

Nick Bennett  
Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed  
CF35 5LI

4 June 2019

Dear Nick,

### Scrutiny of Accounts 2017–18

Thank you for your response to the recommendations directed at the Public Services Ombudsman for Wales in the Public Accounts Committee's Scrutiny of Accounts 2017–18 Report, which was considered at our meeting on 13 May 2019.

The Committee noted your responses to its recommendations and have a number of points we would welcome further information/clarification on.

### Role of the Advisory Panel and Audit and Risk Assurance Committee

The Governance Statement 2017–18<sup>1</sup> describes the corporate governance arrangements for your office, including the respective roles and responsibilities of the Advisory Panel and Audit and Risk Assurance Committee (ARAC).

The Committee noted that the Advisory Panel, comprising external advisors, was established in 2012–13 to “strengthen the openness and transparency of the governance arrangements”<sup>2</sup>, providing “leadership and good governance of the office of the Public Services Ombudsman for Wales”<sup>3</sup> and “specific advice and support to the Ombudsman on ... internal control arrangements”<sup>4</sup>.

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<sup>1</sup> [Annual Report and Accounts 2017–18, Public Services Ombudsman for Wales](#), pages 52 to 63

<sup>2</sup> [Financial statements for the year ending 31 March 2013, Public Services Ombudsman for Wales](#), page 20

<sup>3</sup> [Annual Report and Accounts 2017–18, Public Services Ombudsman for Wales](#), page 54

<sup>4</sup> [Annual Report and Accounts 2017–18, Public Services Ombudsman for Wales](#), page 54



While acknowledging that it is a “non–statutory forum”, the Committee notes your statement that the Advisory Panel has been “developed to take account of best practice”<sup>5</sup>. Its role is consistent with the principles set out in HM Treasury’s [‘Corporate governance in central government departments: Code of good practice 2011’](#). This states “Boards are advisory in the sense that they will provide advice to the department on issues within their remit, such as strategy and the deliverability of policies”.

Consistent with the principles set out in [HM Treasury’s Audit and Risk Assurance Committee Handbook](#) – which sets out good practice principles for ARAC – the ARAC’s role is described as providing support to the Ombudsman by “reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements and the annual report”<sup>6</sup>.

Since the roles of both the Advisory Panel and ARAC appear to be consistent with respective HM Treasury principles, the Committee would be grateful if you could explain what you mean by the statement that your ARAC should not be “conflated with the traditional main board/audit committee structure”.

### **Membership – Audit and Risk Assurance Committee**

In your [written evidence to the Committee](#), you note that you have reviewed the terms of the reference and membership for both committees.

In your response to the Committee’s Report, you note that the Advisory Panel and ARAC are “standalone” and “as neither I nor any of my staff are members of the ARAC it is wholly independent”. You note in your [written evidence](#) to the Committee that “the membership of both [the Advisory Panel and the ARAC] is identical”. However, they are not independent of each other.

Paragraph 3.1 of [HM Treasury’s Audit and Risk Assurance Committee Handbook \(ARAC Handbook\)](#) acknowledges some commonality in membership of boards and the ARAC. However, it states that the ARAC “may need to seek further independent, non–executive membership from sources other than the board in

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<sup>5</sup> [Financial statements for the year ending 2012–13, Public Services Ombudsman for Wales](#), page 8

<sup>6</sup> [Annual Report and Accounts 2017–18, Public Services Ombudsman for Wales](#), page 56



order to ensure an appropriate level of skills and experience”. The Committee notes that appointing independent members that do not sit on the board (or Advisory Panel) is considered best practice (as is reflected in the example terms of reference set out at Annex D to the ARAC Handbook), enabling the ARAC to “act as the conscience of the organisation and to provide insight and strong constructive challenge where required, such as on ...information flows on risk and controls ...”<sup>7</sup>. It is for this reason that the Committee made its recommendation about the appointment of an independent external member, although expressed it in respect of the Advisory Panel. The Committee would welcome your comments on how the composition of ARAC complies with best practice set out in the ARAC Handbook, particularly in respect of independent external members.

### **Chair – Advisory Panel and Audit and Risk Assurance Committee**

Consistent with paragraph 2.14 of the '[Corporate governance in central government departments: Code of good practice 2011](#)', the ARAC is chaired by a non-executive member, Jonathan Morgan. However, we note that Mr Morgan also chairs the Advisory Panel.

The Committee notes that Annex A to [HM Treasury's Audit and Risk Assurance Committee Handbook \(ARAC Handbook\)](#) sets out best practice for the ARAC Chair. These include meeting with the Chair of the board (or Advisory Panel). Also, given their respective roles – the Advisory Panel to provide specific advice on internal control matters and the ARAC to review the comprehensiveness and reliability of assurances on the control environment – it would not appear to be best practice for the same person to chair both committees. The Committee would welcome your comments in respect of this.

### **Special payments**

The Committee noted your response to recommendation 33. This states, while special payments are not your default position, settlement agreements were used for the three cases in respect of which payments were disclosed in the 2017–18 accounts.

The Committee welcomes your confirmation that the settlement agreements were not subject to non-disclosure agreements and “each included an express

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<sup>7</sup> [Audit and risk assurance committee handbook](#), HM Treasury, page 3.



provision making it clear that nothing in the agreement prevented the individual from making a protected whistleblowing disclosure”. However, you also state “for contractual reasons, I am unable to provide details of the specific individual cases”.

The Committee is disappointed that your response fails to address the concerns set out in its report. It is not seeking information about the individuals to whom the payments were made. However, it would welcome additional information in respect of the related payments, including the reasons for these payments and assurance that these represented value for money.

### **Presentation of the annual report and accounts**

The Committee recommended that your annual report and accounts more clearly and effectively report performance. In your response, you note that the Auditor General for Wales (the Auditor General) provided a “true and fair view” opinion on the 2017–18 annual report and accounts and concluded that they had been properly prepared in accordance with HM Treasury directions.

The Committee was concerned about the emphasis you placed on the role of the Auditor General. The Auditor General’s certificate and report sets out his responsibilities in respect of the ‘other information’ (or the ‘annual report’), which includes the performance report. He notes that his opinion on the financial statements “does not cover the other information and, except to the extent otherwise explicitly stated in my report, I do not express any form of assurance conclusion thereon”. The Committee’s report was aimed at improving the presentation of the annual report and transparency in the performance report. This is not something on which the Auditor General provides assurance.

The Committee would welcome your comments on the matters set out in this letter by 5 July 2019.

Yours sincerely,

A handwritten signature in black ink that reads "Nick Ramsay". The signature is fluid and cursive, with a long horizontal flourish extending from the end of the name.

**Nick Ramsay AM**  
**Chair**

