



**Cynulliad Cenedlaethol Cymru  
The National Assembly for Wales**

**Y Pwyllgor Archwilio  
The Audit Committee**

**Dydd Iau, 14 Mai 2009  
Thursday, 14 May 2009**

**Cynnwys**  
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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,  
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.  
In addition, an English translation of Welsh speeches is included.

**Aelodau Cynulliad yn bresennol**  
**Assembly Members in attendance**

Lorraine Barrett	Llafur Labour
Mick Bates	Democratiaid Rhyddfrydol Cymru (yn dirprwyo ar ran Michael German) Welsh Liberal Democrats (substitute for Michael German)
Lesley Griffiths	Llafur Labour
Irene James	Llafur Labour
Bethan Jenkins	Plaid Cymru The Party of Wales
Huw Lewis	Llafur Labour
Jonathan Morgan	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Chair of the Committee)
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives
Janet Ryder	Plaid Cymru The Party of Wales

**Eraill yn bresennol**  
**Others in attendance**

Jeremy Colman	Archwilydd Cyffredinol Cymru Auditor General for Wales
Ian Gibson	Dirprwy Bennaeth, Uned Llywodraethu Corfforaethol, Llywodraeth Cynulliad Cymru Deputy Head, Corporate Governance Unit, Welsh Assembly Government
Matthew Hockridge	Swyddfa Archwilio Cymru Wales Audit Office
Mark Jeffs	Swyddfa Archwilio Cymru Wales Audit Office
Matthew Mortlock	Swyddfa Archwilio Cymru Wales Audit Office

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol**  
**National Assembly for Wales officials in attendance**

John Grimes	Clerc Clerk
Abigail Phillips	Dirprwy Glerc Deputy Clerk

*Dechreuodd y cyfarfod am 9.30 a.m.*  
*The meeting began at 9.30 a.m.*

**Ymddiheuriadau a Dirprwyon**  
**Apologies and Substitutions**

[1] **Jonathan Morgan:** Good morning. It is 9.30 a.m. so we will make a start. I welcome Members to the National Assembly's Audit Committee. I will start with the usual

housekeeping announcements. I remind people that they can speak in Welsh or English. Headsets are available for translation or sound amplification. I ask everyone to switch off their mobile phones, BlackBerrys and pagers. If there is a fire alarm, please follow the advice of the ushers. We are expecting the Northern Ireland Assembly Public Accounts Committee to join us in the public gallery during the committee, and we will have informal discussions with the committee afterwards. On apologies and substitutions, Janice Gregory sends her apologies due to a clash with Legislation Committee No. 3. There is no substitution for her. However, Mick Bates is here substituting for Mike German, who sends his apologies.

9.31 a.m.

### **Prosiect y Ddraig Goch: Brîff gan Archwilydd Cyffredinol Cymru The Red Dragon Project: Briefing from the Auditor General for Wales**

[2] **Jonathan Morgan:** This is a joint report by the Auditor General for Wales and the UK Comptroller and Auditor General, which was published on 27 March. The report covers the devolved and non-devolved aspects of the project, which are, clearly, inextricably linked. As per our new arrangement, the auditor general will provide a briefing on the report, and Members can then ask however many questions they wish. Towards the end of the meeting, we will decide how to proceed with the report.

[3] **Mr Colman:** As you said, this is a joint report between my office and the National Audit Office, and it is the first time that we have undertaken such a joint project. It was a pleasure to work with my old colleagues in the NAO on this report. For that reason, it is a slightly funny report in the sense that I am empowered to examine the actions of the Welsh authorities—in this context, the Welsh Assembly Government and the former Welsh Development Agency—and the Comptroller and Auditor General is empowered to examine the actions of the Ministry of Defence. He cannot look at the Welsh authorities, and I cannot look at the Ministry of Defence, so the best thing was for us to collaborate.

[4] We initiated this project specifically in response to a letter to us both from the chairman of the House of Commons Defence Committee. That committee was concerned that the Ministry of Defence seemed to have led the Welsh authorities up the garden path. So, that is the question that we were seeking to answer: whether or not the Ministry of Defence was doing something that it should not.

[5] The basic concept was that RAF St Athan was potentially a major project for Wales. The MOD would procure a new building—a superhangar, as it called it—which was expected to improve the efficiency of fast jet repair, leading to savings to the Ministry of Defence and the creation of 2,500 jobs in Wales. The Welsh authorities also hoped to create a further 4,000 jobs through an aerospace park set in the grounds of the new superhangar, with the defence repair business as an anchor tenant. So, the basic concept was clearly a win-win situation.

[6] However, it did not turn out like that. The conclusion of the report is that the Welsh authorities and the MOD did not work together. In fact, essentially, they saw it as a commercial negotiation, and did not fully share with each other information, assumptions and a vision. The Comptroller and Auditor General and I concluded that in a situation where you have two parties to a negotiation that are wholly funded by the taxpayer, they have a duty to collaborate rather than to compete with each other. That is the fundamental issue in the report.

[7] This is one of the most complex projects that the Wales Audit Office and I, in 16 years of public audit, have looked at. It is extremely complicated. The basic point is that the report is about two sets of public bodies working together to achieve something that would have been a win-win situation, but somehow failing to achieve that happy result. That is the essence of the story.

[8] As for the future, there is some prospect of a defence training academy on the site, so the physical infrastructure is not necessarily a complete waste of money, but we have not audited anything to do with the future—we do not normally audit the future, although it has been done—and that is not part of this report, which is, essentially, backward looking. The detail is complicated, but it is also important, so I will ask my colleague Mark Jeffs to summarise some of the more detailed points.

[9] **Mr Jeffs:** I will talk you through the summary of our report, which sets out our key conclusions. There are five conclusions and, if you are going to follow along, I will start with the last conclusion to explain the present situation and the outcomes that have been achieved. I will then go through the other four in the proper order. They explain the issues that we found, particularly on joint working.

[10] As Jeremy explained, neither the Ministry of Defence nor the Welsh authorities have secured the benefits that they intended to get from the Red Dragon project. The Ministry of Defence has not made the £263 million in efficiency savings that it intended to make from the project, and the Welsh authorities did not safeguard the Defence Aviation Repair Agency jobs that they wanted to safeguard as a result of their involvement in the project. As a result of the decisions on the fast jet repairing and uncertainty at the site, progress has been slow on the aerospace park and just four companies are located there, with 45 jobs. The net cost to the taxpayer of the Red Dragon project is around £113 million, which takes account of £57 million in efficiency savings that the Ministry of Defence made during its involvement in the project, prior to its termination. The Welsh authorities have spent around £34.5 million. It is important to note that most of that has been spent on assets, that is, on property, and on improving those assets, and that includes most of the £12 million that the Welsh authorities paid to the Ministry of Defence for the land at RAF St Athan and as a contribution to acquiring the airfield and its assets. It includes around £5 million spent on land and properties around the St Athan site in anticipation of further development and it also includes £7 million recently spent upgrading the runway at St Athan so that it meets Civil Aviation Authority standards. At present, the Assembly Government expenditure is less than the estimated market value of the site, which is around £44 million.

[11] Going forward, it is important to note, more positively, that the Welsh authorities and the Ministry of Defence have collaborated, and are continuing to do so, to secure a viable future for the St Athan site. Both expect to get significant economic benefits from the defence training academy and a smaller than originally anticipated aerospace park that will run alongside it. Based on estimates, as many as 5,500 jobs could be created as a result of the new defence training academy, although many of those will be filled by people who are relocating from other parts of the UK. The Welsh authorities also anticipate that the smaller than originally planned aerospace park could create as many as 2,000 further jobs.

[12] To return to our conclusions on the decision-making process and the joint working, our first conclusion is that there was no common purpose for the Red Dragon project. Both parties saw the transaction as essentially commercial in nature and had their own objectives going into it. The Welsh authorities wanted to safeguard the DARA jobs, because, at the time, there was a perceived threat that DARA could be lost to Wales with a consequent impact upon the aerospace industry in south Wales. They also wanted to secure the opportunity to create further jobs through the aerospace park. The Ministry of Defence wanted more efficient fast jet repair. At the outset, those objectives were complementary, because building a superhangar in the Red Dragon project was seen as the best way to deliver the objectives of both parties, but those objectives were complementary only as long as the MOD continued to see DARA as its best option for military fast jet repair.

9.40 a.m.

[13] Our second conclusion, which links to the first, is that the MOD and the Welsh authorities did not have a shared understanding about the assumptions that underpinned their respective decisions on the Red Dragon project. Both parties produced their own detailed business cases and investment appraisals for their own elements of the project, and each separate case was reasonable on its own grounds. For example, the Welsh authorities' plans clearly identified the benefits that they wanted to get out of safeguarding the DARA jobs, in creating more jobs and protecting the aerospace industry. They had commissioned economic appraisals and market assessments showing that the project could be viable and could generate a positive financial return. They were also generally alert to the main risks, although, as we will come to, it would be fair to say that they underestimated the risks of some of the events around DARA actually transpiring. They also identified, because most of their spending would be on land and assets at market value, that their financial exposure would be relatively limited because they could potentially use those assets for other development purposes.

