



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

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

Dydd Llun, 22 Hydref 2012
Monday, 22 October 2012

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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

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

Anthony Barrett	Archwilydd Cyffredinol Cynorthwyol, Swyddfa Archwilio Cymru Assistant Auditor General, Wales Audit Office
Nicola Charles	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Martin Evans	Comisiwn Archwilio Audit Commission
Jane Hutt	Aelod Cynulliad, Llafur, (y Gweinidog Cyllid ac Arweinydd y Tŷ) Assembly Member, Labour, (the Minister for Finance and Leader of the House)
Mark Jones	Rheolwr Archwilio Ariannol, Swyddfa Archwilio Cymru Financial Audit Manager, Wales Audit Office
Reg Kilpatrick	Cyfarwyddwr Llywodraeth Leol a Gwasanaeth Cyhoeddus, Llywodraeth Cymru Director of Local Government and Public Service, Welsh Government
Matthew Mortlock	Rheolwr Archwilio Perfformiad, Swyddfa Archwilio Cymru Performance Audit Manager, Wales Audit Office
Mike Usher	Cyfarwyddwr Grŵp—Archwilio Ariannol, Swyddfa Archwilio Cymru Group Director—Financial Audit, Wales Audit Office

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

Sarah Beasley	Clerc Clerk
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Dan Collier	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Uwch Gyngorydd Cyfreithiol Senior Legal Adviser
Sarah Sargent	Dirprwy Glerc Deputy Clerk
Tom Jackson	Clerc Clerk

*Dechreuodd y cyfarfod am 1.59 p.m.
The meeting began at 1.59 p.m.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[1] **Darren Millar:** Good afternoon, everybody, and welcome to today's meeting of the Public Accounts Committee. I will make the usual housekeeping announcements. Headsets are available for translation and can also be used for sound amplification; translation is available on channel 1 and amplification on channel 0. I encourage everybody to switch off their mobile phones, BlackBerrys and pagers, as they can interfere with the broadcasting and other equipment. In the event of an emergency, we should not panic, but follow the instructions of the ushers, who will guide people to the nearest appropriate exit. We have not received any apologies for absence today, but Julie Morgan has indicated that she will not be here for the items in which we will discuss the All Wales Ethnic Minority Association; she will be here later in the meeting.

2.00 p.m.

Rheoli Grantiau yng Nghymru—Sesiwn Friffio gan Archwilydd Cyffredinol Cymru ar 'Reolaeth Llywodraeth Cymru o'i Pherthynas â Chymdeithas Lleiafrifoedd Ethnig Cymru Gyfan' Public Grants Management in Wales—Briefing from Auditor General for Wales on 'The Welsh Government's Management of its Relationship with AWEMA'

[2] **Darren Millar:** We will have a briefing from the Wales Audit Office on the Welsh Government's relationship with the All Wales Ethnic Minority Association. Anthony, I understand that you are going to lead on this, as assistant auditor general. You have five minutes or so for your opening remarks, and then I am sure that Members have plenty of questions on the content of the report.

[3] **Mr Barrett:** Our review has considered whether the Welsh Government, including the Welsh European Funding Office, has managed its relationship with AWEMA appropriately, both to protect and make good use of public funds. We have looked at the full history of that relationship, right back from the creation of AWEMA in 1999, through to the actions taken by the Welsh Government following its decision on 9 February this year to terminate its funding. As we state at the outset, we have not sought to examine the internal workings of AWEMA itself, in terms of its governance, staffing matters or financial management. This is because the statutory responsibility for any further examination of AWEMA's own governance, in particular the trustees' actions and decision-making in managing the charity, rests with the Charity Commission, which is taking forward its own inquiry. We have not sought either to undertake our own evaluation of the work that AWEMA has delivered with the support of Welsh Government funding; we have focused instead on the way in which the Welsh Government has discharged its responsibility in

satisfying itself that its grant funding to AWEMA provided good value for money, including the Welsh Government's response to each of the concerns that have come to its attention.

[4] As with the internal audit services report, we have been careful not to encroach on matters that remain under investigation by South Wales Police. We have kept in contact with the police and the Charity Commission throughout our study. The work has taken longer to complete than we first thought, but I hope that appendix 1, which sets out our audit methods, gives you a good feel for the scale of the evidence gathering that we have undertaken, and the report itself is comprehensive in detail.

[5] I would like to put on record my thanks to our own study team for its hard work in bringing the report to fruition, as well as to those who have co-operated with our review, including current and former Welsh Government Ministers and officials, trustees and staff of AWEMA, and representatives of a wide range of other organisations that had dealings with AWEMA in various capacities. I will now hand over to Mike and Matthew, who will take you through the main messages from the report.

[6] **Mr Usher:** When we commenced our work, one of the key concerns being expressed at the time, both here in the National Assembly and among the media and other commentators, was the possibility that there had been some inappropriate political influence over some aspects of the Welsh Government's relationship with AWEMA. We have borne this possibility fully in mind throughout our work. Therefore, I will state first of all that one of our key findings is that we have identified no evidence of inappropriate political influence. Decisions taken by Ministers have been consistent with advice from officials, and we also find instances where Ministers have sought additional assurance from their officials to satisfy themselves before making decisions about funding. We do, however, note in our report that the full basis of certain funding decisions does remain unclear, most notably concerning the actions taken in 2005, in respect of equalities unit funding following the Imani Consultancy Services Ltd review; Matthew will say a little bit about that later.

[7] When this committee was taking evidence from the Welsh Government on our grants management report in January this year, I was struck by a comment about AWEMA that was made by the then Permanent Secretary, Dame Gillian Morgan. In response to a question from the Chair, Gill said that the Welsh Government should have graded AWEMA as a high-risk organisation. The simple fact is that the Welsh Government had no mechanism in place that would have allowed it to make that assessment and thus adopt a suitable approach to its grant monitoring and relationship management. We found that while there were a certain number of gaps in the paper trail, the Welsh Government actually held rather a lot of information about AWEMA, but it was on lots of different paper files in various departmental silos or in the central archives, or else existed only as non-registered information on the e-mail archives of individual Welsh Government officials.

[8] In the absence of a formal customer relationship management mechanism, as you would see in a private company, there were really no robust business processes in place within the Welsh Government to ensure that the potential risks or problems, even if identified by one official, could then be passed on to relevant civil servants in other departments to help inform their own judgments and decisions on funding. It is this failure in knowledge management that is one of the key weaknesses in the Welsh Government's relationship with AWEMA. It created, in essence, a disjointed approach, both between departments, and also over time. The fairly high turnover of civil servants responsible for managing that relationship, together with the absence of succession planning or managed handovers between those various officials, meant that the tribal memory of the Welsh Government, in essence, was partial and short-term.

[9] I should note that that lack of continuity contrasts sharply with the position in

AWEMA itself, where the chief executive, Naz Malik, was present throughout nearly all of that organisation's existence. Whenever a significant issue about AWEMA arose, as happened on several occasions through the 13-year period, the Welsh Government officials who were currently holding the baton were largely unaware of what had gone on previously. As a consequence, individual judgments on handling—which, if taken in isolation, might not have been unreasonable—given the totality of information about previous episodes, was inadequate. Much of that information, as I say, was sitting in various departmental files and in the archives.

[10] Given the extensive consideration that this committee has given to the general topic of grants management, committee members will be familiar with the actions that the Welsh Government has taken over the last few years to improve its management of grants. I believe that it is fair to say that the grants management project and the centre of excellence are starting to make a difference. However, there remains much to do, and it is important that the recommendations made by this committee in its interim report on grants management are taken on board by the Welsh Government, and implemented in a timely way.

[11] I referred a few minutes ago to our 2011 report on grants management in Wales. As the committee will recall, that report contained various illustrative case studies, and drew on 18 previous reports that we had issued on individual grant programmes and projects. It is fair to say, by way of context, that, if we had conducted this AWEMA review a few years ago, it would have featured as the nineteenth case study in that overarching report. There is little here that is new by way of identified weaknesses in the Welsh Government's approach to grants management. Many of the issues that were covered in our report are ones that we have commented on previously in other contexts. However, what is different with this report is that, for the first time, we have looked at the totality of the Welsh Government's relationship with a grant recipient over an entire 13-year period—in essence, from cradle to grave.

[12] Matthew will now provide the committee with more detail about the various issues that we have identified.

[13] **Mr Mortlock:** I will be as brief as I can, Chair. I wish to emphasise a few points from the report, to set the scene for further questions. First, and as was noted in some of last week's media coverage, when we set out on this piece of work, we did not have a clear understanding—nor did the public at large—of the amount of public money that had gone through, or to, AWEMA. So, part 1 of the report is very much about setting the record straight in terms of the amounts of money received by AWEMA, and some of the purposes to which it was put, but also making clear the point that some of the £7.15 million was through AWEMA, rather than to AWEMA, if you like. So, it was paid through AWEMA, but on behalf of other project partners, and that money was then being passed on for delivery and project work by those partners as well. We have not rounded that up in the report, partly because it is difficult to piece it together exactly. However, to put it in context, in the region of about £2.5 million of the £7.15 million is money that went through AWEMA, rather than being spent directly by AWEMA.

[14] Also, and you do not need me to say this to you—you will be well versed in this from your own dealings with third sector organisations—AWEMA, as with many third sector bodies, was very dependent on the public funding that it received. We estimate that Welsh Government funding made up at least 90% of its total income over the years, and that most of the remaining 10% came from other public funding. Some of that was, indirectly, Welsh Government funding, which was channelled through other organisations as well.

[15] Mike has already given a précis of much of the overarching message in part 2 of the report, around political influence and the weaknesses in grants management. There is a lot in there, and I do not intend to expand on that now; we will take questions on that as you see fit.

However, I wish to say a few things. We have the eight case studies in appendix 3. Those track from the very early years of AWEMA right up to 2011, and issues that WEFO was looking into, following concerns that were raised in north Wales by the north Wales regional equality network. There are two other themes in part 2 that we have not presented as case studies, but which could have been, if you like. One is around the dealings in 2005 and 2006 on efficiency savings, or previous underspends, against grant funding. We believe that there was an opportunity there to be more robust in terms of following that up, and following through on that. One problem was the weaknesses in the Welsh Government's own audit trail in terms of that historic funding. As we note in the report, that also manifested itself in the response that was given in 2006 by the Minister—as prepared by the Equalities Unit—in terms of the funding that had been received by AWEMA to that point.

[16] The other was in 2009, when the Minister then responsible for equalities, Brian Gibbons, raised a query about the frequency of AWEMA board meetings. As you will see in the report, the equalities unit did not really follow through by following up that query and getting to the bottom of what was happening at the AWEMA end of things with the frequency of, and attendance at, board meetings. We could have made those into case studies, so there could have been 10 instances of opportunities to be more robust.

[17] I emphasise that we are talking about £7.15 million having been spent, and another £3 million that would have been committed through to mid 2014 had the Welsh Government not terminated its funding. It would be easy to run away with the impression that that is somehow all money that has gone to naught or been wasted. Indeed, some of the commentary on this gives the impression that we are talking about £7.15 million and asks what it was for. We have set out in part 1 some of the various purposes to which it was put. In part 2, we have tried to recognise that, in respect of the initial Welsh European Funding Office funding for the Curiad Calon Cymru project, and several of the other pieces of funding on social care and housing, officials and others looking at it at the time were satisfied with the outputs that they were getting from the funding received, notwithstanding the weaknesses in grants management that we identified.

[18] Briefly on part 3, by contrast with the history, if you like, we conclude there that the Welsh Government responded robustly to the concerns that emerged in December 2011. That is with the slight caveat of the coverage at the start of part 3, and the fact that certain matters relating to the allegations that emerged later in December were communicated to a WEFO official at the end of November. There is the issue of that not being communicated in the Welsh Government and we cannot say for certain what might have happened had that been communicated, but we have made clear in the report that, in our view, it would perhaps have been possible to have withheld or at least held back some of the advance payments that were then paid out, which amounted to around £0.5 million at the time. Again as we say in the report, had that money been held back at the time, it would have had serious consequences, potentially, for some of AWEMA's partner organisations as well as for AWEMA's own financial position. In particular, as we draw out, partners received around £0.25 million in retrospective payments for their project work on the EU convergence programme projects. So, things could have happened more swiftly, and there are lessons to learn there about communication and escalation at the time.

[19] We end part 3 by looking in a bit of detail at the successor arrangements for the three projects—one of our recommendations simply concerns the need for close scrutiny throughout the remaining life of those projects—and at the action taken by WEFO and the equalities unit regarding due diligence in its funding of other organisations off the back of the situation at AWEMA. Again, there might be elements of that that the committee could usefully explore, looking at how the Welsh Government in future strikes the balance between effective due diligence work in its grant funding without being overbearing in its demands on recipient organisations. It has been put to us that the focus of the work that has been

undertaken over the past six months or so would not, from the Welsh Government's perspective, be sustainable or repeatable, as it has been more detailed than it would see as being routine, so it is about where the balance will be struck going forward with due diligence work. On that note, we will take questions as required.

[20] **Darren Millar:** Thank you for those opening remarks. This is quite a detailed report, and you have already mentioned the fact that there are at least eight case studies in it, with the two that you mentioned that are not specifically separated out as case studies but are referred to in the document. The question that everybody is asking is why on earth, given that the red flag was raised to say that there was a problem on so many different occasions, were the warning signs not considered more carefully on each of those occasions? You mentioned, Mike, the cumulative history not having been recorded or shared with colleagues in the equalities department on a regular basis. However, there were many departments that were in touch with the organisation, and some of the concerns were raised not directly with the equalities department but via other avenues. Why on earth did the Welsh Government not get to grips with the problems at AWEMA sooner, in your opinion?

