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Education and Public Services Group



Llywodraeth Cymru  
Welsh Government

Mr Darren Millar AM  
Chair  
Public Accounts Committee  
National Assembly for Wales  
Cardiff Bay  
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7 September 2015

Dear Chair

## **WAO REPORT ON REGENERATION INVESTMENT FUND FOR WALES**

Further to Derek Jones' letter of 23 July, the purpose of this letter is to provide you with the Welsh Government's response to the WAO report on the Regeneration Investment Fund for Wales (RIFW) as requested in your letter of 15 July.

We welcome the publication of the WAO report. We believe that the report's publication helps to resolve the uncertainty and concern which has surrounded the Fund since its activities were suspended in October 2012. The sensitivities surrounding the Fund were further heightened when it became public knowledge that matters relating to this case were also being examined by the police. This complicated our ability to respond to the concerns identified by the WAO as well as extending the period over which those concerns were investigated. Now that the WAO report has been published and the history of the events surrounding the Fund has been made clear we are better able to attend to the challenge of ensuring that the Fund's resources can be utilised as effectively as possible for the benefit of Welsh communities.

Ensuring that we could safeguard and then make best use of the resources tied up in the Fund has been the central aim for the Welsh Government throughout the period of the WAO study. We took urgent action in October 2012 to suspend the activities of the Fund. We worked closely with WEFO when they decided in July 2013 that the European funds invested in the Fund should be removed and reinvested in other projects. In November 2013 the then Minister for Housing and Regeneration announced, following consultation with the RIFW Board, that he was placing the activities of the Fund under direct Ministerial control. It is important to acknowledge the full support we received from the original RIFW board through each of these developments. We would also wish to emphasise the importance of our joint working with the WAO.

Given the nature of the concerns identified by the WAO another early action was to establish a cross departmental steering group designed to strengthen our oversight of the



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Fund. This group has also provided us with a multi-disciplinary forum to reflect on and respond as quickly as possible to the findings of the WAO study as they have emerged throughout the period since October 2012. It has also enabled us to identify and address any shortcomings identified in the governance and oversight arrangements originally established for the Fund. The steering group has also allowed us to identify the wider lessons to be drawn from this case and helped shape subsequent changes to our policies and practice in connection with arms length bodies. We have for example introduced stronger and more effective guidance covering the establishment and oversight of such bodies. This guidance includes draft terms of reference for Welsh Government observers on commercial boards. We have also been able to draw on our experience in this case to inform the way we have established other arms length organisations subsequently.

The two independent reviews announced by the Minister for Housing Regeneration and Heritage on 7 February 2013 provided an important insight into the early activities of the Fund and the process for disposing of its land assets. With the benefit of hindsight we are clear as to the significance of the decision to dispose of RIFW's land assets without a public sale. This means that we are unable to demonstrate conclusively that the sale has achieved best value. The WAO report concludes that the decision taken by the RIFW Board in the early part of 2011 with regard to the sale was reasonable in principle given the technical advice the Board had received. We share that view. We believe that it is important to consider the Board's decision in the context of the very significant economic uncertainty the Board had to deal with at that time with Wales still emerging from the worst effects of the global financial crisis in 2008. However what is also now clear is that the decision to sell the RIFW land assets privately was one of the crucial factors contributing to the uncertainty which has subsequently surrounded the Fund.

The WAO report highlights the conflicting valuation evidence regarding the land assets disposed of by RIFW. We have acknowledged that in the absence of full exposure to the market it is not possible to demonstrate conclusively that best value was achieved for the asset portfolio. But it is important to note that neither do we believe that the valuation evidence available in this case points conclusively to there having been a sale at under value. We note the District Valuer's conclusion that greater value could have been achieved through the sales process had RIFW been tasked solely with realising the best possible price for the land assets in optimal market conditions. But the circumstances in which RIFW was conducting the sale were more constrained than that. RIFW needed to realise the assets it had been given in lieu of cash in order to proceed to invest in desperately needed regeneration as a stimulus to a recessionary economy and to secure European funds for Wales. The WAO have also recognised this point in their acknowledgment that it was unlikely that RIFW could have achieved sale proceeds consistent with the District Valuer's valuation.