[14] Although the plans were reasonable in their own right and on their own basis, they were not joined up, and there were two key areas in which the assumptions were not shared. The first assumption was that the Welsh authorities' plans for St Athan revolved around DARA as an anchor tenant, and they expected DARA to undertake both military and civil repair work, but the Ministry of Defence's investment appraisal for the superhangar and the Red Dragon project made no reference to DARA undertaking civil work. The Welsh authorities did not have access to DARA's business plans on the grounds of commercial confidentiality, so they could not assess for themselves whether DARA was well placed to undertake such work and so relied on the design of the superhangar, which showed that it could accommodate civil aircraft for repair as well as military aircraft.

[15] The Welsh authorities also made assumptions on MOD's longer-term financial commitment to DARA and to the St Athan site. They thought that, because of the scale of MOD's financial investment in constructing the superhangar, once the Red Dragon project was approved, the MOD would be committed for the longer term. They were not aware that the MOD's own calculations had shown that it would make such significant efficiency savings through the Red Dragon project that it could pull out of the project at year 5 without financial loss. So, the Welsh authorities signed up to a break clause in the lease with the Ministry of Defence that would allow them to exit the project at year 5, and the Welsh authorities thought it highly unlikely that the MOD would do so. That was mainly because of their assumptions about the MOD's financial exposure and so their commitment to the project, but they also relied on oral assurances from MOD officials and, to some extent, from Treasury officials. They also looked to the approval of the project by the Minister for the armed forces as evidence of the MOD's longer-term commitment to DARA and to the St Athan site.

[16] Our third conclusion is that the MOD's vision for defence aircraft support was evolving when its commitment to St Athan was made, which means that, in the background of the decision-making process on Red Dragon, there was uncertainty about the level of repair work that would go to DARA. Its guaranteed order book with the Ministry of Defence ended in March 2004, and the MOD had not decided how much of its future work would go to DARA, how much would go to the front-line bases, and how much would be put out to industry. Nevertheless, DARA had assumed that it would win all its previous MOD work and secure new military repair contracts. Around that time, the MOD had commissioned a review of logistics support, including aircraft repair, which was known as the end-to-end review. That looked at logistics support from the factory to the front line and at ways of making that whole process more efficient. That review was still going on when the MOD made its commitment to the Red Dragon project.

[17] In its decision making, the MOD had two difficult roles to play in respect of DARA. On the one hand, it was the owner of DARA that had the imperative to protect DARA's business and do what was right for DARA, but, on the other, it was also DARA's main customer procuring aircraft repair from DARA. We found that, in its decision making, the MOD found it difficult to reconcile those two roles.

[18] Our fourth conclusion is about the decision to end fast jet repair work at St Athan and the immediate aftermath. Ultimately, the end-to-end review led to the closure of DARA's fast jet business at St Athan. The MOD's decision was based on the prospects of greater savings for defence. In essence, although it could make savings through the Red Dragon project, it identified an alternative means through which it could make even greater savings, and so it decided to pursue that. A separate report by the National Audit Office has shown that the MOD had separately made around £1.4 billion in efficiency savings from its wider transformation fast jet repair.

[19] Nevertheless, the Welsh authorities were not told about the impact of the decisions on DARA as early as they might have been. The MOD told the Welsh authorities that the end-to-end review could mean that fast jet repair would be rationalised and would be done either at the front line or at DARA in St Athan. However, it was not as clear as it could have been that, even if the work remained at DARA St Athan, there would be a significant reduction in the civilian workforce, because much of the repair in future would be carried out by RAF personnel instead of civil workers.

[20] Once the MOD had completed its end-to-end review and decided to transfer fast jet repair away from St Athan, it informed the Welsh authorities. As the report explains, the Welsh authorities were vocal in their opposition to that and tried to influence the MOD to change its decision. However, once it transpired that that was not going to happen, the MOD and the Welsh authorities set up joint project groups to look for ways of securing a future for the site. However, the decisions on fast jet repair severely disrupted the plans that the Welsh authorities had for the site.

[21] Since those decisions were made, progress at the site has been slow. One company came and left after 18 months. There are four companies on site at present. There has been ongoing uncertainty about the future use of the site and the facilities that would be available for the aerospace park. In particular, there was uncertainty while the Welsh authorities were waiting for a decision on the defence training academy, and, once that decision was made, there was uncertainty around exactly which parts of the site would be used for the defence training academy, which parts would be available for the aerospace park, and which could be let to industry. I understand that there is now more certainty on that and a planning application is being dealt with at the moment. That brings us to the position that I outlined at the beginning: the plans for the defence training academy going forward and for a smaller than originally intended aerospace park.

[22] **Jonathan Morgan:** Thank you very much. Before I open it up to Members, I want to ask a question. Looking at the timeline and at the September 2004 announcement that the MOD wanted to change its mind, in essence, about the repair of fast jets based on the efficiency savings that it could get elsewhere, at what point before then did it become pretty apparent that this was going to happen—or was it an almighty shock? Were there communications?

[23] **Mr Colman:** When did it become apparent in Wales, do you mean?

[24] **Jonathan Morgan:** Yes.

[25] **Mr Jeffs:** The report mentions that the Welsh authorities were informed around

August 2004, so they were given notice in advance of the announcement. However, as the report says, they registered their concern at being told at a point at which they perceived that the decision had already been made.

[26] **Jonathan Morgan:** So, from what you can tell, before August 2004, at no other point were there any conversations between officials or Ministers indicating that this was going to happen.

[27] **Mr Jeffs:** You would have to check thoroughly with them, but I think that they were aware that the end-to-end review was ongoing and there had been discussions that this was in the background. However, it was the extent of the impact of the end-to-end review and the finality of its impact on DARA that was quite new in August 2004. There were options under consideration but I do not think that the Welsh authorities had fully perceived that it could mean the end for DARA.

[28] **Lorraine Barrett:** Mark, you said something about the Welsh authorities not having access to DARA's business plan. I think that I know the answer to this question, but would they have had access, or would they have insisted on access to a business plan had it been a private company that was looking for investment? If the Welsh authorities were told, 'We need £34 million to set up a private company that will bring new jobs to Wales', I am sure that the Welsh authorities would have asked to see a business plan. I just need to know that.

9.50 a.m.

[29] Following on from that, could the Welsh authorities have compelled DARA to show them the business plan? Is there something to do with the protection of DARA or the fact that it is an MOD facility that means that it does not have to show a business plan? It seems a bit bizarre that they could not or did not get access to the business plan.

[30] **Mr Colman:** Since we published the report, a number of senior officials have complained to me that it is very unfair, because it seems to apportion blame equally between the Ministry of Defence and the Welsh authorities; whereas, in the view of senior officials in Wales, the MOD was wholly and completely to blame for everything that might be perceived to have gone wrong. Frankly, I do not like using the word 'blame' and you will never find the word 'blame' in our reports. However, if you can criticise the Welsh authorities, it is for taking this deal on the MOD's terms. The MOD saw it as an arm's-length commercial negotiation, which is its habitual way of dealing with everyone that it is not firing bullets at. [*Laughter.*] Indeed, that is how the MOD is run internally.

[31] The reason the conclusion is, in a way, critical of both sides of this transaction is that both the UK Comptroller and Auditor General and I think that both sides approached it from entirely the wrong point of view. The right way to approach it would have been to say, 'Here is a joint activity from which we can both benefit; let us put all our information together and see how to make the most of it'. That just did not happen, so the questions that you have asked, which are perfectly reasonable if one is approaching this as a joint project, would have been seen as completely unreasonable, given the habitual approach of the MOD, which the Welsh authorities simply went along with. In other words, it was treated purely as a commercial negotiation. Of course, another factor that you have to bear in mind is that £100 million seems like an awful lot of money to us, but it is small change to the Ministry of Defence. So, the Welsh authorities took undue comfort from the degree of financial commitment that they saw the MOD making.

[32] **Mr Jeffs:** On the specific questions about the business plan and whether the MOD was compelled to show it, because this was done largely on a commercial basis—that is, the Welsh authorities were not giving a grant or money directly to DARA but buying land from



the MOD to enable it to rationalise itself on the site—it is important to remember that, as part of a commercial negotiation, their leverage to demand things from DARA was not particularly strong.

[33] **Janet Ryder:** I want to clarify whom you are talking about when you say ‘the Welsh authorities’. Are you talking about local authorities or does it include WAG?

[34] **Mr Jeffs:** It was the Assembly Government and the former Welsh Development Agency.