2.15 p.m.

[21] **Mr Usher:** As I was saying earlier, it was not so much that they did not have information, because there was quite a lot of information, but that it was held in so many different silos. I think that that lack of joining things up was the fundamental problem. Every time a little episode arose, it was considered in isolation. There was an absence of knowledge management and a lack of a mechanism to ensure that the people who were dealing with the latest problem were aware of what had happened previously. So, there was an issue of time and of silo working between different departments and different bits of departments. In most private companies, you would see a customer relationship management system of some kind, and there really is no equivalent of that within an organisation of the complexity of the Welsh Government. The mechanism is not there at the moment.

[22] **Darren Millar:** To be fair, as a result of one of the concerns raised, there was an investigation into what went on. A report was commissioned, and although it took a long time to publish the report and its findings, it made some very clear recommendations, but, for some reason, they were not followed up. So, it was not that the department did not hold the knowledge about the history of that particular incident; the department just failed to follow through on it. Why?

[23] **Mr Mortlock:** It is right to say that, as well as the knowledge management issue, in our judgment, the interventions in their own right were not sufficient in their robustness at the time, or actions were not followed through sufficiently, as you say, Chair.

[24] On the Imani situation, which you referred to, between late 2003 and early 2005, the completion of that review was at a time—and, again, it is easy to say in hindsight—when the equalities unit, under its guise at the time, was clearly struggling with its overall performance. There were clearly some significant staffing and leadership issues within the department and a lot of problems. It is easy to look at this report and to think that this was No. 1 on the list of issues prominent for the department at the time, but I suspect that it was not, actually, and that this was very much a side issue for a department that was perhaps, for want of a better word, 'dysfunctional' at that point. Looking back, that is one of the key issues, particularly with regard to the equalities unit's management of its funding, which has been, essentially from day one, on an annual basis.

[25] **Darren Millar:** However, as I said, it is not just the equalities unit that we are talking about here. Looking at the actions of WEFO when concerns were raised, it seems to have body-swerved the issue a couple of times. It said that the governance arrangements were

matters for the Charity Commission, and not matters for it to be concerned about, which is quite an extraordinary response. Is that a typical response, and one that you would expect from an organisation giving millions of pounds to an organisation?

[26] **Mr Jones:** Taking WEFO for example, in 2006 it was probably quite rigorous in identifying the issues, in meeting AWEMA in August 2006 and in putting forward a robust action plan, which case study 5 in appendix 3 sets out. What case study 5 says is that there was no evidence of WEFO having followed up that action plan systematically to ensure that all the good work that had happened in 2006 bore fruit. As to why that happened, all that we can evidence is that we found no evidence that it had happened, so it is probably more a question for officers. In 2006, taking WEFO for example, you had rigorous action and then perhaps a little bit more of a lackadaisical approach in following up on that.

[27] **Mr Mortlock:** It also comes back to a point that we make at the start of our recommendations section, namely what does the Welsh Government see as its role, and what is its role, in respect of issues of governance and things that could easily be perceived as internal matters for the organisation? Are they, in fact, internal matters? If the Welsh Government and other public funders are providing public funding, where do you draw the line and say, ‘Well, these are actually issues directly relevant and pertinent to our grant funding and our relationship with that organisation’? That is also identifiable in several of the case studies. ‘Wouldn’t we be crossing the line to be asking more questions about these matters?’ ‘Aren’t these matters for the organisation, first and foremost, to deal with?’ However, that raises a broader philosophical question about where the Welsh Government draws the line and how it wants to manage its funding relationships.

[28] **Darren Millar:** Okay. A few Members want to come in here—Aled, Oscar, Jenny and Mike.

[29] **Aled Roberts:** I question whether your explanation of silo working and dysfunctional departments is correct, because we have had problems here since 2001. Certainly from 2003 onwards, the BBC and *Western Mail* were reporting on it, so it was very much in the public domain. I find it inconceivable that somebody senior within the Welsh Government did not have oversight of these different issues. From all my experience in local government, if there is one issue raised, there might be an audit or a review, which is overseen by the individual department, but I cannot, in a month of Sundays, accept that there was not somebody senior within the Government, both ministerial and civil service, who was actually asking, ‘What is going on here?’ More importantly, when they did have action plans et cetera that were set out for them as a result of those reviews, I cannot accept that there was no-one checking that the action plans were functioning. Were you able to establish that there was anybody anywhere who had oversight of these investigations?

[30] **Mr Mortlock:** I would agree with you in one sense that it might be difficult to believe that that was the case, but we have not seen any evidence of someone holding the ring on this. The argument would be that if it was for any one department to hold the ring, then it would have been for the equalities unit, under its various guises.

[31] Indeed, in the early days of AWEMA—we set out in the report where AWEMA originated from and the policy context at the time—the equalities unit was instrumental in encouraging other departments to look to AWEMA as a vehicle through which they could potentially deliver consultative work, policy research work or whatever it might be, on issues affecting black and minority ethnic communities. So, there was a light shone on the opportunity to work through AWEMA on certain matters in the early years of the Assembly.

[32] At a senior level, as we made clear in the first couple of case studies, almost from the outset, there were some big problems in AWEMA: an acrimonious split in 2001 and various

allegations over the next few years, which were escalated right up to Permanent Secretary level at the time, as the case studies make clear. Even then, there was perhaps a bit of disjoint between those concerns and an awareness of the departmental relationships that were developing with AWEMA at the time.

[33] In case study 1, we note that there were concerns following a meeting between representatives and the Permanent Secretary, such as ‘What is AWEMA?’ and ‘Is it a Home Office-funded initiative or something that we should be concerned about?’ Even that suggested that, at that time, there was a lack of clarity or misinformation. ‘Exactly what are we funding AWEMA for?’ and ‘To what extent is this a Welsh Government vehicle or a central Government vehicle?’ So, that is carried all the way through the years and it pops up on different radars, but there is no evidence that we have seen of anyone really getting to grips with it.

[34] **Aled Roberts:** At what stage was the Permanent Secretary involved in this?

[35] **Mr Mortlock:** Case study 1 kicks off in about April 2001 with the split in AWEMA’s economic development committee and the creation of the separate company to take forward some separate project work. Those issues were raised at Permanent Secretary level. That goes through to case study 3, taking forward the Imani review following a meeting that the Permanent Secretary had with the Minister responsible for equalities at the time, Edwina Hart. After that point, the later case studies involve officials who were down a tier in the management structure. The issues in 2006 were largely dealt with by WEFO and equalities unit officers at a lower level and likewise from that point on. The 2007 concerns were largely dealt with by the department itself. In the early years, there was a lot of noise in the system around the creation of AWEMA. My gut feeling is that officials found it difficult to differentiate between what was noise in the system, what were personal disputes and tensions between different organisations and representatives of those organisations, and what were genuine concerns and issues that they should have been worried about and looking into.

[36] **Aled Roberts:** From what you are saying, it sounds as though the Permanent Secretary’s involvement was a case of dipping in and out, rather than having any sort of overall oversight of action plans or anything that was happening between different departments.

[37] **Mr Mortlock:** Yes, and I do not know whether you would expect that to be the case. The Permanent Secretary was clearly involved at a high level in discussions with representatives of various communities at that time. I know that fora and steering groups were put in place in the early years of the Assembly to reach out to representatives of black and minority ethnic communities. I do not think that you would necessarily expect the Permanent Secretary to be involved in the micromanagement of some of the grant funding that, at that time, was relatively small-scale in its individual pieces of funding. Obviously, it was only in 2005 that we started to talk about the WEFO European funding, which is on a significantly different scale.

[38] **Aled Roberts:** You might expect the Permanent Secretary to ensure that departments are talking to each other.

[39] **Darren Millar:** So, they reach this tipping point in December, where the response, as you have said, is more robust. Given that similar concerns about governance and the actions of Mr Malik, in particular, had been brought to the attention of the Welsh Government in the past, why was the response in December so markedly different?

[40] **Mr Mortlock:** When we asked that question directly to the Welsh Government, first, the source of some of the concerns coming from the finance director at that time, and indeed

the chief executive making contact, directly, as—

[41] **Darren Millar:** But, to be fair, it had an acting chair who had raised concerns previously, did it not?

[42] **Mr Mortlock:** Yes; in 2007. The—

[43] **Darren Millar:** It is very inconsistent, is it not?

[44] **Mr Mortlock:** It is. I suspect that it is, really, a question for the Welsh Government. It may well point to the grants management project and all the work that it has been doing to strengthen its grant management. Is this not a manifestation of it actually taking more robust action as you might have expected it to do previously?

[45] **Mr Usher:** I think that there is quite a lot in that particular aspect. Given the amount of public attention given to what you would loosely call scandals, such as Plas Madoc et cetera, it is much higher in the public profile. The Welsh Government has been receiving concerns raised by various whistleblowers about particular things around Wales; so, it is getting more practised, if you like, in terms of dealing with those things, escalating them, getting internal audit involved, contacting us and those sorts of things. Over the last 18 months, we have seen quite a step change in its approach; it is much more proactive. So, I think that when this did blow up in December, it had a process whereby it could say, ‘We have a problem; let us escalate it quickly, talk to the right people and tackle it’, which probably was not there before.

[46] **Mohammad Asghar:** Thank you very much, gentlemen. You have given a good report. However, I think that there are still a lot of anomalies and gaps. It was one of the most roguish organisations. How could this carry on for so long with the ultimate power held by one person? I come from an ethnic minority and I am a very proud to be British, but there is an eternal perception among ethnic minorities that some of the organisations are virtually gravy trains and that people are sitting there just making money. There is political influence in that; it has a political flavour. There is a long list. Did you interview any former employees of this organisation? They could have given you more information about the organisation rather than people working there at the moment. So, basically, you missed quite a few points. I think that one political party is virtually using this Government’s funds to give them to these organisations for their political gain. That is the general perception in ethnic minorities. They are in majority not even in—

[47] **Darren Millar:** You gave a very clear statement at the start that you found no evidence of political interference. Obviously, you have interviewed a whole host of people, including former Ministers and individuals who have been associated and connected with AWEMA in the past and at present. So, you have obviously established quite a strong statement, but how did you form that statement? I think that that, perhaps, is a better way of putting it.

[48] **Mohammad Asghar:** Thank you, Chair.

[49] **Mr Mortlock:** It is quite simple, really: no evidence has been put to us to demonstrate the point over political influence and neither have we seen any documented evidence, for example, of Ministers seeking to change a judgment on grant funding or the like. As to interviewing AWEMA staff, we did pick up some current and former AWEMA staff throughout the course of our work, and we also interviewed some of the trustees, but, deliberately guided by our terms of reference, we did not look in detail at the AWEMA staff.

2.30 p.m.

[50] We have received, through third parties, some of their concerns. It is clear, as was clear in February, that there are plenty of former staff who did not enjoy working for the organisation and have various grievances against it, but, again, it was not our place to look into those particular personal matters.

[51] **Mr Usher:** We need to bear in mind that, as well as our work, two other pieces of work are ongoing: one is by the Charity Commission, which is looking at the operation of AWEMA as a charity, and may well be getting into some of the issues that you raised, Oscar, and the other is the parallel police investigation, which again is focused very much at the AWEMA end of things.

[52] **Mohammad Asghar:** My point, Chair, is that this is an ethnic minority organisation. Clearly, AWEMA relates to ethnic minorities. Did you have any interviews with or collect information from ethnic former employees or anybody who was associated with the organisation throughout Wales that might be indirectly linked with AWEMA because it was funding them? Some organisations were getting funds from AWEMA—

[53] **Darren Millar:** There is a full schedule in the report of the people who were interviewed and contacted, who provided evidence in terms of its collation, including some of the other organisations that are involved in BME work and some of the individuals who were directly involved at the coalface of AWEMA at the time. So, it is fair to say that we have had a response. Clearly, other work is being done by the Charity Commission and the South Wales Police, and we will hear more about that in due course.

[54] **Jenny Rathbone:** I have two questions. First, to pick up on the point about the role of the Charity Commission, I do not quite understand why neither you nor the Government felt that it was the Government's role to look into the governance of this organisation, particularly in the period before March 2005, because AWEMA was not registered as a charity until then. Therefore, surely it was the role of the Government to ensure that governance arrangements were in place at this voluntary organisation to ensure that the money was being spent appropriately. I cannot understand why we are not clearer about that, given that the Charity Commission has no responsibility for it prior to it being registered as a charity. I have a second question, but I will pick it up as a supplementary.

[55] **Mr Usher:** In the first instance, the Charity Commission, as you said, will be able to look at the period from 2005 when AWEMA received charitable status through to the present day, and we understand that that is what it is looking at: the governance of the charity over that period. It is looking at the roles of the trustees and the way in which the charity operated. It is conducting a statutory inquiry under the Charities Act 2011. I am afraid that I cannot give you an indication of timescales for reporting, but we understand that it is undertaking quite a substantial piece of work.

[56] Prior to 2005, you are right, it was not a charity and this, again, cuts to the heart of how robustly the Welsh Government was administering its grants at that time. It is fair to say that things have improved over time, but starting from a very low base. So, exactly the sorts of things that you would have expected a funder to be doing with regard to any of its grant recipients, around due diligence, monitoring, and that being proportionate to risk, and risk assessments, simply were not in place. They were not happening.

