

Mr Jeremy Colman

18<sup>th</sup> February 2011

Darren Millar Esq AM  
Chair, Public Accounts Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

Dear Mr Millar,

Thank you for your letter of 16<sup>th</sup> December inviting me to give evidence to your committee.

I have delayed replying until now because I have been in correspondence with the Auditor General since just before receiving your letter about the WAO's Report ("The Report") on its review of my conduct in office ("The Review"). That correspondence was concluded only on 11<sup>th</sup> February when I received a copy of the Report from the WAO's Solicitors.

I would not normally have any objection to assisting the Committee with its inquiry. In relation to the two specific issues your letter mentions I consider that I acted reasonably being guided at all times by appropriate advice, including legal advice.

My expectation, based on my own experience of public audit over many years would have been that the Auditor General's Report would set out undisputed facts as the basis for impartial analysis leading to conclusions and recommendations. Such an approach gives users of the report, notably your Committee, some assurance that the conclusions are soundly based and avoids the Committee having to resolve disputes about the factual basis for the conclusions.

In this case, however, the Report has not been put together in that way. May I draw your attention to the small print on page 3 of the Report? That describes a process of clearance that is strikingly different to that practised invariably by myself and my predecessor as Auditor General. The key sentence is at the end of the second paragraph. It shows that the WAO have picked and chosen which of my comments to take into account.

What this means is that the Report does not contain any of my explanations relating to the two areas referred to in your letter to me. At points the Report does record that I contest or deny certain matters but it does not say why. It does not even record all the matters that I contest or deny. And yet some of the most critical adverse findings appear to be based on contested points (notably the allegation that I mislead colleagues about Mr Snow's severance terms).

For the reasons given above I consider that the Report is unfair, breaches the principles of natural justice, and that its adverse conclusions are unreasonable.

It is not just the Report that is subject to these flaws. The whole conduct of the Review appears to have ignored fairness, good practice and natural justice. To see why I say this please consider the following analysis which works backwards through the Review process from the issuing of the Report:-

- a. Report clearance ignores relevant evidence  
To give some idea of the magnitude of the omissions of relevant evidence from the Report, I enclose a copy of the note I prepared about the Chief Operating Officer post. I will not lengthen this letter with a recital of all the evidence of mine that has been omitted but you should be aware that I consider that none of the adverse findings can be supported on a fair view of all relevant evidence.
- b. Comments sought from me after the WAO staff had made up their minds.  
The first time I saw a draft of the Report was on 18<sup>th</sup> January. I had written to the Auditor General on 24<sup>th</sup> December 2010 explaining why I saw the opportunity to comment as the only way that stood a chance of remedying the deficiencies and departures from good practice in the Review. In my letter (copy enclosed) I said that for that remedy to work my comments would need to be considered by the WAO with an open mind. As I have shown above, major comments were ignored. In fact any comment I made that cast doubt on the main adverse conclusions has been suppressed in the Report, which was issued only 10 days after the WAO had received my very extensive comments.
- c. Unreasonable conclusions  
The main adverse conclusions were published early in December 2010 accompanied by attributed comments from the Auditor General. I had at that stage not even been informed that there was a review let alone been asked to submit evidence. What that means is that the conclusions had been formed by the WAO without considering highly relevant and important evidence. That is unreasonable in itself. The adverse conclusions in the report are unchanged from those published in December although the WAO has had an opportunity to consider my evidence. I contend that no reasonable auditor faced with my evidence in addition to that gathered previously could reach those conclusions without further enquiry to resolve disputed factual matters (such as whether I had misled colleagues). No such further enquiry has been made.
- d. Unfair method  
As described in Appendix 1, a major feature of the WAO's method for the review was based on a general invitation to WAO staff to report concerns about my conduct. That may have been an appropriate method for a review of potential misconduct in the usual sense of the word. But once the definition of misconduct is widened to include "matters of inappropriate or poor judgement" (Report, paragraph 3), that method is bound to be unfair because it is likely to suppress any positive or balancing evidence. An example of just such a bias can be found in paragraph 66 which relates to a difference of opinion about an accounting treatment. It is one-sided and negative about my actions in that case to the point of untruth. This paragraph also contains an example of the misleading way that the WAO have reflected some of my comments. The final sentence suggests that I agree with the facts but not with the conclusion. In my comment I said "I do not know and can only guess whose interpretation of the facts is given here. It is emphatically untrue that i helped create an impasse. The facts of the case are that i was being presented by two senior staff with radically opposed views on a particular accounting matter. As impasse had occurred before i was aware of the situation, and the internal disagreement had been revealed to an external client (which