[35] **Janet Ryder:** So, can we assume that, even at a ministerial level, there was not this level of communication, or did you not look at that aspect?

[36] **Mr Jeffs:** The report mentions that there were communications between Ministers in Wales and in London.

[37] **Janet Ryder:** To what extent could Ministers in Wales have verified with the Ministry of Defence its future plans? Was there a role for Ministers in Wales to ensure that a big investment such as this was a joint venture and not developed, as it would seem from what you are saying, as two more or less separate cases?

[38] **Mr Colman:** I think that there was a role for a lot of people to do that. Ministers here were engaged in it, as were officials here, but, from what we have seen, nobody thought of the project in those terms.

[39] **Janet Ryder:** So, are you saying that no-one thought of this as a joint venture or that no-one thought that you could not take the Ministry of Defence at its word?

[40] **Mr Colman:** No-one thought of this as a joint venture. As you are aware, when we are producing reports, we clear them with the audited bodies to ensure that the facts are straight. The National Audit Office has a slightly different process, by which it seeks to agree the report word for word. The most difficult issue was on that exact point: was this a joint venture or was it not? The Ministry of Defence says that it simply was not. So, it is very hard to predict what the outcome would have been had anyone in Wales made a big issue of it and said ‘Let’s look at this as a joint venture’. The Ministry of Defence may well have just said, ‘Well it just isn’t’. My view and the Comptroller and Auditor General’s view is that it jolly well should have been seen as a joint venture, but no-one thought like that at the time.

[41] **Jonathan Morgan:** Have you finished your questions, Janet?

[42] **Janet Ryder:** Yes, but I might come back on that later.

[43] **Jonathan Morgan:** Mick Bates is next.

[44] **Mick Bates:** Thank you for the opening remarks. In the past, when the operations of the Assembly first impacted on what was happening in Westminster, there were things called memoranda of understanding—that has produced a big smile from the auditor general. Can you put in context why there were not any memoranda of understanding that would apply to this type of operation? That is notwithstanding the fact that, from the MOD’s view, it was purely commercial. The actual operation of joint working was not well understood. In March 2003, I think, there was a composite agreement. What was contained in that composite agreement and what was the legal position, if any, that that placed on joint working between the MOD and the Welsh authorities?

[45] **Mr Jeffs:** The composite agreement had a section about joint working and, as we say

in the report, with regard to joint working on the ground, there are generally lots of good examples of officials working together well. It is a complex site at St Athan; lots of things had to be moved around, lots of projects had to be set up to move parts of the RAF from one building to another, to move the army out and to make things available for development work. The composite agreement set out those arrangements for joint working on the ground. The big concern is how much of a joint project it was at a higher level—it fundamentally was not a joint project at the start.

[46] **Mick Bates:** Did no-one say, 'In the past, we worked out memoranda of understanding about operations at ministerial level'? Did no-one even think of following what was once the common practice of writing these memoranda of understanding?

[47] **Mr Jeffs:** No.

[48] **Mick Bates:** In commercial terms, one would write a heads of agreement between companies. Was there a heads of agreement that would take care of any co-operation on the commercial side?

[49] **Mr Jeffs:** Yes, there were heads of terms on the negotiations that went on to become the composite agreements, so there were formal arrangements between the parties.

[50] **Mick Bates:** At what stage would the Minister have seen that or been advised by officials as to whether or not this appraisal was robust enough to take the whole project forward?

[51] **Mr Jeffs:** I think that it was in early 2003 that the projects on both sides were given ministerial approval, but, as I said, the appraisals were very much based on each individual body's assessment of the benefits of the project to itself primarily, and they were presented in their own terms rather than as a whole project.

[52] **Mr Colman:** As it turned out, they were making inconsistent assumptions. So, if one had done an investment appraisal for the whole project, that would have been drawn out. The Treasury's very long-standing guidance on investment appraisals, dating back decades, would have said that you ignore organisational boundaries and do an investment appraisal from the point of view of the taxpayer first, and that would have driven common assumptions throughout. It would then have been up to each individual party, the Ministry of Defence and the Welsh authorities respectively, to do their own appraisals of what it meant for them.

[53] **Mick Bates:** So all of what you term 'the Welsh authorities', namely the local authorities—

[54] **Mr Colman:** 'Welsh authorities' is a technical term in this report, to save us saying 'the Welsh Assembly Government and the then Welsh Development Agency'. We are not talking about local authorities at all.

[55] **Mick Bates:** Okay. The question still applies: of the ministerial officials, who undertook the appraisal at this stage? Was it WDA officials?

[56] **Mr Jeffs:** Yes. The WDA did an appraisal, which went to its board and, because of the novel nature of the project, it went up to the Assembly Government for approval. The Government did some further assessment of its own.

[57] **Mick Bates:** Did anyone identify a possible problem that this was purely commercial and that there was no co-operation with ministerial officials?

10.00 a.m.

[58] **Mr Jeffs:** Not that I am aware of. We are not saying that there was no co-operation. There was co-operation on the ground, and they were negotiating with each other.

[59] **Jonathan Morgan:** Am I right in thinking that concerns were also raised by the chief of defence logistics as to the viability of the project? I am trying to find it in the report; I made a note of it and I have lost it. Before the decision by the MOD and the ministerial decisions in Westminster were made, a level of concern was raised by the chief of defence logistics as to the long-term viability of the repairs service.

[60] **Mr Colman:** At one point in the project, when I was learning about it, I thought that the problem at the Ministry of Defence end—and it is a problem that is not unknown at the Ministry of Defence—was that one bit of the MOD did not know what another bit was doing. That was not so in this case. The most senior levels in the MOD were aware that both these activities were going on: the end-to-end review and the negotiations about St Athan. They were aware that there was interplay between the two. They pursued that and kept both projects live until they were in a position to decide what they wanted to do in the long term, which was to withdraw from the Red Dragon project. So, from the Ministry of Defence's point of view—if I slightly exceed my powers in commenting on what it does—that was perfectly rational. Likewise, the Welsh authorities carried out an investment appraisal, which was the sort of investment appraisal that they generally undertake. Although I said a few moments ago that the Treasury's guidance is that investment appraisals for public projects should be done on a taxpayer basis—that has been the Treasury's point of view for as long as I can remember; it goes back quite a long time—in practice, it is incredibly difficult to get bodies to do that. So, it is not surprising that the MOD did its investment appraisal and that the Welsh authorities did their own investment appraisal. We have no particular criticism of the investment appraisal itself. The problem was that the assumptions were inconsistent between the two appraisals.

[61] **Jonathan Morgan:** The point in the report, which I have just located, refers to the non-devolved bit, although it does refer, on page 27, to the chief of defence logistics raising concerns about the project because of inconsistencies between DARA's aspirations and the direction taken in some of the MOD's work with industry. It then goes on to say that:

[62] 'the Chief of Defence Logistics was apprehensive about presuming that this level of work would continue when the Royal Air Force was adapting to new military planning scenarios and having to become more flexible'.

[63] Clearly, that concern was being raised within the MOD well before the announcement in September 2004. I am curious—I do not know whether you were able to ascertain this with officials in the Assembly Government—as to whether they were aware of the view of the chief of defence logistics.

[64] **Mr Jeffs:** I am not sure whether they were aware of those particular concerns. Those are part of the background that I mentioned earlier regarding the uncertainty over DARA during that process. The Welsh authorities were certainly aware that alternatives to DARA were being suggested within the MOD, and part of their reason for getting involved in the Red Dragon project was that they thought that, once the MOD had committed to the superhangar, it was committed to it over the long term. So, in supporting DARA, they were winning the argument against those within the MOD who were proposing alternatives.

[65] **Bethan Jenkins:** Obviously, you have not been able to audit the future, but one part of the report mentions the current situation with regard to St Athan. I want to put that in its context, because the *raison d'être* of the Welsh authorities was to try to secure those 1,900

jobs at DARA, which did not prove to be successful. However, the report says that it has not 'examined in detail the economic impact', but that there may be benefits. Could you expand on the plans—you said that they were more certain—in relation to the training academy, and on the part of the report that says that, if those options do not prove to be successful, the land could be sold, which could be beneficial to the Government. I think that it is relevant. Is there potential for the same mistakes to be made again in looking for the projects to be developed? How does one learn from that? That is the context in which I am asking that question.

[66] **Mr Jeffs:** I certainly think that there are lessons to learn now about recommendations, specifically around the joint working. We hope that the Assembly Government will take those on board in the current relationship that it has with the MOD over the defence training.

[67] In relation to the greater certainty, there has been a long process of discussion about exactly how the site can be configured. I understand that there is now some agreement between the MOD and the Welsh authorities about which part of the site can be used for the aerospace part. It matters, because which parts, how much of the site and how many companies can be located there impacts on the viability of the site, how many jobs they can get and how much revenue they can generate. I understand that that is now pretty much settled and is going through the planning processes.

