



# **Cynulliad Cenedlaethol Cymru** **The National Assembly for Wales**

## **Y Pwyllgor Cyfrifon Cyhoeddus** **The Public Accounts Committee**

**Dydd Llun, 1 Hydref 2012**  
**Monday, 1 October 2012**

### **Cynnwys** **Contents**

Cyflwyniad, Ymddiheuriadau a Dirprwyon  
Introductions, Apologies and Substitutions

Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1—Tystiolaeth gan Sefydliad Cyfrifwyr  
Siartredig Cymru a Lloegr  
Public Audit (Wales) Bill: Stage 1—Evidence from the Institute of Chartered Accountants in  
England and Wales

Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1—Tystiolaeth gan Prospect ac Undeb y  
Gwasanaethau Cyhoeddus a Masnachol  
Public Audit (Wales) Bill: Stage 1—Evidence from Prospect and the Public and Commercial  
Services Union

Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o'r Cyfarfod  
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from the Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir  
trawsgrifriad o'r cyfieithu ar y pryd.

The proceedings are recorded in the language in which they were spoken in the committee. In  
addition, a transcription of the simultaneous interpretation is included.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Mohammad Asghar	Ceidwadwyr Cymreig Welsh Conservatives
Mike Hedges	Llafur Labour
Darren Millar	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Gwyn R. Price	Llafur Labour
Jenny Rathbone	Llafur Labour
David Rees	Llafur (yn dirprwyo ar ran Julie Morgan) Labour (substitute for Julie Morgan)
Aled Roberts	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Lindsay Whittle	Plaid Cymru The Party of Wales

**Eraill yn bresennol**  
**Others in attendance**

Gareth Howells	Prospect
David Rees	Prospect
Ben Robertson	Undeb Gwasanaethau Cyhoeddus a Masnachol Public and Commercial Services Union
Vernon Soare	Cyfarwyddwr Gweithredol, Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr Executive Director, Institute of Chartered Accountants in England and Wales

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol**  
**National Assembly for Wales officials in attendance**

Sarah Beasley	Clerc Clerk
Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Sarah Sargent	Dirprwy Glerc Deputy Clerk

*Dechreuodd y cyfarfod am 2.10 p.m.*  
*The meeting began at 2.10 p.m.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon**  
**Introductions, Apologies and Substitutions**

[1] **Darren Millar:** Good afternoon, everyone, and welcome to today's meeting of the Public Accounts Committee. Headsets are available for translation and sound amplification; translation is on channel 1 and amplification on channel 0. Please ensure that your mobile phones, BlackBerrys and pagers are switched off, as they can interfere with the broadcasting and other equipment. In the event of an emergency, ushers will guide people to the nearest

appropriate exit. We have received apologies today from Julie Morgan, who cannot be with us, but David Rees is attending as a substitute; you are very welcome, David.

**Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1—Tystiolaeth gan Sefydliad  
Cyfrifwyr Siartredig Cymru a Lloegr  
Public Audit (Wales) Bill: Stage 1—Evidence from the Institute of Chartered  
Accountants in England and Wales**

[2] **Darren Millar:** I am delighted to welcome Vernon Soare, executive director of the Institute of Chartered Accountants in England and Wales, to our evidence session today. We have received a paper from ICAEW, which has been circulated to Members, so we have had an opportunity to digest that. Can you clarify whether you support the need for legislation in this area?

[3] **Mr Soare:** Thank you, Chair, and thank you for your welcome. Yes, we support the need for legislation to put on to a sound footing practices that are currently in place, in the sense of custom and practice.

[4] **Darren Millar:** I appreciate that. We will move now to questions from Members.

[5] **Gwyn R. Price:** Thank you. Could you briefly outline your concerns regarding the governance model proposed in the Bill?

[6] **Mr Soare:** Before I answer the question, Chair, may I, for clarity, declare an interest? We have noted in paragraph 6 of our submission that we are currently discussing with the Wales Audit Office the potential for ICAEW to provide some monitoring services, and for a contract; I wanted to make that very clear. I apologise for that digression.

[7] Our concern regarding the governance issues hinge on the independence issue. We come at this from the point of view of professional standards, international accounting standards and the requirements of our ethics code. In a nutshell, what we see is a proposal for a board that is more oversight and supervisory in nature, but having significant executive responsibilities, and we believe that those executive responsibilities cut across the requirement and the need for the independence of the Auditor General for Wales.

[8] **Gwyn R. Price:** Can you elaborate on why you feel that previous experience could unintentionally lead to the creation of legislation that would reduce the AGW's direct accountability to the Assembly?

[9] **Mr Soare:** The background in the papers and the explanatory memorandum touch upon certain issues that have taken place over the last two or three years with the Auditor General for Wales and the Wales Audit Office. Our concern is that, in an effort to, understandably, try to put in place checks in that area and to rectify those particular issues, it is shelved over into creating some other unintentional problems. So, the greater scrutiny of the Auditor General for Wales, as a result of past episodes, has turned into some problem in terms of independence and the way in which the Auditor General for Wales would discharge his or her statutory and professional ethical responsibilities.

[10] **Aled Roberts:** Gofynnaf fy nghwestiwn yn Gymraeg. Rydych wedi cyflwyno model goruchwyllo ac arolygu ym mharagraff 8 eich tystiolaeth. A allwch ymhelaethau ar pam y credwch fod mwy o gryfderau yn y model hwnnw na'r model **Aled Roberts:** I will ask my question in Welsh. You have presented a supervisory and oversight model in paragraph 8 of your evidence. Can you expand on why you believe that there are more strengths in that model as opposed to the model that is in the

sydd yn y Bil?

Bill?

2.15 p.m.

[11] **Mr Soare:** Yes, I can. In paragraph 8, we refer to the supervisory model. That model has strengths—and could have many strengths—if it was made clear that the supervisory role of the Wales Audit Office board was going to be discharged in such a way that it did not fetter the Auditor General for Wales’s discretion in discharging the statutory responsibilities of that office. So if it was to be advisory model, rather than, on occasions, as we understand it, to go against or to alter the views of the Auditor General for Wales, that is where we believe that it is not a good model. At present, it is a mixture; in a sense, it is supervisory and executive or operational. If it was purely supervisory, it would be a good model, and I may refer to the National Audit Office model in a moment. However, at present, we believe that it is a mixture, and, in a sense, it is neither one thing nor the other.

[12] **Aled Roberts:** Mae eich tystiolaeth yn nodi na chaiff y model hwn o fewn y Bil ei adlewyrchu yn yr un man arall yn y Deyrnas Unedig. Rydych eisoes wedi sôn am Swyddfa Archwilio Genedlaethol y DU. A allwch nodi’r gwahaniaethau pwysig rhwng y model yn y Bil a model y SAG? **Aled Roberts:** Your evidence states that the model that is contained in the Bill is not reflected anywhere else in the United Kingdom. You have already mentioned the UK National Audit Office. Could you note the important differences between the model in the Bill and the NAO model?

