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Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Mark Isherwood, MS
Chair – Public Accounts and Public Administration Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1NA

29 August 2023

Dear Mark,

**PUBLIC ACCOUNTS AND PUBLIC ADMINISTRATION COMMITTEE REPORT
REVIEW OF THE WELSH COMMISSIONERS
RESPONSE TO THE REPORT**

I have pleasure in enclosing a copy of the Welsh Ministers' response to the above report which will be laid before the Table Office.

On behalf of the Cabinet, I would like to thank you and the Committee for the careful and considered way in which you undertook the investigation and produced the report.

The relevant Additional Accounting Officers will be pleased to provide any further information, explanation or detail if required, following this response.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Response to the Report of the Senedd Cymru/Welsh Parliament
Public Accounts and Public Administration Committee Report on
Review of the Welsh Commissioners, July 2023**

Provided by: Rebecca Evans MS, Minister for Finance and Local Government

Date: August 2023

The Welsh Government welcomes the findings of the report and offers the following response to the sixteen recommendations contained within it. Where a response relates to more than one recommendation, the relevant recommendations have been grouped together.

Recommendations 1 and 4 have been grouped together for response.

Recommendation 1

We recommend the Welsh Government agrees a timetable for providing information each year to inform the Commissioners' budget preparation process. The Welsh Government should provide an update to the Committee when it has agreed the timetable it intends to adopt.

Accept

Recommendation 4

We recommend the Welsh Ministers confirm the funding allocations for Commissioners according to a defined timetable, which provides sufficient time for Commissioners to plan their following years' budgets accordingly, and it takes a consistent approach in doing so.

Accept

Welsh Ministers are required to write to the Business Committee to agree a timetable for the following financial year's budget timetable before the summer recess. However, the dates on which the draft and final budgets will be tabled cannot be confirmed until the UK Government has announced the date of its autumn fiscal event. It is only at this point, late in the autumn term, when Ministers currently learn precise details of the Welsh budget settlement.

The timing of these events since 2017 has impacted adversely on Welsh Ministers' budget planning. We recognise and share the Commissioners' concerns in devising spending plans for the following financial year when learning details of our final budget settlement at such a late stage. Public sponsored bodies, local authorities, and our partners in the third sector face similar challenges.

As a result, the precise details and timing of funding allocations for the Commissioners depend on the progress of the overall budget process for the appropriate budget round. As noted in the evidence submitted to the Committee, Commissioners have been invited to submit early estimates to Ministers in August each year, earlier than the statutory deadline of 31 October. This allows for discussion of the potential funding available while the budget-setting process takes place.

Where possible, the Welsh Government will provide indicative budgets for future years. However, Ministers are unable to commit to precise levels of funding for the Commissioners until they can consider the allocation in the wider context of the total funding available to them. As stated by the First Minister in his Statement of 9 August, our financial position after the UK Spring Budget in March, was up to £900m lower in real terms than when that budget was set by the UK Government at the time of the last spending review in 2021. This has an impact on all budget areas and policies, including Commissioners. However, in practice the budgets for the Commissioners have remained stable or increased in recent years. This should allow the Commissioners to estimate their income and expenditure based on existing budget limits.

Recommendation 2

We recommend the Welsh Government provides, to the Committee and Commissioners, information about the process for modifying the estimates submitted by Commissioners.

Accept

Under the legislation governing each Commissioner, the responsibility rests with the Commissioner to provide their statutory estimate of the income and expenses of the Commissioner and the Commissioner's staff. They are required to submit their estimate to the Welsh Ministers at least five months before the beginning of the financial year to which it relates (31 October).

As Accounting Officers, Commissioners are expected to plan to use their resources on an affordable and sustainable path, within agreed limits. The budget limits for each Commissioner give an indication of the budget Commissioners should plan to for the year ahead.

Once submitted to the Welsh Government, the Commissioners' estimates are reviewed and considered alongside other funding requirements across the budget. Welsh Ministers have encouraged Commissioners to provide their statutory estimates earlier than the statutory deadline to inform the budget process.