[68] With regard to the jobs, I understand from the consortium that is developing it that those were the estimates given at the time. We have not audited the likelihood of those jobs coming along. That has been outwith the remit of our report. We reported that just to report the current situation in a factual sense. I am not sure that we can add much on how robust those estimates are and how robust the economic appraisals are with regard to its impact. It may be something that you wish to ask the Assembly.

[69] **Mr Colman:** As Mark said earlier, the Welsh authorities decided that, if they were spending money predominantly on acquiring assets at market value, their financial risk was limited, which is true. However, the market value for land assets with some restrictions on use, which is what this site has, in a part of Wales with not the best possible communications, might not be the same as the market value in practice when you come to sell. It might be more, it might be less. Who knows? So, there is some financial risk. I said that we have not audited the future, which is why it would be very nice to say that, although the original Red Dragon project did not come about, all is not lost because we have this wonderful site with wonderful prospects for the defence training academy. That might even be true, but we are not in a position to say whether or not it will happen. It looks extremely promising, but many a slip. We hope that there is not a slip.

[70] **Lesley Griffiths:** Mark, I would like to take you back to something that you said in your opening remarks. The Welsh authorities' belief in the MOD's commitment seems to have been taken at face value, but you said in your opening remarks that they did not realise that the MOD could pull out of the project at year five.

[71] **Mr Jeffs:** Without financial loss, yes. They knew that it could pull out of the project in year five, because it had negotiated a break clause and there is a complex legal document, the details of which I will not bore you with. However, it is true that their assumption was that, if the MOD is spending all of this money on a superhangar, why would it even contemplate leaving after that amount of time. They had contemplated the possibility and realised that, if that did happen, of all the agencies involved, they would probably be the best placed to make good use of the facility by way of economic benefits for Wales. However, their underlying assumption was that, as the Ministry of Defence was spending around £100 million in this thing, why would it abandon it after five years, not realising that the MOD's own figures showed that it would save enough over those five years to make it worth doing

and abandoning.

[72] **Lesley Griffiths:** As Jeremy said, £100 million is very little to the MOD.

[73] **Jonathan Morgan:** Are there any further questions to the auditor general or to Mark?

[74] **Janet Ryder:** With regard to the break clause, did you find any evidence that concerns were raised about that break clause being put in? If you did not find any concerns being raised at that point, did you find any evidence that, perhaps, at a ministerial level, assurances were being sought that that break clause would not be enacted?

[75] **Mr Jeffs:** I would not say that there were no concerns about that break clause. I think that it would be fair to say that the Welsh authorities would have preferred not to have had it and would have preferred to have a full 15-year lease on the superhangar. However, they understood that, within the Ministry of Defence was concerned about its financial exposure, just committing to the project over a 15-year period and committing to not changing how it repaired aircrafts

10.10 a.m.

[76] It wanted some flexibility, which was understood and the break clause was negotiated on the basis of shared profits at the end and on the basis of the market value. So, I think that it would be fair to say that that was the case. The MoD would tell you that ideally it would not have included a break clause at all, but that it negotiated to try to mitigate some of the risks around it. Advice on the break clause, as it says in the report, went to the Minister. In those negotiations, as we say, with MoD officials, assurance was given that, although there was a break clause at five years, the MoD was committed to DARA in the longer term.

[77] **Janet Ryder:** So, on top of the break clause, when the WDA did the initial work, due to the size of the contract it was referred to ministerial level for further investigation—

[78] **Mr Jeffs:** We have not specifically looked at what Ministers did.

[79] **Janet Ryder:** You have not looked at the governmental involvement in this.

[80] **Mr Jeffs:** We know that the advice was provided, setting out the benefits, risks and the nature of the break clause and that that was then passed on to the Minister.

[81] **Jonathan Morgan:** Are there any further questions? I see that there are not. We will defer our decision on how to handle the report until later.

10.11 a.m.

**Cydymffurfio â Chyfarwyddeb Oriau Gwaith Ewrop ar gyfer Meddygon Iau ar draws GIG Cymru: Briff gan Archwilydd Cyffredinol Cymru  
Compliance with the European Working Time Directive for Junior Doctors across NHS Wales: Briefing from the Auditor General for Wales**

[82] **Jonathan Morgan:** We now move on to item 3 on the agenda. This report was published, as you will recall, on 19 March and deals with quite a complicated area. The auditor general will first brief the committee and then Members can raise questions with him before we defer this item until later to decide on a course of action.

[83] **Mr Colman:** Although you say that this is a complicated issue, it is dramatically less

complicated than the one that we have just discussed. On one level, this is extremely simple. Since 1998, NHS bodies have been required to comply with most of the provisions of the European working time directive. That is the law and the report is on whether NHS bodies are likely to comply with the requirements by August 2009 to limit the work of junior doctors to 48 hours a week. It is a very simple question that requires a 'yes' or 'no' answer. Our answer, in informal language, rather than the formal language of the report, is that it seems unlikely that the NHS in Wales will completely comply with that legal requirement.

[84] There has been a certain amount of publicity about the rights and wrongs of a time limit for junior doctors, with various authorities claiming that the limit of 48 hours will adversely affect the training of junior doctors and so on. Those policy issues are not for us to examine. From our point of view, this is straightforward: the law says that the limit is x, therefore will they comply with the law? In that sense, this is quite a narrow issue.

[85] This report focuses specifically on junior doctors, so it does not look into compliance with the directive across other staff groups nor did we look at the wider provisions of the directive relating to rest breaks, for example. We looked at the planning of NHS trusts to achieve the deadline. This has been phased in over a period of years. No-one can say that there has not been a lot of notice of this requirement, so you would expect NHS trusts to have good plans in place for achieving the requirement. Apart from the fact that it is a legal obligation, failure to comply puts NHS bodies at risk of legal action or intervention by the Health and Safety Executive, or even prosecution of not just the trust, but of the chief executive. Failure to observe the directive can also put trusts at risk of claims of clinical negligence because they had employed doctors who were overtired by working too long. If junior doctors have been working very long hours, which used to be the case, and are moving to a period in which they do not work long hours, there will be an impact on services. That is precisely why a very long period was allowed to phase it in, to be able to find new ways of working that do not rely on junior doctors working long hours. The NHS is not in a position to simply spend money employing more doctors, so new ways of working are required. In other words, to achieve compliance, NHS bodies will have had to do a lot, such as modernising the workforce, introducing new roles and new ways of working, improving their rota management and undertaking service reconfiguration. So, they had a lot to do and they had quite a long time to do it in. We said that compliance is unlikely to be achieved by the August deadline, without there being a substantial investment of effort and money and, in all probability, some kind of temporary extension of the deadline. That was our general conclusion. My colleague, Matthew Mortlock, will now give you some more detail.

[86] **Mr Mortlock:** It is worth saying at the start that what we did as part of our work on this audit was to visit all of the NHS trusts in Wales that employ junior doctors—that is, everywhere except the Welsh Ambulance Services NHS Trust. We also paid a brief visit to Powys Local Health Board, although it has only a very small number of junior doctor posts. I hope that the report is quite straightforward—that is my judgment of it. I think that it is quite straightforward, in that it is in three parts. Part 1 summarises the position that we had found from our local audit work, which took place in the first half of 2008. Part 2 begins to look forward, so there is a bit of auditing the future there. It looks ahead, drawing on an Assembly Government internal document that provided estimates of likely compliance by August 2009, which was a document that was shared with the Department of Health to inform a UK-wide position. Part 3 briefly reflects on the potential derogation extension of the deadline for the UK as a whole, or for certain specialties I should say, and what that would mean—I will come back to that in due course.

[87] Part 1 is the meat of the report. Taking Jeremy's point that trusts have had a long time to prepare for this, you might feel that the conclusion of part 1 is therefore relatively negative, in that we found that despite there being some progress, trusts had not really made adequate preparation as of July 2008 in order to be in a position to be compliant by August 2009. On

that point, it is worth saying—although how strongly this point was emphasised is difficult to say—that Assembly Government documents prior to that point in time had encouraged trusts to look to try to comply with the 48-hour limit by August 2008, thereby allowing them a little bit of leeway in testing options, working out what they could do if the things that they wanted to do did not work in practice or had other negative implications, as Jeremy said they might, for doctors' training time and service delivery. If you were to ask the question, 'Have you been looking towards an August 2008 deadline for the delivery of your plans?', I think that the answer would generally be a resounding, 'No'. As we say, in fact, there was a lack of adequate preparation at that point in time, in looking ahead to August 2009.

[88] What do we mean by a lack of preparation? We mean a lack of robust, clear action planning on the ground. Certainly, in a number of trusts, there has been a bit of confusion over exactly who was responsible for this and where the lead lay—was it a HR issue or a medical issue to be driven by the medical director? We wanted to know what kind of internal profile this had had in the performance management arrangements and scrutiny within those organisations. There is certainly scope for improvement in all those areas.

