



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

Y Pwyllgor Cyfrifon Cyhoeddus The Public Accounts Committee

**Dydd Mawrth, 16 Hydref 2012
Tuesday, 16 October 2012**

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Motion under Standing Order No. 17.42 to Resolve to Exclude the Public

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad 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**

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

Eraill yn bresennol**Others in attendance**

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| Yr Athro/Professor David Heald | Prifysgol Aberdeen University of Aberdeen |
| Amyas Morse | Rheolwr ac Archwilydd Cyffredinol y DU UK Comptroller and Auditor General |

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

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|-----------------|---|
| Sarah Beasley | Clerc Clerk |
| Joanest Jackson | Cynghorydd Cyfreithiol Legal Adviser |
| Sarah Sargent | Dirprwy Glerc Deputy Clerk |

Dechreuodd y cyfarfod am 9.02 a.m.

The meeting began at 9.02 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[1] **Darren Millar:** Good morning, everybody, and welcome to today's meeting of the Public Accounts Committee. The National Assembly for Wales is a bilingual institution and people are free to contribute to today's meeting in either English or Welsh as they see fit. Everybody has a headset; they are available for amplification and translation, should you require it, during the course of the meeting. I encourage everybody to switch off their mobile phones, pagers and BlackBerrys as they can interfere with the broadcasting and other equipment. In the event of an emergency, follow the instructions of the ushers, who will guide people to the nearest appropriate exit. We have not received any apologies for absence. We will move on to the meat of our agenda.

**Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1—Tystiolaeth gan yr
Athro David Heald**
Public Audit (Wales) Bill: Stage 1—Evidence from Professor David Heald

[2] **Darren Millar:** We are continuing with our scrutiny work on the Public Audit (Wales) Bill at Stage 1. We are taking evidence today from Professor David Heald. This is the third oral evidence session that we have had on the Bill. Welcome, Professor, and thank you for your paper, which we are very grateful for. If I may, I shall go straight into a question, but feel free to add any opening remarks in your response. Do you agree with the need for legislation in this area, and do you agree with the principles behind the Bill as they stand?

[3] **Professor Heald:** It depends what you mean by ‘the principles behind the Bill’; if you are asking whether I believe in having accountability, transparency and good governance in a public audit office, then obviously the answer is ‘yes’. However, I think that the Bill as it stands is fundamentally misguided. It reflects what happened in the United Kingdom Parliament, where they used a sledgehammer to crack a nut. The issue in the United Kingdom was largely about the expenses of a former Comptroller and Auditor General, but a complex system was set up to deal with that particular problem. Although I am not familiar with Welsh public affairs, from what I have read in the extensive documentation that I have seen, Wales is going down the same way.

[4] There are things that can be done to achieve those objectives. In my evidence, I propose a clear separation at the Assembly between the client role that this committee would perform and the oversight role that is performed by the Public Accounts Commission in the United Kingdom Parliament and the Scottish Commission for Public Audit in the Scottish Parliament. I propose the establishment of a Welsh commission for public audit. I believe that oversight belongs clearly to the legislature; that is where oversight should lie. There should not be any ambiguity about the responsibilities of the Auditor General for Wales. If I were a member of this committee, one of the things that would worry me is that future Auditors General for Wales would not be able to be as frank with the committee as they could otherwise have been, because they will have to defend a rather complex compromise that has been effected within the board.

[5] Therefore, although I am all in favour of better internal governance, the crucial point is that the Assembly should either trust the Auditor General for Wales or remove the Auditor General for Wales. There are proper protections for the independence of the Auditor General for Wales because you need a two-thirds majority of all Members voting for such removal. Obviously, in a proportionally representational parliament, that actually gives a very good protection.

[6] **Darren Millar:** We will tease out some of the detail of your responses to some of those issues, such as the corporate body, in a few moments. However, I would like to get a very clear statement on the record. Do you think that we need legislation to be able to deal with the governance and oversight issues that need to be addressed?

[7] **Professor Heald:** Most of the issues can be dealt with without legislation; they could be dealt with internally in the Wales Audit Office. Where I think you will need legislation is to set up a Welsh commission for public audit. There could be a committee of the Assembly to deal with oversight, which is the position in Northern Ireland—rather confusingly, it is called the Audit Committee of the Northern Ireland Assembly. However, I think that there is an advantage to having a statutory body for two or three reasons. One reason is that it will probably not suffer the turnover of membership during a term of the Assembly that can happen to select committees. I noticed in the report of your previous committee that there had been a lot of turnover even within the last term of the Assembly. At Westminster and in

Scotland, the statutory body does not fall at dissolution; it continues. Think about what happened in the Westminster Parliament after May 2010: at a time when key executive decisions were being taken by a new Government, there were no committees functioning; they did not really get established until July, just before the long Parliamentary recess. Therefore, having a continuing body is one of the advantages. It would also flag up the separation of the client role from the oversight role. Also, one of the things that I propose is that, if you have a statutory body, you could think about having external members with expertise. Therefore, there are some things you would want legislation for, but that would not be the present Bill.

[8] **Darren Millar:** Thank you very much for that. Julie is next.

[9] **Julie Morgan:** Can you tell us a bit more about how the Scottish system operates and your views on it?

[10] **Professor Heald:** Although I am a professor in a Scottish university, I would not claim to be very familiar with the detailed operations in Scotland. However, I was a member of the Financial Issues Advisory Group that made the recommendations that became the Public Finance and Accountability (Scotland) Act 2000, which basically set up the system. Scotland had a complex situation whereby, before devolution, we had the Accounts Commission, which dealt with local government and health audit, and the National Audit Office in Scotland, which was part of the UK National Audit Office. At the time, there was a big discussion about whether you should keep a separate body for local government audit, reflecting the separate democratic mandate of local authorities. What FIAG proposed and Parliament accepted was that Scotland was too small a country to have two audit bodies.

[11] Turning back to the situation in Wales, one of the practical problems Wales has had is that, in the six years after devolution, there was not a full-time auditor general for Wales, and the merger of the Audit Commission in Wales and the National Audit Office in Wales did not take place until 2005. One thing that came out in the international peer review was that that merger did not go particularly well, and that there were a lot of legacy issues connected with that merger. However, to come back to Scotland, Scotland had a chance of settling down its arrangements right at the beginning of the existence of devolution. Generally speaking, the view in Scotland would be that that merger went successfully for staff at the Accounts Commission and the National Audit Office in Scotland. Because of FIAG, Scotland actually has that clear distinction between the client role that takes the Public Accounts Committee role and the oversight body that is actually responsible for governance. The point that I am trying to emphasise is that I think that the client role and the oversight role are fundamentally different. I think that the oversight role belongs to the Assembly, or the Parliament in the Scottish case, and not to complex internal mechanisms.

[12] **Julie Morgan:** I think that you mention in your evidence that the fact that we have only 60 Members could be a determining factor. Do you wish to add anything on that?

[13] **Professor Heald:** In Scotland there are 129 Members and in Northern Ireland there are 108 Members; so, Wales actually has a very small legislature. However, that would not discourage me from taking the view that one wanted a statutory body with a very clear oversight role that was recognised, that would not be subject to the kind of turnover that select committees often have, and that would actually survive dissolution. There would probably be a stronger argument in Wales for having external members because, obviously, as a committee of the Assembly one cannot have external members, whereas if it is a statutory body, the Act could state that there would be a certain number of statutory members, with the Members of the Assembly being in the majority.

[14] **Julie Morgan:** The Members of the Assembly should be in the majority.

[15] **Professor Heald:** I think so.

[16] **Julie Morgan:** Yes.

[17] **Professor Heald:** There is this fundamental point that public audit should belong to the legislature. It is symbolic rather than a matter of great importance, but it is signalling the fact that the prime responsibility and route of accountability of the auditor general is actually to the Assembly, not to the Government.