[57] **Jenny Rathbone:** That was my second question: why, in any organisation, would you ever give money for further activities until you had assured yourself that the money had been spent on the previous activities and that it had met the objectives and purposes for which it had been given?

[58] **Mr Usher:** That is an interesting point. If you look at appendix 2, which contains the analysis of spend, you will see there that there is a step change in the quantum of funding that AWEMA received when the European money kicked in.

[59] **Darren Millar:** It is on page 20.

[60] **Mr Usher:** I am sorry; I was looking at pages 92 and 93. We have an analysis by financial year there, and you will see the step change that kicks in from 2005-06 onwards when European funding began, which is after the point at which AWEMA attained charitable status. Prior to that, some of the funding was project related and some of it was core funding for AWEMA's running costs. That step change is significant because we did not really see much evidence of WEFO or the Welsh Government looking to see that the organisation that it was funding was equipped to cope with such a magnitude of increase in the volume and value of business—in essence, this was pretty much its turnover, as there was not much other funding there. So, there was that big jump, and an assessment of the capacity and capability of the organisation to make that leap was not really in place.

[61] **Mr Mortlock:** I would add that it would have been very difficult, eight years on, for us to get into the detail of what was happening with the governance of AWEMA between 1999-2000 and 2004-05. What we are clear on in case studies 1 to 3 in appendix 3 is that there were opportunities there for the Welsh Government to be asking some harder nosed questions about governance of AWEMA, and it did not do that. Even on some occasions when it was suggesting that it would do that, for example, in the case of the period at the end of 2003 when the Imani report was being commissioned, although an impression was given externally that that review would respond to some of the issues of governance and financial probity that were present at the time, and indeed had been present over the previous years, the end product of that exercise was something quite different—it was quite a narrowly focused piece of work looking at the delivery of three projects, and not something that was about governance and management at AWEMA. It was about what those three projects delivered. You are absolutely right, and we are clear that there were opportunities for the Welsh Government at the time to ask different questions about the governance of the organisation that it was funding.

[62] A point that is hidden away in one of the 120 or so footnotes in the report is one that Mr Malik made to us, that in March 2005, when AWEMA gained charitable status, from his perspective, that was part of the AWEMA response to putting its house in order at the time. I have to say that we have not seen or heard a great deal from the Welsh Government side from that period of time in terms of it saying, 'Oh yes, this was the way of moving forward with AWEMA from our perspective', but clearly it was something that changed in terms of the governance of AWEMA at that time, which was immediately post the Imani report and the consideration of it. You are absolutely right that there was plenty of opportunity to have asked some different questions about governance over a period of time.

[63] **Darren Millar:** Jenny, do you want to come back?

[64] **Jenny Rathbone:** I will come in later.

[65] **Darren Millar:** Aled, you had a point on this.

[66] **Aled Roberts:** Yes, on March 2005, because that was when AWEMA formulated itself as a charity. At that time, there was an increase of £460,000 in its annual funding and a further £500,000-odd the following year, so it was a huge step up. The Imani report was actually finalised in January 2005, and made it clear that funding that was committed should continue but that no new funding should be given. Have you been able to establish why that was not included in the final version of the report? Did you interview the report author?

[67] **Mr Mortlock:** We did interview the report author. That recommendation is in the report, although it is not in the executive summary. As we make clear in our report, it was in the executive summary of an undated draft version of the report. We interviewed the report author and we have made clear in the report that we have asked direct questions about influence over the draft, and he did not feel under any undue influence to alter it. We have not seen any evidence behind the scenes of e-mails or communications in terms of any kind of mischief in relation to the report drafting. Quite aside from that, the point that we make in the report is that the advice to Ministers in January 2005 did not itself explicitly refer to the recommendations in the Imani report, whether they were in the main body of the report or not; it talked more generally about the recommendations to Ministers in terms of future funding, but it did not point them directly to the recommendations in the report.

[68] The final thing that I would say is that one of our critiques of WEFO's original appraisal of the Curiad Calon Cymru project, which is the reason why you then get the big uplift in funding in 2005-06, was that there was no evidence that we could see that the Imani review formed part of the appraisal. That comes across as a point of poor communication between departments.

[69] **Aled Roberts:** In paragraph 18, you make it clear that the Imani report was not shared with the communities directorate. You say that it did not inform WEFO's appraisal, but was the Imani report shared with WEFO?

[70] **Mr Mortlock:** I think that we have made it clear it was—[*Interruption.*] Yes, the circular—Mike is telling me that it was paragraph 2.34. So, yes, the advice to Ministers was also shared with the chief executive of WEFO at the time.

[71] **Darren Millar:** Mike is next—sorry, do you have a question on this, Jenny?

[72] **Jenny Rathbone:** Yes, it is on this.

[73] **Darren Millar:** Sorry, Mike; you will get your chance.

[74] **Jenny Rathbone:** This was also shared with the First Minister and the Minister for equalities, but not with Edwina Hart, who had commissioned the report. That is difficult to understand. If you commission something, you want to see the end result, and you probably have some idea as to why you commissioned it in the first place.

[75] **Mr Mortlock:** I would agree with you. It is difficult to understand that. We have actually reflected Mrs Hart's perspective in the report, in that, looking back, she herself finds it strange that that was not shared. Officials who were in the communities directorate at that time to whom we have spoken have no recollection of it having been shared at the time. Obviously, the Communities First funding had already been under way for a couple of years at that point, albeit that it was being extended in chunks over time. So, again, you could have asked a question about wanting to take more assurance off the back of that.

[76] The submission to the First Minister and to the Minister for equalities in January 2005 did make reference to the other funding that AWEMA was receiving, and the Communities First pot of funding was one that was spoken of in more positive terms, in terms of officials being satisfied with what they were getting at that time from funding that, again, went through AWEMA to four different organisations.

[77] **Jenny Rathbone:** Are you saying that the Ministers did not see the Imani report, and that they only saw a submission—that is, a *précis*—from civil servants?

[78] **Mr Mortlock:** No. The submission went up, and the report went with it as an attachment. What we said in the report is that, obviously, we cannot say with any certainty how closely scrutinised the report itself was by the Ministers at the time as opposed to the advice. I would say that, on both counts, the recollection of officials and others of the events around that period have not been particularly clear, and that is why we are saying that it remains unclear as to exactly what went around some of this.

[79] **Jenny Rathbone:** And the submission was written by whom?

[80] **Mr Mortlock:** By the equalities unit.

[81] **Mike Hedges:** I have read the report and found this quite a complicated means of income and expenditure for AWEMA. You did not say anything about this in your report, and I would like to ask you why. I do not believe that it is good practice to give money to an organisation for it to then give grants, because, when grants funding is at one step removed, you lose control of it. That is something that I picked up on: it was going to AWEMA, which was top-slicing it and then passing it on. I do not think that that is good practice, and, in the local authorities that I was involved in, we made sure that that never happened. We only ever funded people directly, not through a third party. You did not raise that is a criticism, and I was surprised at that—was there any particular reason?

[82] **Mr Usher:** You are right about the additional level of complexity that is introduced by providing funding to an organisation and then expecting it to deal with a vast range of other people. It adds another layer of complexity to the role and responsibilities of the funder. There are plenty of parallels for that kind of mechanism in the past. You had the former training and enterprise councils, for instance. The funding went through to them and then from them on to training providers, which might then go out and subcontract—you could be three or four people down the line. It makes it more complicated. It is not necessarily a bad thing per se, but it does make it that much more complicated, and the funder needs to take even greater care to know who it is they are dealing with and that they have proper, appropriate, robust procedures in place in order to safeguard public funds. When it is one step removed, it is that much harder to have that kind of relationship. You are reliant in part on AWEMA giving you those assurances on behalf of its partners, and you have to weight that accordingly.

[83] **Darren Millar:** It is fair to say that the Welsh Government has always looked for national bodies, where possible, to channel money, is it not? It encouraged the creation of AWEMA, did it not?

[84] **Mr Usher:** From a public administration point of view, you can see a lot of sense in that. Rather than the Welsh Government itself dealing with 400 organisations, if you can deal with a handful directly and they in turn deal with the 400, from a complexity and an economy-of-scale argument, you can see good sense in doing that, but it does make it that much harder and inherently more risky, and there is the importance of how the funder satisfies itself that robust arrangements are in place. That question becomes so much harder to answer.

2.45 p.m.

[85] **Mike Hedges:** We have mentioned WEFO, and you have been critical of it and what it has done in terms of assessments et cetera. I sit on another committee that is almost certainly going to produce a report that will say that WEFO has dug in too deep in organisations and will be very critical about the fact that it has been very difficult to get money out of WEFO. Are we getting joined-up scrutiny? We talk about joined-up government, but I think that we will probably end up with one report from here saying that

WEFO should have worked a lot closer on it, and another from the Finance Committee stating that WEFO needs to be less strict with the money that it is giving to organisations.

[86] **Mr Barrett:** From my point of view, that highlights the balance that needs to be found in terms of either the complexity of the relationship or the sums of money that are involved, and the importance of having risk assessment, and that, if you like, providing a proportionate response. From an audit perspective, I would not want the Welsh Government suddenly to clam up and not provide funding to organisations that are doing good work in communities. So, there needs to be that balance, and I think that what you have highlighted is that lack of balance. I do not know the details of the Finance Committee's report, but there may be examples of where it might be going into too much depth and taking too long to get funding out, as opposed to examples of where it is being more relaxed.

[87] **Lindsay Whittle:** In the interim report on grants management, the committee has said that the Welsh Government may need to develop a proportionate requirement for recipients of grant funding to notify it of any changes to its trustees. How does the evidence of this report reflect that contention? Should anyone who gets a grant tell the Welsh Government that its trustees have changed, especially as people are standing down with immediate effect—important people in important posts? There is clearly something wrong, is there not?

[88] **Mr Usher:** Talking about charitable bodies in receipt of funds, something like a change of trustee is quite a significant event for any charity. Some of it is due to standard rotation at the end of a term of office and so on, and it would seem sensible for that to be communicated to the funder as a matter of fact. Where there are issues with trustees resigning unexpectedly or at short notice that is an inherent risk indicator that there is something there that the funder needs to be aware of. That is down to the quality of that funding monitoring relationship. There should be openness and no surprises on either side. It is about trying to get a good quality monitoring relationship. If the information comes in, it can then be assessed proportionate to risk and all the rest of it. However, if you do not know about it, you cannot act. So, it needs to be communicated, absolutely.

[89] **Lindsay Whittle:** Following the investigative journalists' reports that appeared on television and in the newspapers, clearly alarm bells should have been ringing quite loudly.

[90] **Mr Usher:** I think that is pretty much what our report states, is it not?

[91] **Lindsay Whittle:** Yes. I also note that your report states that

[92] 'AWEMA's governing document states that AWEMA's trustees should meet at least four times a year and that AWEMA's Council of Members should meet at least twice a year.'

[93] That did not happen, did it? Should funding continue in those circumstances? Again, somebody, somewhere, should have seen this and said, 'We shouldn't be continuing to fund'. What I am really concerned about is that there seems to be a cover-up here. Are we, with this report, simply compounding a cover-up? That is what I feel. We need names, do we not, and we do not have them?

[94] **Mr Mortlock:** I think that I said earlier that, in respect of the point that you made about the governing document, in 2009, the Minister sought assurances from officials on the frequency of board meetings, having heard a whisper somewhere and having had some concerns brought to his attention, but he did not get those assurances. The unit did not follow through sufficiently on the question that had been raised. There was then a handover to another Minister at the end of that year and the issue was perhaps forgotten and there was a turnover of officials once again. Yes, that is not good enough: a question was raised, a concern was

raised, and that was not followed through. However, there are several instances of that ilk.

[95] With regard to a cover-up, we would again say that we certainly have not hidden anything in our report. This is the evidence that we have been over. We have been fulsome in trying to set it out. We have certainly been fulsome in trying to set out, for all of the tranches of funding, the history of those and the process of advice and agreement for the funding decisions. I think that this is a collective failure in the administration over time to respond effectively to the issues that were clearly there. In part 3, we make the point that several of the issues of concern—this is the point that has been made by the chair of AWEMA—highlighted in the internal audit report, such as Mr Malik’s roles as chief executive and trustee and the employment of family members, were not secrets. We can be aghast about them now, but officials were having meetings with Mr Malik and his daughter in her role as well, so there was no secret about her role, or his roles as chief executive and trustee. So, the question that then arises is why someone was not asking different questions about that previously.

[96] **Lindsay Whittle:** This is not a £50 grant to a church hall fund; we are talking about millions of pounds of public money and there was a whole colourful catalogue of Ministers, many of them quite famous names in Welsh politics. A Minister would be well-paid; should the Minister not have been asking questions like this?

[97] **Mr Mortlock:** Again, it is not for me to defend the actions of Ministers, but Ministers have asked questions over time. The Imani report was a response to concerns raised with the equalities unit by the Minister at that time, Mrs Hart. The Minister was raising concerns in 2009 and the Minister was clearly concerned about events in 2007, when the former acting chair and vice chair raised concerns. The issue, as we see it, is that the departments and officials have not done enough to follow through on the issues of concern over time.

[98] **Lindsay Whittle:** But the money kept churning; it was like a one-armed bandit that was broken and the winnings kept churning out all the time and nobody turned the plug off.