should never have happened) again before i was aware that there was an issue. Faced with conflicting advice and very difficult interpersonal relations between the partners concerned i decided i could rely on neither of them, as i had lost confidence in their ability to give me advice untempered by personal animosity. The only way i could discharge my responsibilities was to engage external experts to advise".

e. Conflicts of Interest

The principal author of the Report is Mr Simon Edge. The only conflict of interest the report identifies (Appendix 1, xviii) refers to framework contracts and audit appointments. In fact he was throughout the Review subject to major and in my view disqualifying conflicts of interest, as follows:-

i. He was my principal advisor on governance throughout my period in Office.

He would therefore be incapable of giving unbiased assessment as to whether any alleged failures of governance were due to my poor judgement or his bad advice.

ii. He has an interest in the outcome of the Review

It would obviously be in Mr Edge's interest for the review to boost the role in the WAO of the Head of Compliance, particularly as that role had already been given more weight by me than was usual in UK Audit Bodies and might therefore be under threat under a new Audit General.

iii. He might be perceived to be actuated by personal animosity

Had my criminal prosecution come to trial, Mr Edge would have been an important prosecution witness. He had played a role in my resignation from Office. He had also reported directly to me for a number of months and enjoyed direct access to me for nearly 5 years. It is not fanciful to suggest that causes of personal animosity might have arisen between us.

I do not say that Mr Edge acted in bad faith but I do say that there is an appearance of bias and that on conclusions bias cannot be ruled out, particularly so given the unexplained departures from fair process throughout the review.

In conclusion, I note that in two places in Appendix 1 of the Report (pages 26 and 28) it is asserted by Mr Edge that this "..... is not a witch hunt". In the light of this letter and my perception of the pervading bias against me that has characterised the whole Review, you may wish to reflect on the definition of a witch hunt.

Yours sincerely,

**Jeremy Colman**

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From: Jeremy Colman  
To: Huw Vaughan Thomas  
Auditor General for Wales

Date: 24<sup>th</sup> December 2010

Dear Mr Vaughan Thomas,

Simon Edge's letter of 15<sup>th</sup> December to my Solicitors reached me late in the afternoon of 22<sup>nd</sup> December. It offered me the opportunity to comment on a draft report into my conduct while in office as Auditor General for Wales. It set a deadline of 7<sup>th</sup> January for the receipt of such comments, but it did not enclose a copy of the draft report.

At the earliest opportunity, I sought to convey a telephone message that a copy of the draft report should be sent to me as soon as possible. It is of course highly unlikely that it will reach me until 29<sup>th</sup> December or even later. Given that, in my experience, outgoing letters require around seven days to pass through the prison system and the post office mail. I would need to complete my commentary on the draft report within one or two days.

I am sure you will realise that even under the best of circumstances a couple of days can hardly be long enough to allow a person whose actions are the subject of a report to comment on a draft of it.

In this case however the circumstances are far from satisfactory and the opportunity that you are offering me to comment is the sole means now available to correct what I see as very serious weaknesses in the WAO's approach to this review. I set out below why I consider that the WAO's approach so far has been flawed. The flaws that I identify, unless they can be corrected, will result in damage to the WAO, for producing what will be seen as an unprofessional product, and not me, as a victim of unfair and unreasonable criticism.

I am not given to extravagant language and I use the term "very serious weakness" because I consider that the WAO's approach to this review departs markedly from my legitimate expectations.

I base my expectations for this review on my own experience over seventeen years or more in public audit, including in particular a review that the WAO conducted in 2009 touching the conduct of a Senior Public Servant. I also have regard to the WAO's published manual for Performance Audit Work. I remind you that the 2009 International Peer Review of the WAO found that the WAO's approach to performance audit was at the cutting edge of Public Audit Practice and that that approach has been adopted by the European Court of Audit following training by WAO staff, including members of the Court in person.

