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Mr Llyr Gruffydd AM  
Chair of the Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

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Dear Llyr

### **WAO Chair's expenses**

Since the Wales Audit Office Board came fully into effect in 2014, expenses incurred by and on behalf of the Chair of the Board have been paid in accordance with the Board's Travel and Subsistence Policy, as per the terms of appointment set by the Finance Committee. The Wales Audit Office has administered these payments through our expenses system. Some months ago, my finance staff engaged with Assembly Commission finance staff to amend this administrative payment process due to changes in HMRC rules. As a result of those discussions, an issue was identified in relation to the funding of the Chair's expenses, which our Director of Finance explains in the attached note.

I assure the Committee that we have agreed a temporary solution to the issue with Commission staff, with a permanent solution to be put in place on appointment of the next Chair. Our Director of Finance will continue to liaise with the Committee Clerk and the Commission's finance team in working through the detail of this.

Yours sincerely



**ADRIAN CROMPTON**  
**Auditor General for Wales**

## Explanatory note prepared by the Director of Finance – Board Chair's expenses

Arrangements and processes for paying the expenses of the Chair of the Wales Audit Office (WAO) are unfortunately rather complex because of the legislation that applies (the Public Audit (Wales) Act 2013) (the 2013 Act) and its interaction with tax rules. While it is reasonable to think that this should be a straightforward and minor matter, regrettably, it is not. This note explains an issue that came to light during 2019-20 regarding the funding of the Chair's travel expenses (not salary).

The Chair's terms of appointment, including remuneration, are set by the Finance Committee. The 2013 Act requires that the First Minister must be consulted on the Chair's remuneration arrangements before those arrangements can be made. The current terms state that expenses incurred will be reimbursed in accordance with the Travel and Subsistence policy adopted by the [WAO] Board. The WAO has been of the view that it is able to pay such expenses under its general powers to do anything which is calculated to facilitate, or which is incidental or conducive to, the exercise of any of its functions (section 14 of the 2013 Act).

Since the full establishment of the Board and commencement of its finance functions on 1 April 2014, expenses incurred by and on behalf of the Chair (as well as other Board members) have formed part of the Estimate and published Accounts of the WAO. This means, we have always funded the Chair's expenses (and their tax liability) through the WAO's Estimate (supply budget) from the Welsh Consolidated Fund (WCF). Our Annual Report and Accounts have always provided full disclosure of this ([page 73, 2018-19](#)).

Last year, we engaged with Assembly Commission finance staff to amend the administrative payment processes for the Chair due to changes in HMRC rules. From April 2019, HMRC no longer allowed for the tax liability on the Chair's expenses to be met via a special agreement for such expenses (as was standard practice across public bodies for non-executive appointments) and instead required that the tax be recovered directly through payroll. The WAO does not administer the Chair's salary through payroll, the Commission itself does.

As the Commission processes the Chair's salary, we agreed with Commission finance staff that details of expenses paid to the Chair by the WAO would be notified to them to allow the tax due to HMRC to be properly accounted for.

In considering the transactional steps necessary for this process change, we acknowledged in discussions with Commission staff that the 2013 Act (para 7 of Schedule 1) says that "a salary, allowances, gratuities, and other benefits to cover expenses properly and necessarily incurred" are "to be charged on, and paid out of" the WCF. Our view is that while para 7 is not entirely clear (reimbursement of an incurred business expense is not normally an allowance nor a benefit, for example), it does seem that it would be proper to charge the Chair's expenses directly on the WCF rather than through WAO's Estimate and accounts.

As mentioned, the expenses had been an indirect charge via the WAO Estimate since 1 April 2014. It is important to emphasise that there is no issue with the accuracy of the amounts paid, just the accounting for the expenses as a direct versus indirect charge on WCF.

On identifying the issue in 2019-20, we considered that it would be right to charge the expense amounts directly to WCF from 2019-20 onwards, rather than continue with previous practice. The value of expenses in 2019-20 was approximately £5,000. No adjusting corrections are needed in respect of previous years because there is no consequential misstatement in any accounts. We have engaged with our own external auditors on this matter, and with my Audit Director colleagues leading the Assembly Commission and Welsh Government audits.

For 2019-20, we reached an agreement with Commission finance staff whereby the Commission has paid the Chair all expenses incurred in the year (and already paid by the WAO) and has charged that amount directly to the WCF. The WAO has recovered that same amount from the Chair so that these costs will not be a charge against the WAO's supply Estimate in 2019-20. The net cost is £zero, with the transaction shifting the expense to a direct charge on WCF instead of an indirect charge through WAO's supply Estimate. The surplus supply in our Estimate (arising from these expenses being recovered directly from WCF instead of being paid from supply) will be returned to WCF as part of our year-end outturn. This addresses the issue for the year just ended.

For the new financial year, 2020-21, with Commission staff we had planned to transfer the Chair to the WAO payroll, so that the WAO could make all the salary and expenses payments via payroll and recover all the costs as a direct charge on WCF. This would have reduced the bureaucracy and control weakness associated with setting up an alternative process for the Chair to claim expenses via the Commission.

However, when liaising on this approach with Welsh Government officials, whilst they were supportive of the administrative change to simplify the process, their legal advice on the application of the 2013 Act provisions relating to the Chair's remuneration concluded that the change would require consultation with the First Minister. The three parties have differing interpretations of the legal position, and I do not share the detail of that in this note. If consultation is found to be needed, it would seem appropriate to do that linked to the Committee's recruitment/ appointment of a new Board Chair in a few months' time and as part of the consultation requirements set out in the 2013 Act. Though that is a matter for the Committee to determine.

In the meantime, the temporary arrangements we have agreed with Commission staff to ensure the expenses are administered as a direct charge on WCF will continue. On appointment of the new Board Chair, we are keen to put the new administrative process for payments in place.

For 2020-21 the minor reduction in supply within the WAO Estimate (£5,000) can be reflected in a Supplementary Estimate (to reduce the budget) for the Committee to consider later this year, subject to the Board's approval; I will recommend that it is right and proper to do so.

For information, we have also reviewed the arrangements for the expenses of the Auditor General, as outlined in our [letter of 7 February 2020](#) to the Committee. There are no taxation consequences associated with the Auditor General's expenses so his expenses do not need to be administered via payroll.

I have engaged with finance colleagues in the Commission and Welsh Government in drafting this note.

**Steven O'Donoghue**  
**Director of Finance & HR**

28 April 2020