We have scrutinised the WAO conclusions regarding valuation evidence and the professional advice received by the Board throughout the land disposal process very carefully indeed. We are not only concerned about these matters because of the importance of RIFW maximising the funds it had available to support regeneration projects. In the context of our continuing oversight of the Fund, we have also needed to be careful to reserve our position on whether the evidence available to us in this case justifies taking any further action in the public interest. I would be pleased to brief the Committee on the latest position.

We are pleased that the report recognises the innovative nature of RIFW and the potential it offered to make available much needed funding in support of regeneration in our towns and cities. We continue to believe - as was the case with RIFW - that wherever possible we

should be examining the use of loan rather than traditional grant finance to support regeneration projects with a commercial component. We will draw on the wider operational experience gained through RIFW to inform future policy initiatives in this area.

I will now address each of the Auditor General's recommendations in turn

**Recommendation 1** In relation to RIFW, the Welsh Government should ensure that arrangements for its future governance, oversight and accountability are robust and clearly understood by all stakeholders.

We fully accept this recommendation. Since the decisions to suspend the activities of the Fund and then to bring RIFW under direct Ministerial control by appointing an interim Board of officials these matters have effectively been dormant. We are however clear that before we could advise that RIFW could be used as a delivery model in the future we would need to initiate new structures and procedures for its governance, oversight and accountability. There are clear lessons to be drawn from the Auditor General's findings which would inform this process. These include the design and recruitment of the Board; how the Board is briefed regarding its role and the status of the Fund; arrangements for reporting the activities of the Fund to Ministers; as well as clarity around reporting lines and expectations to the Accounting Officer.

We have begun the process of giving practical effect to these findings in the guidance on arms length bodies which has been developed since the investigation began and which has been informed by the emerging findings of the Auditor General.

**Recommendation 2** When making decisions on disposing of the remainder of its asset portfolio RIFW should take account of the findings of this Report in relation to the sale process.

We fully accept this recommendation. We will ensure that there will be a clear understanding with RIFW that the remaining assets will only be sold when there is full confidence that the market has been fully tested and the opportunity to optimise the return for the public purse in pecuniary or policy terms has been addressed.

The interim RIFW Board has already sought professional advice on how best to optimise the public return on the small number of remaining assets. The approach will be guided by decisions regarding the future of the Fund. The publication of the Auditor General's report clears the way for such decisions to be taken.

**Recommendation 3** The Welsh Government should investigate whether state aid was provided and, if so, whether it was unlawful; and should discuss with the UK Government the need to refer the portfolio sale transaction to the European Commission as required by the European Commission's Communication on state aid elements in sales of land and buildings by public authorities.

We recognise that because there was no open sale process or independent valuation at the time of the sale we can not demonstrate whether best value was achieved in this case. However, we are also clear that the fact that the sales price which was achieved by RIFW may have been less than that which could have been achieved in different circumstances does not in itself allow us to conclude that a state aid has been provided. For there to have been a state aid we would need to be able to demonstrate that a selective economic advantage had been granted. Because of the range of valuation evidence available in this case determining whether there has been a sale at undervalue is highly uncertain. We are

continuing to scrutinise whether any advantage may have arisen from the other aspects of the evidence highlighted in the report; we would be pleased to brief the Committee further on this.

**Recommendation 4** The Welsh Government should clearly define the functions of arms-length bodies and ensure that their boards:

Understand their functions and have appropriate capability and capacity to discharge them;  
are clear about the time commitment for board members and that remuneration levels are appropriate;

are provided with effective induction training covering the respective needs of:

- Welsh Government officials appointed to boards; and
- non-executive and externally appointed board members.