[89] In July, the position was that 47 per cent of junior doctors—less than half—were reported to be working less than 48 hours a week. I say 'reported' and will also come back to that in due course. I should say that Velindre NHS Trust and Powys Local Health Board were already reporting 100 per cent compliance. Powys, as I said, has only a small number of posts, and Velindre is a very different beast in relation to this particular issue and ways of working generally. So, the scenario in those two trusts cannot be taken as being typical of the NHS as a whole.

10.20 a.m.

[90] Elsewhere, there is significant variation in the position of trusts. If you look at figure 2 on page 10, it ranges between 31 per cent and 73 per cent reported compliance. We reported those figures based on the newly merged trusts following the mergers in April or July of last year. Those aggregated figures also hid significant differences in the legacy positions of those merging organisations. In a sense, that might be a good thing—there might have been good practice from the legacy organisations for the new body to learn from in taking things forward.

[91] So, there was a lack of planning and a variation in the position at that time. There have been some changes—I will not pretend that trusts have not been doing things to comply. Jeremy mentioned the days when junior doctors worked even longer hours, but, by and large—with a few exceptions that are noted in the report—trusts were already compliant at that point with the requirement to achieve a 56-hour working limit. It is only fair that we recognise that that in itself is an achievement with regard to where the NHS has moved from, which has had its own implication and has involved changes along the way. Nevertheless, our look was still ahead to the new 48-hour limit.

[92] So, trusts have been doing things, but we are essentially saying that progress has not been quick enough and that planning has not been robust enough. In certain areas—Jeremy mentioned service reconfiguration as one of the solutions—there was an awareness within the Assembly Government that that was a longer term agenda that extends up to and beyond the August 2009 deadline, but there was some uncertainty about future service reconfiguration and reorganisation that had an impact on decision-making, and enabling trusts to move ahead with certain plans that they might have had.

[93] We talk about partnership working in the Red Dragon project section of the report, looking at joint working between trusts, health boards and the Assembly Government. More work needed to be done in the year since then on working together to agree what needed to be

done to support compliance. Some within the NHS expressed a degree of disappointment with the level of support available from the Assembly Government. We have set out in the report the staffing provision around this. The Assembly Government has also emphasised that there is a lot of good practice and a lot of work going on at the Department of Health level for the NHS in Wales to draw upon, so there is an argument that there is only so much that the Assembly Government needed to do that would not have duplicated work already going on more nationally. So, there is a role for the Assembly Government to engage at a national level in supporting that work.

[94] With regard to financial support, there were local health board allocations to be passed on to trusts dating back to before the initial 58-hour limit was introduced. We have not focused on where exactly that money went, but my gut feeling is that it was difficult to see whether the money that was built into those allocations was specifically targeted at EWTD compliance issues. If it was, although that has effectively been consolidated since that time, it may have been targeted at measures to achieve the reductions to 58 hours and 56 hours. However, that has now effectively been used and consolidated in that position—no new moneys have been announced for moving towards the 48-hour target. That is in contrast to recent announcements in England from the Department of Health and new money pumped into the system there.

[95] The other slightly disappointing area was a taskforce called the ‘safer taskforce’ that brought together various parties with an interest in achieving compliance with a directive, and the knock-on impacts of that for professional service delivery and professional training. That group had not been meeting regularly through the course of our work, which is perhaps surprising, as you would expect it to meet more regularly to try to meet the challenges ahead. So, that is a source of disappointment to us.

[96] Looking ahead in part 2, I mention that the Assembly Government had prepared a state of readiness paper to be passed on to the Department of Health. That paper, which we also had an opportunity to look at, estimated that 88 per cent of junior doctors would work 48 hours or less by August 2009. That estimate was based on plans discussed with and submitted by trusts since July 2008, so since the point that we report upon in part 1. Certain specialities will have particular challenges in meeting that deadline, in particular, surgery, obstetrics and gynaecology, paediatrics and anaesthetics. The basis of that 88 per cent estimate was not entirely complete, in that one trust had not submitted its full action plan at that point. So, you might say that that estimate already suggested that they would not be fully compliant and recognised the challenge ahead.

[97] We took the view that even that figure of 88 per cent was optimistic, because it relied upon trusts delivering the plans that they had put forward and there was no guarantee that that would be as easy as you might expect for a number of reasons, which we set out. The first was that where those plans were reliant on extra funding or funding for extra staff, who was to say that that funding would become available, given the wider financial climate? If there was a reliance on recruiting extra junior doctors, who was to say that they would be able to recruit those people? There were some live concerns in the system at that point regarding future recruitment, stemming, to a degree, from changes in immigration rules that affected junior doctor supply. Also, we found that there had already been some staff resistance to previous measures that the trusts had tried to introduce, and there was no reason to expect that staff would happily accept everything that the management was trying to do to achieve the deadline. In addition, there was something that I alluded to earlier, which is that even if trusts were reporting that junior doctors were working to a set working pattern, that was not necessarily what happened on the ground. That may be inevitable in some cases, but there is an onus on trusts to identify whether that is happening and to provide compensatory rest, where appropriate. There was also a feeling that many trusts might aim to just comply with the directive, so you might have junior doctors working, to take it to the extreme, 47 hours



and 59 minutes a week on average, over 26 weeks, leaving absolutely no leeway for circumstances that would put extra pressure on working time in the service, and, as we know, you cannot predict with any certainty the level of pressure in the NHS. That was our analysis of the Assembly Government's estimate and that was our take on the likelihood of compliance by August.

[98] That paper went forward to the UK Government, and, as we explain in part 3, on the basis of an analysis of the position across the UK, the Department of Health published notification of its intention to seek an exemption from the directive—a derogation—for up to three years through to August 2012. We say in the report that that was subject to approval by the European Commission, and we mention in the report that the European Commission was due to respond at the start of May. I understand that we have not yet heard a 'yea' or 'nay' on the derogation. Even if that derogation is approved, which is by no means guaranteed, trusts still have to reduce working times to 52 hours, and to be eligible for the derogation, which will apply in some super-specialist areas or in certain remote areas, employers must demonstrate that they have done absolutely everything possible to comply. The Assembly Government has indicated that there will be a robust process to assess the evidence of that. Even if the derogation exists, which is not guaranteed, there is no guarantee that, where trusts identify that they would like to take advantage of that, the Assembly Government will agree to it.

[99] That is the analysis of the report. You will note that it is a little different, in that we have not made specific recommendations in the report. We produce reports ourselves locally on individual NHS trusts, with the exception of Velindre and Powys, taking account of the position they have already reached. Those reports make their own recommendations, which are principally designed to drive forward the process and emphasise the importance of getting into gear and ramping up the action plan and performance management on this issue, ahead of August 2009.

10.30 a.m.

[100] We set out in the report that, from the state-of-readiness paper, the Assembly Government itself had identified certain actions that it intended to take to support compliance. Those included the director of human resources for NHS Wales and the deputy chief medical officer who, I know, have been meeting with trust chief executives and medical directors to challenge them on the plans that they have been developing and putting in place to support compliance. I am not in position to update you on the extent to which those other actions have taken place, but that may be an issue that you will want to take up directly with the Assembly Government in due course.

[101] **Jonathan Morgan:** Thank you very much. Before I bring in Lorraine Barrett, I have a question for Matthew. When you were looking at the situation, you mentioned the difference in comparing the financial position in Wales to that in England and that there were specific amounts from the Department of Health to help organisations in England to meet the European working time directive. You said in your presentation that local health boards made specific allocations to trusts to help them to comply with 58 hours, but that you could not identify anything else beyond that. One issue that is consistently raised with me by the British Medical Association—and I think that it was alluded to in this report—is the threat and the potential problem of junior doctor vacancies. Accepting that your brief is confined purely to the boundaries of our country and does not extend into England, how much of that, as an issue, has been tackled by the Department of Health in England, compared to that tackled by us here? I would imagine that the potential junior doctor vacancies have a significant impact on the ability of trusts to meet the European working time directive. Is that something that has been tackled elsewhere, but we do not know, or we cannot see, whether it has been tackled here?

[102] **Mr Mortlock:** By way of explanation, the bottom-up nature of this report, feeding up from local audit work, inevitably means that in presenting these findings and the analysis in this report, we have not necessarily looked, as we might do, approaching it from a different angle, in as much detail at the national level implications. We have not, for example, talked directly to the Department of Health about this issue in producing this report. However, I think that you are right in saying that the issue of junior doctor supply is not an issue that the Welsh Assembly Government can influence by itself. It is a national issue, and it needs to be tackled at a national level with all parties involved. The Assembly Government clearly has a role to play in that process. We are not talking simply about a supply chain issue, if you like, for junior doctors that stops at Offa's Dyke and no-one crosses the border.

[103] **Jonathan Morgan:** Okay. Lorraine is next.