[99] **Darren Millar:** The issue, it seems to me, is that, when Ministers changed, there was no effective handover support for the incoming Ministers to be able to pick up from their officials the legacy issues that were still outstanding from the previous portfolio holder.

[100] **Mr Usher:** That is right, Chair, and the same applies to officials with responsibility to transfer. Again, there is very limited evidence of a structured handover. If that knowledge transfer does not happen, issues get dropped.

[101] **Darren Millar:** So, if a Minister disappeared, who was on the ball, as it were, like Edwina Hart, who we could perhaps say was behaving responsibly et cetera, as soon as that Minister moved out of that portfolio, any new Minister was not given a briefing to hand things over and to be told, ‘Well, the previous Minister was concerned about x, y and z and we are still working on those issues’.

[102] **Mr Usher:** Ministers were very frank with us during discussions. Certainly, a couple of them said that, looking back and reflecting, it would have been helpful to have had some kind of handover with the predecessor, but those sorts of discussions tended not to happen.

[103] **Darren Millar:** Okay. Gwyn has the next question.

[104] **Gwyn R. Price:** The Wales Audit Office repeatedly highlights a lack of communication between Government departments involved in diverse funding streams to AWEMA. What were the causes of this lack of communication?

[105] **Mr Mortlock:** It is no secret in our reports over time—the 18 reports—some of which feature in the grants management report. The criticism of silo working within the Welsh Government has been prominent in various audit reports, and, indeed, in other reports over time. Effectively, that is it, as well as a failure of the departments to look across their own boundaries to understand what is going on.

[106] I think things are getting better; we point in part 3 to the cross-departmental response that was put in place post December. However, from a grants management perspective, there are still lessons to learn. One of the pieces of funding we refer to relates to the Welsh Government's children and families branch, which declined a bid from AWEMA in November/December 2011, shortly before all the issues blew up. We were told that the AWEMA bid was significantly below the bar in terms of the evaluation criteria for that bid, but when we asked officials whether, when they granted funding to organisations, they communicated with other Welsh Government departments that might also be funding those organisations, the answer was that the children and families branch did not. That is not specific to AWEMA, but, to me, that is something that we have been saying over a period of time, and you would expect that the Welsh Government should now be in a position, almost as a matter of routine, when it is considering allocating grant funding, for officials to be very clear on which of their departmental colleagues are already providing funding to those organisations, and what is the track record of that organisation in delivering against that department's funding. Therefore, I believe that that is a fairly simple thing to put in place. However, it is also about communicating to officials, and about officials understanding, how they should go about collating that information. This comes back to the customer-relationship-management-system kind of model that Mike was talking about.

[107] **Mr Usher:** Customer-relationship management sounds like jargon. However, in essence, at present, in order for information to be conveyed between two departments, an official has to make a conscious effort to communicate—to pick up the phone, to write an e-mail, or whatever—as opposed to recording information into some kind of database-type system, where others can simply pick it up when they need to. Therefore, rather than the official working out, 'Who do I need to share this with?', it goes into the pot, and anyone who needs access to it, can get it. In the absence of a system, it requires officials to be proactive; they are busy flitting from one thing to another, and the incentive is not in the system to encourage them to do so. That may be part of the problem.

[108] **Gwyn R. Price:** Therefore, they could have, and they should have, but they did not. It is as simple as that. However, why do you believe that a customer-relationship management system would resolve these issues?

[109] **Mr Usher:** I would be cautious in saying that it would resolve these issues; we believe that it would go a long way towards assisting officials to improve things. Precisely because of that point, it removes the need for them to be proactive in picking up the phone to a colleague. For example, if official A drops into the CRM system that they have had a meeting with the chairman of a charity, who made the following points in the meeting, that goes into the corporate memory. Subsequently, someone who is about to deal with that organisation can look at the record for that organisation and see that a discussion had taken place. Therefore, the information is there on tap, as opposed to someone having to make a conscious effort to communicate with someone who might be working with them at some point in the future. It is just a means by which life would be much easier for them in sharing information.

[110] **Gwyn R. Price:** Would you have concerns around requests made under the Freedom of Information Act 2000, in the provision of the information in such a system?

[111] **Mr Usher:** I would certainly hope not within the Welsh Government itself. I would

be concerned if any official is not recording things with one eye on potential freedom of information requests regarding any part of public business. There are safeguards under the Act around exemptions, redactions, and so on, if it is proper for something not to be placed in the public domain, for whatever appropriate reason. However, to not record things for fear that they might be the subject of a freedom of information request at a later date is an unacceptable way to conduct public business.

[112] **Gwyn R. Price:** Thank you.

[113] **Darren Millar:** Aled has a brief question, then Jenny.

[114] **Aled Roberts:** Is the existence of a database a cop-out? Someone can put something on a database, but, in reality, what we should be expecting here is that individuals in different departments communicate with each other, given the value of this grant funding. I find it inconceivable that someone in one unit or department does not know who, in another department, is responsible for something. Paragraph 2.26 of your report notes that, it is not just a case of the lack of communication, but the fact that,

[115] ‘The Welsh Government’s file records are also lacking in detail.’

[116] You go on to say that you could not find any recorded meeting notes. That seems totally slipshod.

[117] **Jenny Rathbone:** May I follow that up?

[118] **Darren Millar:** Yes.

[119] **Jenny Rathbone:** I wish to refer to figure 6, on page 40. Going back to the submission that was made to Ministers in 2005 on the back of the Imani report, it seems that this was not about a lack of communications, but, it would appear, from the information that you provide, that civil servants actively wished to cover up their own deficiencies, and were anxious that, if AWEMA’s funding ceased, AWEMA could have justifiably highlighted the weakness in the equalities unit’s own management. That is a specific example of the equalities unit not functioning as it was supposed to. Are you able to point us to examples where that complete dysfunctionality continued? That is a specific example where people were not biting the bullet because they were concerned that their own deficiencies would be exposed.

[120] **Darren Millar:** I believe that what committee members are saying to you is that a customer-relationship management system can be useful, if the information that goes into it is accurate and the quality of the data is such that it overcomes deficiencies, such as the ones that Jenny referred to.

[121] **Mr Usher:** I believe that that is right, Chair. A CRM system is not a panacea for all problems. It will not solve all the issues that we have outlined in this report, and, even if it worked well, it will not be the solution to everything. We have suggested it as one important way in which we think the Welsh Government can raise its game as a complex organisation. However, there are other recommendations in the report that are of equal standing.

3.00 p.m.

[122] **Mr Barrett:** I would add that the database-type system should never be seen as a replacement for people talking to each other. People might have views or feelings about things from their discussions that do not get onto that type of system, but it would be useful to have a conversation with someone about those things. The suggested system will allow you to

identify to whom you need to talk—who made the last entry in relation to a particular body.

[123] **Aled Roberts:** Is it not a fact that the lack of records, file notes et cetera basically means that anyone who is investigating any misdemeanour or failings have their hands tied behind their backs before they even start? It may be that records are not kept because people know how bad the situation is, as Jenny suggested, and they do not want to be caught out.

[124] **Mr Mortlock:** On the point we made about record keeping, we have ploughed through hundreds of WEFO file records related to AWEMA—there are plenty of records there. For the first five or six years or so of equalities unit funding, the audit trail with regard to the files on AWEMA is poor. We have also seen other evidence that the general file records for that department were poor; there was clearly a general problem with record keeping and what you would expect the audit trail of material for that department to be for a period of years. I would not suggest that we have seen any evidence that files relating to AWEMA were all over the place, while files relating to all of the other bodies that the unit was funding were perfectly ordered.

[125] **Aled Roberts:** That is the one department where you have looked at the files. The worry for us is that there are other departments like that.

[126] **Darren Millar:** To be fair, they have had to look at a number of departments with regard to the files for AWEMA, have they not? It is a general problem rather than one that is specific to AWEMA, which would have indicated that there had been deliberate tampering with files; is that what you are saying?

[127] **Mr Mortlock:** On the point about communication and knowledge management, I point you to two examples from the report, in addition to those on which we have touched. The first is that one of the first interventions by the Welsh Government was in late 2002, when it commissioned a review by its finance department—this is case study 2 in the report. At exactly the same time, give or take a week or two, the communities directorate was embarking on approving the funding of the Communities First Black and Ethnic Minority Support Team project. As we say in the report, things changed in respect of that funding. Where originally the Scarman Trust was going to be the lead body, we think that the Welsh Government was notified in December 2002 that AWEMA would take on the financial management and administration of the project. Logically, you would ask where was that bit of communication at that point in time for the communities directorate to be aware that the finance department was doing a review of the financial accountability arrangements of that organisation, while at the same time entering into an agreement that would see that organisation managing the finances of £1 million-worth of Communities First funding over time.

[128] In 2007—this is case study 6, which discusses the concerns of the acting chair and vice chair—what was interesting was that, quite appropriately, the equalities unit shared the concerns that had been raised with it with WEFO. We have not seen much evidence of what WEFO did off the back of that. However, interestingly, part of AWEMA's response to that at the time was that it was somewhat aghast at these issues even having been passed on to WEFO by the equalities unit. We make clear in the case study that in our view that was entirely appropriate. I am sure that if we were sitting here saying that that had not been shared with WEFO, we would be thinking why on earth not. Aside from that, WEFO itself was not particularly involved, as far as we can see, as regards it taking forward any action off the back of that. Those are two cases, added to the ones that we have already talked about regarding the communication issue.

[129] **Mike Hedges:** There are problems of reputational risk. There are also problems right across the way in which things are done. I do not know if you remember—I was trying to find

it in the report—but when one grant was turned down, Mr Malik said that it was due to institutional racism. He did not take it any further, but he threw that allegation at civil servants. Is there not a danger that people could step back and say, ‘Well, there is a risk of our organisation being—in the wake of the Stephen Lawrence inquiry—deemed institutionally racist, and there is a danger that I, personally, will be deemed a racist, because I refused money to this organisation.’?

[130] **Mr Mortlock:** Even though the Communities @One funding was managed by the Wales Co-operative Centre, essentially on behalf of the Welsh Government, we included it almost deliberately to make the point that this was a case study of the reaction from the AWEMA side on this particular example. It kind of links back to the 2005 situation, in terms of the consideration and the advice to Ministers at the time in relation to the reputational risk of withdrawing our funding to AWEMA. I do not know that I would want to say much more than what is in the report on that point.

[131] At that time, there was an issue where AWEMA perceived that it was being unfairly treated and facing more onerous demands and being asked for more paper work. Certainly, the perspective of the Wales Co-operative Centre and people we have talked to, and the feedback we have had from them, was that they were following their usual process and wanted more information on particular points. Some of those were issues around partnership working, and, reflecting on it, there were issues around the WEFO projects at that time and other issues raised by other partner organisations. The accusation at the time was that one particular individual on the panel, for whatever reason, was getting in the way of the bid, but we have not seen any evidence to support that view.

[132] **Darren Millar:** It is worth pointing out that when the latest episode occurred, after 19 December, when Assembly Members, members of the press et cetera, began to ask questions, the accusation of racism reared its head at that time, through various comments that were being made, I think, by Dr Rita Austin, as chair of the trustees, which was not dissimilar to some of the allegations being thrown around.

[133] Do you want to continue, Mike?

[134] **Mike Hedges:** No.

[135] **Mohammad Asghar:** This committee has previously recommended that the Welsh Government develops a transparent, proportionate and consistent business test for determining whether to make advance payments of grants to organisations. How does the evidence of this report reflect on that recommendation?

[136] **Mr Usher:** This report exemplifies the importance of the committee having made that recommendation. Advance payment of grants is appropriate in certain circumstances, particularly with voluntary sector organisations that need it for cash-flow purposes. The distinction is drawn in the committee’s previous report, between ‘advance payments’ and ‘payments in advance of need’; the latter are never acceptable. The committee has recommended a transparent, proportionate and consistent business test. All three words are important, but one of the key words is ‘proportionate’. For a very small grant-funded organisation, that could be a light touch, but there needs to be some kind of robust mechanism, rather than it being the default position that advance payments are made, because we are talking about public funds, and they need to be used wisely.

[137] **Darren Millar:** Interestingly, of course, the Big Lottery Fund seems to have taken quite a different approach in terms of advance payments. I think that it had only paid £4,000 of the £0.5 million that it was going to pay.

[138] **Jenny Rathbone:** There are some pretty uncomfortable similarities between this story and that of the River Lodge in Llangollen, particularly where backbench Assembly Members with local knowledge raised very specific concerns. It would appear that in this case, inaccurate information is given to Dr Dai Lloyd. I am concerned to understand the sanctions for civil servants who provide inaccurate information to Ministers. Ministers cannot possibly do the sums themselves; they have to assure themselves that the information they are provided with—in the written answer, in this case—is accurate. It is disturbing that Ministers ask for an answer to a question and the answer is inaccurate. How can the backbencher possibly know, short of doing six months' work?

[139] **Mr Usher:** We were very disturbed indeed when we identified the fact that the information provided in response to an Assembly question was incorrect. Prima facie, that should not happen. There is no evidence whatsoever that the Minister who gave the response in any way sought to mislead. The answer given was entirely based on information provided by officials, which goes to the heart of your question about what arrangements the Welsh Government has in place to ensure that it is giving accurate, factual information to Ministers—in every respect, not just in response to Assembly questions. For the answer to that question, I am afraid you will have to go to the Welsh Government, rather than to us. We were very concerned to see this. It is not a unique incident and it is something that causes us a lot of concern in terms of parliamentary accountability. Assembly Members need to have confidence that the answers that they receive are factually correct. The Welsh Government, equally, needs robust arrangements to ensure that the answers given are factually correct and then, if any problem is identified retrospectively, it gets through to you.