[18] **Aled Roberts:** You obviously have reservations about setting up the Wales Audit Office as a separate entity. You have mentioned the board comprising executives and non-executives, but what other changes do you feel should be made with regard to the whole concept?

[19] **Professor Heald:** As I said at the beginning, there is a danger of overreaction in Wales, in the same way that there was an overreaction in Westminster. The other point to make is that Wales is a very small country, when you consider the size of Wales in relation to that of the United Kingdom. At the United Kingdom level, with a much bigger National Audit Office than the Wales Audit Office, you can get away with making it very bureaucratized and complicated, having the corporation sole model of the auditor general at the statutory board, and then a code of practice to govern relationships between them. I think that there is a real danger in Wales of the system becoming so complex and bureaucratized that it attracts all the attention to the internal processes of the audit office and not to the substantive work. There has obviously been a loss of trust in Wales because of the problems that you have experienced. If you had a Wales commission for public audit, with concerns expressed in the explanatory memorandum, and if the change is in internal governance to the WAO, an auditor general could just abolish the changes of the present auditor general, and my view would be that that would be extremely risky for a future auditor general for Wales if there was a Wales commission for public audit, because obviously the Wales commission for public audit would want to ensure that there was proper internal governance

9.15 a.m.

[20] The whole point about public audit is that its independence is fundamentally important. If you establish a corporate structure with powers to control the resources available to the auditor general, you run the danger of damaging that audit independence. If I were a member of this committee, I would be worried about whether tensions were building up between the board and the Auditor General for Wales. The chair of the board and the auditor general would not particularly want to share those with the committee, and then you would get a crisis.

[21] **Aled Roberts:** You mentioned your view that putting a corporate board on top does not encourage confidence and, in fact, weakens the whole system.

[22] **Professor Heald:** Exactly. I would prefer, as a not very desirable option, abolishing the corporation sole status of the Auditor General for Wales and just making it a corporate body. I think that that is a bad idea, but it gets away from the idea that you have one governance mechanism, which is corporation sole, and you have another on top, a board, and that makes it better. I think that they would largely negate each other, and if you are to continue with the present model, you will need a statutory code of practice, which comes back to my point about bureaucratizing the whole process.

[23] **Aled Roberts:** You also state in your evidence that you believe that the Government is placing too much confidence in reasonableness as a mechanism for resolving

disagreements. What is your view of section 26, which allows the WAO board to reject all or part of the auditor general's work programme?

[24] **Professor Heald:** First of all, I do not know what 'reasonable' means. 'Reasonable' in this context could be determined only by the courts. If the auditor general tried taking the Wales Audit Office board to court, it would bring the whole system and the Assembly into disrepute. It is difficult to determine what is reasonable and what is unreasonable in that context, except through a court of law. It is taking away the power that the auditor general needs as a corporation sole to discharge his responsibilities to the Assembly, by not allowing him to come to the Assembly with a request for resources. So, there are two things to note: one is that I do not know what 'reasonable' or 'unreasonable' means; and, secondly, if the Auditor General for Wales is not delivering what the Assembly wants, it becomes very confusing as to whether it is because the Auditor General for Wales has not been given sufficient resources, or whether it is the fault of the board. There is an inherent conflict in the board in the sense that it is supposed to be holding the auditor general to account while at the same time controlling what resources the auditor general gets. My argument is that it should be the Assembly that decides how much the auditor general gets, in response to a bid from the auditor general, so that the auditor general is satisfied with the resources that the Assembly has provided. That should be quite clear.

[25] **Mike Hedges:** Could you expand on paragraphs 11 and 12 of your submission, which appear to suggest that the Wales Audit Office should be advisory rather than supervisory? From my experience of serving on a lot of public bodies, I feel that there is a variation from those such as local councils through to those such as health authorities, where you have a mix of people who are either executive or non-executive, and then, with something like a police authority, not only do you have an overarching body, but you actually have a split in roles. Do you see a police authority model being appropriate?

[26] **Professor Heald:** I confess that I know very little about police authority models. The point that I would make to start is that the question of the auditor general and public audit is actually very different from a public service delivery organisation in police or in health, for example. The auditor general has to make judgments on financial certification audit, and he has to make judgments on value for money, and the whole model of public audit collapses if the auditor general's independence in those judgments is reduced.

[27] The other point to make is that there is a lot of discussion about the different models of board. My argument is that an advisory board should be there to give advice to the auditor general, but the auditor general would be perfectly entitled to reject that advice. By definition, 'advisory' means drawing in expertise from outside, which might be international, academic, or from the private profession. However, the auditor general makes the decisions. So, the Public Accounts Committee and the Welsh commission for public audit would be clear that the buck stops with the auditor general.

[28] On the model in the Bill, quite a few people who have submitted written evidence to the committee have made the point that you have a supervisory-type composition for executive tasks, and one should not overstress the similarity between what is proposed in Wales and the case in the United Kingdom Parliament. In the United Kingdom Parliament, there are five non-executives, including the chair, and four executives, who are essentially there on the basis of the preferences of the Comptroller and Auditor General. So, it is five to four with a non-executive majority, but the Comptroller and Auditor General and his management team clearly have a very strong role. What has been proposed in the Bill, namely five non-executives, one employee, and the auditor general, is a strange composition for an executive board. In response to an earlier question, my worry is about this mixing of monitoring and advising. If a board advises the auditor general on actions, it cannot at the same time monitor and hold him to account. The roles are fundamentally in conflict.

[29] **Mike Hedges:** Is there not a problem with advisory boards? I can tell you now that if I were on an advisory board and I gave my advice once and it was ignored, and I then gave my advice again and it was ignored again, I would say, 'Thank you very much, I am wasting my time and yours, goodbye'. Is there not a danger with advisory boards that, if the advice is not taken, the advisory board will just fall apart?

[30] **Professor Heald:** There is obviously that kind of danger. That goes back to my earlier point about a loss of trust. However, if you remember the example of the Welsh commission for public audit, that is precisely the kind of question that you would ask that commission. A wise auditor general would be well prepared to ensure that, if advice came from the advisory board, which he or she did not accept, a good reason was given for that. Your example presumably implies that not only was your advice not followed, but you did not think that there was any kind of due process about that advice.

[31] **Mike Hedges:** No. If my advice had not been followed, having given it twice, I think that I would say, 'Thank you very much, but we are wasting each other's time'. I do not think that it is to do with due process. If I have come to a viewpoint, and that viewpoint has been ignored twice, it would not get ignored a third time. I think that a lot of people would feel the same way.

[32] **Professor Heald:** Obviously, you can have successful and unsuccessful advisory boards. However, in this specific instance, what I am saying is that it is fundamentally important to make it absolutely clear that responsibility lies with the auditor general. If the advisory board suggests that there should either be more or less attention paid to the NHS in Wales, it should be for the Auditor General for Wales to make that decision, and to defend that decision to the Public Accounts Committee, when you are dealing with reports, and to the oversight body.

[33] **Jenny Rathbone:** I want to pursue this idea that people on advisory boards get ignored. You will be aware of the dictum that power corrupts and absolute power corrupts absolutely. Therefore, in your scheme of things, where would the responsibility lie for dealing with the sorts of issues that, unfortunately, have arisen with previous auditors general, both in the UK and in Wales, where people have not behaved to the highest standards of the Nolan principles? Would that be the role of the advisory body or of the Welsh commission for public audit?

[34] **Professor Heald:** That would be the role of the Welsh commission for public audit.

[35] **Jenny Rathbone:** Okay. You can see the difficulty. The Welsh commission for public audit would be made up of people who would not be a part of the Wales Audit Office and they would rely on evidence from other people if they felt that the office was being abused.

[36] **Professor Heald:** You are raising a number of separate issues.

[37] **Jenny Rathbone:** They are crucial in the minds of people who are worrying about how previous auditors general abused their power.