[13] **Mr Soare:** The central difference between the model that is proposed in the Bill here and the UK National Audit Office model is that, while the National Audit Office board is a body corporate and the auditor general is, again, legally a separate entity, there is between them, in a sense, a code of practice, which describes the interaction between the auditor general and the National Audit Office board. As far as we can see, in this particular Bill, that code of practice is absent, and in its absence it is unclear to us, for example, how differences between the Auditor General for Wales and the Wales Audit Office board could be reconciled in practice. In the NAO model, it is set down; so, if there is a disagreement, or a difference of opinion, it is set down clearly as to how those differences will be resolved, giving a clear definition of the scope of the board and the auditor general. We believe that that is currently missing from this Bill.

[14] **Aled Roberts:** As far as you are aware, has any explanation been given as to why the code of practice model was not followed in this instance in the Bill?

[15] **Mr Soare:** We have not received any indication as to why that was not the case. However, we believe that it would be a sensible step to do so.

[16] **Darren Millar:** Just to clarify this, you are saying that you would prefer to see a supervisory board, but that, if a corporate body was to be established, you feel that there is a need for a similar sort of code of practice between the Auditor General for Wales and the new corporate body.

[17] **Mr Soare:** Yes; we are in favour of a supervisory board, if it is oversight and supervision. We believe that that would work well, and we can see why it would work well. However, we would have to qualify that by saying that the membership of that supervisory board would have to be reviewed, because the present model makes it an almost entirely non-executive body.

[18] **Darren Millar:** We will come to the issue of membership later.

[19] **Mr Soare:** Okay. So, with those caveats, yes.

[20] **Mike Hedges:** Before people shout at me, saying that we have devolution, is there not a problem with having four different means of going about it in England, Wales, Scotland and Northern Ireland? Are there any substantial differences between the four, and how does the Welsh suggestion fit in, compared with the other three?

[21] **Mr Soare:** In terms of the different models for auditors general, I am not an expert in all of them, and I would say, first of all, that it is for the Assembly or Parliament of those jurisdictions to decide what is best for them. We are a professional body, but we recognise that one model may not be quite right for one Parliament or Assembly, as it would be for another. However, the main way in which the arrangements that have been proposed in the Bill here differ is that we believe that it will undermine the ability of the Auditor General for Wales to discharge the functions of safeguarding public money and reporting without fear or favour. That is our concern. You can have different structures, but ultimately it comes down to a matter of independence and who, in one sense, is in control of the operational audit function.

[22] **Mike Hedges:** Moving on from that, to corporate intervention in the work programme, what in your view would be an appropriate level of such an intervention?

[23] **Mr Soare:** My understanding is that the proposal in the Bill is that the Auditor General for Wales would put forward an audit programme, and the board would be able to suggest amendments and changes. I think that there is a provision if the board feels that it is unreasonable, and that opens up another debate about the definition of reasonableness, but I will not go into the legal side of that now. I am sure that you are all very well aware of that. It differs very much from the National Audit Office model: in the protocol or code of practice there, as far as the discharge of statutory functions is concerned, the Comptroller and Auditor General at the National Audit Office has the final say. So, the role of the board in the National Audit Office model is one of advice and supervision. However, ultimately, on statutory matters, it is for the Comptroller and Auditor General to decide.

[24] Outside of statutory matters, the code of practice makes it slightly different: there is a different approach, where the auditor general can be restricted as to what he or she does, but that is because it is not in the statutory function. However, it is very clear in terms of the work programme, as far as we can make out from the Bill, that there is a big potential for a fettering of the discretion and professional judgment of the Auditor General for Wales. That then leads, in our view, to a potential problem of accountability to the Assembly in terms of the fact that if, in future, there is something that has not been done correctly, or if there is a problem or an issue, it becomes very difficult to decide whether it is the Auditor General for Wales or the board that is at fault. In our view, it blurs the accountability on such matters.

[25] **Mike Hedges:** Do you distinguish between the pre-1983 powers and the post-1983 powers of the auditor general? I am of the view that he ought to be dealing with the pre-1983 powers unfettered, and I do not see the fettering of the post-1983 powers as a serious problem.

[26] **Mr Soare:** I am afraid that I am not in a position to give a definitive answer. I am not aware of the pre-1983 position. I apologise.

[27] **Mike Hedges:** The pre-1983 position was that he audited: he audited the books of all Government bodies and all bodies funded by Government. That was his role, and any value-for-money work that he did, he did in addition to that. Post 1983, he was given value-for-money powers.

[28] **Mr Soare:** I now understand. Post 1983, in the code of audit practice, value for

money is part of delivering the statutory role of the auditor general. That would not be a discretionary area. That would be part of the statutory delivery of his function.

[29] **Lindsay Whittle:** There is no dispute resolution process in the Bill. I would be interested in your views on that. When the Minister gave evidence to us, she said that it was unlikely that agreement between the two parties would not be reached, but in the event that agreement could not be reached, the parties would have to consider their positions or maybe resolve the matter through courts. What is your opinion on that?

[30] **Mr Soare:** I think it would be quite expensive for a start. As far as we understand it, the ability of the Auditor General for Wales to procure legal advice would be at the discretion of the board. I think there is a potential conflict there; he or she might find himself or herself unable to procure the right legal advice, because the board will be in control of it. I would hope that, in those circumstances, the board would not exercise that blocking manoeuvre, but it does not seem to us to be a very practical way forward.

[31] In the code of practice for the National Audit Office there are resolution procedures in place. I think there has been a view that judicial review might be brought in. All of us who have had experience of judicial review know that it takes an enormous amount of time and is very expensive. Probably neither of those things would help the business of the Assembly or of the audit office.

[32] **Lindsay Whittle:** That is interesting. On the code of practice, what are your views on the provision of a statutory code, similar to that of the National Audit Office, to manage the relationships between the Auditor General and the Wales Audit Office?

[33] **Mr Soare:** We would be in favour of that, because it would take away a lot of uncertainty and could deal with some of the potential ambiguities in a more measured way before they become a practical problem. The last thing you would want is a stand-off and both sides having recourse to legal advice. Interestingly, as you have probably seen, the code is quite short, but I think it is a very clear document and we would be in favour of a similar document operating here.

[34] **Lindsay Whittle:** Thank you very much.

[35] **Darren Millar:** When the legislation was proposed in England, with the code of practice, did you support the establishment of the corporate body as an institute there?

[36] **Mr Soare:** To be quite straightforward, I cannot recall whether we expressed a view at that time, but, if it is of interest, I can go back and send you a separate note on that.

[37] **Darren Millar:** I think it would be interesting in terms of consistency.

[38] **Mr Soare:** Yes.

[39] **Darren Millar:** Also, in terms of redress, what role you think the National Assembly for Wales might play in the event of a disagreement, if a corporate body were to be established?

[40] **Mr Soare:** Ultimately, I think the National Assembly should have the final say. It would depend on the circumstances and on whether the Auditor General at that point felt that he or she was compromising his or her role. There is the ultimate course of action—I refer here to the ethical code for auditors and professional accountants that is subscribed to by the ICAEW, but which is an international code; there are provisions in that such that, if a professional accountant auditor believes they cannot discharge their role, the ultimate step

would be to resign their office. So, I would say yes, the Assembly should have the final say, but that would then bring into focus whether the Auditor General for Wales felt that they could continue in their role in those circumstances.

