

Mark Isherwood MS

Chair

Public Accounts and Public Administration Committee

27 January 2023

Dear Mark

Public Accounts and Public Administration Committee Inquiry into Public Appointments

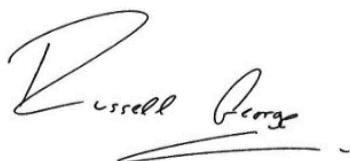
Thank you for your letter of 7 December 2022, and the opportunity to comment on the public appointments process.

To date in the Sixth Senedd, the Health and Social Care Committee has conducted one post-appointment hearing and three pre-appointment hearings for roles including the chairs of health boards and trusts, and the chair of the Citizens' Voice Body for Health and Social Care. Our response reflects our experiences of these appointments, the experience of our predecessor committee in the Fifth Senedd, and our views on wider issues and principles relevant to scrutiny of the public appointment process.

We discussed your letter at our meeting on 26 January, and hope that the reflections on our experience of the Senedd's role in Welsh Government-made public appointments set out in the annex to this letter will be of assistance to your important and timely inquiry.

Please let us know if you would like any further information.

Yours sincerely



Russell George MS

Chair, Health and Social Care Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg. We welcome correspondence in Welsh or English.



Annex: views of the Health and Social Care Committee on Welsh Government-made public appointments

Background

1. To date in the Sixth Senedd, the Health and Social Care Committee has conducted one post-appointment hearing and three pre-appointment hearings for roles including the chairs of health boards and trusts, and the chair of the Citizens' Voice Body for Health and Social Care. Our response reflects our experiences of these appointments, the experience of our predecessor committee in the Fifth Senedd, and our views on wider issues and principles relevant to scrutiny of the public appointment process.

Scrutiny of public appointments

2. The making of public appointments is an important Welsh Government function, involving the appointment of individuals to carry out roles which contribute to the effective governance and delivery of devolved responsibilities. As with all its functions, the Welsh Government is accountable to the Senedd in respect of the public appointments process. The Senedd, including its committees, therefore has a responsibility to carry out proportionate and constructive scrutiny. This includes scrutiny of individual appointments, where the roles are of significant public interest or have a significant impact on the public, and scrutiny of the way in which the Welsh Government is fulfilling its public appointment role.

3. The protocol agreed between the Llywydd and First Minister in relation to pre-appointment hearings includes a list of appointments that are subject (at committees' discretion) to pre-appointment hearings. It also makes provision for committees to request to hold a pre-appointment hearing for posts that are not on the list but which the relevant committee considers to be of significant public importance or impact. The protocol provides that the Minister can agree or decline such requests.

4. Not all of the posts on the list are the same in nature. For example, while both are of public interest and have impact, there are considerable differences between posts such as the Older People's Commissioner/Children's Commissioner and the chairs of health boards. The issues pertaining to pre-appointment hearings may therefore be different for different posts.

5. In addition to providing committees with the opportunity to reach a view on whether the preferred candidate is suitable for appointment and/or raise any issues relating to a candidate (for example whether there are any conflicts of interest that need to be resolved before the candidate is appointed), it also fulfils other valuable functions, including:

- Requiring the preferred candidate to outline, on the public record, why they want the role, why they are suited to it, what their priorities would be, and how their success should be judged. This brings transparency to the process, requires the candidate to demonstrate their ability to stand up to scrutiny, and establishes a baseline against which they can be held to account if appointed.
- Forming part of the ongoing scrutiny of an important Welsh Government function—that of making public appointments. For example, through undertaking pre-appointment hearings we have been able to see that two health board chair appointments in recent years have had to be readvertised due to a lack of suitable candidates. As a result, we have raised questions with the Minister about succession planning for senior leadership roles in the health service as well as how Welsh Government is facilitating and encouraging greater diversity among applicants and appointments.

6. The Senedd's scrutiny of pre-appointment hearings is conducted in line with the protocol agreed by the Llywydd and the First Minister, but responsibility for pre-appointment scrutiny is dispersed across the Senedd's structures: responsibility for conducting pre-appointment hearings rests with individual committees; responsibility for scrutiny of public administration rests with the Public Accounts and Public Administration Committee; responsibility for Senedd procedures rests with the Business Committee; and the Chairs' Forum has a role in coordinating and overseeing committee activity and considering emerging issues. It may be helpful for consideration to be given to whether these arrangements are sufficient.

Role of Senedd committees in the public appointment process

7. Committees' role in the public appointment process is limited. While pre appointment scrutiny has an important role in transparency (as set out above), it cannot and should not replace, or be seen to replace, a robust and transparent recruitment process. Therefore, we have been careful to ensure that the recommendations we have made in pre-appointment hearing reports are framed to reflect this limited role.

8. We suggest that to bring consistency across appointments, and ensure committees' roles are better understood, the Chairs' Forum discusses this matter further with a view to agreeing standard wording that could be used when committees are content that they have not seen any reason why a candidate should not be appointed.

9. It would also be helpful if the Chairs' Forum or the Llywydd published clear information about the role of committees in this process (including the protocol agreed with the First Minister), and the Welsh Government includes reference to this information in all adverts/candidate packs.

10. An issue we have raised, and which has been raised by our predecessor Committee in the Fifth Senedd, is whether sufficient action is being taken to attract and encourage sufficient suitable candidates for public appointments.