[38] **Professor Heald:** There was certainly inappropriate behaviour in the past, but expectations and standards have changed about what is acceptable practice. On unacceptable behaviour, there is a great danger in focusing on what are thought to have been the misdemeanours of a former Auditor General for Wales, as that is only part of the story. On the basis of what I have read, particularly the international peer group report, followed up by the internal audit review by the Wales Audit Office, which ought to have been externally

commissioned and not done internally, it is clear that there were lots of senior management conflicts within the Wales Audit Office. I would put it more bluntly than the peer review did—although, if you look at page 35, it is pretty clear. The peer review group told senior management to get its act together and stop fighting, and it drew attention to a bad human resources climate in the Wales Audit Office and to a poor industrial relations record. There were serious big-sense housekeeping problems. The housekeeping side of governance was not done well, either on the human resources side or on the financial management side. As I said in my memorandum, reading the National Audit Office report on the accounts from 2005 to 2012 is very depressing, as is looking at the Auditor General for Scotland's report to the Assembly on the 2010-11 accounts. However, some of those problems reflect the problems of merger. When you have made mistakes, particularly if you are an audit office, it is very difficult to correct them without serious problems.

[39] Having said all that on the negative side, the crucial point about the peer review is that it tells a good story about the operational activities of the Wales Audit Office. Given that it was created only in 2005 as a merger of two bodies, one of which had its own legacy bodies, it gives a good report on its operational work. One has to remember that the UK National Audit Office really has its origins in Gladstone, so it is a body that has been around for a very long time. The picture that the peer review gives is of a body that functions very well on an operational level but that has let its internal housekeeping fall. On your question of who would be responsible, given that there is much more sensitivity about expenses after the House of Commons' problems and other problems, it is very clear that there are certain issues that a governance organisation at a parliamentary level would have to deal with.

[40] I understand the concerns that have been generated, but I am worried about damaging the credibility and operational performance of public audit because of certain things that have happened in the past. If I were on the Welsh commission for public audit, I would want to know from the present Auditor General for Wales whether the internal senior management problems had been solved. One thing that seems to have happened after 2005 was that people had legacy entitlements from previous employment outside the control of the Auditor General for Wales and, if you had wanted to reorganise senior management and remove certain people, you would have had to pay them very large amounts of compensation, which would have been extremely newsworthy. So, I can understand why there is a reaction to what happened, but, because the operational performance is praised, one has to be careful that one does not enter a situation where, essentially, housekeeping concerns—on which an audit body must do well or it will come into disrepute—will affect the operational side.

9.30 a.m.

[41] The other point is that you cannot expect governments to like public auditors, because they sometimes qualify their accounts and say critical things about public services and how they are run. There becomes a danger that, when a public audit organisation has problems, as here, governments will clamp down. One only has to look at what has happened in England, where the Audit Commission was abolished largely because it upset some powerful people. It is interesting that, with the peer review, the Wales Audit Office kept its stakeholders on board. I gave evidence to the Communities and Local Government Committee at Westminster about the Audit Commission, and it was striking, at that time, that all the stakeholders had turned on the Audit Commission. The audit functions have now been outsourced to private firms. In contrast, in 2009, before the scandals broke, the Wales Audit Office had the support of its stakeholders.

[42] **Jenny Rathbone:** That still does not address the top-line concern about where the personal behaviour of the officeholder brings the office into disrepute and how that is going to be dealt with. I am a bit concerned that the Welsh commission for public audit will be peopled by Assembly Members and the great and the good, who may not know of the

concerns that may be about the behaviour of the officeholder. That is what seems to have been a cause for concern in the past.

[43] **Professor Heald:** You cannot legislate for criminal behaviour by any public official, particularly if the criminal behaviour is not connected with the direct conduct of duties. The severance-type issues were an internal failure of the processes within the audit office. I would attribute that, much more than seems to have been done by many of the documents I have seen, to the inherited problems of the merger and distrust within the senior management. In your scenario, it is not obvious that even the corporate board would know what was going on. One issue in Wales, as a small country, is the question of proximity. Given the fact that the Auditor General for Wales under the present Bill would be on his or her own within the corporate board, I wonder where these five people will come from. I would have thought that, in a country the size of Wales, with the issue of people being seen to have political baggage or professional conflicts of interest, one could easily end up with a corporate board that knows remarkably little about Wales.

[44] **Darren Millar:** One suggestion that has been made by a number of witnesses is that, rather than having a corporate body, a supervisory-type board should be established, which will be a little closer to the action, as Jenny has suggested, so that it can keep its eye on the ball more easily, perhaps, than a lofty statutory body, which might be one step removed from the day-to-day activity of the Wales Audit Office. Would that be a more appropriate model?

[45] **Professor Heald:** If you are asking me whether the National Audit Office model is less bad, the answer is 'yes'. I have difficulty with this terminology of 'supervisory board'. If it is about internal governance, you have the high-level housekeeping that is fundamental for all public bodies to get right, but even more so for audit offices. I understand that. However, if it is a body that is monitoring, in my view, it cannot, at the same time, advise or have executive-type functions. If it is advising or having executive functions and it is monitoring, it becomes very unclear whether any issues that arise are because of the actions of the auditor general or the actions and decisions of the board. One of the things that I think would happen is that it would drive the debate away from the Assembly.

[46] **Darren Millar:** So, if we take away all executive functions of the board and simply have a supervisory board, to which the auditor general is held to account, is that not a sufficient way of safeguarding the independence of the auditor general and some of those other concerns that you raised?

[47] **Professor Heald:** If it was clear that the question of resources was in the hands of the auditor general and there was not a corporate board model with executive functions, I think that that would go part of the way. However, I still make the point that the crucial oversight role of public audit should belong to the legislature, not to the executive.

[48] **Mohammad Asghar:** Thank you for the wonderful information that you have given us. Scotland and Wales are both small countries.

[49] In paragraph 12 of your submission you suggest that the Auditor General for Wales should be trusted with strengthening internal control arrangements. Would such arrangements be sustainable in the long term, particularly as a successor AGW could unpick any such arrangements that have been put in place on a voluntary basis?

[50] **Professor Heald:** I mentioned earlier that I think there has been a collapse of trust. What people seem to want to do is put lots of rules and regulations in place. If you look at the Budget Responsibility and National Audit Act 2011, and at Schedule 3 and the code of practice, you will see that there is quite tight specification about how a relationship should actually work, which is a view that 'rules are what you want', rather than 'principles are what

you want'. So, if you have a lot of trust, there is a temptation to invent a lot of rules. I make two points: first, I think that that is misguided; and, secondly, you should also think about the different scales of the Wales Audit Office and the National Audit Office—something you can make work at the National Audit Office level, which is a pretty big organisation, might be much more difficult and consume much more senior management time at the Wales Audit Office level.

[51] In answer to the question about a future auditor general unpicking arrangements, given the fact that I would want the Welsh commission for public audit to have a leading role in the appointment of future auditor generals, and it would be the body by which the auditor general is held to account, I think that this unpicking danger is just exaggerated, because there would be safeguards at the Assembly level.

[52] **Darren Millar:** I suppose the issue is the existing arrangements. On the one hand you are saying, 'Trust the auditor general to make sure that there are sufficient safeguards within his own organisation and have this relationship of trust'. We know, for example, that our current auditor general has taken steps to improve accountability and oversight within the organisation, as it were, but those committee arrangements that he has set up on a voluntary basis do not have a statutory basis. Therefore, if a new AGW is appointed, he could just tear them up and throw them out of the window and say, 'I am not having any of this anymore. I am my own person, I am independent and I can do what I want.' Is there not a danger of that if you extend the trust situation perhaps too far?

[53] **Professor Heald:** If you are seriously worried on that point, there is no reason why something should not be put into the legislation. I was proposing legislation for the Welsh commission for public audit. You could put something in, but the problem is that using primary legislation to specify organisational structures strikes me as intrinsically undesirable. If the loss of trust has reached such a point that people feel that it is necessary, I do not think it is that damaging.

[54] **Darren Millar:** Julie, you wanted to come in.