[104] **Lorraine Barrett:** This raises huge questions and we will be discussing later how we go forward with this. I have one easy question and then a few other points. With regard to the imposition of fines for each breach of the directive, does each time an individual doctor works over the hours constitute a breach? Would the fine have to be paid by the trust, the local health board or the Welsh Assembly Government?

[105] **Mr Mortlock:** On what qualifies as a breach, my understanding is that a breach is an employee working over the limit, being proven, effectively, to have been forced to work over that 48-hour limit. The European Commission has the power to impose those fines. It is not clear whether or not, and in what circumstances, it would choose to do so.

[106] On the payment, I think that we would have to clarify that for you. I think that the Health and Safety Executive, under the working time regulations, could probably impose fines directly on individual companies. My suspicion would be that the European Commission's power would be more about imposing fines at a Government level, but we would have to clarify that.

[107] **Lorraine Barrett:** I was just thinking of the logistics of this, and of each hospital keeping a school register, almost, whereby each time that a doctor works over the hours, he will tick the register. The logistics of the whole thing seems a little crazy. Matthew has covered, in his general comments, the questions that have come to me, thinking about a doctor's workload, how they work, and those pressures and emergencies. You cannot just walk out of a heart operation and say, 'My eight hours are up now, so I'm going and someone else will have to come in.' As a former nurse, I know that at times you would just stay on without thinking about it, because that was the nature of the job—you could not just walk out. Do you think, therefore, and you touched on this, that, within that 26-week period, they should aim for 40 hours to allow for emergency pressures? Have you, or should someone, come to a figure that will allow for that? Even then, each 26 weeks will not be exactly the same, because of the nature of the job. So, this would not be an easy situation even if everyone was working together positively. Can doctors work, and get paid for, overtime within the directive if they choose to do so? I have many more questions, but that is enough for now.

[108] **Mr Mortlock:** The UK Government agreed an opt-out of the directive whereby individual employees could work beyond 48 hours, if they wanted to. You might feel that that covers the scenario of voluntarily working overtime and so, technically, voluntarily opting out. However, legally, you would need something formal on paper stating that you had opted out of the directive. So there is perhaps a difference between ad hoc opting out, and a more formalised opt-out.

[109] For junior doctors, it is not quite as simple as their taking advantage of the opt-out.

They typically work in teams according to rotas and the British Medical Association has pointed that out. Consequently, an individual's wanting to opt out has a knock-on effect on the delivery of a team's work. Essentially, the ideal scenario would be where the whole team opted out and said that they were happy to work to a different pattern and signed up to it. However, junior doctors work on a rotational basis, so even if the current team has agreed to a particular work pattern, who is to say that the next team will also agree? You would not want to be in a position where, in one six-month period, one team is working one pattern and then you had to throw that up in the air in the next six-month period because the next team did not agree to work that same pattern and to opt out. So, although that clause is there, it is not simple for junior doctors to take advantage of it.

[110] **Lorraine Barrett:** Where does being on-call fit into all of this? Does being on-call count as working for the purposes of the 48-hour directive?

[111] **Mr Mortlock:** The on-call issue is even more complicated. There have been European rulings on the treatment of on-call. That has upped the ante for achieving compliance, because there was previously quite a lot of reliance on resident on-call. Resident on-call duties are now counted as working time, even if you are sleeping in a rest room or wherever it may be. Non-resident on-call duties are not treated as working time, but as soon as you are called upon to work, then you are, effectively, working. So, there is an issue there with monitoring activity during non-resident on-call time or when people are then called into the hospital. The on-call issue has been another topic of heated debate, with pressure on the Government to challenge those rulings.

[112] **Janet Ryder:** I understand that the terms and conditions of doctors are not devolved, so to what extent is there a split in responsibility between the Assembly and Westminster as regards what is retained at Westminster? Obviously the Assembly, as the health service in Wales is devolved, has to make the implications of this work in Wales. However, you have said that it is the UK that will have to negotiate with Europe on a UK level for any opportunity to extend this in any way. I know that you said that this report took a bottom-up, rather than a top-down, approach, but have you found any delay in the transfer of instructions from Westminster to the Assembly Government? Given that the Assembly Government, from an early stage—although it has had a long time to work on this—started to make directives available to the health service, it seemed to anticipate that it was working towards a compliance date of 2008; that did not materialise. So, how certain do you think that it can be that the trust will meet the August 2009 deadline?

10.40 a.m.

[113] **Mr Mortlock:** To answer a few of those points, there is obviously nothing stopping the Assembly itself from lobbying at a European level.

[114] **Janet Ryder:** Could Wales negotiate its own opt-out?

[115] **Mr Mortlock:** I do not think that it could negotiate its own opt-out, but it could support a case itself, independently, as well as in support of the UK Government. There is a bit of a tension here in that the onus is on individual employers. Ultimately, we are talking about employment law, and the onus is on employers—in this case, the trust—to comply with employment law. So, you could ask what role the Assembly Government has in this and to what extent. Is it the case that the onus is on trusts to say 'It is an employment law issue, and we have to comply with employment law, so we will take that baby and solve that problem'. I think that it would be naive to suggest that there is not a role for the Assembly Government in this, and you have pointed to the fact that there have been reports previously that have tried to emphasise and point out how trusts should be working on this.

[116] My feeling is that, to a degree, human nature might have meant that the attention of trusts that managed to get to the 56-hour limit in time, or, indeed, ahead of time in some cases, shifted elsewhere temporarily and perhaps attention has not been focused back on this to the extent that we would expect. So, a year in, trusts should have been refocusing. We do point out that some trusts had just begun to refocus their radar on this issue at that point, but, over the following 12 months, there was a lot for trusts, the Assembly Government and Government at a national level to do.

[117] **Janet Ryder:** Did you find that trusts felt that they had been given adequate support by Assembly Government officials in meeting these targets?

[118] **Mr Mortlock:** It is fair to say that there are mixed views. Some trusts raised concerns with us about the level of support available from the Assembly Government; others were generally happy with the support that they had received—or at least the people with whom we spoke were. So, there are different views. Equally, the Assembly Government has its own view on the level of support that it needed to give above and beyond the advice and guidance that was being developed at a UK level.

[119] **Janet Ryder:** Conversely, looking at it from the Assembly Government's point of view, to what extent was it waiting for the work that you have just referred to that was being done at the UK level? To what extent has it satisfied itself that the plans submitted by the trusts are workable and achievable?

[120] **Mr Mortlock:** The work at the UK level has been going on for many years. Really, ever since the directive was first announced, or rather since its coverage of junior doctors was first announced, its implications have been discussed and addressed at UK level. Therefore, I would certainly not want to suggest that nothing has been happening until the last year and then, all of a sudden, there was a rush for action.

[121] **Janet Ryder:** Was that being done in the Assembly Government from year 1 as well?

[122] **Mr Mortlock:** As I said, we have not looked back into the mists of time at the action taken by the Assembly Government year on year. However, the support for some of the roles created within the Assembly Government in this area has been there since April 2004 certainly. So, it is not the case that those roles have been created only in the past 12 months; a resource has been committed.

[123] **Janet Ryder:** That is six years on from when the directive was issued, is it not? The directive was issued before the establishment of the National Assembly.

[124] **Mr Mortlock:** The directive was, but its application to junior doctors was announced in 2000, and the real implications with the reduction in the working time limits applied from April 2004.

[125] **Nick Ramsay:** To follow Janet's question about the deadline of August 2009, are you pretty certain that that will be extended? What length of time are we looking at its being extended by, and is there any guarantee that the Assembly Government will do what is necessary with the trusts to meet that extended deadline?

[126] **Mr Mortlock:** I think that the extension would be up to three years. It may be that the European Commission will say, 'We will grant you an extension, but we are only happy for it to run for two years'. So, we do not quite know until we have that decision at European level. I would be speculating if I said the extent to which we think that the Assembly Government will do what it needs to do. The fact is that one of the positions giving European working times directive support is due to come to an end in August, at the same time as the

deadline, so, in principle, some of the support that has been there will not be there after August.

[127] **Nick Ramsay:** Going back to Lorraine's earlier point about who is responsible and what sort of fines there are, I notice that there is the possibility of the chief executives of trusts being prosecuted. That is a hefty stick to use to ensure that this comes about.

[128] **Bethan Jenkins:** You did other field work prior to the mergers, but do you think that there is any more work to be done post the reorganisation of the trusts? If so, how will that reflect on progress—or the lack thereof? You mentioned that some of the previous mergers may have helped to reach these targets, but what impact will this have, especially on the extension? Might that be used as an excuse for conforming to the extension? I just wanted to probe a little further on what Lorraine Barrett said, just to get some clarification. If there are discrepancies in the rota system, how effective will the directive be in reflecting the reality on the ground?