[140] **Jenny Rathbone:** So, you are unable to convince us that these are not just two aberrations.

[141] **Mr Usher:** No, the issue is what quality assurance mechanism is in place to ensure that the answers being given are factually accurate and complete.

[142] **Mike Hedges:** Is there a case, when a Member raises questions in whichever form, for the auditor general to send somebody to have an initial look, at least, rather than a full audit, and then to decide whether a full audit is necessary?

[143] **Mr Usher:** The auditor general is always happy to receive communications from Assembly Members. We will always have an initial look in response to anything coming to us from an Assembly Member. Sometimes, we will identify that the query has arisen through a simple misunderstanding or that clarification can solve the problem. Other times, it might be a more significant matter that merits a full review and a response to that Member by correspondence. In other instances—the regeneration investment fund for Wales is a recent example—following correspondence from an Assembly Member, we had a look and decided that we needed to conduct a full value-for-money study. So, in response to your question, yes, absolutely; if Members come to the auditor general, we will always look at these things, but the nature of our response and the amount of work that we do depends on the nature of the issue and what we find.

[144] **Mike Hedges:** I take it from that that Dai Lloyd did not approach you; he just went to the Minister.

[145] **Mr Mortlock:** In 2010—*[Inaudible.]*—no, I do not think so. He went to the Minister with some concerns and, again, those were not followed through.

[146] **Darren Millar:** Is it fair to say that a number of Assembly Members have been in touch with the Wales Audit Office about AWEMA at various points in past years?

[147] **Mr Mortlock:** No—

[148] **Darren Millar:** I certainly got in touch with you after December.

[149] **Mr Mortlock:** Yes, it is true that the study that was undertaken was partly in response to the issues raised with us by the Welsh Government and by Assembly Members, but, pre-dating that, no.

[150] **Mr Usher:** Those communications were in January and February this year.

[151] **Darren Millar:** It is not only written questions, but the briefings that were given to Ministers, which is another sort of River-Lodge-type link, where we know that completely inaccurate information was given to a Minister and the basis on which the Minister made the decision was incorrect—about the red-book valuation, for example. Here, we find that Carl Sargeant was given a ministerial briefing that said that there had been no mention of any previous concerns about AWEMA's delivery and governance arrangements, which was completely untrue. How do we address this problem? It seems to be wider than just this one particular issue, does it not?

[152] **Mr Usher:** I think, Chair, that we would share the committee's concern on that general principle. Questions really need to be asked by this committee to the Welsh Government as to how this came about and what it can do to prevent it happening.

[153] **Darren Millar:** The new Permanent Secretary really has his work cut out.

[154] **Aled Roberts:** Does the format of ministerial briefings et cetera always identify the author?

[155] **Mr Mortlock:** Yes, they normally have an authorship on them, but exactly how reflective that is of who drafts it and who approves it internally—they are presented in someone's name—

[156] **Aled Roberts:** Does it identify someone who is responsible for presenting the briefing?

[157] **Mr Mortlock:** Yes.

3.15 p.m.

[158] **Mohammad Asghar:** The audit department must remember that all information was triggered by a whistleblower. It has not come out of an investigation by the audit office, internal auditors, or by anyone else. It was an internal whistleblower in AWEMA. That is the point that we have to seriously consider. If that had not happened, it would still be carrying on. So, a lot of problems have come out afterwards, and now we have this wonderful report, which is great. However, how many other organisations are in a similar position in this country, doing the same thing? Are we learning any lessons with this?

[159] **Mr Mortlock:** It would be remiss of me not to acknowledge a point that we make in the report about the concerns raised on 19 December 2011 by AWEMA's finance director. Mr Malik also communicated with WEFO and the equalities units on that same morning, in very short order, after the e-mails that were received from the finance director. We believe that that followed a prompting to do so at the AWEMA board meeting the previous Friday. Mr Malik, as we made clear at the start of part 3, had a conversation about certain matters relating to allegations at the organisation that he was facing at the end of November. So, it is a point that we have discussed at some length over the past few weeks, particularly as we have been

sharing drafts with third parties. So, yes, the whistleblower was clearly the director of finance—his communication was clearly the main stimulus to the Welsh Government action—but it was not the only communication that was received. As for the wider point, I think that there is a more general point about people who work in organisations feeling that they will be taken seriously, protecting their anonymity where appropriate and them having the confidence to come forward with concerns.

[160] **Mohammad Asghar:** As mentioned by my colleague Lindsay Whittle, there is some sort of a cover-up. Your diagram mentions a famous name. One name is much longer than all others—

[161] **Darren Millar:** Oscar, we are running late on time.

[162] **Mohammad Asghar:** We can send our written—

[163] **Darren Millar:** I do not want to disturb you, but there is one final, very important question that I will ask in closing, because the clock is completely against us.

[164] It obviously took a long time to get this report signed off. It was delivered to this committee later than forecast. We were expecting it immediately after the summer recess but we are only having a briefing on it today. Can you tell us why it took so long for you to complete your work?

[165] **Mr Barrett:** Perhaps I could just take that question, to finish. In terms of clearing the report, I do not think that it took us much longer, in terms of elapsed time, than a report would normally take. What took us longer was the amount of time that it took to do the work, because of the volume of files that we had to review and the number of people we had to interview. It became apparent reasonably early on that it was going to take us a lot longer. We were being very ambitious when we set our original timetable. So, it was the amount of work that we needed to do that required a longer time, rather than the amount of clearance.

[166] **Aled Roberts:** You mentioned clearance. With whom was this report agreed, beyond the Welsh Government? Were there any other parties who were subject to the clearance process?

[167] **Mr Mortlock:** As we normally would, we agreed the report with the accounting officer at the Welsh Government. Beyond that, as we normally would, we shared extracts of the report that named certain individuals or organisations with them, out of natural justice. That is more for comment than for agreement, although we have taken on board some of the points that were made in response to that. However, they have not fundamentally changed the messages in the report, nor would that have affected its clearance with the Welsh Government, other than to elucidate issues at the start of part 3, for example. Fundamentally, the report has remained unchanged in its overall conclusions through the clearance process. We also took the opportunity, only the week before publication, to share extracts of the report with the former finance director of AWEMA, and the full draft with the chair and former chief executive, to give them the opportunity to see the report. Again, we have made some changes in response to some of that feedback—nuancing and some matters of detail—merely to put across the view of Mr Malik or Dr Austin on certain matters presented in the report. Again, that is entirely consistent with our usual report publication and clearance arrangements.

[168] **Darren Millar:** I am afraid that we will have to close this part of our meeting. I thank Anthony, Mike, Matthew and Mark for your attendance at committee today. I am sure that we will have plenty to chew on as we discuss this in private session.

3.20 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**

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

the committee resolves to exclude the public from the meeting during the next agenda item, agenda item no. 5, and item no. 7, in accordance with Standing Order No. 17.42(vi).

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

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 3.20 p.m.
The public part of the meeting ended at 3.20 p.m.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 3.38 p.m.
The committee reconvened in public at 3.38 p.m.*

**Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1—Tystiolaeth gan y Comisiwn
Archwilio**
Public Audit (Wales) Bill: Stage 1—Evidence from the Audit Commission

[171] **Darren Millar:** We will now continue with our meeting. I am delighted that the Audit Commission has sent Martin Evans to join us. He is the managing director of audit policy at the Audit Commission. We are very grateful to you for attending to give us oral evidence on the Public Audit (Wales) Bill.

[172] We have a copy of your response to the Welsh Government consultation on its Bill, and that has been very helpful. I would just ask you, in summary, to set out whether you support the general principles of the Bill as they currently stand. If you do support them, can you give us a few reasons for that?

[173] **Mr Evans:** Good afternoon, everybody. We do support the general principles of the Bill, to the extent that they involve putting the governance of the Wales Audit Office on a proper footing, thereby enhancing the accountability of the auditor general to the Assembly while preserving his essential independence. We think that these are good aims.

[174] As you will see from our comment, we think that the Bill is perhaps slightly over-engineered for those simple aims, and one of the unintended consequences of much of the detail is that, in one or two places, the Bill is in danger of compromising the independence of the auditor general and thus runs counter to its stated aim.

[175] It is a good principle that the WAO should be put on a proper corporate footing, because that then enhances its accountability. Clearly, it is important that the auditor general be accountable to parliament as a holder of public office in his own right, but it is equally right that, in discharging his auditor functions, he be independent.

[176] **Darren Millar:** You said 'over-engineered'. Which parts of the Bill in particular do you feel are a bit over-engineered?

[177] **Mr Evans:** It is over-engineered in the sense that the role of the board of the corporate body, the WAO, seems to be encroaching on the role of the Auditor General for Wales. Also, the amount of reporting back to the Government seems to be onerous and burdensome, on the Government, the WAO and the AGW.

[178] **Darren Millar:** However, do you feel that the corporate body model is a suitable model for the WAO in helping to deliver better governance?

[179] **Mr Evans:** Yes, we think so, but there is an issue about the role of the board of that corporate body.

[180] **Jenny Rathbone:** Could you elaborate a little on the role of the chair and the non-execs? A previous expert witness felt that, in some circumstances, the chair and the non-execs could be nobbled by the Government to take their foot off the accelerator on this or that—not on actual accurate auditing and accounts, but on things where there is a bit more discretion involved, such as which value-for-money report to do.

[181] **Mr Evans:** That is an area where we think that it must be the unfettered responsibility of the auditor general to decide what work he does. I would see the role of the board of the body corporate as being, essentially, to scrutinise, to challenge and to advise the auditor general and provide support to the Wales Audit Office, and to act as a conduit for the accountability of the WAO to the National Assembly.

[182] **Jenny Rathbone:** However, if it were a body with executive powers, the auditor general would be a member of the board.

[183] **Mr Evans:** If the board had executive powers, it would be running the Wales Audit Office on a daily basis, and I find that model quite difficult to reconcile with the independence of the auditor general. If it was an executive board, it would have to run the body on a daily basis, and that would mean that the board would have to be involved in all the operational decisions of the Wales Audit Office.

[184] **Jenny Rathbone:** So, which model would you regard as appropriate to strengthen the governance of the office of the auditor general, as well as the Wales Audit Office? Would it be supervisory or advisory? Could you just talk us through that?

[185] **Mr Evans:** The Wales Audit Office could still be established as a body corporate, but the board would have more of an oversight, supervisory, advisory role, or whichever adjective you want use. I would see its role as one of monitoring and reporting on the performance of the Wales Audit Office as a whole, exercising scrutiny through the audit committee and the remuneration committee, helping the Wales Audit Office to develop its strategy. So, it would really be exercising an oversight role and being accountable to the Assembly for the work of the WAO as a whole.

[186] **Jenny Rathbone:** In that context, what is the appropriate balance for the make-up of the board, considering the current proposals for a mainly non-executive membership?

[187] **Mr Evans:** If the board had that role, you could have a majority of non-executives, because it would not be involved in the day-to-day running. That would enable you to broaden the membership of that board to include various stakeholder interests, because if you had an executive board, you would be narrowing the choice of people whom you could appoint to it, because they would have to understand how to run an audit business. The Wales Audit Office is an audit firm, if you like, and, therefore, your choice would be limited to people who have an understanding of how to run an audit practice. They might also have a

background in consultancy as well as in value for money. However, if it had a broader supervisory role, you could bring in stakeholder interests, so people who know what it is like to be on the receiving end of a Wales Audit Office audit and people with a general background in business, and they would keep an eye on how the Wales Audit Office is being run as a body. You could broaden the choice of people you could appoint to it, and it is probably up to you whether you have any executives on it. Historically, the commission's controller of audit was not a member of the board, but the Government decided to appoint our last comptroller but one as a member of the commission board in his own right, and that seemed to work, but he was the only executive on the board.

3.45 p.m.

[188] **Mike Hedges:** Having listened to you, you seem to be talking about something very much along the lines of the current police authority model, in which you have a chief constable with responsibility for what he does and general policing, but there is a board or committee above him that is there to carry out a number of functions.

[189] **Mr Evans:** The current police authorities, and not what is proposed.

[190] **Mike Hedges:** Yes, the police authorities as they exist at the moment, with a group of what are, effectively, non-executives. The chief constable is on the authority to give advice et cetera, plus any assistant chief constable or deputy chief constable that he brings along. He has absolute control over policing, which is the equivalent of having absolute control over what is audited, but he has to report to the police authority on a whole range of matters.

[191] **Mr Evans:** The difference is that the membership of police authorities is a combination of members nominated by constituent local authorities and individuals appointed from outside as non-executives. Under the supervisory model, you would have a wholly non-executive board, so these would be public appointments, and you would be able to appoint people with the mix of skills, experience and competencies that you wanted. You would determine who sat on it, and it would not be a function of who was nominated by constituent bodies.

[192] **Jenny Rathbone:** One possibility that we are looking at is of having a staff member on the board to be elected by the staff members of the Wales Audit Office. Do you think that that would work well, based on your experience?