[55] **Julie Morgan:** You said that you felt that a collapse of trust should not result in rules and regulations being put in place. That seems to me to be an absolutely natural progression: if there is a collapse of trust you try to do something about it in a way that will stop that from happening again. I would challenge what you are saying there.

[56] **Professor Heald:** I am a professor of accountancy, and, in accounting, one usually makes the distinction between the UK system, which has always been based on trying to set high-level principles, and the US system, which is based on incredibly detailed rules that take up an amazing number of pages. The problem with detailed rules is that they can paralyse the system and they also encourage people to find ways of getting around them. A lot of the issues, such as in the case of Enron in the United States of America, were caused by the fact that you had the rules, and provided you could do something within the rules, then that was fine. People invested an enormous amount of time and resources into finding ways of complying with the rules, but still getting the result that they wanted.

[57] **Darren Millar:** We do not have time to go into the ins and outs of Enron. You have contrasted a number of times the size and scale of Wales with the scale of the UK National Audit Office arrangements. I think you suggested that the NAO arrangements are working.

[58] **Professor Heald:** That is a question best addressed to the Comptroller and Auditor General when you see him this morning.

[59] **Darren Millar:** So, you are not able to give us your professional opinion.

[60] **Professor Heald:** No, presumably the Comptroller and Auditor General is not going to come to Cardiff and tell the Welsh Public Accounts Committee that the system in the UK is not working.

[61] **Darren Millar:** But I am looking for your opinion. Do you think that it works on an NAO level?

[62] **Professor Heald:** I have no inside knowledge whatsoever. There is an issue that I raised when the UK Bill was being considered originally in 2008-09, namely that there is a danger that governments try to exercise political influence through the kind of people that they put on the corporate board. There are two points to make in that regard. First, that is probably less of a threat at a United Kingdom level because of the 4:5 composition of the corporate board, and, secondly, there is the fact that the United Kingdom is a much bigger place, which means that it is much easier to find suitable people who will not either have conflicts of interest or politics or be perceived to have them.

[63] **Darren Millar:** Of course, you are assuming that everybody appointed to any board has to be from within Wales.

[64] **Professor Heald:** You could have a board that does not have anybody who knows anything about Wales. That is the danger.

[65] **Darren Millar:** There are plenty of people from Wales who know a lot about Wales living elsewhere around the world. However, we will move on because you are talking very specifically about the composition of the board and I know that Lindsay has some questions about that.

[66] **Lindsay Whittle:** Good morning. Paragraph 17 of your submission, Professor Heald, says that

[67] ‘Employee representation on an executive Board which exercises control over the AGW is entirely inappropriate. There are specific issues in the context of an Audit Office that do not apply to a normal public service delivery organisation.’

[68] What are those specific issues? You have cited in your evidence examples, such as industrial relations, human resource issues and possibly the finger of suspicion pointing at an executive member in case of any leaks, but was there anything else?

[69] **Professor Heald:** The key issue is audit independence and the status of the Auditor General for Wales as a corporation itself. You mention the practical kind of issues that I raised, but my understanding of UK arrangements is that the three people on the NAO board, other than the Comptroller and Auditor General, are there with his or her approval. The employee member is going to be chosen either by the board or through some democratic election of employees of the Wales Audit Office. The issues of audit independence become particularly important given the Wales Audit Office board’s control of the resources available to the auditor general.

9.45 a.m.

[70] **Lindsay Whittle:** You mentioned that you have some difficulty with supervisory boards, and that is coming across—

[71] **Professor Heald:** I have difficulty with regard to exactly what people think they will do. That is what I am saying. The supervisory board is German for the higher level board

above the executive board. So, if you are going to go for a supervisory board model, it has to be very clear what the supervision is about. To come back to the question on the concern about internal governance and good practice, that is quite different from having control over resources and work programmes.

[72] **Lindsay Whittle:** Do you, with your experience, have any thoughts on the appropriate size and composition of any board?

[73] **Professor Heald:** It depends what that board is going to do.

[74] **Lindsay Whittle:** I meant in relation to Wales.

[75] **Professor Heald:** For an executive board, the balance in the UK is a much better balance—the 5:4 balance—but the numbers might be too big in the context of Wales. However, if it is going to be an executive model, it requires much stronger presence, because the employee member is presumably not a person who would necessarily be the choice of the Auditor General for Wales if unconstrained. If it was the unconstrained choice of the Auditor General for Wales, I would assume that an assistant auditor general would be chosen. That would be a natural choice, because it would be a member of senior management. If you have an advisory board, there is scope. I do not think that that is the kind of thing that I would want to pin down in primary legislation, but you could certainly have people from the private accountancy profession, people from academia, people from another audit office in another jurisdiction, or someone from private business.

[76] **Lindsay Whittle:** Would that be your advice to this committee?

[77] **Professor Heald:** My advice would be to have an advisory board and to have a Wales commission for public audit.

[78] **Aled Roberts:** You referred to the supervisory board perhaps not being in the tradition of public audit in the UK, and you mentioned that it is more akin to a German model. When we heard evidence from the unions, they cited the German model, where there is employee representation, as something that they supported. Do you have any knowledge of the continental model, where there may be employee representatives who are not, as you have stated, the choice of the auditor general?

[79] **Professor Heald:** My knowledge of German corporate governance is limited to what I read in newspapers. However, my understanding is that the German model is to have an executive board that has a supervisory board of wider stakeholders, but the executive decisions are clearly reserved to the executive board management level.

[80] **Jenny Rathbone:** I would like to go back to discuss the employee member of the Wales Audit Office board. My concern about the auditor general appointing a staff member to the board is that person could be constrained in what they could say because it might affect their status as an employee, whereas someone elected by the staff of the WAO would not have that problem, because they would have a mandate from the staff to represent the views of the organisation. If they found that the heat was getting a bit too much, they could always resign and someone else could be selected. The point is that it has to be someone who is not beholden to the auditor general for their position on that board—whether it is advisory or supervisory. I appreciate that, were it to be supervisory, they would have to absent themselves from any decisions about cutting staff levels, and so on, because that could compromise their position. However, where we are talking about good governance and the duties of the organisation, I would have thought that that a member elected from among the staff would be entirely appropriate, given that all of these people are supposed to have the Nolan principles running through them like a stick of rock—at least, I would hope so.

[81] **Professor Heald:** For the reason that I gave previously, I do not think that an employee member of the board of an audit office is appropriate. Leaving that aside, if you are going to have an employee member, and that means not someone who is from senior management—

[82] **Jenny Rathbone:** It could be a senior manager; we do not know.

[83] **Professor Heald:** However, if your employee member is not, ex officio, an assistant auditor general, then election is a better model than choice. I still think that that person will be in an exceptionally difficult position. One of the points that should worry people is that the international peer review commented extensively about the poor industrial relations record of the Wales Audit Office and about weak human resource management practices. I would have thought that an elected employee member would be in an extremely difficult position, because there will be a question about that person being there in a representational role, to represent the employees as stakeholders, while, at the same time, having collective responsibility as a member of a board with executive functions. So, I think that that arrangement will build tensions and problems.

[84] **Jenny Rathbone:** Supposing that the role was not supervisory and did not involve taking executive decisions, but rather was advisory, would it not be perfectly possible for that to be an enhancement of the good governance of—

[85] **Professor Heald:** If it was advisory, yes.

[86] **Jenny Rathbone:** Okay. Thank you. I want to quickly ask you about the issues that you raise in paragraph 18 about the legacy costs and the payoffs—I know that you have already mentioned this. I am having difficulty understanding how this could ever be an issue, but, clearly, it has been an issue. You are saying that, if we were to disband the current organisation and create a new board, we could have this problem all over again.

[87] **Professor Heald:** I do not understand the taxation law or the employment law side of it, but, from what I have read, the issues are that, when you have two corporate bodies, with one providing services to the other corporate body, that could be regarded as a taxable transaction in terms of travel and subsistence.