The final budget allocation is informed by the Commissioners' estimates and is decided in light of the overall budget available to the Welsh Government and, in particular, to the Major Expenditure Group to which the Commissioners' budgets are allocated. This involves discussions within Welsh Government and with the Commissioners or their staff, leading to a final budget allocation for each Commissioner which is presented in the Welsh Government Draft Budget Proposals and the Final Budget (Annual Budget Motion) both laid before Senedd Cymru. The budget for each Commissioner cannot be confirmed until the Senedd has approved the overall Budget for the Welsh Government under the relevant Standing Orders.

Recommendation 3

We recommend the Welsh Government clarifies why it does not appear to use the modification process to revise the Commissioners' estimates and explains why the estimates, as laid before the Senedd, may not set out the agreed funding for the Commissioners.

Accept

Each Commissioner must for each financial year prepare an estimate of the income and expenses of the Commissioner and the Commissioner's staff. The Commissioner must submit this to the Welsh Ministers who have a power to make modifications they think appropriate. The statutory estimate provided by the Commissioner does not confirm the budget the Commissioner received. As set out in response to Recommendations 1 and 4, it is for Welsh Ministers to determine the budget provided to Commissioners through the draft and final budget process.

Welsh Ministers have not used the power to modify the estimate documentation provided by each Commissioner and therefore those estimates provided by Commissioner are laid before the Senedd unchanged.

The Welsh Government does follow a modification process as detailed in the response to Recommendation 2 above. The Commissioners' initial estimates of income and expenses are considered alongside overall budget pressures facing the Welsh Government and the wider public sector. The Commissioners are notified of their draft budget allocations once the draft Welsh Government budget has been published and will then receive formal notification detailing its budget allocation once approved by the Senedd. The agreed funding for each Commissioner is clearly set out in the budget which is approved by the Senedd. This is likely to be different to the estimate prepared by the Commissioner and submitted to Welsh Ministers.

Recommendation 5

We recommend the Welsh Government provides an update to the Committee about the progress it has made with its programme to move to Term of Government Remits for its Arm's Length Bodies, together with information about the timescales for completing the exercise.

Accept

All Commissioners are champions for the people or policy areas whose interests they represent. As such, they are independent of Government and must have the freedom and discretion to undertake their duties without fear of their work having an impact on their funding. The relationship between the Welsh Government and Commissioners is, therefore, fundamentally different to the relationship that the Welsh Government has with other categories of bodies, such as Welsh Government Sponsored Bodies, Arm's Length Bodies (ALBs) or subsidiary companies.

Despite the policy and operational independence of Commissioners, all are funded by public funds which are provided by the Welsh Government. All Commissioners are Accounting Officers, receive Accounting Officer letters and must attend appropriate training. They are, therefore, personally responsible for the management of the funds allocated to them. The accounts and governance arrangements of all Commissioners must be subject to internal audit and to external audit by the Auditor General for Wales.

The role of the Commissioners is set out in the relevant founding legislation and, due to the operational independence of the Commissioners, Welsh Ministers do not issue them with 'remit letters' as such. Instead, Ministers issue a grant allocation letter to each Commissioner which sets out their funding for the year in question: they will also have in place a protocol or Memorandum of Understanding explaining statutory duties, operational arrangements, guidance, and policies with which they need to comply. Each Commissioner is then responsible for identifying their own priorities and subsequent workplan which is discussed with Ministers.

Further advice on this relationship is set out in *Managing Welsh Public Money*.

Welsh Government Arm's Length Bodies receive remit letters from the responsible Welsh Minister. The majority of such bodies now receive a Term of Government remit letter but, as funding cannot be guaranteed beyond the relevant financial year, Ministers will still agree annual funding letters to each ALB after the Senedd has agreed the Welsh Government Budget each year.

Recommendation 6

We recommend that the Welsh Ministers lay Welsh Commissioners' estimates before the Senedd on a timely basis and at the earliest opportunity each year following their decisions about funding allocations for the next financial year.