[129] **Mr Colman:** I will make a general point about the impact of NHS restructuring and mergers on a wide range of ongoing issues in the NHS. I know that the Assembly Government is wide awake to the risk that the huge workload involved in merging organisations could distract the management of those organisations from pursuing the day-to-day issues that matter most of all to patients and staff. To help with that process, we will be providing the new local health boards with what we call 'legacy reports'. They will record, from our point of view, the outstanding issues, and this is clearly an outstanding issue in many, though not quite all, of the new local health boards. It will not get lost by accident, if I may put it in those terms. There are processes in place, not just with us, I hope, although we are contributing to the continuity process. However, you are quite right that there is a risk of people being distracted.

[130] **Jonathan Morgan:** There are no further questions on that point, unless Members have others that they want to raise.

[131] **Mr Mortlock:** I just want to add one point. I mentioned that there were opportunities in some of the trusts that have merged to learn from relative practice across the two predecessor organisations. As we say in the report, the position as at January 2009 with the overall aggregate compliance rate across Wales was not significantly different from the position that we reported at July 2008, so there had not been an obvious step change in performance across the piece. Those figures have been derived from a slightly different source, but notwithstanding that, the evidence was that the position had not moved on significantly. I understand that we are still at a roughly similar level of compliance now. That suggests that trusts may have been in the process of planning what to do from August 2009 onwards, but those changes have not been enacted on the ground. So, the benefits of the mergers may be in thinking of new ideas for the future, but they have not necessarily made a significant difference yet.

[132] As Jeremy said, new organisations are being created, and, in some cases, you will have people coming in new to NHS Wales to lead those organisations. Clearly, they will want to have sight of the risk that they face, that is, the legal risk of non-compliance.

10.50 a.m.

[133] Finally, I will just pick up the point about reality on the ground. If junior doctors are not working more than 48 hours, they will be on pay bands that recognise that reduction in hours. So, in one sense, there is an onus on them—or there certainly will be going forward—to speak up from a financial perspective, if not from a legal perspective, and to raise the point if they feel that they are being asked to work significantly longer hours than they are being

paid for. So, there may be some protection in the system there, if there are any issues with junior doctors working longer hours on the ground than the rota pattern suggests. That should flush that out. However, who is to say?

[134] **Janet Ryder:** My question is a continuation of that. The same thing applies to teaching: pay, terms and conditions are a non-devolved area. If there is a fundamental change in that at a UK level, a financial consequential would be made available to Wales to deal with it. Is there the same mechanism for this? Will there be, or has there been, a financial consequential, that is, an additional sum of money made available? Is that what is being used in the English trusts and the English health service to bring this into operation, or was that extra funding found within the English health service purely and simply, without having any impact on us?

[135] **Mr Mortlock:** It is right to say that pay, terms and conditions are agreed nationally. That is part of the new deal arrangements.

[136] **Janet Ryder:** At a UK level, not nationally.

[137] **Mr Mortlock:** Sorry, yes, at a UK level. You can treat that as part of the conditions, but the law is actually made at a European level. The nub of the issue resides and comes down from a European governmental level.

[138] **Janet Ryder:** If we were talking about teaching, and a directive were to be changed so that teachers did not have to be in the classroom, or you were to raise their salaries in any way at a UK level—not a national level, within Wales—the consequential funding for that would be transferred to our budget from Westminster, to pay for that increase in teachers' pay and to meet some of those obligations. Does the same thing apply to the health service?

[139] **Mr Colman:** I am not sure that that is quite right, actually. We are getting into the arcane workings of the Barnett formula, which is more than I could attempt to brief the committee on. I do not think that it is anything like as automatic as that. There are some quite interesting questions as to which increases in UK expenditure flow through Barnett and which do not, especially if it is do with shifting money around within the NHS in England. That could be done without any net increase in public expenditure in England, with no net effect therefore on the NHS in Wales. So, it is not at all a straightforward matter.

[140] As Matthew says, the negotiations on pay for junior doctors, and doctors generally in Wales, are part of England-and-Wales negotiations. However, that is not a legal requirement; that is a matter of convenience. One can understand why it might well be convenient for Wales to join those negotiations, because Wales is recruiting doctors in essentially the same market as England. However, I believe that I am right in saying that Wales could go its own way if it was thought expedient for it to do so. The detailed terms and conditions as to how people are allocated to rotas and the methods of working differ very considerably between Wales and England. They will get even more different following the restructuring.

[141] **Mr Mortlock:** We are implicitly assuming that there is also a financial impact. In reducing junior doctors' hours, given how the pay bands work, you could realise some efficiency savings even if you had to direct them elsewhere. Your net junior doctor pay on a one-to-one basis may be lower but you might want to redirect that resource to address the other implications that arise. So, it is not necessarily correct to assume that there is an increased financial commitment necessary to meet the directive on specific pay and issues around junior doctors.

[142] **Jonathan Morgan:** I have one final question. The report recommends the convening of a working group to be set up as part of the modernising medical careers programme. You

recommend this to ensure that the quality of junior doctor training is maintained in achieving compliance. Is there an issue with the quality of the training?

[143] **Mr Mortlock:** Just to clarify, Chair, we do not recommend that; it is something that the Assembly Government has committed itself to doing. That is something that it identified it would do. As Jeremy alluded at the beginning, many of the concerns from professional bodies in particular about the impact of the directive have been about the impact on junior doctors' professional training. The reduction in hours effectively means less time on the job. Changes in shift patterns to accommodate that reduction in hours means less exposure to certain types of activities that add to individuals' professional training.

[144] This is a debate that has raged on since the extension of the directive to junior doctors. A lot of work has been done. There are examples of different ways of working and different types of training being explored. There is also the issue of what constitutes professional training and what counts as such. There are different ways of delivering it—more modernised ways. However, I can only say that the concern is still live. The Royal College of Surgeons, for example, still argues that it would like to see a 65-hour week for surgeons in order to be able to deliver the professional training. Surveys from the British Medical Association identify concerns among junior doctors about the impact on their training, but also with a significant proportion of junior doctors saying that they would agree that the training period, the length of their training, could well be extended to offset the effects. So, you just train them over a longer period to ensure that they are properly trained when they move on to the next level in their professional development. However, there is concern.

[145] **Jonathan Morgan:** Thank you. We shall defer a decision on this item until a bit later. Thank you for being with us.

10.57 a.m.

**Adolygiad gan Gymheiriaid o Swyddfa Archwilio Cymru: Brïff gan Archwilydd  
Cyffredinol Cymru  
Peer Review of the Wales Audit Office: Briefing by the Auditor General for  
Wales**

[146] **Jonathan Morgan:** The Wales Audit Office wrote to me regarding the peer review that has been commissioned and has asked to meet me. I am meeting the chair of the review panel a week on Friday. The purpose of this session is to receive a briefing from the auditor general and to put questions about the nature and purpose of this particular review.

[147] **Mr Colman:** Those who have been members of the committee for several years may recall that, in successive years, in presenting my estimate to the committee in October, I have said that, in due course, I would wish to commission a peer review of my organisation. In the early years, I considered that it was far too soon to carry out such an exercise, because the organisation resulting from the merger was still forming. However, four years after the formation of the Wales Audit Office, it is now an appropriate time to receive advice from my peers as to how things are going. I will outline the terms of reference in a little more detail in a moment.

[148] It might sound rather grandiose to call it an international peer review, but that is factually accurate. The members of the review are Caroline Gardner, the Deputy Auditor General for Scotland, John Purcell, the former Comptroller and Auditor General for Ireland, Roel Praat, Director Of Policy Development And Communications, Netherlands Court of Audit, and Sir Alistair Graham, former chairman of the Committee on Standards in Public Life, among other things.

11.00 a.m.

[149] I believe that a peer review from time to time is good for any organisation—certainly any public body. Audit offices are rather peculiar organisations and are not like other public bodies. Therefore, it makes particular sense to seek advice from others who face similar issues, so I am particularly glad that Caroline has agreed to join the group—indeed, she has been elected chair of it by the group. The comparison between our work and that of Scotland's is particularly appropriate. The situation is not the same, but is very similar, and I happen to know that the arrangements in Scotland differ in some places quite significantly from our own. So, that is a very fruitful comparison. However, a genuine international perspective is also useful, hence the reference to the Irish Republic and the Netherlands. Finally, Sir Alistair brings a wealth of experience on matters relating to propriety, industrial relations and human resources. I have no doubt that he will contribute a great deal to the review.

[150] Having commissioned the review from them, I attached considerable importance to the review team operating completely independently of me. So, we arranged a full day's briefing session for the peer review team and presented to it the results of an internal self-assessment, about which I will say a bit more in a moment. At the end of that briefing day, the peer reviewers decided what to do next and their first decision was to have a meeting without me being present to decide between themselves what issues they wished to examine in depth and how to go about their work. The only contact between the peer review team and my office is through the secretariat. Matthew here is, I suppose, the assistant secretary; the secretary, Rob Powell, is currently on holiday. The secretariat is providing support to the peer reviewers, who have arranged a demanding programme of interviews over the next two or three weeks.