[193] **Mr Evans:** I am not sure what function that individual would serve. You want the best people for the job and, in any advisory model, you probably would not need anybody other than the auditor general in his own right. If it were an executive model, it should be the best people who have the best skills, experience and competence to do the job. I am not sure about an elected model. It would also seem to me to create an inherent conflict of interest if you had a staff member as a member of the board that was deciding on remuneration policy and a whole range of other things. We were not sure, when we read the draft Bill, whether that would be another senior executive from the Wales Audit Office or whether it would be a staff 'rep', and I think that we would be uncomfortable with the latter, to be frank.

[194] **Gwyn R. Price:** You have covered most of the things that I was going to ask. Obviously, you are going for the supervisory model with a mix of skills, and you do not think that a local 'rep', as you said, would add anything.

[195] **Mr Evans:** Yes, that is right. If you want the views of the staff, you can get them in other ways. Clearly, you have to have regard to the impact that your policies are having on the ground, and the staff need to be behind you, but I do not think that you do that through the governance structures but through other means, by surveying and by a mechanism for

regularly taking soundings from staff in the organisation.

[196] **Julie Morgan:** You have made clear that you support the proposed model, but you have some reservations about how independent the auditor general would be. I know that you have already said a bit about this, but what do you think is the key thing to ensure that that independence is preserved?

[197] **Mr Evans:** At the end of the day, any auditor has to be able to decide what they look at, how they allocate resources to the subjects that they want to look at, what professional judgments they make, and how they report them. Those are the four things that the auditor general as an auditor has to be responsible for, and I assume that he will also be the chief executive of the Wales Audit Office. In that sense, working with the board, he will have day-to-day operational responsibility for the management of the office, but as a member of the board. However, you can distinguish between his role as an auditor on the one hand, and as a senior public servant accountable to the Assembly on the other and, in that sense, he would be the accounting officer for the Wales Audit Office.

[198] **Julie Morgan:** So, his professional judgment must be unfettered.

[199] **Mr Evans:** That is one of the stated aims of the Bill and of the policy behind it. It is difficult, because, clearly, that does not mean that you can sign a blank cheque and spend as much money as you like exercising your independence. We all recognise that there has to be a framework within which you operate and within which you have to be accountable. However, within the envelope of funding agreed for the Wales Audit Office and public audit in Wales, the auditor general has to be able to decide how those resources are applied and what relative priority is attached to different work streams in the work programme and to the judgments, because if those judgments were compromised, it would serve no-one's interests.

[200] **Mohammad Asghar:** What are your views on the alternative proposal of establishing a statutory, Assembly-appointed supervisory board with no executive powers?

[201] **Mr Evans:** That is the model that I have been favouring. That is the model that I am used to working under in England, where the board members of the Audit Commission are appointed by the Secretary of State after a public appointments process. There is a balance of skills: we have people representing the stakeholder interests, such as local government and the NHS, and people who have a general business background. Their role is to hold the senior executives of the commission to account for the way in which we run the business and to exercise the statutory functions of the commission that are not those of an auditor but are slightly different from those of the Wales Audit Office.

[202] **Darren Millar:** Can I get this absolutely right, for the sake of clarity for us all? The model proposed on the face of the Bill is for a corporate body with some executive functions to be given to it and for the auditor general to be as independent as possible while being accountable to that corporate body. The alternative proposal that has been put to the committee by a number of witnesses now is that, rather than go for a corporate-body-type model, a statutory supervisory board be created to which the auditor general is accountable, but which has no executive powers. However, it would have powers to call the auditor general in to ask him to explain why he has made certain decisions, to hold him to account for his work and, if it has any concerns, to raise them with the National Assembly's Public Accounts Committee. Of those two different models, which one does the Audit Commission think would be the most sensible?

[203] **Mr Evans:** I am not sure that the body corporate has to have an executive board. You can have a body corporate and a supervisory board. Is that a variant of one of your two models?

[204] **Darren Millar:** So, you are suggesting having a corporate body and a supervisory board separately.

[205] **Mr Evans:** No, I am suggesting a corporate body overseen by a supervisory board, but with the auditor general being the chief executive.

[206] **Darren Millar:** So, the corporate body would have a different function, as it were, to the board that oversaw the work of the WAO. Is that what you are saying?

[207] **Mr Evans:** No, I think that they would be the same thing. At the moment, as I understand it, the staff of the WAO are employed by the auditor general, because there is not a corporate entity. We support the idea that there should be a corporate entity called the 'Wales Audit Office' and that the staff of the Wales Audit Office should be employed by that body. As far as I am aware, the Comptroller and Auditor General of the UK Government does not employ the staff of the National Audit Office, but that does not fetter his independence. The board that would oversee the WAO would not have executive functions that would involve its running the business on a day-to-day basis; it would have a chief executive, namely the auditor general. The board's functions would be to challenge, scrutinise, advise and be the conduit for accountability to the Assembly. It is quite close to the model that has been applied for the National Audit Office and the Comptroller and Auditor General in England, because the NAO is now an established corporate body. I would not describe the board of the NAO as an executive board. You could argue that it has some sort of executive functions at the margins, in agreeing the budget and putting that to the Public Accounts Commission, but it is not involved in running the business on a day-to-day basis.

[208] **Darren Millar:** However, is that not because of this code of conduct that exists?

[209] **Mr Evans:** The code of practice.

[210] **Darren Millar:** The code of practice, rather, that exists outside the legislation, which, essentially limits—

[211] **Mr Evans:** You may need something like that to make that model work, but if that is the detail required to make it work, yes, we support that. Whether there is a framework agreement or whatever the rules of engagement between the auditor general and the board of the WAO may be, its key role should be monitoring and reporting on the performance of the office and the auditor general, acting and scrutinising through the audit committee and remuneration committee, helping to develop strategy and being accountable to the National Assembly.

[212] **Darren Millar:** I suppose that what we are trying to establish is whether you need a corporate body to do that, or whether you should just establish a supervisory board to do those jobs.

[213] **Mr Evans:** That is a good question. [*Laughter.*]

[214] **Darren Millar:** It is like looking for the holy grail at the moment, I can tell you.

[215] **Mr Evans:** In principle, it must be better that the Wales Audit Office exists as a corporate body rather than existing as a group of people reporting to a single person. That is a better basis for accountability.

[216] **Mohammad Asghar:** The auditor general's job is 100% executive, I agree, and he should work without fear or favour, independently. With any body that is established, whether

it is a corporate body or a supervisory body, a line should be drawn beyond which his total independence cannot be touched, so that he can work without fear or favour, and is not interfered with. A line should be drawn. Do you not think there is an element of jeopardy with this other body, as regards his working independently, without fear or favour?

[217] **Mr Evans:** Not if it is clear that the supervisory board could not second-guess the auditor's judgments about opinions on individual bodies' accounts, or judgments in value-for-money reports—and you have just been hearing one, have you not? Ultimately, those must be the judgments of the auditor general. Clearly, the auditor general should have regard to the advice of the board if the board says, 'We think you should be looking at x', and he should also have a duty to consult on his programme of studies, inspections or investigations—whatever you want to call them. If an issue blew up, and the Assembly really wanted the auditor general to look at it, you should be able to ask him to do that. It is never absolute, I agree, but in terms of the actual judgments, it must be absolutely clear that those are the judgments of the auditor. In the wider profession, confidence in the judgment of auditors rests on the fact that they are and should be seen to be independent, and not influenced by others or by outside considerations.

[218] **Aled Roberts:** May I return to the provisions as they currently stand? Section 26 in particular makes it clear that the board, as currently envisaged, could actually reject all or part of the auditor general's work programme or resource requirements if it considered them unreasonable. A number of witnesses have outlined the fact that there is no definition of what is reasonable or unreasonable. Does that tend to reinforce your concerns regarding loss of independence?

[219] **Mr Evans:** That is one of the provisions that we commented on, and we did not think that that was appropriate. We think that the auditor general must have responsibility for deciding how to apply the resources allocated to him. As I said earlier, you cannot expect a blank cheque in the sense that I can just audit away to my heart's content and not worry about the resource envelope in which it is done, but within the bounds of an agreed resource envelope—and there will be mechanisms for agreeing that with the Assembly, as there are for the Comptroller and Auditor General in the UK—the auditor has to be able to decide what he is going to look at and how he allocates resources between the competing priorities.

[220] **Aled Roberts:** Are you able to shed any light on a situation where perhaps the board and the auditor general cannot agree, and where there is a dispute as to what is reasonable or unreasonable? We have had suggestions from some that perhaps they just go to court.

[221] **Mr Evans:** That is not something that we would want to see happen. The auditor general should have a duty to consult and have regard to the views of others in putting his programme together, but ultimately he has to decide what he thinks is right to do in the public interest, and he is accountable for those decisions in his own right as a corporation sole. I think that he should be able to do that. There will no doubt be, behind the scenes, robust discussions.

4.00 p.m.

[222] If the board is working effectively, there should be robust discussions along the lines of, 'We have so much money, and we know that we have to give opinions on these bodies' accounts, but where do we want to direct our discretionary resources, where are we going to add the most value, what is going to be most useful to the Assembly and what is going to best serve the public interest?' There should be robust discussions and the membership of the advisory board should be people who are capable of holding those discussions, holding the auditor general to account and challenging him. However, at the end of the day, if he feels that, as auditor general, he must pursue a certain piece of work, he has to have the right to do

that.

[223] **Lindsay Whittle:** Good afternoon. I am interested in your views on the composition of the board. In particular, you seem to be saying that it should be more supervisory. You will know that it is to have seven members—one chair, one staff member, the auditor general himself and four other non-executive members. You do not seem to like that option either—correct me if I am wrong. Do you have you any ideas regarding the composition of the board?

[224] **Mr Evans:** What I was saying earlier was that if it was supervisory, you would potentially have a broader range of people represented on it because they would not necessarily need to know how to run an audit firm; they would be able to bring a different sort of challenge to the running of the Wales Audit Office. If it was an advisory board, I think that five plus one or two would not be inappropriate. It is for the Assembly, in discussion with the auditor general, to decide what would be an appropriate size. We have an advisory board of no fewer than 10, no more than 15, but we think that is too large for the size of the organisation that we are now. That was when we had 2,500 staff and a turnover of £250 million, but we are a much smaller organisation now, so we probably have an unduly large board, and if we were starting from scratch, we would probably be a bit smaller. You need to think about the skills, competencies and experience you want to be represented on that board, but seven seems a reasonable number. The auditor general should be on it; whether you want another senior member of staff is a matter of judgment. I do not think it should be an elected member of staff, but I do not think it is necessary in a supervisory role.

[225] **Lindsay Whittle:** Why not elected?

[226] **Mr Evans:** I think I answered that earlier. You need the best people for the job and you need people with the skills, competencies and experience that you are looking for, for that board to exercise its functions. If you want the views of the staff, you can get those through other mechanisms. You should get the views of staff, but not through the governance structure.

[227] **Darren Millar:** That is an important message for elected members: you just need the best people for the job. [*Laughter.*]

[228] **Mike Hedges:** I was going to say that Swansea East has the best person for the job. You mentioned the statutory code of practice earlier, Chair. Do you think there is a need for a statutory code of practice to manage the relationship between the auditor general and the board?

[229] **Mr Evans:** I must admit that I am not that familiar with the NAO code of practice. It was only when I was preparing to come here today that I became aware of it and I have not had the chance to read it from beginning to end. Terms of engagement, if you like, or a framework agreement on who is responsible for what avoids issues later down the track. The board could say, ‘We thought that was part of our function,’ and the auditor general could say, ‘No, that was never envisaged; it was always part of mine’, therefore, I think that it would be very helpful to have that set out from the outset so that everybody is clear about who is responsible for what. That, again, reinforces the board members’ and the auditor general’s separate accountabilities. So, it would be a good idea.

[230] **Darren Millar:** Are there any closing remarks you want to make, Mr Evans?

[231] **Mr Evans:** No, I said what I wanted to say at the beginning and the questions have given me the opportunity to reinforce those views, so I hope that has been helpful.

[232] **Darren Millar:** We are really grateful to you for taking the time to come to give us

evidence today; we are sorry it has been a little rushed, but we have been up against the clock, unfortunately. You will be sent a copy of a transcript of today's meeting and if there are any factual inaccuracies, feel free to let us know. Also, if there is any further information you want to send us, we will be happy to receive that too. Thank you very much.

[233] **Mr Evans:** Thank you very much.

[234] **Darren Millar:** We will just bring the Minister in now. You have all received a copy of a short note from Ian Summers that you might want to have a quick look at, at some point. We will be talking about that later under item 7.

4.06 p.m.

**Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1—Tystiolaeth gan y Gweinidog
Cyllid ac Arweinydd y Tŷ
Public Audit (Wales) Bill: Stage 1—Evidence from the Minister for Finance
and Leader of the House**

[235] **Darren Millar:** We will now move on to item 6, continuing with our evidence on the Public Audit (Wales) Bill. I am delighted to welcome the Minister for Finance and Leader of the House, Jane Hutt, to the table, along with Nicola Charles from legal services and Reg Kilpatrick, director of local government and public service. Welcome to you all; we are grateful to you for coming to give us more evidence as part of this work.

[236] We have taken a lot of evidence from a range of witnesses now and we are starting to focus on some areas that we still believe might need to be resolved in the Bill. One of those issues relates to the functions of the National Assembly and some clarification on that. So, could you confirm whether you would be content for the Bill to provide full responsibility for all matters relating to the oversight of the Wales Audit Office to rest with the Assembly rather than the current split between the Assembly and this Public Accounts Committee?