[41] **David Rees:** From what I gather from all the evidence and from what you are saying this afternoon, the relationship between the Auditor General and the board is the crucial aspect about which you are concerned, particularly—you used these words in paragraph 12—in relation to compromising the independence of the Auditor General for Wales. Could you expand a little on your concerns about compromising the independence and the impact that will have?

[42] **Mr Soare:** Compromising the independence we see first of all in the work programme, in that the board can decide to alter the work programme that the Auditor General for Wales believes is professionally needed to discharge their statutory responsibilities. It can be rejected on the grounds of unreasonableness and, as has already been mentioned, it is not quite clear to us what would be unreasonable and therefore, again, that opens up the prospect of a lack of clarity there. There is also the issue that, as far as we can see, the board could instruct the staff of the Wales Audit Office, because I think there is going to be a change in the reporting line: the staff would no longer report directly to the Auditor General for Wales but rather to the board. The staff could also be instructed to carry out work for some of the audit clients or audited bodies, and that introduces a number of problems with regard to the ethical code. It might be said that that would never happen, but, looking at the arrangements, if the board decided to deploy some of the Wales Audit Office staff to sort out a big problem—a financial or a systems problem in one of the audited bodies or departments—the ability of the Auditor General for Wales to independently discharge their role in respect of the audit of that body would be compromised. Therefore, I think that there are the seeds of problems in that respect in the arrangements as drafted.

2.30 p.m.

[43] **David Rees:** Do you therefore think that the supervisory model you mentioned would alleviate those concerns or are there other ways to alleviate those concerns?

[44] **Mr Soare:** We believe that the supervisory model, the oversight model, would reduce those potential problems in that it would keep the operational and executive responsibility with the Auditor General for Wales and the oversight body would not intervene in operational matters. However, that is not to say that bodies such as the audit committee or the remuneration committee should not play a very strong role. Looking at the way that other bodies work in the private and public sectors, the key to good corporate governance, in addition to the board, is those committees. Therefore, we believe that a supervisory model with a strong audit committee and a strong remuneration committee would be far preferable.

[45] **Darren Millar:** Going back to the issue of the possibility of a statutory code, if there were a statutory code and a supervisory-type board rather than a corporate board with executive functions, do you think that might be a better approach to resolving your concerns?

[46] **Mr Soare:** Yes, we do.

[47] **Darren Millar:** Okay. Thank you. Jenny is next.

[48] **Jenny Rathbone:** Would such a statutory code get around the reservations you have set out in paragraph 15 that it would not satisfy the requirements of the Companies Act 2006 or the Financial Reporting Council, which are presumably there to ensure that auditors are not interfered with in their work?

[49] **Mr Soare:** If I may, I will expand a little on that paragraph because it may not be entirely clear what we are saying there. Each of the four auditors general in the UK are able, under the Companies Act 2006, to act as a statutory auditor. To my knowledge, at the moment, the only one who does this is the Comptroller and Auditor General from the National Audit Office. Under that arrangement, the National Audit Office audits about 30 public sector companies under the Companies Act 2006. For example, High Speed Two is a limited company under the Companies Act, but it is audited by the Comptroller and Auditor General under the provisions of the Companies Act 2006. The Companies Act 2006 stipulates very clearly issues to do with the independence, control and objectivity of the auditor. Of course, it is generally written for the corporate sector, where it must be very clear that the statutory auditor is carrying out his or her role in signing off those accounts and financial statements without any outside influence or undue influence.

[50] As currently drafted, if, in future, the Auditor General for Wales was requested to carry out audits of public sector companies here in Wales, it is our view that the current proposals in the Bill would not satisfy the requirements of the Companies Act because, under the current proposed model, the Auditor General for Wales's ability to discharge the audit of that company under the Companies Act would not comply with the ethical code of practice or the requirement in the Act to be seen to be an independent auditor in that situation. Therefore, in those circumstances, looking at this Bill, although in a sense some of it is a reaction to what has happened in the past, it would be good to bear in mind what might happen in future. If there is a prospect of the Auditor General for Wales being required to audit public sector companies here in Wales, you need to ensure that you have a framework now that will be fit for purpose in the future. It is also interesting that, in the UK, the Comptroller and Auditor General, in addition to auditing companies that are public sector companies constituted under the Companies Act, is also considering whether he could have audit rights in companies that discharge a large amount of delivery of public services, for example. Again, any amendments to the Bill at this stage here need to look to the future as well as to the past.

[51] **Jenny Rathbone:** Yes. Certainly, Serco, which is in the press today, springs to mind.

[52] **Mr Soare:** Yes.

[53] **Darren Millar:** Just to clarify, you have talked a lot about companies, but what about third sector organisations, such as charities, et cetera? Would there be similar implications?

[54] **Mr Soare:** Yes. I do not speak with great authority on this, but, in terms of many charities, as well as other organisations that deliver a public service—I am thinking of organisations such as housing associations or the equivalent here in Wales—if you look at their constitutions, they are constituted by statute under the Companies Act. Therefore, the arrangements for the audit of a third sector organisation, such as a charity or housing association, if it is written into their constitution that they are formed under the Companies Act, must comply with the Companies Act 2006. So, many third sector organisations could fall into that category also. So, currently, the arrangements would not work, as far as we understand, although we would advise that you have some discussion with the Financial Reporting Council itself on this.

[55] **Jenny Rathbone:** Okay, but if there was a statutory code making it clear that the board was not able to interfere with the statutory duties of the auditor general, would that then meet the requirements of these bodies?

[56] **Mr Soare:** Obviously, it would depend upon what the code said.

[57] **Jenny Rathbone:** Indeed.

[58] **Mr Soare:** If we assume that it was similar to, or carries the same import as, the National Audit Office code of practice, the answer would be 'yes', because currently, the Comptroller and Auditor General for the National Audit Office is signing around 30 Companies Act reports per year. Each year, the Financial Reporting Council reports to the Secretary of State as to the discharge of its responsibilities because it will look at how those audits have been carried out. For example, the one published in July stated that it has looked at the work of the Comptroller and Auditor General on those 30 companies, and that it is satisfied that he has discharged his responsibilities in line with the Companies Act. So, the code of practice actually works there in that respect.

[59] **Jenny Rathbone:** Okay. So, to summarise, it would be possible to comply by looking closely at the statutory code in order to make it comply.

[60] **Mr Soare:** Yes.

[61] **Jenny Rathbone:** I wish to look at your comments on the composition of the board. I know that you mentioned earlier the importance of the board having an audit committee and a remuneration committee. What makes you think that non-executives would not be in a position to carry out those sorts of functions? The job descriptions could ensure that those people would have the right historic understanding of all this.