[151] As to the product of the review, I have asked the panel to report to me in writing during the summer. It certainly appears to be well placed to do that. The report will be published and presented to this committee. If you wish to take evidence from members of the peer review team, I am sure that they will be willing to come here for that.

[152] On the terms of reference, there are, essentially, three headings. However, the peer review team will, I am sure, focus on particular aspects of those and I do not know what they will be. The first heading relates to the external services provided by the Wales Audit Office, namely the reports that this committee sees, our financial audit work, work on governance and fraud, and local work on performance audit and inspection, as well as our work on promoting good practice. So, that is the quality, effectiveness and impact on our external services. The second heading is the running of the Wales Audit Office, covering such issues as staff management, leadership, strategy, direction, quality control, financial management, programme management and governance. Thirdly is the effectiveness of our external relationships. Those are our relationships with the Assembly, the Assembly Government, local government, the NHS, other external review bodies within and outside Wales and, quite generally, our overall approach to external communications.

[153] The terms of reference do not restrict the peer review panel in any way, but you can see that they are very broad and I am sure that that is why it makes sense for the panel to choose to focus on particular areas of interest to it.

[154] I referred to the self-assessment that I commissioned, and this idea was suggested to me by the president of the European Court of Auditors, which is another audit institution that has undergone an external peer review. He told me that it had decided that its peer review would be well informed if it could be provided with an internal self-assessment to chew on, as it were. So, last December, I commissioned an internal team, led by Rob Powell, to assess the



whole organisation. It is of course our professional business to assess organisations and Rob Powell had previously led the work on the assessment of Forestry Commission Wales and, before that—indeed, it has become a sort of hobby of his—our successive pieces of work on the Welsh Ambulance Services NHS Trust. My instructions to Rob Powell and his team were to do to the Wales Audit Office what they had already done to the Forestry Commission and the Welsh Ambulance Services NHS Trust. They took that work extremely seriously and produced a comprehensive self-assessment that is the raw material on which the peer review team will work.

[155] You referred, Chair, to the letter that you have received from the chair of the review panel. This is part of its programme of interviews with numerous external stakeholders, including Welsh Ministers, which will be taking place over the next few weeks. In addition to that programme of interviews, the peer reviewers are interviewing my staff. They will be attending briefing meetings with my staff in small groups, reading files and, in fact, they will have access to the whole organisation. I hope that, by providing them with that degree of access and encouraging them to consult very widely, they will deliver an outstanding piece of work that will guide the operation of my office in future years.

[156] **Jonathan Morgan:** Thank you. Are there any questions to the auditor general?

[157] **Bethan Jenkins:** I just wanted to clarify something. I have received the results of a survey, undertaken by Prospect, of staff and their perceptions of the Wales Audit Office in lots of regards. I know that you have touched on it, but I just wanted to know what input staff will have with regard to the peer review and how freely they will be able to take part in that process. Some of the statistics that I have seen are quite worrying for morale, and they also suggest that the prevalence of bullying may be something to be concerned about. I would like to seek assurances that staff have been given sufficient information about the peer review and that they will feel inclined to be able to offer information about the future of their role within the office.

[158] **Mr Colman:** The self-assessment exercise included, as a major part, but certainly not the only part, a series of facilitated focus groups, using a technique that we had developed in both the ambulance service and the Forestry Commission, which uses a certain amount of technology to draw out staff views. Rather more than half of my staff participated in those focus groups and the material that came out has been analysed and presented to the peer review panel. The peer reviewers will, in addition, be interviewing my staff, as I have said. In fact, today Sir Alistair Graham is meeting staff in my office in Ewloe in north Wales, and they will say to him whatever they want to say. So, we have already done a great deal to draw the staff into the work. I am aware that Prospect conducted a survey of its own members, but I have not been informed of the outcome of that survey. I would like to think that the facilitated focus groups that we ran as part of the self-assessment gave a richer and deeper understanding of what the issues are and got underneath the mere expressions of opinion that you get from a survey.

11.10 a.m.

[159] You have mentioned morale issues and issues to do with bullying. I am concerned about the extent to which human resources issues have emerged from the self-assessment; that is an area of particular importance. It is one of the reasons why I was very pleased that Sir Alistair Graham agreed to join the peer review panel. In parallel with the peer review, I am also undertaking a quick review of our HR processes, with a view to identifying any changes that need to be made.

[160] **Bethan Jenkins:** May I come back on that? Are you working with the trade unions? You say that you have not seen the findings, but are you working with them positively to

marry the self-assessment that you have carried out with the work that they have carried out through their survey?

[161] **Mr Colman:** Yes. As a matter of fact, I am meeting senior officials of Prospect on two occasions within the next five days, specifically to talk about our relationship with the unions. It is certainly my desire to involve the unions constructively throughout this process.

[162] **Jonathan Morgan:** With regard to the second heading that you have provided, namely the running of the Wales Audit Office, presumably the review team will take into account the changes in governance arrangements that have occurred elsewhere, particularly at a UK level within the National Audit Office. It will also bring that level of experience in relation to what has happened elsewhere in the UK and further afield, as to how governance issues might be addressed. Presumably, you have given the team a free hand to examine exactly what it wants.

[163] **Mr Colman:** The team can do whatever it likes. From the questions that the team asked during the briefing session, which is my only source of information, it is clearly very interested in these questions. The arrangements in Scotland for the governance of Audit Scotland are different to those in Wales, and very complicated. So, I hope that I will be able to learn through Caroline Gardner about anything that is relevant to us. The arrangements in Ireland are somewhat similar to Wales—they are more similar to Wales than Scotland, as it happens—but I know that John Purcell is extremely interested in this area. So, I would be very surprised if the peer reviewers did not look comprehensively at that issue.

[164] **Jonathan Morgan:** Are there any further questions from Members about the peer review?

[165] **Bethan Jenkins:** I was going to ask for clarification about how the peer review team is put together. Who decides who sits on it? Is it the same people every time, or do its members vary from time to time? This is my first time sitting on this particular committee, so I just wanted to clarify that.

[166] **Jonathan Morgan:** As far as we are aware, this is the first time that a peer review has taken place; the auditor general has commissioned a review by his peers to examine those particular areas of external services, the running of the Wales Audit Office and the effectiveness of external relationships. In doing a review, it is standard practice to ask your peers, who are experts and who have a wealth of experience, to examine how your department or office is run. So, it is a welcome move in that we have a number of people with great expertise to bring to the peer review. From what the auditor general said, it looks as if the review will be very wide ranging, and it can examine any part of the way in which the Wales Audit Office is run. I suppose that it is a rather curious relationship due to the fact that the auditor general is one of the few people in the world with two distinct legal identities, and the Wales Audit Office, as with other audit offices, are strange creatures in that regard, without being offensive. The organisations are different to other public bodies, and this review could conceivably make a large number of recommendations to the auditor general—or to anyone else for that matter—as to how the office is run or structured, and how relationships in those areas of work are taken forward. It seems to be a very thorough piece of work, and the committee will have the chance to ask questions to the peer review panel, once the report is published, about the nature of the work and the recommendations that it has made.

[167] **Mr Colman:** May I make two further comments about what you have just said? As to who selected the members of the panel, that was me. My criteria for selection were that I wanted a panel that would do a thorough job and that would bring to it a relevant range of experience. I have mentioned the reasons for wanting input from Scotland. Although I was previously acquainted with John Purcell, he is not a man whom I know well, but it seems to

me that the Irish example is relevant, and a genuinely foreign input—because one does not think of Ireland as foreign in that sense—will be coming from the Netherlands. I was pleased that they were willing to join that; I had not previously met the man that they have nominated, Roel Praat. Sir Alistair Graham, with whom I worked some 30 years ago on opposite sides of a negotiating table, but had not recently met, is a particularly appropriate person to invite and he was pleased to join us. I am delighted that he has. So, it was commissioned by me and the panel members were appointed by me.

[168] In the introduction to this item, I said that those committee members who were members in previous Octobers might recall that I also said that, should this committee wish to commission any kind of value for money study on some aspect of the Wales Audit Office, not only are you entitled to do that, I would be delighted if you did. I would be even more delighted if you did so in the light of the peer review, which will give you a basis for deciding which areas you think demand further assurance. A completely independent look at us would be in your hands.

[169] **Jonathan Morgan:** Are there any further points? I see that there are none. I will report back about my meeting with the chair of the panel on a week Friday and let you know the nature of our discussions.

11.16 a.m.

### **Cynnig Trefniadol Procedural Motion**

[170] **Jonathan Morgan:** I move that

*the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 10.37(vi).*

[171] I see that the committee is in agreement.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11.17 a.m.  
The public part of the meeting ended at 11.17 a.m.*