[88] There is also the question of the terms on which people transfer. The union evidence that I have read expresses concern that it is not clear whether it is TUPE, the Transfer of Undertakings (Protection of Employment) Regulations 2006, or TUPE equivalent. That is entirely out of my scope of expertise, but the point that I was making was that that is a transitional cost that should be thought about very carefully before legislation is enacted, because it could be extremely embarrassing. One of the things that clearly happened—I think that the Audit Commission had two predecessor bodies and people had their rights transferred in and then transferred into the Wales Audit Office as a non-corporate body, but, if they are transferred into a new corporate body, you could end up with all those kinds of problems. It also reduces flexibility. You can imagine becoming a new auditor general for Wales and thinking that your senior management is top-heavy, but not feeling able to do anything about it, simply because the severance costs would be so large, and that is a sensitive topic.

[89] **Darren Millar:** Thank you very much for that. The clock has beaten us, Professor Heald—pardon me, Gwyn, did you want to ask a question?

[90] **Gwyn R. Price:** In conclusion, on the establishment of a Welsh commission for public audit, your first statement was ‘Either back the auditor general or don’t have one’, is that—

[91] **Professor Heald:** No, back the auditor general, or remove the auditor general if the auditor general loses the confidence of the Assembly. In Westminster, you can remove the Comptroller and Auditor General by a resolution of both Houses of Parliament. That is exceptionally difficult, so there is an in-built protection. In the context of a unicameral system like Wales, the fact that it is by a two-thirds majority of total Members and you have proportional representation gives a big protection. However, if there was a clear sense in the Assembly that the auditor general should be removed, the Assembly should remove the auditor general.

[92] **Darren Millar:** On that note, we will close this part of our meeting. Thank you very much indeed for your evidence, Professor Heald.

[93] **Professor Heald:** Thank you very much.

9.55 a.m.

**Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1—Tystiolaeth gan Reolwr ac
Archwilydd Cyffredinol y DU
Public Audit (Wales) Bill: Stage 1—Evidence from the UK Comptroller and
Auditor General**

[94] **Darren Millar:** Okay. We will take evidence now from Amyas Morse. Have I pronounced that correctly?

[95] **Mr Morse:** Yes.

[96] **Darren Millar:** Amyas Morse is the UK Comptroller and Auditor General. We are delighted to have you here with us today, and you are here to talk a little about the workings of the National Audit Office and how the board side of things, in particular, works over in the UK Parliament. We are very grateful that you have come in to share your experience of that. As you know, we have a Bill before us that will constitute some similar arrangements, I think it is fair to say, to those which exist in the National Audit Office. One of the things that we have been concerned about is that a number of witnesses have suggested that the sort of arrangement that is on the face of our Bill could potentially leave an auditor general feeling fettered and constrained as far as his independence was concerned. Is that your experience?

[97] **Mr Morse:** It has not been my experience under the arrangements we have in the National Audit Office. You should bear in mind that I have never operated under any other arrangements because, although there was no statute in place when I was appointed, there was a clear intention to enact the statutory provisions. I knew what they were and I agreed before hand that I would be happy to work with them, so we had them. Although technically I was not subject to that, we conducted all our business as if the statute was in place. So, from the start, we acted on that basis in good faith, and, to be honest, although I do not necessarily recommend it to yourselves, it was not a bad way to start because it meant that everybody started off behaving in a way which said, 'We know what the arrangements are supposed to be and we are going to try to put our best possible efforts into making them work as well as they can'. So, the fact that it was a voluntary arrangement, while knowing it was going to become statutory, let us work out the arrangements, code of conduct and everything else in a relatively relaxed fashion.

[98] **Darren Millar:** Do you think that without that code of conduct you would perhaps feel more fettered or not have the opportunity to express a very clear audit opinion at times?

[99] **Mr Morse:** It depends what the code of conduct says, if you will pardon me for saying that, but that is the truth of it. In many ways, a code of conduct, if it very clearly expresses the areas of independence of the Comptroller and Auditor General, as our does—. I was constantly being asked whether I was satisfied that this made me sufficiently independent and I very carefully exercised my judgment to make sure that it would do. At the end of the day, I sign. It is not the board that signs the opinions; I am personally responsible and liable for them, and therefore having a committee telling me what my opinion should be would really not work; professionally, it would be an unacceptable arrangement and you could not possibly do that. You cannot personally take responsibility if it is not really your choice to make the decision. However, I am very satisfied that what we came out with was very clear about the areas of my responsibility and the areas that the board had oversight on, and its duties are set out very clearly in that. To be honest, I find it a benefit to have it set out clearly, because you can understand that, when you have a board, a lot of the things that are reserved for the decision of the C&AG might be technically quite interesting to people who find themselves on the board. Therefore, having some clarity about what they are not supposed to do, and being able to politely remind each other what our respective roles are, is not altogether a bad thing.

[100] From other boards I have seen, it is not normal that the board has a series of areas that are not within its purview, and, therefore, to have great clarity as to what the respective roles are is good. There are a number of areas where the C&AG's discretion is paramount and we want that to be remembered. Of course, you give your advice and a lot of this depends on being very receptive to advice, and having an obligation to be receptive, and listening carefully. I get advice from many different directions; not just from the board, but from the Public Accounts Committee, too, and I am enjoined to listen to those views on what else we should be looking at and to take them into account, although the decisions are all mine. I am, therefore, fortunate to have a lot of different types of advice and direction, all of which are valuable. However, the task of bringing it all together in a coherent programme is mine.

10.00 a.m.

[101] In a way, you could say that having it clear about what the board does is in some ways explicit, but it also says what it does not do, and that is quite helpful. So, I have not found it a burden; I have found it really quite helpful.

[102] **Darren Millar:** However, it is the code that is critical to ensuring what people's roles and responsibilities are. I have read the code, and it is very prescriptive, and it seems to me that it essentially creates or designates the corporate body side of things as a supervisory board that, on paper, holds some executive functions, but which are really left pretty much to you. Is that a fair summary of what it does?

[103] **Mr Morse:** Yes, it is. I suppose I come at this as an accountant, which is why I said what I did earlier on. If you say to me that it is my job at the end of the day to stand behind the opinions that I express, as an officer of Parliament, I am a separate statutory person to the NAO, and in the end, as such, I have to stand behind the statements and the opinions expressed, and the NAO is doing its work to enable me and to support me in that. So, I have to be clear that nobody is impinging on my ability to do that work, because, at the end of the day, I am standing behind it, and I am personally responsible for it and subject to criticism if it is not done properly. So, everything that goes out of the office, I personally sign it and I read it. I carefully go through the quality control and everything else. It is worth just expressing that to give you an idea of the working experience.

[104] This is not like the boss of an organisation who sits somewhere way up top and does not know what the output is. If you are in a position where you are picking this up and saying, 'I personally certify that this is correct', you had better know what you are certifying—

otherwise, bad luck. So, I am very much bringing the professional attitude that people would expect of me in doing that, and I need to do it in an untrammelled way in order to do my job properly. It is not some great freedom or anything; it is just that I actually cannot do a professional job if I do not have the ability to exercise my judgment in that way.

[105] **Darren Millar:** Okay, we will explore some of the other issues as we go along.

[106] **Lindsay Whittle:** To be honest with you, Mr Morse, I like your style—it is good.

[107] How do you reconcile your statutory responsibilities as Comptroller and Auditor General with your other roles as chief executive, accounting officer and board member of the National Audit Office? You have partially answered it, but is there any conflict?

[108] **Mr Morse:** I do not find that there is. I do not mean it to sound as if everything in the garden is lovely, and I will add some remark about that, if I may, Chair.

[109] First of all, I think that the code of practice makes that pretty easy, for the most part. It is quite clear that the Comptroller and Auditor General is what I have described to you: I am responsible for deciding what the programme of work will be. The reason for that is, at the end of the day, I have a duty to Parliament to help hold it accountable for efficiency and effectiveness in the use of public money. Really, I am very clear about how I see myself in my role: I am there to help Parliament challenge the Executive on whether it is using public money properly. That is what I exist for; otherwise, there is no point in having me there.