[237] **The Minister for Finance and Leader of the House (Jane Hutt):** Thank you very much, Chair. I am pleased to give evidence once again. I have some opening remarks that I wanted to make.

[238] **Darren Millar:** Please feel free to share. Go ahead; make those opening remarks.

[239] **Jane Hutt:** They might help with the questioning. As you say, you have had a number of sessions in which you have received not only written responses, but evidence from consultees. I wanted to focus on two of the most pressing matters relating to the Bill's continuing protection of the auditor general's independence alongside a corporate Wales Audit Office. It might be useful for me to say this at the outset this afternoon before going to questions. The other key point is whether the Bill should be amended to include provision for a statutory code.

[240] There is a similar code in Schedule 3 to the Budget Responsibility and National Audit Act 2011, which is about setting out the relationship between the auditor general and the corporate audit office, if that is the route we go down. We have been looking at this carefully and I have asked my officials for suitable amendments to address these concerns; for example, section 25(1) relates to the annual plan and I have asked them to consider whether we need section 26 at all in relation to the annual budget. So, I hope that you welcome this response today in terms of looking at that particular issue.

[241] Also, I know that there are concerns about the transfer of staff and I want the

opportunity this afternoon—and I hope that I will have that—to reassure you on that matter. Perhaps that will come out in the questions.

[242] **Darren Millar:** Why do you not refer to that now?

[243] **Jane Hutt:** This is something where we clearly see the importance of protecting staff. The matter of transferring staff is being discussed closely with the auditor general and his office. We have had good engagement with the auditor general's office and his staff on these matters. It is also vital that we ensure that the commitment and motivation of staff are maintained as they are crucial in terms of any transitional organisational change. It is our intention that the principles of the Transfer of Undertakings (Protection of Employment) Regulations 1981 be applied in line with the Cabinet Office's 'Staff Transfers in the Public Sector: Statement of Practice January 2000'. I wanted to reassure you, Chair, and the committee, that this is at the forefront of our discussions with the auditor general. We have been engaged on that matter, and I believe that meetings are being held on this. However, it is clear that the transfer of employment from the auditor general to a Wales Audit Office will be on no less favourable terms than would be the case if TUPE applied.

[244] **Darren Millar:** Okay. So, just to clarify, on that particular staff transfer point, if a corporate body were to be created, you would be happy to make whatever changes necessary on the face of the Bill to ensure that people's terms and conditions would be protected to at least an equivalent level?

[245] **Jane Hutt:** Yes.

[246] **Darren Millar:** That is great. Secondly, on your other remark, if a corporate model were to be adopted, and we moved forward on that basis, would you be prepared to put in amendments on the face of the Bill to establish the need for a statutory code?

[247] **Jane Hutt:** Yes. Would you like me to expand more fully on that now or in response to questions on the statutory code?

[248] **Darren Millar:** We will go to questions, then. I have already put the question to you about the responsibilities of the National Assembly and the responsibilities of the Public Accounts Committee. To be fair, Minister, in the Bill before us, compared with the original Bill in its first draft, as it were, there has been a significant change in terms of clarification, namely that it would be the Assembly that would be responsible for all matters relating to the oversight of the WAO, rather than the Public Accounts Committee. Is that something that you wish to clarify further through amendment?

[249] **Jane Hutt:** I hope that I was clear. I think, when this was raised at the last committee hearing, that we were fully persuaded that it should be the Assembly through Standing Orders, rather than the PAC, that should determine how the oversight functions that fall to the Assembly under the Bill should be carried out. Therefore, I think that we are in common agreement on that. Section 29 of the Bill makes that provision: it is for the Assembly to decide how it should exercise the functions conferred on it by the Bill that deal with supervising or holding the WAO to account. Furthermore, paragraph 30(6) of Schedule 1 to the Bill still requires the Public Accounts Committee to specify other responsibilities of the auditor general as the WAO's accounting officer. However, we would bring forward an amendment at Stage 2 to make this provision compatible with section 29. Therefore, I hope that you will be assured that that is the appropriate way forward, in order to be clear about the oversight matters that rest with the Assembly.

[250] **Darren Millar:** Okay. That is very helpful. Secondly, we received evidence from Professor Heald, who has some academic interest in public accounts. He has suggested that

there might be a better way forward through the establishment of a Welsh commission for public audit. What are your thoughts on that, Minister?

[251] **Jane Hutt:** I read Professor Heald's evidence with interest. I have an open mind, but I think that this is for the Assembly to consider. It seems to me that it is for you to decide how the Assembly scrutinises a Wales Audit Office. If the Assembly considers that this is desirable, then section 29 provides for you to establish a sub-committee, which could include external members with the relevant expertise. I know that this is something that you would want to consider, and I think that it is for you and something that you would want to take on board and consider alongside the Bill.

[252] **Darren Millar:** Okay. Diolch yn fawr. Aled Roberts has the next questions.

[253] **Aled Roberts:** We have heard from several witnesses who believe that the alternative provision of a supervisory board would be much simpler and would still deal with the issues of the independence of the auditor general and the accountability to the Assembly. Clearly, that was ruled out while the Bill was being drafted. Can you expand on the reasoning behind not going for this supervisory board model, which several witnesses appear to suggest that we should be looking at?

4.15 p.m.

[254] **Jane Hutt:** Thank you, Aled. I commented on this in September and drew the committee's attention to the explanatory memorandum, in which we lay out all of the options that were considered. The first option was not to do anything and to leave things as they are. We also looked at the option of a supervisory board and the option of a corporate body.

[255] It may be worth me going back to the context of where we have come from, in terms of the importance of the governance of the Auditor General for Wales and his or her office. This is about the reputation and credibility of that office, and it is about wider confidence in public services in Wales. In fact, in making my opening comments, I was thinking that I feel that I am very much a steward in this process. I am doing this not only on behalf of the Government but also on behalf of the public sector in Wales, in terms of the credibility that we need to secure. We must recall the damage that was done by a former auditor general while in office: wilful concealment of information from the then auditor general's advisory audit risk and management committee and from senior staff; misleading the Assembly; a governance structure with no legal basis established by and with members appointed by the then Auditor General for Wales, with input from a nominee of the Chair of the Assembly's Public Accounts Committee; and a range of accounting failures, including accounts not complying with approved practices, expenditure on early retirement settlements, pension entitlements and less than full accounting for public funds.

[256] I did not choose to go through those points when I last gave evidence on this matter. However, for the record, we must remind ourselves of where we have come from and why the credibility and responsibility that we share, in terms of how we take this forward, are very important. I hope that you would respect that. This was because we had an absence of robust governance, meaning that that auditor general was able to bypass or override systems of internal and financial control when it suited him. So, we must have secure arrangements. This is one of the reasons why we have proposed a corporate body that will sustain the confidence of—and provide assurance to—the public, to the bodies audited and to this Assembly that there is robust governance in place for our public audit responsibilities. That has led us to proposing an incorporated Wales Audit Office with a majority of independent members with executive functions appointed by the Assembly.

[257] One of the issues with an advisory or supervisory board is that it would not have any

executive functions. That is the key point. With no executive functions, it could leave all the auditor general's existing administrative financial functions solely in the hands of one person. That is with all of the risks that we had in the past, which could be present again. As I said last time, I appreciate fully what the current Auditor General for Wales has done since his appointment, in terms of recognising the governance and accountability weaknesses that he inherited. However, the governance that we seek is for the future auditor general. We believe that the Bill remedies governance weaknesses. The Wales Audit Office would have the duty to monitor and the power to advise the Auditor General for Wales. It would have powers to establish committees or sub-committees relating to the governance of its affairs and those relating to Auditor General for Wales matters. The Wales Audit Office would be able to provide greater and regular assurances to the Assembly and others on risk management, internal control and governance. I appreciate that that is a long answer, but it goes to the nub of your scrutiny and considerations as to why we are here, where we came from and why we feel it is so important to consider this very carefully indeed.

[258] **Aled Roberts:** I think we understand where we came from, but a number of witnesses have expressed professional concerns regarding fettering the independence of the office, particularly with regard to some of the executive controls as far as the work programme is concerned. For example, the resource has to be approved by the board. What would you say in response to those concerns?

[259] **Jane Hutt:** I think that Reg would like to come in on this point and then I will add to it.

[260] **Mr Kilpatrick:** The amendments that the Minister proposed in her opening remarks concerning sections 25 and 26 should remove those concerns altogether. We include on the face of the Bill a very clear statement that none of this will fetter the AGW in the execution of any of his functions.

[261] **Jane Hutt:** To explain those amendments with regard to crucial arrangements for the annual plan and resources allocated to the auditor general, section 25, relating to the annual plan, currently requires the auditor general and the WAO to agree an annual plan for each financial year. I have been asked what might happen should the auditor general and the WAO not agree a plan. I remain firmly of the view that such non-agreement is a remote possibility, but I have asked officials to look at section 26, which deals with the annual plan resources to be allocated to the auditor general. I have asked my officials to consider striking out the whole of section 26. I think that you may have had some advice on this. The annual budget voted on by the Assembly will not be open-ended, and section 25(2) requires that the annual plan shows how those resources would be applied to the work plan for the year ahead by the auditor general and the WAO. Therefore, striking out section 26 should not lead to any unintended consequences with regard to the independence of the auditor general. I have listened very carefully to your concerns on this matter and I hope that you will consider my suggested amendments carefully.

[262] **Aled Roberts:** The only other point, comparing a supervisory board with an executive board, is that a number of witnesses have indicated their concern that the costs for initial set-up and consequently are much greater in the case of an executive board than would be the case with a supervisory board. Would you like to comment on that?

[263] **Jane Hutt:** Yes. We set out the estimated costs in section 8 of the explanatory memorandum. We have estimated those costs based on current costs of appointments to organisations in the public sector in Wales. We have looked at this on the basis of comparable costs. We think that the costs will amount to around £70,000 in the transitional year, 2012-13, and around £150,000 per year thereafter. We regard that as reasonable and proportionate. We have estimated the cost of the supervisory board to be in the region of £100,000, in line with

the existing arrangements of the Auditor General for Wales, which include the operation of three sub-committees. We have looked at the costs of the UK National Audit Office. I know that you took evidence from it. The figures for it for 2011-12 were £130,000 to £155,000. So, they are not strictly comparable but broadly in line with our full-year estimate. Therefore, we feel that we have reasonable and proportionate costings for a corporate board as compared with a supervisory board.

[264] **Darren Millar:** Minister, we obviously welcome the fact that you want to clear up the issue of operational independence as far as the budgets and work programme are concerned. Everyone has raised concerns about that issue in the evidence we have received, and that includes those who support a corporate body model. However, with regard to the simplification of arrangements, we clearly have these issues with regard to the facts that, if a corporate body is created, there are TUPE issues and that WAO staff will be responsible to both a chief executive and a board, which may at times disagree on certain matters. Those are concerns that the unions et cetera have brought to us. Is there not an easy opportunity to avoid all of those issues by establishing a supervisory board? The evidence from the National Audit Office was that the impact of the code of practice on the corporate body that had been created was effectively to make it a supervisory board. That effectively tied the hands of the corporate body that had been created at the National Audit Office to make it a supervisory board and left the Comptroller and Auditor General to get on with his job. That was his view when that question was put to him. If that is the case, why go to all of this bother? Why not just create a supervisory board?

[265] **Jane Hutt:** I have gone back over why we felt that it was important to have a corporate body with executive functions, which is to have robust governance of the Auditor General for Wales. The committee will have to come to a view about whether it feels that that case has been made in terms of future governance and oversight of the Auditor General for Wales and his important functions.

[266] I want to say a few words to reassure you about the independence of the auditor general in terms of his or her responsibilities. The auditor general would have complete discretion regarding the manner in which the functions of the office were exercised. It would be the duty of the Wales Audit Office, if there was to be one, to provide the resources for those functions to be carried out. Most of those resources would relate to the cost of employees to assist the auditor general. So, as the budget holder, it would be appropriate for the Wales Audit Office, with the auditor general as the chief executive and accounting officer, to consider and approve the scheme of delegation. However, complete discretion is placed on the auditor general by section 8 and a duty is placed on the WAO to provide necessary resources under section 21. Also, the auditor general must have regard to standards and principles in terms of expert professional providers, and the WAO is under a duty, under section 25(2)(d), to support the auditor general's quality control functions. So, throughout the Bill, we have sought to ensure that the auditor general has that independence, discretion and authority to deliver with the support of the Wales Audit Office. I do not think it is going to be complex in terms of the transfer of staff, because, as we have made clear, we are talking to the auditor about the principles of that now.

[267] The issue about the statutory code, which you may wish to discuss further, is important, because a statutory code, which would be more about defining the relationship between the WAO and the AGW, would address some of the concerns that have been raised. I have mentioned a lot of sections and quite a lot of what is on the face of the Bill already, but I can say to you that I have asked my officials to consider an amendment to bring in a statutory code at Stage 2. I would like to hear more from the committee about how it feels a statutory code could assist in defining the relationship between the auditor general and the Wales Audit Office.

[268] **Mike Hedges:** I have two questions. First, do you know of examples in Wales, apart from the Welsh Language Commissioner, where a supervisory board is currently in operation? Secondly, there seems to be no difficulty whatsoever within police authorities regarding the responsibility of the chief constable in terms of policing and the responsibilities of the police authority. Why can such a simple split not be made in this case?

4.30 p.m.