11. Our predecessor committee in the Fifth Senedd conducted a pre-appointment hearing for the role of chair of Swansea Bay University Health Board (UHB). The post had needed to be readvertised due to a lack of suitable candidates for interview. In addition to reaching a conclusion on the suitability of the preferred candidate, the Fifth Senedd Committee raised three broader issues with the public appointments process:

- The need to expand the range of platforms or outlets used for advertising public appointment vacancies.
- The use of search consultancies.
- The need to identify, analyse and address potential barriers to prospective candidates.¹

12. In his response to the Fifth Senedd Committee's report, the then Minister for Health and Social Services agreed that it was disappointing that the post had needed to be readvertised, and noted that in February 2020 a new Diversity and Inclusion Strategy for Public Appointments in Wales had been launched which would:

"aim to build a robust public appointments pipeline through open, robust and potentially new types of public appointment assessment processes. In building the pipeline, targeted outreach work will be undertaken to raise awareness of the opportunities available to attract new talent. Mentoring, shadowing and training programmes will also be developed to support those interested in becoming board members".²

13. In the summer of 2021, we became aware of an advert for the Chair of Cwm Taf Morgannwg UHB which made no reference to the potential for a pre-appointment hearing. We understand this was because of concerns within Welsh Government about timescales. Ultimately, the recruitment did not attract a suitable field of candidates, and the Minister made an interim appointment instead. A written statement³ was issued in September 2021.

¹ Health, Social Care and Sport Committee, Pre-appointment hearing: chair of Swansea Bay University Health Board, March 2020

² Letter from the Minister for Health and Social Services, 3 April 2020

³ Written Statement: Appointment of Chair – Cwm Taf Morgannwg University Health Board, 21 September 2021

14. The Committee held a post-appointment hearing with the interim Chair in November 2021.⁴ Following the hearing, we wrote to the Minister⁵ expressing disappointment that an interim appointment had been necessary and raising a number of points relating to the public appointments process, including how the Welsh Government will ensure that similar roles attract a diverse range of high quality candidates in the future.

15. In her response,⁶ the Minister said that she shared “the disappointment of the Committee in attracting individuals of a high calibre to apply for these very important roles which has led, in this case, to an interim appointment”. She went on to say that the Welsh Government is committed to undertaking public appointment exercises through fair and open competition in accordance with the Governance Code on Public Appointments, and has taken steps to extend the reach of public appointment publicity activity including targeting and engaging with diverse audiences. She further advised that a Task and Finish Group had been set up to look at succession planning for senior leadership positions in the NHS in Wales.

16. The substantive post was advertised in October 2022, and we agreed with the Welsh Government that we would schedule our pre-appointment hearing with the preferred candidate for 26 January 2023. We were advised by the Welsh Government early in the new year that the hearing was not able to go ahead as planned, although no reason has yet been given.

Approach to scrutiny

17. Policy and legislation committees’ remits include holding the Welsh Government to account on expenditure, administration and policy matters within their portfolios. Within the framework of Standing Orders, any guidance published by the Llywydd under Standing Order 6.17 and, for pre-appointment hearings, the protocol agreed between the Llywydd and the First Minister, committees have discretion to decide how best to fulfil their remits. This includes how to scrutinise public appointments, and those appointed to hold them.

18. We value the constructive and positive relationship we have with the Welsh Government as we perform our scrutiny role. However, we note that there may at times be different views about how we conduct our work, for example in relation to our decision to hold a post-appointment hearing with the interim Chair of Cwm Taf Morgannwg UHB in November 2021, or to proceed with a rescheduled pre-appointment hearing for the Chair of Powys Teaching Health Board in September 2022 when Senedd business resumed after the period of national mourning. On the latter occasion, to accommodate the Welsh Government’s concerns, we agreed to implement a curtailed timetable for

⁴ RoP, 4 November 2021

⁵ Letter from the Chair to the Minister for Health and Social Services regarding the public appointments process, 22 November 2021

⁶ Response from the Minister for Health and Social Services to the Chair regarding the public appointments process, 21 December 2021

the production of our report under which we shared a draft with the Welsh Government and the preferred candidate on the afternoon of the day on which we held the hearing⁷ Unfortunately, the Welsh Government was unable to provide comments within the agreed timescales, and our report could not be laid until the following week.

Provision of information

19. Committee clerks and Welsh Government officials work closely to ensure the mutual objective of holding a pre-appointment hearing takes place without disruption to the Committee's work programmes or delaying the appointment of the preferred candidate. This does, however, rely on the timely provision of information, on both sides, and there have been occasions when this has not happened. In the case of the Chair of the Citizens' Voice Body, we were not provided with the information about the candidate or the appointment process until a week before the hearing was due to take place. As we note in our report⁸ on the appointment, this meant that we had limited time to prepare for the hearing, and were unable to follow the approach taken by the Fifth Senedd Health, Social Care and Sport Committee of inviting the preferred candidate to complete a questionnaire in advance to provide information about their experience or their priorities for the role should they be appointed.

20. There have also been occasions when it has appeared that preferred candidates have been unclear about when information relating to their status as preferred candidate will be put into the public domain in advance of pre-appointment hearings, which are held in public.

⁷ The protocol agreed between the Llywydd and the First Minister regarding pre-appointment scrutiny by Senedd committees states that a committee will publish a report, usually within 48 hours, of the hearing, setting out its view on the candidate's suitability. The protocol also provides that a draft report will be shared in confidence with the relevant Minister and the preferred candidate, usually within 24 hours of the hearing, and that consideration will be given to any comments they make.

⁸ Health and Social Care Committee, Pre-appointment hearing: chair of the Citizen Voice Body for Health and Social Care, March 2022