Accept

Whilst Welsh Ministers do not have a prescribed timetable in legislation on when they lay the Commissioners estimates before the Senedd, in practice the estimates are laid as soon as reasonably practical after the Senedd has approved the Final Budget. The agreed funding for each Commissioner is clearly set out in the final budget which is approved by the Senedd. The final funding allocation for Commissioners is unlikely to be the same as the amount requested for the financial year in question, as is the same for other organisations and spending priorities across the Welsh Government portfolio. Where possible, the Welsh Government will provide indicative budgets for future years but, as stated above, Ministers cannot commit to precise levels of funding for the Commissioners until that year's budget is approved. The timescale for publication varies according to the Senedd's procedures for approval of the overall Welsh Government budget. The Welsh Government does not control this timetable but is guided by Standing Orders.

Recommendation 7

We recommend that, for openness and transparency, the Welsh Government publishes the Welsh Commissioners' estimates on its website pages for the Commissioners.

Reject

Under each of the separate pieces of legislation governing the Commissioners, Welsh Ministers are required to lay the estimates before the Senedd with any modifications they think appropriate. They are therefore publicly available via the Senedd website. Commissioners will also publish their annual reports on their own website which will include details of their budget, income, and expenditure.

Recommendation 8

We recommend the relevant Welsh Minister confirms whether the Future Generations Commissioner for Wales' Estimate for 2022-23 was laid before the Senedd, with details of the date on which it was carried out.

Accept

The Welsh Government received the statutory estimate for 2022-23 from the Future Generations Commissioner on 29 October 2021, five months prior to the financial year. The Commissioner requested a budget of £2,322,173 for 2022-23, a proposed 53 per cent increase to the budget of £1,509,000 which the Commissioner had received in 2020-21 and 2021-22.

The Welsh Government laid its Draft Budget Proposal for 2022-23 before the Senedd on 20 December 2021. This outlined a draft budget for the Future Generations Commissioner of £1,509,000 for 2022-23 and an indicative budget of £1,509,000 for 2023-24. The Final Budget was laid before the Senedd on 1 March 2022 which confirmed the budget for the Commissioner for 2022-23 as £1,509,000. Following further discussions for funding in 2023/24, the actual budget for the Commissioner for that year was set at £1,685,000.

However, it appears that the Future Generations Commissioner for Wales' estimate of income and expenses for 2022-23 was not laid before the Senedd at the time. This has now been rectified and I would like to apologise for this oversight. I can confirm that this had no impact on the resources provided to the Commissioner in that financial year.

Recommendation 9

We recommend the Welsh Government provide the Committee with information about the additional funding allocations, announced in July 2022, for pay parity at the Arm's Length Bodies. This should include the evidence on which the expected and actual allocations were determined, well as assurance that the funding allocated is meeting the associated costs.

Accept

The pay parity funding agreed by Welsh Ministers in June 2022 was the result of nearly three years of discussions in the Devolved Sector Group, which includes management and unions from devolved Welsh public bodies, the Commissioners' offices and the Welsh Government. The total sum was based on the number of staff (full-time equivalent), as at 31 March 2022 who were paid below the Welsh Government minimum, and the difference between their pay and the Welsh Government minimum, using the pay scales in place for the 2021-22 financial year. This was increased by the employers' pension contributions and the employers' National Insurance contributions to give an estimate of total cost for each employer.

Each body made an additional claim for pay parity costs as part of their grant-in-aid claim process for financial years 2021-22 and 2022-23. Additional funds were made available to each relevant BEL from previous underspends. A summary of the payments made available to and claimed by the two Commissioners directly affected is below.

| Commissioner | Staff affected (FTE) | 2021-22 pay scales | | Claim for 2021-22 | Claim for 2022-23 | Total claimed |
|--------------------|----------------------|--------------------------------------|-----------------------------------|-------------------|-------------------|---------------|
| | | Salary cost (staff x pay difference) | Total cost (salary + pension, NI) | | | |
| Older People | 5.8 | £12000 | £17000 | £11000 | £11000 | £22000 |
| Future Generations | 5.8 | £11000 | £16000 | £18000 | £19000 | £37000 |

Table 1: Pay Parity costs and claims for Commissioners, 2021-22 and 2022-23.

The increased payment claimed by the Future Generations Commissioner was made possible by lower-than-expected claims from other bodies, including the Older People's Commissioner.