[110] The rest of it comes behind that. The way of fulfilling that primary mission is partly by having audit and partly by having value for money. If you like, when I am doing that job in that way, it is very clear that that is a Comptroller and Auditor General role.

[111] As to having an overall strategy for the NAO—which exists as a set body, as I have said, that is separate from me—to decide on employment, how many people to recruit and all of that stuff, I am clearly operating in my capacity as chief executive of the NAO in deciding all the things to do with the running of the NAO. The board is clear in its functions; it does not do everything in combination. There are certain matters that the non-executives will talk about privately—they have quite a lot of private discussions—and I do not expect to be there for all of that. I am perfectly relaxed about that—the things on which they need to take an independent view, they will do so. When I am there in my capacity as a member of the board, I am conscious that the board members must exercise independent judgment. So, I am there to explain, and, yes, while I take part in the decision making, the board is very much run by the chairman, and it has a non-executive majority. However, it is helpful that we have most of the leadership of the NAO represented at the table. So, in one way, you might say that there is balance, but, in another way, the non-executive board members do not just see me as a conduit of all the report-back regarding what happens in the NAO; they have plenty of other people with whom they build close relationships through their common board membership and of whom they can ask a lot of questions. I do not try to stand as a barrier—only through me are they going to hear about the NAO; absolutely not. We encourage them to be involved with the NAO at every level, and they do that. They do an excellent job on the various other committees and we encourage them to have contact with trainees and all the rest of it.

[112] So, despite having a code of practice, it is interpreted in a very liberal way by both sides. Equally, I do not mind discussing things that might be within my purview. I am not trying to be secretive; I am open and if people have something sensible to say to me then I want to hear it. It might be my decision, at the end of the day, but I am always prepared to explain the decision. It would be very odd if I did not behave like that.

[113] **Lindsay Whittle:** Should we make provision in the Bill for a code of practice similar

to that of the NAO?

[114] **Mr Morse:** I have been following the debate and I think that you could have a satisfactory supervisory board arrangement. However, I am telling you that, in my judgment, the arrangement for me and for the NAO is working well. Every arrangement like this is as good as how hard you work at it, and when you come up against a point that is a bit difficult, you have to give and take and work hard to keep that relationship good. Do people always want to respect the barriers? Sometimes one might find that people are getting to the edge of that and, at that time, it depends how well you work together to get that back into kilter. If you want to avoid confrontation and work together to deliver the better result, you should normally manage to avoid having very difficult conversations. We really have managed that.

[115] **Darren Millar:** So, you think that a supervisory board could work.

[116] **Mr Morse:** Yes, I think that it could well work.

[117] **Darren Millar:** However, if there is going to be a corporate-body-type arrangement, with some executive functions given to that corporate body, there would need to be a code of practice.

[118] **Mr Morse:** That would be mutually protective. If that were not the case, when you come down to it, the problem is that you might have more of a battle of interpretation. You might have a very strong chair who believed that the non-executive part of the board should have a highly determining role in every area, and you might have—and I was listening to your debate earlier—the auditor general taking a similar view. You will want to be a bit clear about what is expected of everyone, so that, if you pardon the expression, they play nicely.

[119] **Darren Millar:** We will come on to conflicts now. Gwyn has some questions that he wants to ask.

[120] **Gwyn R. Price:** What is your view on the Minister's evidence that, in the event of an unresolved dispute between the AGW and WAO in relation to the auditor general's work programme and resource estimate, produced in accordance with section 26, the parties would need to consider their positions or resort to litigation?

[121] **Mr Morse:** I tend to work in terms of practical examples, so what are the unresolved disputes likely to be?

[122] **Gwyn R. Price:** You just mentioned a chairman perhaps disagreeing with you, and saying, 'I totally disagree with you and you disagree with me, so we will have to go to court to resolve it.' What do you think we would have to do before that?

[123] **Mr Morse:** We have a board with a non-executive majority. If it comes down to that, that board, on matters that are for it, would be able to rule. On matters that are reserved to the NAO, my decision would ultimately rule. However, I would not last long in the job if I had constantly gone into that situation, to be quite honest.

[124] **Darren Millar:** I think that the issue that we have, Mr Morse, is that, on the face of our Bill, there is no provision for a code of practice; at present, it simply states that there needs to be agreement over the work programme and the resource estimate. However, it does not state what happens.

[125] **Mr Morse:** I believe that that is too fuzzy. You have to allow someone to make the decision, and I would strongly recommend that it should be the auditor general.

[126] **Darren Millar:** Is it reasonable for the Minister to say that, in the event of a disagreement, with no code of practice, people should just consider their positions, or go to court?

[127] **Mr Morse:** I think that you are making it more likely that you will have a problem, if I am absolutely honest with you.

[128] **Darren Millar:** Okay. Do you wish to ask a question, Gwyn?

[129] **Gwyn R. Price:** I have nothing to add at present, Chair.

[130] **Darren Millar:** So, the code of practice is the key here to maintaining the—

[131] **Mr Morse:** The code of practice is the key, but behind that—and forgive me if what I said is not absolutely right—there is a lot of statutory discretion about how I do my job on paper. However, I have many powerful parties around about, including the Executive, the Government, the commission—which decides on funding, and which has the ability to express itself through its attitude to funding—as well as the board. Within that discretion, you have quite a lot of latitude, but if you are getting off with what most people would regard as unsatisfactory, you will soon hear about it, and your position will become difficult quickly. So, you have a discretion-based system—this was well expressed by the previous witness—in which I strongly believe, because you get better results; you are able to fit the results to the circumstances, without having to think about some rulebook making you do silly things. So, you can do that, but on the other hand you know very well that there are many people who are focused on what you are doing, who will soon let you know about it. There is constant pressure anyway, and you are constantly aware of what people think of your performance, and you have to balance that out. If it gets out of balance, you will soon know about it, and those pressures are effective. The code of practice provides a good foundation, and then sensible behaviour by everyone concerned is the next thing that you are looking for. That can be enjoined by the board.

[132] **Gwyn R. Price:** That is the problem that we are trying to get to—sensible behaviour. The buck stops with someone, or with a board, or whatever.

[133] **Mr Morse:** I believe that it should stop with someone.

[134] **Gwyn R. Price:** You are saying that the board will do its part, and that you will do your part, but what we are trying to say, in creating this Bill, is that someone has to make a decision on this.

[135] **Mr Morse:** I agree. That is what I have. It is clear that there are decisions for me, and that there are decisions for the board, which is helpful. I would recommend that, rather than leaving it all open.

[136] **Aled Roberts:** Therefore, your view on section 26, which allows the board to reject all, or part, of the work programme, or the resources, on the basis that they are unreasonable, is that it is fuzzy.

[137] **Mr Morse:** I do not have anything like that myself. To say that I am responsible for the programme, but that someone else can reach in and reject it—I am not sure that I would accept the job on that basis, to be quite frank.

[138] **Aled Roberts:** I wish to turn to the advantages and the disadvantages of this statutory supervisory board over the existing legislative framework, rather than an executive board. What is your opinion on that?

[139] **Mr Morse:** I do not have strong views on this. You will realise that we have a model that does not quite do either of those things in the NAO. However, as long as—and I am sorry if I am going to sound repetitive—there is a clarity on what roles there are, and, if there is to be a supervisory board, as long as that board is clearly able to challenge and require improvement in the management of resources.

10.15 a.m.

[140] I find it very valuable to get challenges from my board, with questions such as, ‘Is this strategy that you have going forward really clearly thought out? Are you really managing the resources as well as you could?’ Having people with different experiences—some of them in the finance world, some in public service, and others in the private sector—is really helpful, and it is actually supportive to the auditor general, as chief executive, in doing a better job if people have different views and you have active challenge.

