members as they would face divided loyalties: employees of the WAO but serving the AGW, the one in dispute with the other. We suggest that the Auditor General has the final say on the Estimate laid before the Assembly in the event of a dispute, but the Board then has the option of raising its concerns formally with the National Assembly before the latter votes on the annual budget motion.

Membership of the Board

6. The Board will be overwhelmingly non-executive: five of the seven members will come from outside the organisation and will have limited experience of the WAO. However, they will have important executive functions. We consider it essential that an executive board has a greater proportion of executive members, who would need to be senior managers within the WAO, in order to bring sufficient managerial experience to the Board. A much better balance could be achieved with two or three executive members, in addition to the AGW, while still maintaining a majority of non-executive members.

Oversight and accountability of the new WAO

7. One of the principal intentions of the Bill is to hold the AGW to account for his management of the WAO. However, the Board's scrutiny functions are compromised by its executive powers. The Board cannot credibly scrutinise its own decisions, which may include sensitive matters such as severance payments and staff training – exactly the issues that led to the governance failures that precipitated this Bill. It is

quite possible that the non-executive members' appetite for critical scrutiny will diminish over time as they are implicated in decisions they themselves have taken and any unwelcome consequences of those decisions become apparent.

8. The Bill does not establish any reliable mechanisms for the WAO itself to be scrutinised. It is not reasonable to expect the PAC or another Assembly committee to exercise the in-depth scrutiny currently provided by the three existing governance committees (Audit and Risk Management, Remuneration and Resources). The Bill does not require these committees to be retained or to report the outcome of their work to the Assembly. Far from improving the supervision and oversight of the WAO, the Bill diminishes it.
9. In our view, the proposed relationship between the AGW and the WAO is fraught and potentially untenable. We recognise that the intention is to ensure that the AGW is held to account for the exercise of his/her functions as AGW. We consider that this can best be achieved by legislating for the creation of a non-executive board exercising solely advisory, supervisory and scrutiny functions, but not executive decision-making, such as agreement of work programmes.
10. We would expect the Board to provide wide-ranging advice to the AGW and strong, independent and comprehensive scrutiny of the WAO's operations; it should not be seen as a soft option. We believe this option would provide more robust oversight of the WAO; the Government offers no rationale for its assertions to the contrary (paragraph 94 of the Explanatory Memorandum). A single, non-executive board would remove conflicts of interest and would be cleaner, simpler and (according to the Government's own impact assessment) considerably less expensive than the Government's preferred option of an executive board.

Staff related matters

Transfer provisions

11. We welcomed the commitment in paragraph 242 of the consultation document that any transfer of staff would be in accordance with the Cabinet's Office Statement of Practice on Staff Transfers and that provision would be made so that the transfer of employment would be on no less favourable terms than would be the case if TUPE applied. We are therefore disappointed and concerned that the Bill does not make good on this commitment. The transfer provisions in Schedule 3, Part 3 do not include provisions that replicate the TUPE regulations, which prevent adverse alterations to an employee's terms and conditions that are connected to a transfer between one organisation and another. We believe that these provisions should be added and the

transfer should be treated explicitly as a “machinery of government” transfer.

12. We also request that paragraph 5(2)(b)(ii) of Schedule 3 of the Bill makes clear that an employee’s continuous service includes not just service with the AGW, but also service with the WAO’s predecessor organisations (the Audit Commission and the National Audit Office) that was transferred into the WAO when it was created on 1 April 2005. This is an important addition because many of our members have the majority of their service in these predecessor organisations.

Terms and conditions to be “broadly in line” with the Welsh Government

13. Paragraph 31 of Schedule 1 of the Bill requires the WAO’s staff’s terms of employment to be “broadly in line with those members of the staff of the Welsh Government.” We agree that it is important for the employment practices, terms and conditions for staff to be firmly rooted in public sector norms and standards. Fair and open competition using objective criteria must be the basis for staff selection, within the framework of a robust equal opportunities policy. In terms of pay, we accept the principle that the WAO should have due regard to appropriate comparators in the public sector. However, we have two important reservations about the proposed link with the Welsh Government:

- a) It is essential that the auditor of public bodies is independent, and seen to be independent, of the organisations audited. For this reason we consider it inappropriate to link terms and conditions explicitly to the Welsh Government, especially as this organisation is such an important recipient of audit scrutiny. It would be very difficult to undertake a value for money study on a certain aspect of the Welsh Government’s employment practices, for example its recruitment and selection procedures, if the auditor was required to follow those procedures. The conflict of interest is self-evident.
- b) There is an implicit assumption that the Welsh Government’s practices are the best benchmark for public audit. However, the nature of the Welsh Government’s work is quite different from the WAO’s. The staff of the WAO have a much higher proportion of specialist and relatively senior staff who travel much more extensively than the typical civil servant at the Welsh Government. There needs therefore to be sufficient flexibility to respond to market conditions and, crucially, to create grading structures and pay scales that meet audit requirements rather than those of another organisation. For this reason, it is essential that any “broadly in line” wording does not require close alignment to any single aspect of the Welsh Government’s (or any other organisation’s) employment practices and organisational structures.

14. The term “broadly in line” is so vague as to make enforcement difficult. Furthermore, it creates a potential conflict with the transfer provisions in Schedule 3, Part 3 that require employees’ existing terms to be transferred to the new WAO. We consider that a provision along the lines of that in paragraph 17(2) of Schedule 2 of the Budget Responsibility and National Audit Act 2011 – to “have regard to the desirability of keeping the terms broadly in line with those applying to civil servants ” – would be a sufficient safeguard. We consider that if a comparator for audit staff is to be included in the legislation, it would be more appropriate to use the National Assembly for Wales rather than the Welsh Government. This link would ensure that the terms and conditions of the staff are broadly in line with those of staff working for the body that funds the auditor and to which it is ultimately accountable. Furthermore, it would demonstrate audit independence from the Welsh Government.

Employee representative

15. PCS welcomes the principle of having an employee representative as a member of a non-executive advisory board, and we consider that the ability to represent employee experience and views at Board meetings would be valuable. We welcome the principle of an employee representative if that is the intention of the proposals. We note that this is now considered good practice, and we understand that all Health Boards in Wales have one. But this would only be appropriate if the Board was supervisory in nature. We do not think an employee representative should take part in executive decision making since this would compromise their position as a representative of the workforce.

16. We do not have fixed views on how employee members should be appointed, but the proposed method is not conducive to the selection of an employee representative. The WAO’s employees would need the major say in who that person should be, and we do not understand how the non-executive members could assess applications “on merit” when the criterion is “employee experience.” Our preference is that the employee representative should be elected by the staff.

17. The arrangements proposed in the consultation are more suitable for the appointment of executive members. The AGW would clearly need a major role in determining which of the WAO’s senior managers should be members.

We look forward to giving oral evidence on the Bill on 1st October.

Yours sincerely

Sian Wiblin

PCS Negotiations Officer, Wales
On behalf of the Branch Executive Committee, Wales Audit Office