[269] **Jane Hutt:** I am sure that I will be able to give you more information on that, particularly that last point about the interrelationship between the chief constable and the police authority. In terms of other examples of supervisory versus executive boards, I do not know whether we have done any more thinking about that, have we, Reg? You have mentioned, in the past, the Higher Education Funding Council for Wales, am I right, Mike?

[270] **Mike Hedges:** I have mentioned every different type of board that exists—I have served on a lot of them at different times—but the police authority model is the one that most closely resembles what you are trying to do at the moment. However, there is also the NHS trust model where there is a mix of executive and non-executive directors, where no-one from the board tries to tell a doctor whom to operate on, and there are examples like local authorities and the Environment Agency. So, there is a whole range of different types there—

[271] **Darren Millar:** It is fair to say, however, is it not, that police authorities set the budget for the police service in their areas, not the chief constables?

[272] **Mike Hedges:** Yes.

[273] **Darren Millar:** So, the chief constable does not have the trump card. In fact, he has to live within whatever means are set by the police authority, so it is slightly different from the model that is being suggested here whereby the auditor general would have—

[274] **Mike Hedges:** But he does not, does he, because he has to get his budget through us? It is the same thing with the police authority, although it gets a recommendation from a chief constable, it is then held to account by the capping limits as set by the Welsh Government. So, it is quite close. Nothing is an exact replica, but this gets quite close.

[275] **Jane Hutt:** I am happy to come back to the committee on this. I know that time is of the essence, but we could turn around in the next 48 hours some examples of supervisory versus executive-based boards for key public functions. It goes back to the point that there cannot be a more key function than the Auditor General for Wales in terms of governance and oversight of public finances. We have to ensure that he or she is given the appropriate governance framework. That is why we are all here today.

[276] **Gwyn R. Price:** Thank you for proposing these amendments today, Minister, because they clarify a couple of points for me, namely the protection of the auditor general and that there is no need for people to consider their positions if we bring in a statutory code. Those are the two points that I wanted to bring up that I was very concerned about. Thank you, Minister, for putting these proposals and amendments to us.

[277] **Mohammad Asghar:** Minister, I would like to hear your views on the suggestion that the Bill should provide for a statutory code of practice to manage the relationship between the AGW and the board, please.

[278] **Jane Hutt:** This is very important, and Gwyn touched on this as well. We have been looking at this Bill, comparing it with the Budget Responsibility and National Audit Act 2011 where there is a statutory code. This could be along the lines of Schedule 3 to that Act, so

your officials might like to look at that. It is about defining the relationship between the WAO and the AGW.

[279] One of the things I said was that quite a few of these issues about the relationship are in provisions on the face of the Bill and in Schedule 2 to the Bill. To give you one example, going back to the Budget Responsibility and National Audit Act 2011, its code includes details of how financial estimates would be prepared and how resources could be provided for the auditor general. In Wales, sections 20, 21 and 25 of the Bill address that, as do section 18 on the scheme of delegation and sections 23 and 24 on fees. So, there is quite a lot on the face of the Bill and Schedule 2 lays that out. If you feel that it would be helpful if we were to bring forward a Government amendment on this, then we could look at areas that are not covered and at whether we need to express them in a code as well as on the face of the Bill. However, it is something that needs work, is it not, Reg?

[280] **Mr Kilpatrick:** As the Minister said earlier, it is an issue on which we take a view from the committee. We have been very careful in putting this together to cover many of the provisions of the BRANA Act in the Bill to make a more streamlined, simple and straightforward piece of legislation. So, the need for a full and detailed statutory code does not seem to us to be that strong, but if the committee was to have some ideas about things that are not covered, then I think that the Minister would be prepared to consider them.

[281] **Jenny Rathbone:** One of the other issues raised by the Institute of Chartered Accountants in England and Wales is that the Bill may clash with the requirements of the Companies Act 2006. I do not fully understand it myself, but the auditor general must be unfettered in being able to audit all the accounts of any public sector company operating in Wales and those of others that are discharging the delivery of public services but which may not themselves be public sector companies—they may be private companies or voluntary bodies, for example, which provide care for the elderly at home. So, could your officials just clarify how much they have looked into this and whether, by changing the framework, they have somehow inadvertently got in the way of section 1226 of the Companies Act?

[282] **Jane Hutt:** We believe that the auditor general is independent, and if he or she ever has to carry out audits of public sector companies, his or her independent status would enable compliance with the Companies Act. That is the assurance that we have had.

[283] **Mr Kilpatrick:** Absolutely. The issue as we understand it is about whether the AGW is independent or not, and the Minister's remarks and the concessions that she has made today in sections 25 and 26 reinforce our initial views and our initial understanding of his independence. As such, we do not believe that there is a clash or inconsistency between the two pieces of legislation.

[284] **Jenny Rathbone:** So, that anxiety, as previously expressed, should have gone away with your clarification today of statutory codes et cetera.

[285] **Jane Hutt:** Well, it strengthens the position. As we move forward, the amendments that we have announced today will be observed by other witnesses who appear before you, and they hopefully will see that. Clearly, that is also something in which we are happy to engage to clarify it, and professionals in particular, such as chartered accountants, can feel reassured. That is the point: that they feel reassured that the auditor general can act in compliance.

[286] **Jenny Rathbone:** Fine, but it is also absolutely vital that the auditor general is monitoring the accounts of any body discharging large amounts of public services, regardless of its actual status as a private, voluntary or public company or body.

[287] **Mohammad Asghar:** Minister, the Institute of Chartered Accountants in England and Wales has indicated a concern about how the Bill would affect the AGW's ability to provide a robust quality assurance scheme. What is your response to this, please?

[288] **Jane Hutt:** If you look at the suitable quality assurance schemes, you will see that we have to be very clear that the auditor general has to abide by the standards and principles of expert professional providers of accounting or auditing services and provide resources, including staff, which have to be provided to the auditor general in order to carry out those functions. So, we are very clear that the relevant staff at the Wales Audit Office would have to attain those suitable qualifications and, in fact, meet national and international standards for auditing. That is something that we can clarify further, if necessary.

[289] **Mike Hedges:** I would like to ask you some questions on the make-up of the board. Do you think that you have enough executive members on the board, or should there be more, as is the case with the NHS trust model, where most senior managers would have a position and there would be one more non-executive, so that there is a non-executive majority? How many would you be looking at? Would it be four senior members plus five non-executive members, or are you quite happy just to have the auditor general there on his own?

[290] **Jane Hutt:** We will have a staff member as well, which is an important factor. I think that I responded to this point at the meeting in September. We thought that nine would be too many, but five would not be enough, so we pitched between the two. Once again, we will need to be clear about the effective exercise of executive functions, because that will be key to the delivery of the support of the auditor general. However, I would say that senior managers within the organisation should be brought in to advise the Wales Audit Office, but, once again, the committee may have a view about the size and composition of the WAO.

[291] **Julie Morgan:** My question is, again, on the composition of the board and relates particularly to the issue of a member elected by the WAO staff. This is something about which there has been a great deal of scepticism from nearly every witness we have spoken to. What are your views on that?

[292] **Jane Hutt:** We have talked about a possible election by the staff themselves, nomination by the auditor general with approval by the non-executive members, appointment by WAO non-executive members only, or competition among the WAO staff. So, we have been considering options for this and a possible Government amendment. If the committee has criteria for another option, it would be helpful for us to hear those. You have had the evidence, you have met and heard from the witnesses and you have said that scepticism has been expressed. This has to be a genuine employee appointment to the board of the WAO, and we are open to discussion on this matter, are we not, Reg?

[293] **Julie Morgan:** I take it that you do not have a view on this yourselves. The issue was raised that there would possibly be a conflict of interest with regard to an employee discussing staffing issues. Have you had any thoughts on that?

[294] **Jane Hutt:** There are matters that the employee representative could be exempted from engaging with, which could include some staff matters. Once again, that needs to be considered carefully with staff representatives as well as trade union representatives, whom I know you have met. All members of the WAO, including the employee representative, will have executive functions, so it is a key point in terms of any concerns regarding matters that they feel it would be difficult for them to be involved in.

[295] **Julie Morgan:** Some witnesses said that it would be possible to co-opt a senior person or someone from the staff when necessary. Would that satisfy any of the needs of having some sort of word from the employees?

[296] **Jane Hutt:** Do you mean instead of having an employee representative?

[297] **Julie Morgan:** Yes. That is what has been suggested by other witnesses.

[298] **Jane Hutt:** We are certainly prepared to consider it. You have met the trade unions as well, and I know that their views are important to you and to the committee in terms of the role that they would like to play. We are open to the evidence that is coming to you, in terms of other ways of engaging senior members of staff, for example.

4.45 p.m.

[299] Quite apart from this, I do not see why we could not consider an employee member and the option of having co-opted senior members for particular issues or items, or for a period of time. We should be open and flexible. The difficulty is if we go back to the dire place where senior members of staff, and staff at all levels, were in the previous times that I alluded to. We must recognise how vulnerable those members of staff have been in the past. That is why we have to do everything that we can to get this right in terms of employee representation and protection of their roles and interests within a corporate body. They would have executive functions, so we are open to considering different routes to get this representation.

[300] **Mr Kilpatrick:** Could I come back to the point about a staff member being co-opted as and when needed? One of the key principles of having a staff member on the board is that there is a consistency and a coherence of their representation throughout the process. Moving away from that might create a set of circumstances where the employee representative was co-opted on depending on agendas and on matters that were to be discussed, taking into account the conflict of interest issue. There is a risk that you would lose that consistency and, with that, you might lose some of the confidence in that staff member being able to play a full role on the board.

[301] **Julie Morgan:** Thank you for reminding us of how important it is that we consider the needs of staff, in view of what has happened in the past.

[302] **Aled Roberts:** All the witnesses who questioned whether this was a sensible suggestion have identified that there were difficulties for staff members in getting their voices heard in the previous difficulties. All the witnesses have recognised that there is a need for the avenues of communication, even the status of staff, to be reflected within the organisation, but even the trade unions were questioning the specific proposal. The Public and Commercial Services Union made it quite clear in its evidence:

[303] ‘We do not think that an employee representative should take part in executive decision making, since this would compromise their position as a representative of the workforce.’

[304] So, everyone is hearing that there is a need for employees to feel confident within the organisation, but questioning whether this particular methodology is the best way forward.

[305] **Jane Hutt:** That is a very fair point. We will have to strike a balance and perhaps be a bit innovative in how we do this. Maybe you could have a staff member representative with no or very limited executive powers. Or, you could go down another avenue in terms of co-option of employee representation to the board but not with executive powers, or bring in another more senior member of staff with executive powers, who is not a trade union representative. So, that has been very helpful in terms of considering the way forward, and we would want to pursue this.

[306] **Darren Millar:** We will consider what recommendations we might want to make, as a committee, to you as well.

[307] **Lindsay Whittle:** I had two questions. The first was about the staff transfer and TUPE arrangements and the second was about the disparity of the initial set-up costs. Have you answered them satisfactorily? I have always wanted to say this: the answer is 'yes, Minister'. [*Laughter.*]

[308] **Darren Millar:** There is one question that still needs to be asked, about the taxation implications of the potential change to a corporate body. You will be aware that there have been concerns expressed by the auditor general about taxation-related issues. Have you taken any further advice on that, Minister? What are your thoughts as things stand at the moment?

[309] **Jane Hutt:** We are working closely with Her Majesty's Revenue and Customs on this matter, because we are aware that the auditor general has raised concerns about this in terms of protection against additional tax liability that might arise. It is not devolved, of course, so we are engaging. Nicola, you are engaged in those discussions currently, are you not?

[310] **Ms Charles:** Yes, that is right. There is an issue here. Everyone recognises that tax is a non-devolved area, so there is little that we can do to explore that until we have started to see what stance HMRC is taking. I understand that the AGW is still in discussion with HMRC about this. So, when we know what its position is, we will have to consider what we need to do next.

[311] **Darren Millar:** That will have an impact on how the Bill develops going forward, will it not? If things stay as they are, but with a supervisory body and a non-corporate body employing the staff, the situation could be very different, could it not, in terms of the tax status? So we will need to clarify that, will we not, before we embark on Stage 2?

[312] **Ms Charles:** Yes.

[313] **Darren Millar:** What sort of timescale are we working to here?

[314] **Jane Hutt:** We are currently in discussion. As Nicola said, the Auditor General for Wales is already discussing this with HMRC, so we are engaging with it proactively. I would hope to be able to come back to you on this matter within the next week or so.

[315] **Darren Millar:** I think that it is absolutely critical that we get an answer to questions on tax implications.

[316] Are there any further questions from Members? I see that there are none. Are there any closing remarks that you want to make, Minister?

[317] **Jane Hutt:** Again, I hope that you feel that I have carefully considered the evidence that has come before you, as well as your scrutiny of me, which has been very carefully considered. I also hope that you feel that some of the amendments that I have proposed today will alleviate some of your concerns. The importance of getting this right is critical for the public sector in Wales and I think that we share a goal here of strengthening accountability, governance and oversight of the auditor general and respecting his or her independence in undertaking the role effectively. I wish to put that on record again.

[318] **Darren Millar:** Thank you, Minister, and Nicola and Reg for your assistance this afternoon. We will now go on to consider some of those pieces of evidence.

[319] We will now go back into private session for the remainder of our meeting, to consider the evidence that we have had from the Audit Commission and the Minister.

Daeth rhan gyhoeddus y cyfarfod i ben am 4.53 p.m.
The public part of the meeting ended at 4.53 p.m.