Based on the above, I would have expected the WAO to conduct the review in the following stages:

a. Team Selection

The team members should have the appropriate professional skills and be free of bias or conflict of interest.

In this case, I do not know who the team members were, but I do not entertain any doubts about their professional competence as regards bias and conflict of interest however, I should hope to see very particular care taken especially over the selection of Senior Members of the team. An inquiry into the conduct of the head of an organisation cannot fail to examine the role of senior staff as well, giving rise to an obvious potential conflict of interest if the same senior staff conduct the review. Mr Edge himself held a crucial role in the governance of the WAO which would, I should have thought, have made it difficult for him to play a leading part subsequently in reviewing my conduct in that respect.

b. Definition of Scope

The WAO performance audit methodology requires an "Issue Analysis" to be undertaken to set out in a logical manner the questions the review will seek to address. It would be usual to show that analysis to individuals who are to be subject to review.

In this case, Mr Edge's letter, which is entirely procedural in contents, is the first communication I have had from the WAO about the review. I remain entirely ignorant as to its scope.

c. Fieldwork: The Gathering of Evidence

One of the prime sources of evidence about the conduct of an individual is that individual himself.

In this case, no attempt has been made to gather evidence from me.

d. Drawing Conclusions

At the end of fieldwork, the WAO's normal methodology calls for the conclusions to be drawn from the evidence to be set out logically linking to that evidence in an outline report. That outline is usually offered for comment to the subject of the review.

In this case, I have not seen any outline report.

e. Report Clearance

A draft report should be shown to individuals who may be subject to criticism to give them the opportunity:

1. To correct factual errors, omissions or misunderstandings of relevant facts and the inclusion of irrelevant material.
2. To make representations as to the conclusions drawn from the facts acknowledging that the conclusions ultimately are for the Auditor General alone to draw and defend.

The purpose of clearance includes natural justice to individuals who might otherwise face unfair or unreasonable criticism as well as providing the Auditor with assurance that his conclusions are soundly raised.

In this case, it appears that I am to be offered an opportunity to comment. That certainly has the potential to go some way towards remedying the deficiencies that have arisen hitherto in the WAO's approach to the review.

Nevertheless I retain some very serious concerns. To serve its purpose of providing natural justice to individuals who are subject to criticism, report clearance must offer genuine opportunities for them to point out inaccuracies and to make representations. That implies that the Auditor must receive any comments with an open mind. I hope you will understand that in this case I have reason to doubt whether that will be so. Not only have what appear to be significant conclusions from the review received extensive publicity, including comment from the Chair of the Public Accounts Committee, but you yourself have been quoted referring to "failures of integrity at the very top of the organisation".

I am sorry to have to address you at such length on this subject, and I apologise for the fact that it has to be in manuscript. My reputation is important to me and I very much regret that the WAO's approach appears to be designed to attack my reputation without affording me the proper means of defending myself. I would have hoped that the WAO would have wanted this present review to stand as an example of the highest standards of public audit alongside the numerous other fine pieces of work that the WAO has produced in the past.



## The COO Post

Working from memory i shall set down my recollection of the history of the post of COO from its inception in 2005 until my decision to abolish it, announced in June 2009, and the consequential early retirement of the holder of that post, Anthony Snow.

### Why I needed a COO

The WAO came into being on 1<sup>st</sup> April 2005. It was a merger of the Welsh Regional Operations of the Audit Commission and of the National Audit Office. At the same time, the legal functions of the Audit Commission were transferred to the Auditor General for Wales, greatly expanding that role, which had hitherto been performed as a part-time one.

Although i had been nominated as AGW some five months previously, i took up appointment on 1<sup>st</sup> April 2005, having had no more than a few days to familiarise myself with my forthcoming responsibilities. Audit Commission and NAO staff in Wales had worked together to define the tasks that would be needed to effect the merger, but in the absence of the new Auditor General, or after my nomination, the lack of powers until the date of the merger, there were many matters outstanding on 1<sup>st</sup> April 2005.

The situation i inherited was a merger of branch offices, as it were, there was none of the infrastructure that an autonomous public body would need: systems, pay and grading structures, HR, IT and finance functions were all either rudimentary or non-existent.