For financial years 2023-24 and 2024-25, funds were added to those lines meaning that no additional claim was necessary. As Ministers had stated that annual pay increases would normally be met from existing resources, the amount given to all the bodies involved was fixed at the 2021-22 figures.

Recommendation 10

We recommend that the Welsh Government provides information about the process to be adopted by it or Welsh Ministers to address potential conflicts of interest, arising due to the inclusion of the Commissioners within the Welsh Government's accounting boundary and the related restrictions on their use of reserves. Most significantly, the related risks to independence where a Commissioner requests additional budget cover or funding for a review or investigation about the Welsh Ministers or Welsh Government.

Accept

Each Commissioner has different functions which would interact with the Welsh Government and so any conflict of interest needs to be considered in the context of the Commissioners' different statutory responsibilities.

The Commissioner does not identify whether they will be using their resource budget to investigate the Welsh Government or a particular Welsh Minister when the budget is approved and awarded. Should the Commissioner request additional funding to be able to undertake an investigation into a particular Welsh Minister during the financial year, the Minister in question would not be involved in making that funding decision.

Recommendations 11 and 13 have been grouped together for response.

Recommendation 11

The Commissioners identify issues with the restrictions on their use of reserves following the designation, from February 2022, of their offices in the Welsh Government accounting boundary. Given the related risk to independence and potential other unintended consequences, the Committee recommends that the Welsh Government reviews the impact of the changes after they have been in operation for two years and provides an update to the Committee by September 2024.

Accept

Recommendation 13

We recommend the Welsh Government reviews the impact on the Commissioners of bringing them into its accounting boundary. This should be completed two years after such changes have been in operation, with an update provided to the Committee by September 2024.

Accept

The restrictions on reserves are as set out in the UK Public Expenditure framework detailed in the *Consolidated Budgeting Guidance* set out by HM Treasury. Designation is the process that brings a body within the Welsh Government accounting boundary, the designation status of the body has no impact on how the framework is applied.

The designation of the Commissioners within the Welsh Government accounting boundary meets the commitment made in response to the Fourth Assembly's Finance Committee inquiry into Best Practice Budget Processes, to undertake an exercise to align budgetary and accounting boundaries. Designating central government bodies clarifies the financial position for the sector as a whole, aiding long term planning, and also ensures that the appropriate framework is in place for these bodies to safeguard public funds.

The process also accommodates the need to raise awareness of the purpose of designation and continue to address the wider issues concerning the application of the public expenditure framework to all public bodies classified to the central government sector with the existing bodies. Formal designation is carried out by Order made by one of the Welsh Ministers under the Government of Wales Act 2006.

Designation only impacts how the body's budget is reported by the Welsh Government, not how HM Treasury's UK Public Expenditure framework is applied to that body. The restrictions on reserves are as set out in the UK Public Expenditure framework detailed in the *Consolidated Budgeting Guidance* set out by HM Treasury.

This information is already visible in the Budget Motion and supporting documents published. The Commissioners do not meet the materiality threshold to be consolidated in the Welsh Government Consolidated accounts and consolidation is the only other potential impact of designation. There is no budget impact from designation, the budget treatment is determined by the UK Public Expenditure Framework and this is based on the national accounts classification, not the designation status of a body.

The relevant Finance teams will continue to monitor the impact of the balance of operating freedom and restrictions. However, as the Welsh Government must ensure that the public budget is managed in compliance with HM Treasury's UK Public Expenditure framework, the risk from any change in policy would have to be borne by the Welsh Ministers on behalf of the public purse in Wales.

Recommendation 12

The Committee recommends the Welsh Government provides information about the evidence supporting the level of increase in the cash limits agreed for Commissioners, as well as the engagement between the parties about it.

Reject

Commissioners use public funds so are therefore subject to best practice of cash management, including that cash grant-in-aid should not be claimed in advance of need. Standard practice across Welsh Government arm's length bodies is that those bodies hold no more than 2 per cent of total income for retained cash.

Recognising the limitations of a 2 per cent limit on the Commissioners and their particular circumstances, the Welsh Government has agreed a limit of 5 per cent of total income for retained cash to avoid this occurring. This limit is to cover the timing differences of payments and to provide a contingency to allow the Commissioners to start an investigation without any delay whilst they await a funding decision. If the Commissioners expect to hold cash in excess of this limit, permission must be granted by the Welsh Government Director of Finance.