[62] **Mr Soare:** Just to clarify, we are not saying that there should not be non-executives on the supervisory board. Absolutely, there should be. However, in terms of a corporate governance model, I think that we will be recommending more of a unitary board model where you have non-executives, but also senior executives from the organisation, on the board. That is a model that is followed under the corporate governance code of the Companies Act. It means that those executives can be made directly responsible at board meetings. More importantly, they can be part of the decision making as to what needs to be carried out, and then they are responsible for the implementation of it. The problem that we see with the board membership model, as it is proposed, is that it is overwhelmingly non-executive, and therefore we believe that there is not the right balance on that board in terms of the accountability in making the organisation work.

[63] So, yes, by all means, you must have non-executives, but as we currently see it, in terms of the other members, it should be the Auditor General for Wales and one other staff member from the Wales Audit Office who are nominated—not by the Auditor General for Wales but by the board itself. That seems to us to be a rather curious arrangement. In contrast, in the National Audit Office, I think that it is the auditor general who can nominate three members of the audit office's staff, and they will generally be part of the senior management team. By all means have a majority of non-executives if it works, but we believe that the Auditor General for Wales needs to have some ability to have some of his or her senior staff on that board as well.

[64] **Jenny Rathbone:** Why would it not be possible to require the senior staff to come to explain themselves to the non-executive board?

[65] **Mr Soare:** You could try that model, but, in our view, that does not bring into focus the strengths of having a unitary board, in that decisions are taken as a whole board and that executives and non-executives are together bound into those decisions. If you merely have a senior executive turning up to answer some questions and then leaving, then I do not really think that that sends the right message to those senior executives and it certainly deprives the board of the opportunity, in the course of a normal board meeting, to ask the views of the senior staff. In a sense, you are depriving the organisation of the insights and the professional experience of its most senior staff.

[66] **Jenny Rathbone:** You can still have them present in the board meetings, but for them not to be board members formally. It is perfectly possible to ask the director of finance to give a report and then to have a full discussion on the implications of that report.

[67] **Mr Soare:** Yes. I am not saying that you cannot do it, but we believe that a model with a unitary board is a stronger model, and it is the one advocated under the corporate governance codes. So, if that is the way in which you wish to go, then you can get the information you need, but I rather doubt that you would get the whole buy-in and a feeling that you are one organisation, rather than two.

[68] **Jenny Rathbone:** Okay, so would you argue for that as the preferential model, even if the board was monitoring the work of the auditor general and the WAO, rather than taking executive decisions?

[69] **Mr Soare:** Yes, we still would. So, while we are not saying that it could not work the other way, our preference would be to make them board members.

[70] **Mike Hedges:** I am used to this suggested method. It is the way that further education colleges work, for example, where you have the equivalent of lots of non-executive members and some staff-elected members, and you have the principal there as a matter of course and right, as well as other senior staff attending. It would also be abnormal if the head of finance or the deputy and assistant principals were not present, but the voting rights sit with the non-executive members. That situation does not just exist in further education; it exists in quite a few other bodies, but I do not want to go through them all at the moment. So, it seems to be a model that works quite well in the public sector. Do you not think that there is a problem that, if the livelihoods and positions of a group of executive members depend upon the chief of that organisation, there is a danger that those executive members are curtailed in what they say and do in a meeting in order not to upset their 'boss'?

[71] **Mr Soare:** There is always that possibility, but board members, under their statutory responsibilities—and I am talking more from the Companies Act side—have a responsibility to discharge. It may just be a reflection of the difference between the public and private sector, but in the private sector, with a listed company, one could not imagine that the chief financial officer or the finance director would not be a board member. However, if you are confident—and I have worked in the public sector for 25 years before joining ICAEW—that it is a model that works, then we are not here to say, 'Under no circumstances try it', but we have a preference.

2.45 p.m.

[72] **Mike Hedges:** I was going to say that, of course, other models failed in a number of cases and mention Enron and Polly Peck; I could keep going, could I not?

[73] **Mr Soare:** I would be glad to come here on another occasion and talk about them, but, yes, there have been failures.

[74] **Darren Millar:** We are digressing.

[75] **David Rees:** I can concur with Mike, given my experience of a public sector body that was perhaps not reflective of what you are saying. I have two thoughts on that. I also think that the executives may have indirect vision on it, but what is your view on elected representatives of staff? You mentioned senior executives of the Wales Audit Office, but what about an elected representative from the Wales Audit Office?

[76] **Mr Soare:** Again, there are various models of corporate governance, and we know

that some have elected members from the staff on their board. We have nothing against that, but if it meant that there were no senior representatives of the management on the board, we would have a concern. So, if there is a more co-operative approach or something of that sort, we are not against it.

[77] **David Rees:** So, there should be a balance of some senior executives and elected representatives. It is important to understand the different levels and how things work, which are reflected honestly sometimes by senior executives.

[78] **Mr Soare:** There is also a question about what the constituency for the election is and what the purpose of the elected person is. In terms of the supervisory board, which one would imagine, under the code-of-practice approach, would be more strategic in its responsibilities, advising the auditor general, you might argue that that may not be the right position for somebody elected out of the workforce, but maybe a position on the executive board would be. Again, we have no strong views on that. If that works and it brings something to the advisory board, that is fine.

[79] **David Rees:** It does not matter which type of advisory board it is or whoever it is, it is what they bring to the table that is important.

[80] **Mr Soare:** Yes.

[81] **Mohammad Asghar:** Thank you, Mr Soare, for giving us this briefing. Right at the beginning, you said that you agree with the Bill, but during this session you have shown a lot of concern regarding this Bill. Can you expand on your comments in paragraphs 6 and 19 of your evidence and, in particular, set out how the proposals in the Bill would affect the ability of the auditor general to provide a robust quality assurance regime?

[82] **Mr Soare:** At this point, I am glad that I made my declaration of interest early. It is merely the point that the ability of the auditor general to procure services that he or she believes will help them with the discharge of the statutory responsibilities could be vetoed by the board under the arrangements as we understand them. The example that we have taken, but there could be other examples as well, is one where the auditor general believes that he or she needs advice or some assistance and if that is vetoed by the board, if it is in a statutory area where the auditor general is discharging his or her responsibility, independence is fettered at that point.

[83] **Mohammad Asghar:** How do you think that these concerns could be addressed in the Bill? Finally, would this Bill give the public purse real value for money?

[84] **Mr Soare:** In looking at the Bill, it is a little curious that, in some ways, some of the safeguards or changes in the Bill would, in our view, make the audit of public money less rigorously scrutinised than the audit of the private sector. Having spent 25 years working in different parts of the public sector, where I know of the great importance being placed on the safeguarding of public money, that is a bit curious to us, and we have been through some of the issues. It is our view that if a code of practice or equivalent was put in place, that would, hopefully, mean that less expense would be incurred on occasions when there were difficulties and problems to be sorted out and there would be less recourse to legal advice. Ultimately, you do not want to put into the Bill issues of process that could better be placed in a code of practice, which could probably be more easily amended in future than a Bill, where it would be enshrined in legislation. That is why we think that a code of practice is a better solution to many of these problems.

[85] **Darren Millar:** Are there any further questions? If there are not, it is just incumbent upon me to thank you, Mr Soare, for your evidence, and for making yourself available for

scrutiny today. We will of course circulate a verbatim account of your evidence to the meeting, and if there are any inaccuracies, please feel free to let us know and we will make sure that they are amended.