I took immediate steps to establish that infrastructure but by the autumn of 2005 i found that too much of my own time was being absorbed by internal matters. I wanted to spend more time on external representation and on developing our distinctive approach to structured thinking and presentation of audit products, Issue Analysis Drawing Conclusions (IADC).

I therefore decided to create a new post of Chief Operating Officer. The formal description of the functions of that post are not to hand, but the basic concept was that the COO would complete the construction of the corporate infrastructure and run it, relieving me to the greatest possible extent of direct responsibility for that side of the WAO.

### Anthony Snow's Appointment

As i have been criticised in the same quarters for appointing Anthony Snow without any formal competition, i should explain that my decision to do so was based on strongly held principles: First, that it would be dishonest for me to go through a formal selection process if my mind had been made up in advance: Secondly, that it would be cruel to any candidates who might put themselves forward to put them through the stress of a fake competition.

I had decided that Mr Snow was the only realistic candidate because:

- a. He was already responsible for finance and IT.

- b. My observation of him and all other senior WAO staff over preceding months had convinced me he was clearly the best qualified internal candidate.
- c. It would be both risky and wasteful of public money to recruit externally at a time when i already had too many senior staff and was reducing their numbers through voluntary early retirement.

### The COO Role In Practice

As i recall it, Mr Snow took up his new position early in 2006. He had much to do to complete the establishment of our corporate infrastructure and set about the task with characteristic energy.

The operating structure that i had devised for the WAO in 2005 was based on that used in many medium sized accountancy and other professional services firms. It was set out in numerous publications and i personally presented it to WAO staff in a number of workshop sessions. Its basic principles were as follows:-

- a. The core work of the WAO comprised audit projects. Each project would have a single lead partner who would be answerable to me for the delivery of that project to time, quality and budget.
- b. To enable partners to deliver their project portfolios and their performance to be managed, a corporate infrastructure was established. The governance of the infrastructure was in the hands of the Management Committee. That committee had no responsibility for managing projects.
- c. The strategic direction of the WAO was my responsibility and to assist me i set up a consultative body comprising all the partners, The Partnership Board.
- d. A compliance function and Audit and Risk Management Committee were set up to ensure that all the above activities were to be conducted properly.

It will be seen from the above, that the COO, as COO, would primarily be concerned with (b). In practice, Mr Snow acquired some project responsibilities and was of course a senior member of The Partnership Board.

It was to be expected that following a merger, the new organisation would take some time to settle down. I had been advised that a period of as much as three years might be needed. There was certainly evidence of turmoil in day to day issues that arose and that was confirmed whenever we conducted staff surveys.

I also found, over time, that i was increasingly being drawn into internal matters that i had hoped the COO would absorb. I found that i was having to involve myself in sorting out interpersonal disputes between partners. There seemed to be a view amongst some of them that the Management Committee was in some sense the "top" committee and that non-members were in the second class of partners. Despite my repeatedly insisting that the primarily work of the WAO were the portfolios of projects and that project delivery was our most important function, partners continued to behave as if they thought our internal administration mattered more.



I noticed also that the COO was becoming increasingly burdened with matters that could and should have been sorted out by individual partners. In effect, they were delegating upwards to the COO.

### My Decision To Abolish The Role Of COO

During 2008 I realised that the post merger turmoil was continuing far too long, and that a major change was needed to put matters on an even keel. I therefore decided to commission a peer review of the operations of the WAO. The use of peer review is a well-established method for audit bodies internationally to be held to account without comprising their essential independence.

Following the example of the European Court of Auditors i decided to precede the peer review with an internal self-assessment. It was conducted by an internal WAO team with experience of studies of whole organisations.

While the self-assessment was in progress a further staff survey took place. It confirmed that our internal arrangements were unsatisfactory.

In the light of the survey and the self-assessment i announced that "significant but not major action" was needed. What i meant by that was that we had good evidence that our core function of producing audit work was going well. I did not want to compromise that, but there was something seriously wrong with internal management and leadership. In particular, there was clear evidence of disharmony between partners, with a number of senior partners claiming to feel excluded from the roles they believed they should have in running the organisation.

I was also concerned, looking forward to reduce our overheads. The COO post was largely not fee-earning and as the highest paid post on my staff was expensive. The COO's work in creating corporate systems was essentially complete and i was no longer sure that the post was needed.