Recommendation 14

We recommend the Welsh Government provides an update about the review the Minister for Social Justice has asked her officials to undertake into the scope of the Future Generations Commissioner's work and responsibilities. The update should set out the timetable for its completion and when officials expect to provide advice to the Minister.

Accept

On 27 May 2022, the Minister for Social Justice [wrote](#) to the Equality and Social Justice Committee with the Welsh Government's response to recommendation 2 of the Equality and Social Justice Committee's 2022 report *Annual Scrutiny of the Future Generations Commissioner: An Update*. This recommendation concerned an evaluation of the scope of the Future Generations Commissioner's work and responsibilities and was set within the context of the review of the public bodies subject to the Well-being of Future Generations (Wales) Act 2015.

The Minister provided an update to the Public Accounts and Public Administration Committee on this review in her [letter](#) of 1 December 2022. Work is ongoing with the Commissioner on the cost implications to their office in extending the number of bodies subject to the Act's well-being duty.

Beyond the extension of the Act, any evaluation of the Future Generations Commissioner's general duty and functions should form part of a wider post-implementation review to measure the effectiveness of the Well-being of Future Generations (Wales) Act 2015 and to capture its real impact. The Minister asked officials to explore the scope and need for an evaluation of the Act, which could include an assessment of the role and functions of the Commissioner.

Officials have finalised a scoping paper on the approaches that this evaluation could take and are currently in the process of appointing a UK Research and Innovation-funded policy fellow to develop the approach and deliver the first stage of the evaluation. This is likely to include a systematic evidence review and a social impact assessment. Given the broad nature of the Act and its reach in terms of government, public bodies, public services boards and town and community councils, the evaluation will need to involve stakeholders from across the devolved Welsh public sector, including Senedd committees and the Future Generations Commissioner. This will also include the Well-being of Future Generations National Stakeholder Forum, established by the Minister.

An evaluation will also consider the evidence provided by the Future Generations Commissioner (monitoring duty, review power, and annual, and Future Generations Report), the Auditor General for Wales (examination duty and results of examinations report), and the Public Accounts Committee's inquiry in 2020-21, which provide rich insight into how the Act is working. The Welsh Government will continue to keep the Committee updated on this work as it progresses, including the likely timeframes for the multi-year evaluation.

Recommendation 15

We recommend the Welsh Government conducts post-legislative review of the legislation governing all Commissioners, including a review of the funding allocated to them, with an update provided to the Committee in due course.

Reject

The Regulatory Impact Assessment carried out at the time of each of the relevant pieces of founding legislation included details of the planned approach for monitoring, reviewing, and evaluating the policy (post-implementation review).

Each Commissioner has different duties and powers which are aligned to their founding legislation and the wider policy agenda. A review of the legislation relating to the Commissioners would involve three UK Acts of Parliament, a National Assembly Measure, and an Act of the Assembly. Ministers do not currently plan to carry out such a review as we do not believe that there would be enough benefit to Commissioners or the Welsh Government to justify the expenditure. Commissioners' budgets have been settled in the light of the overall budget situation and, as the Welsh Government budget has not kept pace with inflation, Commissioners have faced the same constraints over recent years. A review of legislation would not resolve this issue.

Recommendation 16

We recommend the Welsh Government reviews whether new legislation may impact upon the remit of Welsh Commissioners, ensuring there are adequate resources to incorporate extensions to their roles and responsibilities.

Accept

The Welsh Government already considers whether new legislation may impact upon the remit of Welsh Commissioners. As part of any new Senedd Bill or secondary legislation, a Regulatory Impact Assessment (RIA) is required by standing orders to include the best estimates of the likely impact of that legislation, and which will form part of the Explanatory Memorandum. This will include the best estimates of administrative costs and savings, and whom the costs would fall. Where these costs fall on Commissioner estimates will be provided for. Similarly, if new legislation changes the duties and functions of a Commissioner, the impact of this would be considered as part of policy development and the Regulatory Impact Assessment.