[141] So, whichever board you have, the members need to have enough ability to get involved in the running to provide that valuable role. I do not find it a burden to have to discuss these things with the board. I find it really helpful. While they can be advisory, I would let them be close enough to the action to have a legitimate role in challenging whether the resources are being managed properly. If you have an executive board, it will decide that. If you have a supervisory board, it will want to see that it is being well done. In either case, they should have a clear right to do that, and I think that it is a valuable function. I have certainly found it very helpful.

[142] **Aled Roberts:** Given the scale of the NAO compared with the Wales Audit Office, and the population of this country, if you were in the running for Auditor General for Wales, would you have any concerns regarding perceived conflicts on any board in Wales, given that almost everyone knows everyone else?

[143] **Mr Morse:** I spent many years of my life in Scotland, so it is not alien to me to be in a community where everyone knows everyone else. I can tell you that that is also true in Scotland, certainly in Government and business. They all know each other. You just have to be careful and, as I heard the Chair say, you must have people who have a proven interest, who are not necessarily living in Wales. They can provide you with a bit of an external perspective, which can also be valuable. It is more difficult. It is unlikely that people will not already come with a bit of a view. Therefore, there is probably a bit of an art to balancing the board out. It can be done, I am sure. It certainly can be done in Scotland. There are some very effective boards there, and I cannot imagine why you could not do it here.

[144] **Mohammad Asghar:** My question is on the size and composition of the board. What are your views on the proposed composition of the WAO board, especially on the point about the employee member being nominated by the auditor general?

[145] **Mr Morse:** I think that I have probably done the wrong thing in giving some of my views on this already, but I will just pull them back in. I am sorry if I have overlapped a bit. Personally, I am in favour of having the board members sitting at the table with a reasonable number of the executive members. In an odd way, that leaves the non-execs in a stronger position to form their own independent view of what is going on, rather than have it all represented by a very small executive team, with all the speaking being done by the auditor general, as that means that you get a managed message. If I were you, I would want to be sitting around the table with more people. When the boss is talking, I always look at what the others’ expressions are like. If they look a bit astonished, that tells you that there is something that you should ask a few questions about. There is real value in having a good number.

[146] We decided not to have the whole of my leadership team on the board if we could, just because the total size of the board was going to be too big. Obviously, there has to be a majority of non-execs, and I absolutely accept that but, within that, I have a small leadership team. Having another couple of executive members would have meant another couple of non-execs, and it gets a bit unwieldy as a board, so we decided not to do that. The other two members of my leadership team often attend for particular matters, if they are invited to by the chair, but not as members of the board. They are just invited to come and give their testimony on a regular basis. So, it gives you this more open relationship, so you know a lot of people, and you can phone them up and say, 'I was listening to what you were saying, and I was a bit surprised by that.' That makes it less formal, more open and you know a lot more as a non-exec. I assume that that is a good thing, and it generally results in the relationship between the executive and non-executive members being better than it would be otherwise.

[147] I encourage our non-execs to get as involved with the NAO as they care to, as long as they do not start to think that they are executives, because that would be confusing to everyone. They like meeting students. They kindly come and speak at seminars and workshops and so on. All that, in my view, is very positive and is good news. They communicate to the employees of the NAO what they and the board are doing, and they work well at that, and it is all really important and valuable.

[148] **Mike Hedges:** That sounds very much like the NHS trust model that I am familiar with, where you have that mix and you get the opportunity to discover what is going on. I found that that worked incredibly well during the eight years that I spent as a member of the Swansea NHS trust. I do not know whether you find the same, but although you have that split between executives and non-executives, the reality is that, most of the time, they are both in agreement, or if there is a split, it is not between the executives and non-executives, but between two different points of view, so it does not split that simply.

[149] **Mr Morse:** That is exactly what it is like for us, too. It is helpful. We have one or two members on the leadership team, and there is one, for example, who is a young, bright spark, and we like hearing from him. It is great to show the succession and talent coming through and that it is not all just about what I might want to say to them. Given that they know more, they feel more confident about it, and there is nothing to hide, anyway, so when they talk to everyone else about what they know about the NAO, they are able to speak much more from the heart. It is important that they be prepared to testify that they are running this thing properly. It can be a rather silo-ised organisation, so having board members who are prepared to give positive testimony about what is going on and how things are being done is really very helpful.

[150] **Darren Millar:** Is there a danger that the proposed composition of the board on the face of our Bill is a little too small? We are talking about seven members: five non-execs, the auditor general and one other person from the WAO. You said that your board includes three people from the NAO, plus yourself and the non-exec members of the board.

[151] **Mr Morse:** It sounds so out of balance, to be frank. It is not the absolute size of the board, but to have that many non-execs and a very small executive representation will mean that the auditor general will be reporting all the time. I am surprised that they think that that is right. I would not, personally. In my prior life, I have spent years advising boards. I was a partner in PricewaterhouseCoopers, and that is where I spent most of my working life, and I would say that the number of your board members should be as close to even as you can get while giving the non-execs a majority. That is just normal good practice.

[152] **Julie James:** There is provision in the Bill for non-executives to be able to appoint a staff member of their choosing if they reject the auditor general's initial nomination. Evidence has also been put forward by a witness stating that the employee member should be chosen by

the workforce. What are your views on that?

[153] **Mr Morse:** It depends on what you think the board is for. If someone is chosen by the workforce, that is another randomising factor because do they speak for management or not? No, they do not, really. If you have a lot of access to the workforce, you do not necessarily have to have a workforce representative on the board. You can do it, but it is just a different way of looking at it. For me, the advantage of having a reasonable number of people who are leading the organisation available and talking to their own brief, so to speak, is that you get a pretty good assessment, as a non-exec, of how they are running the organisation. You can then reach down into the organisation and check whether what they are telling you at the board table fits with what you find when you talk to other people. So, I think that that works and that it is a reasonable model.

[154] The problem with having an employee on the board is the question of who are they speaking for? Are they speaking about employment conditions? If so, you would get something from them. However, you could equally do that by inviting someone to do it occasionally, rather than have them sitting through every board meeting, because I suspect that you are not going to be talking about that every time. To be absolutely honest, it sounds a little clunky to me, in getting good, continuous debate. However, I understand that the intention is good, but I probably would not make that a permanent feature, personally.

[155] **Julie Morgan:** So you are not against it, but you are doubtful of it.

[156] **Mr Morse:** It would not be what I would do, no. I would not have a permanent employee on the board. You are making it a lot more difficult to understand what the management is thinking and where it is trying to take the organisation if, all the time, this is now becoming a way of discussing with employees. Hopefully, the management should have other ways of doing that, so I am not sure that the board needs to be the way of doing it.

[157] **Julie Morgan:** Have you had any experience of boards where this sort of situation has existed?

[158] **Mr Morse:** Yes, I have. I mentioned to you that I had been a partner in PricewaterhouseCoopers.

[159] **Julie Morgan:** Yes, that is what I was thinking.

[160] **Mr Morse:** That is run by the partners. It is like a trade guild, really. It is owned by the partners. The management board is made up of partners, so you are always there in your capacity as a partner, as an equity owner of the business, and as someone who is trying to run it. So, I am used to the sort of interaction between people being concerned about this from the point of view of working in the business and of being concerned about the overall performance. That is the world that I come from. My last job was as global managing partner of operations at PricewaterhouseCoopers. In all the jobs that I had, which were executive jobs, at PricewaterhouseCoopers, I found myself having to balance and be aware of the views of all my partners. We were also vitally interested in the staff, because we very much needed talent coming through and staying with us, so we spent a lot of time focusing on them. However, you do have to run the business properly.