2.51 p.m.

**Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1—Tystiolaeth gan Prospect ac Undeb y Gwasanaethau Cyhoeddus a Masnachol**  
**Public Audit (Wales) Bill: Stage 1—Evidence from Prospect and the Public and Commercial Services Union**

[86] **Darren Millar:** We move to item 3 on our agenda, continuing with the evidence that we are taking on the Public Audit (Wales) Bill. I am delighted to welcome to the table Ben Robertson of the PCS union, Gareth Howells of Prospect, and another David Rees, also from Prospect. I thought the world was only big enough for one David Rees, but we have two. Thank you for the written evidence that you have submitted. We will go straight into some questions on that evidence. Most of the questions that we ask will be directed to both of your organisations, so feel free to let me know if anyone wants to chip in.

[87] I will ask both organisations—perhaps starting with you, Ben—whether you agree with the need for legislation in this area and the general principles of the Bill as laid out.

[88] **Mr Robertson:** Yes, we agree that the governance arrangements for the WAO need to be put on a more formal footing. They need to be improved and strengthened, so, to that end, we agree with the principles behind the Bill. However, we share the concerns raised by the AGW and others, as set out in our paper, that some of the provisions relating to the transfer of staff are not strong enough. We do not agree with some of the governance proposals, in particular the creation of an executive board for the WAO and the separation of the WAO from the AGW's functions.

[89] **Darren Millar:** We will discuss some of these issues in more detail as we get to the meat of the questions. Gareth, did you have anything to add?

[90] **Mr Howells:** We concur with the points that Ben has made. From Prospect's perspective, we have past experience of governance failures in the organisation, and we support the Bill's intention to strengthen and improve the accountability and governance arrangements relating to the auditor general and the WAO. As I have said, we did express concerns previously about the conduct of the previous AGW in office, and subsequent investigations by this committee bore out a lot of our concerns. From our point of view, the principles espoused in the Bill are something that we strongly support. So, yes, we support it.

[91] **Mohammad Asghar:** My question is for both Ben and Gareth. Are you concerned that the governance model proposed in the Bill would have the effect of determining the accountability and independence of the auditor general?

[92] **Mr Howells:** Dave, would you like to come in on this point?

[93] **Mr Rees:** Just to reiterate the points that have been made, we fully, 100% support the principles behind the Bill. We want to see an independent public audit function in Wales, and we want to see true accountability for the audit function. One of the reasons we are here today simply is to discuss the question of whether the Bill does what it says on the tin; does it actually support those two principles? Fundamentally, the problem we have comes down to the question of what is meant by accountability. I think that the Bill probably confuses what accountability is. Accountability should not be about restricting freedom of action. What this

actually does is to restrict the freedom of the auditor general to act independently. We want to see an auditor general who is truly independent, but accountable for his actions so that, should he misuse his authority, he can be bashed over the head—metaphorically, of course.

[94] The difficulty in terms of accountability is that this Bill restricts his freedom to act. We want to see the Bill enabling him to act as he sees fit, while at the same time being subject to scrutiny. The model has a board that has both executive and scrutiny functions. We believe that the model should separate the two concepts out: the board should be about ensuring that the auditor general is accountable for the exercise of his independent authority.

[95] **Darren Millar:** Did you want to add anything?

[96] **Mr Robertson:** Not really. I fully support that; I think that the executive responsibilities have to remain with the auditor general. The annual plan and the budget have to be determined ultimately by the auditor general. The proposals as they stand create a tension, in that the board and the auditor general may not agree on the budget or the annual plan. If everyone behaves reasonably, then there should not be a problem, but people do not always behave reasonably. The model has to be sustained, I imagine, for decades, potentially—they are not going to legislate in this area for some time to come, I would have thought. I think that it creates unnecessary friction. A much simpler solution, and one that ensures genuine accountability, would be to have a supervisory and advisory board, with the AGW retaining executive responsibility.

[97] **Darren Millar:** Thank you for that clarity. David?

[98] **David Rees:** I think that you have answered the question, to be honest, because both of you have highlighted the fact that the relationship between the board and the AGW is the critical aspect, along with the independence of the AGW to undertake his functions. I think that you have already mentioned that it is the plan and the ability of the AGW to identify the resources that he or she requires to undertake the responsibility. If there is going to be a supervisory role for the board—which I think was the solution that you came up with for this—where is the power to make an auditor general do something? You mentioned the budget; what happens if he comes up with a budget that is totally unacceptable? Where do you see the power then to control the AGW in that aspect?

[99] **Mr Robertson:** I suppose that, ultimately, the National Assembly has to agree the budget; it is part of the budget motion. I think that there is already, in reality, a satisfactory control over that, in that the National Assembly would not approve an outrageous budget. Well—

[100] **David Rees:** We would hope not. Put it that way. *[Laughter.]* Do you think that the level will come back to the Assembly to rule on?

[101] **Mr Robertson:** Ultimately, with a budget, it does. I certainly think that a supervisory and advisory board would advise the AGW on his budget. He would have to go to the board and say, ‘This is my budget’, and consult it, and the National Assembly or this committee, if it is acting for the National Assembly, can say, ‘We don’t think that that budget is appropriate’. I am not sure that you would want to create a board that could override the auditor general in that respect, because if that is the case, who has the final say on the budget? Presumably, it is still the National Assembly, but it is not quite clear. If you are going to have the National Assembly and the auditor general arguing over the budget, I do not think that that would be—

[102] **David Rees:** So, you think that the board should be totally supervisory and advisory—scrutiny and that is it?

[103] **Mr Rees:** Yes. We would expect the auditor general to consult the board. We would expect the auditor general to take on board the views of the board. If necessary, if it is not satisfied that the auditor general is acting reasonably, or is concerned that he or she is abusing his or her power, we would then expect the board to escalate the matter with the Public Accounts Committee.

[104] **Darren Millar:** Members will be aware, of course, that there have been discussions between this committee and the existing auditor general about his budget in the past, and there have been amendments that resulted from those discussions.

3.00 p.m.

[105] **Aled Roberts:** I would just like to tease out a bit more of this. Where a dispute does arise, there is no provision on the face of the Bill with regard to dispute resolution. Do you feel that, professionally, that could lead to divided loyalties and issues of loyalty among the staff in such a situation?

[106] **Mr Rees:** I think that that applies if it is a board as set out in the Bill as it stands. It would be extremely difficult in terms of resolving disputes between the auditor general and the board. As you have said, there is no mechanism in the Bill that would make that work. The Bill talks about, for example, resource requests. It states that such requests would not be turned down unless they were unreasonable. However, there is no definition of what constitutes 'unreasonable' and, ultimately, the only way of resolving disputes as it currently stands would potentially be legal action, which is obviously not in anybody's interest and would fundamentally undermine public confidence in all public audit.