We have already begun to take action to address this recommendation. Revised guidance on the establishment of arms length bodies has been developed to reflect the learning from this case and is now available to staff. We are also now developing training materials for boards intended to be drawn upon as part of the induction process for new board members. In conjunction with representatives of our sponsored bodies we are reviewing the process for appointment and induction of arms length board members, including the development of a programme of core training on matters common to all bodies.

**Recommendation 5** The Welsh Government should exercise proper oversight of its arms-length bodies to ensure that they each demonstrate good governance and remain focused on their core activities. This should include an appropriate level of oversight by Welsh Government Corporate Governance Committees.

We fully accept this recommendation. Whilst it is important that arms length bodies have a level of independence reflecting the purpose in establishing them as such, it is also essential that there is clarity about how oversight is achieved through corporate governance mechanisms and through direct reporting. This includes ensuring that there is greater clarity regarding the role of independent board members as well as the role of Welsh Government officials acting as board members or observers. There is also a need to be as clear as possible in establishing reporting lines through to Additional Accounting Officers.

The main Welsh Government Corporate Governance Committee has discussed this issue and has also advised that more should be done to support arms length bodies in their governance arrangements and to ensure that board members are properly trained and equipped to discharge their governance responsibilities effectively. We are developing our response to this as part of the work referred to above and we will report back to the Corporate Governance Committee regularly.

**Recommendation 6** The Welsh Government should ensure that transfers of the responsibility for overseeing arms-length bodies between its departments are managed effectively.

We fully accept this recommendation and the implication that arrangements on this occasion could have been improved. The intention has to be to act quickly, to remove any doubt about where responsibility lies and to ensure that key facts are exchanged to ensure that oversight can be exercised in an informed fashion. Revised protocols and guidance ensures that we now have much improved procedures for transferring business and risks between

departments. We have also developed mechanisms to allow a clear handover between Corporate Governance Committees including the need to highlight those projects that carry the biggest risks.

**Recommendation 7** The Welsh Government should review the effectiveness of its internal quality-assurance arrangements for providing Welsh Ministers with draft responses to Assembly Questions.

We would offer a qualified welcome to this recommendation. We always keep our policies in this area under review and will continue to attach the highest importance to providing Minister and Assembly Members with answers that are as accurate as possible. I have reviewed the answers given in this case. The information was mainly factual and not entirely provided by third parties. We were not aware of Mr Davies' concerns regarding the sale of the RIFW land assets until some time after they had been referred to the Auditor General.

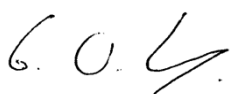
**Recommendation 8** When engaging external consultancy services, the Welsh Government should make clear at the outset its expectations concerning the agreement of consultants' reports with relevant third parties for factual accuracy, completeness and balance.

We partially accept this recommendation. It clearly would have been preferable for the peer review we commissioned from Deloitte relating to the professional advice received by RIFW to have been fact checked prior to it being submitted to us for action. However in certain cases where reports are being commissioned and where there may be a dispute as to the facts or the presentation of a case or where it is not intended that the report should be published it may not be appropriate to require a fact checking process. In the case of RIFW the reports we commissioned did succeed in shedding an independent perspective on complicated events which at that time had been referred to the police for further consideration.

I am as requested enclosing a copy of the review of RIFW's governance arrangements we commissioned from Gilbert Lloyd. This has been partially redacted to reflect the fact that certain key sections had not been fully fact checked during the report's preparation. I can however reassure the Committee that the relevant sections have been addressed by the Auditor General during the preparation of the WAO report which was able to examine the circumstances surrounding the sale of RIFW's land assets in more detail. I understand that arrangements are in hand to enable the Committee to have access to the peer review report we commissioned from Deloitte.

We would be pleased to provide any further information the Committee might find helpful in advance of the scrutiny sessions that are planned.

Yours sincerely



Owen Evans