I met Mr Snow towards the end of March 2009 to discuss how we should respond to the self-assessment. During that meeting i informed him that i wished to consider the continued need for the COO post. I told him that i wished to move to a more directive management style, to abolish the Management Committee, which had never been intended to manage the whole organisation and set up some kind of executive body, which would have that responsibility. I envisaged that that would involve heads of financial audit and performance audit. I told Mr Snow that i considered that he would be a strong candidate for such posts (subject of course to their being defined).

After several further meetings with Mr Snow, he informed me that rather than put himself forward for a role in the new structure he would prefer to retire, provided we could agree on suitable terms.

### Mr Snow's Retirement Package

I sought legal advice on the terms to which Mr Snow would be entitled. As i recall the advice, it said that from the age of 50 (a few weeks away) Mr Snow could insist on early retirement on terms based on his entitlement in the Audit Commission on 31<sup>st</sup> March 2005. I was informed that those terms were themselves reserved rights from some

earlier review of the Audit Commission's arrangements . When i saw the amount of his entitlement i doubted whether i could defend it. I therefore had to explore with Mr Snow whether he would agree to accept less. I asked my Head of Finance, John Baker, to conduct the detailed negotiations because he had at his fingertips the complicated rules of the Audit Commission Scheme. He was also the only person who could advise me on the affordability of any proposed package.

In the event, Mr Baker was able to agree terms with Mr Snow that were significantly cheaper than the amount to which he was legally entitled and which were affordable.

As regards a business case for the abolition of the COO post, Mr Baker produced figures showing that the outlay on severance payments would be recovered in a period that seemed to me to be reasonable. In addition, and actually my primary reason for abolishing the post, i considered that the WAO would be likely to operate more effectively and efficiently with a new top structure without a COO.

On that basis, i approved the terms Mr Baker had agreed with Mr Snow and initiated work with Solicitors to produce the necessary documentation.

### Confidentiality

In my opinion, the negotiations with Mr Snow were highly confidential. The mere fact that negotiations were in progress needed to be known to the barest minimum number of people. My reasons for confidentiality during the negotiation were:

- a. The negotiations were about an individual's personal position. He was entitled to a degree of protection towards his privacy.
- b. In all my experience, the chances of a successful outcome are increased by negotiating in private as that enables the parties to consider a wider range of options than might be feasible with more parties involved.
- c. I might not have been able to agree terms with Mr Snow, in which event he would remain on my staff in some capacity. His position in that role would be undermined and his usefulness to the WAO compromised, if it became known that i had wanted him to go.
- d. As COO, Mr Snow was my most senior staff member. He was the line manager of almost all the partners. It would be demeaning for Mr Snow's retirement to be discussed by his subordinates and his subordinates would be, in my view, subject to conflicts of interest in considering the issue.

Once terms were agreed, and Mr Snow's departure announced, confidentiality was much less of an issue. I was always quite clear that if we were asked to reveal the terms then i would have to balance the public interest in knowing the remuneration of senior public officials with Mr Snow's rights to privacy. Each case has to be decided on its merits at the time, but i judged it highly likely that i would decide to give out the information.

That does not mean that i would have been pleased to do so, because the information would probably emerge out of its proper context, which was a part of the major restructuring of the WAO that did not take place until December 2009. Out of context, Mr

Snow's retirement terms might excite sensational comment. Presented in context, there was a chance that a proper perspective might be taken.

The compromise agreement that Mr Snow and i signed, included terms as to confidentiality but those terms did not in any way restrict my ability to reveal the terms on which Mr Snow left, including the costs of his early retirement.

In addition to involving Mr Baker in the negotiation of terms, i had informed the head of HR, in strict confidence, that such a negotiation was taking place. I had also mentioned it to Peter Laing, the Chair of the ARMC.

### The Announcement

Because the abolition of the COO's post, and, as it turned out, Mr Snow's departure, would be the first step in moving to a new WAO structure, it seemed to me that the appropriate time to announce it would be as part of the announcement to staff of the partner organisation development workshops that would be designing the new structure.

I therefore included the announcement about Mr Snow in a draft covering the workshops that was presented at the outset of the first workshop on 17<sup>th</sup> June 2009.

J G Colman

21<sup>st</sup> January 2011