[161] **Jenny Rathbone:** The current Auditor General for Wales is concerned that the supervisory model that you operate in England could potentially be used to fetter his ability to do his job properly. I note that Professor Heald also mentioned the possibility of the chair and the board becoming conduits for Government influence on the NAO. This is a pretty important consideration for maintaining the independence of the auditor general versus the executive. In the context of England, your position has already been considerably trimmed in

the sense that foundation trusts, free schools and so on are all outside your purview, are they not? They no longer form part of your role. Services for the public in England have been much more fragmented than has been the case in Wales. So, I just wanted to talk to you about how this supervisory body could, in theory, be used to fetter your discretion. It has already abolished the Audit Commission. Your job is being curtailed, so you are a less powerful person than your predecessor, if I can put it that way. *[Laughter.]*

10.30 a.m.

[162] **Mr Morse:** I am not sure how. There are two focuses to what you have said to me. I will answer the easier question first, which is what you started out by asking me and which is whether having a supervisory board curtails my ability to do my job without being fettered. The answer to that, in my case, is 'no', and I think I tried to answer that earlier, but let me be clear—

[163] **Jenny Rathbone:** No, I think that you were very clear—

[164] **Mr Morse:** The reason for that was because a primary driver in drafting the legislation and the code of practice was so that my discretion would not be fettered. What I think lay behind some of the decisions to do this was that they wanted to be sure that the National Audit Office was being run to the highest possible standards in every way, but they did not want to fetter the discretion of the Comptroller and Auditor General and that was very clear. In my view, that was all borne forth in the nature of the legislation and the code of practice. It is clear to me that they have not been fettered in those ways, but that is because the code of practice and the legislation both set out not to fetter them as a clear primary objective. As far as I am concerned, they have achieved it. If I ever think that there is any risk of my discretion being fettered, I am swift to protect its boundary. If you really want to set this model up in the way that we have done, you can do so and have unfettered discretion by the Comptroller and Auditor General. I am quite sure of that.

[165] As to your other remarks, I recognise some of them, but the jury is still out on much of this, and there are big changes in the localisation of delivery of services. Nonetheless, where they are funded by taxpayer money, there still has to be demonstrable accountability for that money, and there is a rolling discussion about how that accountability will be demonstrated by the departments that are doing the funding. There is also a rolling discussion about how I will do my job of helping Parliament to hold the accounting officer to account. In discussion with us, it is producing and trying to improve accountability statements. Our intention is to examine what is happening on the ground to see whether that ties in with the accountability statements.

[166] It is a matter of others' judgments whether I am more powerful than my predecessor. I am only interested in my ability to do my job properly now. I think that I have enormous discretion, but I am having at the moment to exercise that discretion in response to a quite understandable set of policies designed to deliver on a much more localised basis. So, how we do it has to change. We are going through a process of changing that. That does not mean that I am shut out of it; it just means that we are going to have to do it differently. Delivering the services in different ways under less centralised models means that the way in which we satisfy ourselves about value for money has to be different. Just as the model is evolving, so is our way of providing that assurance to Parliament. I do not consider that, somehow, there are many things for which I am no longer responsible to satisfy Parliament about. It is a challenging problem to see how we are going to do it, and we are engaged in it.

[167] **Jenny Rathbone:** I am glad that you think that you are able to do that job. I want to ask about your relationship with Parliament. The primary clients of your work are the Public Accounts Committee, just as we as a committee are the primary recipients of the reports of

the Wales Audit Office and the Auditor General for Wales. Could you tell us about the role that you have with the Public Accounts Commission, which is about the way in which you carry out your duty?

[168] **Mr Morse:** The Public Accounts Commission is the body that I report to as an accounting officer. I am responsible for the budget and how the budget is used. I, with Andrew Likierman, the chairman of the National Audit Office, present the budget and strategy each year. Generally, we have two meetings per annum. There is a reasonable number of common members—I do not remember the exact composition, but it includes the chair of the Public Accounts Committee—on the Public Accounts Commission, including the chair of the Treasury Committee and other senior parliamentarians. The reason for that, which I think is entirely appropriate, is that although the Public Accounts Committee is the primary customer for our services, it is not the only one, by any means. We do a significant amount of work. We are doing more work now than we did, and are likely to do even more still, for other committees. If you look at our statutory basis, you will see that we make reports to Parliament. Therefore, it is valuable that we have a body that is strongly aligned, but not the same as the body that has to receive a lot of our reports. It is a good thing that everything does not get transacted just through the Public Accounts Committee.

[169] **Jenny Rathbone:** That is the case here too. The health finances report came here, but that does not stop it being looked at by the health committee. If the Assembly set up a similar body, whether we would call it a public accounts commission or the standards committee or whatever, would that obviate the need to transform the structures of the Wales Audit Office? You will appreciate that the concerns that have led to this proposed legislation are about the experience under the previous auditor general. Would a public accounts commission or an Assembly body be sufficient to pick up on concerns?

[170] **Mr Morse:** It would be a very different model. If you left everything as it is, apart from having a commission, you would have a body focused specifically on exercising budgetary control. That would certainly give you sight of some issues, because you would have a budget presented. It would be a much more distant oversight than having a board structure. You would get some of the oversight that we have in the NAO, but you would not have other types of oversight. My predecessor did not have a board at all, and decided everything to do with the NAO themselves, with a management committee. You could do that. However, having a board provides the NAO with a degree more protection. Having people who have heard and understood how strategies were developed and executive decisions were made, means that they are able to come forward to the funding body and attest that they think that those have been done soundly. I find that rather helpful.

[171] **Darren Millar:** Just for clarity's sake, currently, the Public Accounts Committee in Wales has a dual function: we are responsible for receiving the reports of the auditor general, but we are also responsible for holding him to account. Those responsibilities require very different relationships, do they not? Those very distinct and different responsibilities have been split in the Westminster model, and, indeed, in most nations around the world. Do you think that it would be wise to split them here too?

[172] **Mr Morse:** I do not know how well it works here. However, my experience of the PAC is that I am close to it. I sit as a witness in all its public hearings. Having a slightly different forum at which I am held to account for my intermissions as an accounting officer is probably rather more rigorous and it injects an element more independence than might be there otherwise. On the whole, the answer is 'yes'.

[173] **Darren Millar:** Jenny, will you be brief, because we are against the clock?

[174] **Jenny Rathbone:** Okay. Given the interest in the use of public money and value for

money, how do you ensure transparency and openness with members of the public in your role?

[175] **Mr Morse:** The NAO board publishes its minutes on its website. We also publish details of things that may be of interest, such as travel and subsistence, and hospitality. As you know, nearly all of our reports are also published. We have pretty active communication policies. There is not very much that we would not publish. The only things that we do not wish to publish are things such as audit working papers where we are in a confidential relationship with a department and we obviously have to protect that. I would rather be as open as possible, because it is a much safer posture to be in.

[176] **Mike Hedges:** When you set up the National Audit Office, how did the actual cost compare with the estimated costs?

[177] **Mr Morse:** There were not many additional incremental costs. I do not have a number that I can put on the table. We already had most of the governance in place. The additional costs were the costs of non-executive board members and some more secretarial time in supporting them. There was not very much, so it was almost exactly what we thought it would be. There was not an awful lot of money involved, apart from paying the non-executive board members. We already had a governance arrangement in place and quite good management accounts and so forth. Therefore, there was not much that was created other than that. We obviously had board meetings and there was a certain amount of time cost associated with that, but there were not many actual cash costs apart from salary.

[178] **Mike Hedges:** We have heard the opinion that the cost of setting up a corporate model would be higher than that for a supervisory model. Do you have any views on that?

[179] **Mr Morse:** Probably so, but, in the context we are talking about, the differences would not be great.

[180] **Darren Millar:** That brings us to the end of this part of our meeting. Thank you, Mr Morse, for your evidence today. It has been very useful to us, and I am sure that we will enjoy discussing it in a few moments.

[181] **Mr Morse:** Thank you for inviting me.

10.43 a.m.

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

[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.

[183] I see that Members are content. I ask the ushers to clear the public gallery. Thank you.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.43 a.m.
The public part of the meeting ended at 10.43 a.m.*