[107] One way to resolve that tension is to enable the auditor general to exercise his authority independently and then have quite rigorous accountability arrangements that enable the auditor general to be seen to be answerable for the way in which he has exercised his authority. One of the ironies from our perspective as a trade union, because we have called for greater accountability for the auditor general over a number of years, is that this Bill, to a certain extent, would make the auditor general less accountable than he currently is. At the moment, the auditor general can be called to account for his actions, but if the auditor general has the fallback position of saying, 'The reason I haven't acted as you would like me to and the reason that I have exercised my authority in the way that I have is that I have been restricted in terms of the resources that I need to deliver my audit, so I couldn't look at the things that I considered necessary because the board wouldn't agree my work programme', our worry is that, rather than having a more accountable auditor general, the Bill may perversely create a less accountable auditor general.

[108] **Aled Roberts:** We have obviously been hearing evidence on the statutory code that is in place as far as the National Audit Office is concerned, and we have heard different views with regard to whether that deals with a situation where there is a code of practice, to all intents and purposes, in operation. Do you have any views on how effective that has been within the NAO?

[109] **Mr Robertson:** I do not think that we have a view on how effective it has been in the NAO—I am not really sure about that—but the statutory code, if there is an executive board, which I believe is the model in the NAO, would be helpful because the statutory code would regulate in a little more detail some of the ambiguities that are in the Bill at the moment: exactly what powers would be delegated; how the auditor general would retain his or her independence in terms of audit judgment and the selection of topics to audit; and so on. There is a list in Schedule 2 or 3 to the relevant Act that sets out what the statutory code has to contain. So, I think that that would be helpful, certainly if there is going to be an executive

board. At the moment, I do not think that it is entirely clear. It relies on words like 'reasonable' and states that they have to agree, but there is no provision really for what happens if they do not agree, as to how any disputes or disagreements might be resolved and how they might be avoided in the first place. Some clarity around the principles of each body's remit—the AGW and the WAO—would mean that any potential dispute could be reduced, if not avoided all together.

[110] **Aled Roberts:** However, to be clear, that would not be your preference.

[111] **Mr Robertson:** Our preference is for a supervisory board. I think that the statutory code was designed for that situation, with an executive board, to avoid conflicts between the board, the National Audit Office, in that case, and the Comptroller and Auditor General. So, I am not sure that it would be necessary, if we had a supervisory or advisory board.

[112] **Jenny Rathbone:** In your evidence, you say that, at the moment, the way in which the legislation has been drafted is in danger of diminishing the oversight and supervision, because it is unreasonable to expect the PAC or another Assembly committee to exercise the in-depth scrutiny that is currently provided by the three existing governance committees. I would not disagree with that. Could you talk us through a little more about how those committees are selected, and why it would not be possible to have them as sub-committees of the board, as it were, using that type of model?

[113] **Mr Robertson:** In terms of how they are selected, I think that they are selected using Nolan principles through competition, namely that people apply for advertised posts, and we do not have any problem with how the current committees are selected. If they were sub-committees of the board—if they were members of the executive board sitting as sub-committees—that problem would remain because the board itself would take decisions which it would then have to scrutinise, and that is what would not be right about it. If they were independent, so that other people came in in addition to the board members, then I think that that problem would largely be overcome. However, you would have another layer of scrutiny which I do not think is entirely necessary if you have the main board as a supervisory board.

[114] **Jenny Rathbone:** Okay, but we would be paying these non-executives, and we would obviously be choosing non-executives who fitted the job description based on the Nolan principles, so why would it not be possible for them to carry out the duties that are currently carried out by the three existing governance committees?

[115] **Mr Robertson:** They could, but not if they are making and contributing to executive decisions about budgets. For instance, our executive committee might make executive decisions on training provision and termination payments, which are sensitive matters. If they make those decisions, I do not see how they can scrutinise them credibly.

[116] **Jenny Rathbone:** Okay, but if it was a supervisory board that was monitoring the work of the auditor general and the Wales Audit Office, then it would be perfectly possible for those people to do that work between them.

[117] **Mr Robertson:** Yes, and there would be no need for the three committees then. As you say, you would then just have sub-committees of the main supervisory board.

[118] **Jenny Rathbone:** Thank you for that. Prospect, you stated that you thought that it would be better if the auditor general was not a member of the board, and if he or she were asked to come in and discuss the work of the WAO with the board. That is an interesting point, but it rather contradicts the evidence that we heard earlier from the accountants, who said that you get better decisions if senior executives are laced into the decisions.

[119] **Mr Rees:** Again, it comes back to the nature of the board itself. If the board is an executive board exercising executive functions, I think that it would be crucial for the auditor general, and perhaps other senior executives, to be on the board. If it is to be a supervisory board that is to hold the auditor general to account, there probably needs to be that separation. I would not expect the auditor general in those circumstances to be a member of the supervisory board, but I would expect the auditor general to attend such a board.

[120] **Jenny Rathbone:** And, presumably, you would expect anyone else who needed to be held to account to attend, so to speak.

[121] **Mr Rees:** Absolutely.

[122] **Jenny Rathbone:** So, if we were to go with your recommendation that there should be only a supervisory board, what might the downside of that be?

[123] **Mr Rees:** I am struggling a little, because I think that it is the right option.

[124] **Jenny Rathbone:** Okay, fair enough.

[125] **Mr Rees:** I could be facetious and say that the downside is that it would mean some redrafting of the legislation, but I think that it is the right option for public audit in Wales.

[126] **Mr Howells:** That is the view of Prospect and I think that it is also PCS's view that that is the right approach going forward, and that there is a need to change what is proposed in the Bill.

[127] **Jenny Rathbone:** PCS, is it your view that it would be better not to have the auditor general on such a supervisory board?

[128] **Mr Robertson:** Yes, I think so, because the auditor general is being held to account by that board, and I think that it would be appropriate for him to attend, but not to be a member. The people holding others to account should be independent. You keep things simple and clear if you have that board acting in a supervisory capacity, independently of any WAO employees, except for the employee representative of course. You could not have senior managers of the WAO or the auditor general himself on that board.

[129] **Jenny Rathbone:** In principle, do you think that such a supervisory board would have enabled the concerns that you had about the previous auditor general to be addressed more quickly?

[130] **Mr Howells:** Yes, we believe that it would have, from our perspective, had we had a situation like that. One thing that we believe is important going forward, and we have discussed this option, is that there should be some sort of mechanism whereby, if there is a supervisory board, there is an employee representative on that board—and you probably want to ask us our views on the employee representative. There should also be an opportunity for the board to meet with representatives of the staff—the trade unions, say—once a year, so that it can discuss any concerns that they have. If the supervisory board, whether it is the chair or the board, then feel that there are issues, it may well be appropriate for it to relay those issues directly to this committee. To give you an example, when there were issues and we had concerns relating to the previous auditor general, we did not feel that there was a proper mechanism for us to feed into the committee at that time. The only recourse that we had was to go to the Minister for finance, who I think was Andrew Davies at the time. We raised issues with him, because we had such concerns about what was going on. There was some criticism of us by some senior people in the organisation for that, but I think that we have been vindicated in our concerns and a lot of the issues that we raised, as time has shown. So, I

think that it is important for there to be a proper mechanism for feeding through.

[131] **Darren Millar:** And for bringing those issues to the attention of this committee, or whichever committee is charged with governance and accountability.

[132] **Mr Rees:** Could I add to that? If there were to be a supervisory board, the powers of that board would be crucial, in that it would need access to any information that it considered necessary to carry out its duties to hold the WAO to account. The supervisory board would need to be able to call whichever witnesses or executives it considered it needed to speak to, to clarify issues and seek explanations. It is also crucial that any supervisory board would need the authority to report on matters of concern or take matters of concern back to the PAC.

[133] **Darren Millar:** Thank you for that. It is very helpful.

[134] **Lindsay Whittle:** You almost pre-empted my questions there, which are about employee representatives on the board. In your evidence, you have said that there is not sufficient information on the role that the employee member would be expected to perform. I think that you also say that there is evidence that there are not enough staff representatives. How many staff representatives do you think there should be, and what role should they play?

[135] **Mr Howells:** First of all, as you rightly said, we are not clear on what the Bill actually intends. Is the employee representative there to represent the staff or to bring management knowledge and experience to the board? Our preferred option is for that representative to be elected by the staff. You could have a situation whereby one person could be nominated and then there is a vote, or you could have almost a threshold, as in some elections, where you have to have a certain number of people to nominate that person. That is one option. However, Prospect and PCS are strongly of the view that there should be an employee representative. I think that I heard, when we were coming in, your previous witness make the point about the role of employee representatives, about them being involved in strategy and things like that. From what I understand of the German model, which I think is called co-determination, those people can be involved pretty clearly in strategy and things like that. So, I do not see any reason why there are not people in this organisation, our members, who are capable of making decisions like that. That is what we believe is the right option, to have them involved.

3.15 p.m.

[136] If you have a supervisory board, I think it right and proper that there be a staff representative. As for whether it is one or two, the legislation says one, but if you decided to say two, I do not think that we would quarrel with you, let me put it like that. We would be quite happy. The important thing is that these people in the Wales Audit Office are professional. They have had experience of working in the public sector, and they have skills and knowledge that they can bring to benefit the organisation. Regarding many of the problems that the organisation had, if our people had had the opportunity to have some input, I think that we probably would not have been in the mess that we were in under the previous auditor general.

[137] **Lindsay Whittle:** Do you have a crystal ball over there? You are pre-empting all my questions, which is fine. I agree that staff should be elected. Would that be by secret ballot or a show of hands?

[138] **Mr Howells:** It would have to be by ballot. That is the proper procedure for people in a democratic process. If someone from management decided to stand, and the vote was through a show of hands, who is to say, going on past experience, that there would not be some sort of retribution for those who voted against?

[139] **Lindsay Whittle:** Indeed. Thank you for that. I agree entirely.

[140] **Darren Millar:** Gwyn, would you like to come in now?

[141] **Gwyn R. Price:** Yes. As with Lindsay, you have touched on quite a few of my questions, too, but I want to ask whether the PCS fully supports that view on representatives.

[142] **Mr Robertson:** Yes, we support that. An employee representative should be elected by all staff in a secret ballot. I do not think that there is any other defensible way of electing a staff representative. Our view is that an employee representative would be best placed on a supervisory or advisory board, acting in that capacity. There might be problems on an executive board if an employee representative were called upon to make decisions in its capacity as an employer. That might compromise their role as a staff representative, so it is probably best avoided. If they were an observer on an executive committee, that would be fine, but we would have reservations about their being a full member of an executive board. If there is to be an executive board, there need to be senior managers on that board who are able to bring management knowledge and experience to the decision-making functions.

[143] **Gwyn R. Price:** Is that your opinion as well, David?

[144] **Mr Howells:** No, we have a different view on that. If there is a management board, we would like an employee representative elected by the staff to be present. There may be an issue as to whether those people would be there in an observer capacity, to see what is being done, and I am open-minded about how that works. Obviously, there could be an issue if someone votes for something that is contrary to staff interests, as that puts the person in a difficult position. However, my view is that, in the public sector, we should be adopting an approach based on mutual trust and working in partnership. If we have a mature approach to employee relations, those sorts of things should be done openly and constructively, rather than there being an adversarial approach. That is the right way forward. We want to see this organisation succeed. We do not want to go back to what has happened in the past.

[145] I would like to make one point: if the former auditor general were still in post, I do not think that my colleagues would feel comfortable sitting here, giving you their views today. That reflects the transformation in the organisation with the new auditor general, in that people feel comfortable expressing a point of view. Going forward, we need to build on that.

[146] **Darren Millar:** Thank you for that. Can I just clarify something? If a corporate board were to be established, as opposed to a supervisory board—and we have just discussed the differences between them—how many senior executives, in addition to an elected staff representative, do you feel ought to be present on that board? At the moment, the Bill is proposing seven members: five non-executives, the auditor general and another staff member. Do you think that that number ought to increase to nine members, or eight? Do you have a particular view on this, or is it not a strong view?

[147] **Mr Rees:** We do not have a particular view on exactly how many executives would be needed on an executive board. The functions of the board should determine its membership and, at the moment, I do not think that that is the case. We have an executive board with a non-executive membership. If it is to be an executive board, the number of executives on a board of nine members would probably have to be in the region of three or four.

[148] **Mike Hedges:** I have been sat on both sides of the table when TUPE negotiations have been taking place for people moving between organisations: once as a trade union representative, and once as an employer representative, I suppose, within a local authority. I

am bemused by why you think that there is a problem with TUPE. One example was when Rhondda and Pontypridd colleges merged and all the staff just transferred over. Another example was with local government reorganisation, when one authority and two halves of other authorities formed a new authority, and the transfer went through quite easily. Everybody was transferred across on their current terms and conditions into posts that were relevant to where they were. Why do you not think that that would happen here?

[149] **Mr Rees:** I do not think that it is a question of what we think would happen, as I do not think that we can anticipate what the future will hold. The concern that our members have, and which I think that staff more generally have, is that, without that TUPE protection, it could lead to changes taking place on day one of a new Wales Audit Office, and there would be nothing in the legislation as it currently stands to protect staff in relation to that.

[150] **Mike Hedges:** No, it does not protect staff, but if the auditor general said tomorrow, 'I have decided to hand you all redundancy notices, and I am now going to offer to re-employ you under new terms and conditions', there is nothing to stop him from doing that either, is there?

[151] **Mr Howells:** The difficulty in a situation like that is that people's only alternative is to resign, is it not?

[152] **Mike Hedges:** What I mean is that I do not see you being any worse off under a transfer into day one than you are now under the legislation as it stands. I am also unable to see into the future, and I do not think that either of those events is likely to happen, but they are both allowable in law.

[153] **Mr Rees:** Under a TUPE transfer, changes could not be made as a result of the transfer. The problem is that, without those TUPE terms being stated in the legislation, staff are left in the position that their terms and conditions could be changed as a result of the transfer. It is true that, in any new organisation, the terms and conditions of staff could be changed by negotiation, but those changes are not on the basis of the transfer itself.

[154] **Darren Millar:** To clarify, you want to see the TUPE regulations on the face of the Bill, do you not? You do not feel that there is sufficient protection at the moment.

[155] **Mr Rees:** In the previous consultation draft of the Bill, the explanatory memorandum actually said that there would be TUPE-like provisions, but that has come out of the explanatory memorandum.

[156] **Mike Hedges:** Perhaps I will raise this next point in two parts, before the Chair gets annoyed with me.

[157] **Darren Millar:** Go on, get it out.

[158] **Mike Hedges:** The first point is that TUPE is the Transfer of Undertakings (Protection of Employment) Regulations 2006, so that is a legal point, regardless of whether it is on the face of the Bill. I accept that you have these concerns, however, so what discussions have you had with the auditor general about them?

[159] **Mr Rees:** We have discussed them with the auditor general. Obviously, it is a matter of great concern for our members, and I believe that it is of great concern for the auditor general as well. We have discussed them, and I know that he also shares those concerns.

[160] **Mr Robertson:** Let me just add on that question that the TUPE regulations exclude public sector reorganisations. I think that there is a section that says that reorganisations of

public bodies are not, in themselves, TUPE transfers. So, we are not covered by the regulations unless there is something specific in the Bill that allows that.

[161] Secondly, there is a provision in the Bill requiring our terms to be broadly in line with those of the Welsh Government. Some of our members feel that that could potentially lead to a reduction, although we do not know which way it would go. However, without any assurance on whether terms and conditions would be protected as a result of the transfer, we do not have any protection in that respect, because there is no provision there that is equivalent to TUPE.

[162] **Gwyn R. Price:** Mike has covered quite a lot of what I was going to ask, but you say that you have had discussions with the auditor general. What was the result of those discussions?

[163] **Mr Howells:** We made representations about our concerns and all that, and I understand that he has made some of these points to you. One other point that I would like to make on this is that there were some issues regarding what happened when the Wales Audit Office was set up. We had some problems for ex-Audit Commission staff around the redundancy terms on the transfer when the Wales Audit Office was set up, so we have legitimate concerns. I should add that there was also an issue in relation to pensions, as there was a lack of clarity in relation to people joining us. The people in the audit commission were in the audit commission pension scheme and they transferred over into the civil service pension scheme. There was an issue there whereby there was some uncertainty about whether people initially were entitled to all the terms of the principal civil service pension scheme and we had to have that resolved. So, a lot of the concerns that we have raised with you are based on experience of what has gone on in the past. That is why we went to the auditor general and said to him, 'Look, we've got real concerns; you weren't around at the time when the WAO was set up and our experience tells us that we need some assurance in relation to the TUPE and to make sure that these issues are covered and are explicitly stated, so that we don't get into a situation where we get involved in litigation because we don't think that is something that we would want to get involved with'. If this issue is covered properly, it will avoid any of those issues developing in the future.

[164] **Gwyn R. Price:** You want clarity on your position.

[165] **Mr Howells:** Indeed we do.

[166] **Mr Rees:** To add to that, the question of TUPE-like provisions only applies if the board is an executive board and the employer of staff. If it is not, then there is no staff transfer.

[167] **Mr Howells:** If the auditor general was still the employer, none of these issues would arise.

[168] **Darren Millar:** Okay; I appreciate that. However, if a corporate body is created, and we have this 'broadly in line' term, are you aware of what the legal interpretation of that line may or may not be? Have you had advice at all?

[169] **Mr Howells:** No, it is vague to us. The other point is, as we explained in our evidence, if we are going to be aligned, this 'broadly in line' term would be more appropriate in relation to the National Assembly for Wales because it would give a separation from the Welsh Government. That is the Prospect view; I am not sure that PCS is totally of the same opinion on that.

[170] **Darren Millar:** I think you made the same sort of comment, did you not?

[171] **Mr Robertson:** We made the same sort of comment. We do not think the term ‘broadly in line’ should be in the Bill. We would rather see something a little more flexible: the Budget Responsibility and National Audit Act 2011 included the need to have due regard to the desirability of, which sounds a bit convoluted, but something like ‘due regard’ would be better. We accept that the WAO has to operate within public sector norms and standards, but I do not think that tying us to a particular organisation—

[172] **Darren Millar:** It is a more widely used legal term.

[173] **Mr Robertson:** More widely, yes, rather than one particular organisation. If you are going to tie us to one particular organisation, we would need to know what ‘broadly in line’ means because I do not think that is clear.

[174] **Jenny Rathbone:** It has been more or less covered, but are you familiar with Audit Scotland, which obviously has a supervisory role? It includes the Auditor General for Scotland, as well as three non-executives. There is then another body, the Accounts Commission, which does not exist in Wales. Are you aware of your members’ views on the way in which the Scottish body operates?

[175] **Mr Robertson:** I do not know. PCS represents staff in Audit Scotland, but I am not sure how they view the arrangements there. So, no, I am afraid not.

[176] **Darren Millar:** Are there any further questions from Members? If there are not, do you as witnesses have any closing remarks to make?

[177] **Mr Howells:** Thank you, Chair. You have heard our view about our preferred model. There is obviously the issue about governance, which we are concerned about. We support the move to that. We have expressed our view in relation to the employee representative and where we see that. There is also the issue around the TUPE and the terms and conditions going forward. They are the four issues that are of concern to our members, but let us be clear, we are grateful to the committee for the fact that you have looked to change the governance arrangements, which were deficient in the past. The current auditor general deserves credit for coming in and recognising that the governance arrangements were deficient. He has tried to address them, but what is being proposed in the principles of the Bill is the right way forward, and whatever the model is at the end of the day, we look forward to working with the auditor general and putting that into practice. Thank you for the opportunity to put our points to you.

[178] **Darren Millar:** Thank you, Gareth. Ben, did you want to add anything?

[179] **Mr Robertson:** I fully agree with that. I will make two brief points. The governance arrangements of the WAO need to evolve; they do not need to be fundamentally changed. They have improved a lot over the last two or three years and I do not think there is any case for the fundamental changes envisaged in the Bill. I believe that evolution is better than revolution in this respect.

3.30 p.m.

[180] On the supervisory board, I just want to emphasise that we said in our paper that it is not a soft option—we do not believe that it is—and it could actually be more difficult for the auditor. If the AGW had a good relationship with an executive board, I believe that his or her life could be much easier than if he or she had a strong supervisory board that was really able to hold him or her to account independently. That needs to be borne in mind.

[181] **Darren Millar:** Okay. Thank you for that. That brings us to the end of the evidence session. I just remind you, as witnesses, that you will be sent a copy of the transcript of today's proceedings; if it contains any errors, please let us know so that we can correct those in terms of factual accuracy. We are grateful to you for making yourselves available to us today, and thank you also for your written evidence. Diolch yn fawr.

3.31 p.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd  
o'r Cyfarfod  
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public  
from the Meeting**

[182] **Darren Millar:** I move that

*the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(vi).*

[183] I see that the committee is in agreement.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 3.31 p.m.  
The public part of the meeting ended at 3.31 p.m.*