



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

Y Pwyllgor Cyfrifon Cyhoeddus **The Public Accounts Committee**

Dydd Llun, 24 Medi 2012
Monday, 24 September 2012

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trawsgrifad o'r cyfieithu ar y pryd.

The proceedings are recorded in the language in which they were spoken in the committee. In
addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mohammad Asghar	Ceidwadwyr Cymreig Welsh Conservatives
Mike Hedges	Llafur Labour
Darren Millar	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Julie Morgan	Llafur Labour
Gwyn R. Price	Llafur Labour
Jenny Rathbone	Llafur Labour
Lindsay Whittle	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Nicola Charles	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Jane Hutt	Aelod Cynulliad, Llafur, Gweinidog Cyllid ac Arweinydd y Tŷ Assembly Member, Labour, Minister for Finance and Leader of the House
Reg Kilpatrick	Cyfarwyddwr Llywodraeth Leol a Gwasanaeth Cyhoeddus, Llywodraeth Cymru Director of Local Government and Public Service, Welsh Government
Stephen Martin	Rheolwr—Archwilio Perfformiad, Swyddfa Archwilio Cymru Manager—Performance Audit, Wales Audit Office
Martin Peters	Rheolwr Cydymffurfiaeth—Swyddfa Archwilio Cymru Compliance Manager—Wales Audit Office
Huw Vaughan Thomas	Archwilydd Cyffredinol, Swyddfa Archwilio Cymru Auditor General, Wales Audit Office
Mike Usher	Cyfarwyddwr Grŵp—Archwilio Ariannol, Swyddfa Archwilio Cymru Group Director—Financial Audit, Wales Audit Office

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

Sarah Beasley	Clerc Clerk
Dan Collier	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Uwch Gynghorydd Cyfreithiol Senior Legal Adviser
Tom Jackson	Clerc Clerk
Sarah Sargent	Dirprwy Glerc Deputy Clerk

*Dechreuodd y cyfarfod am 2.02 p.m.
The meeting began at 2.02 p.m.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introductions, Apologies and Substitutions

[1] **Darren Millar:** Good afternoon, everybody, and welcome to today's meeting of the Public Accounts Committee. I remind everybody that they should switch off their mobile phones, BlackBerrys or pagers, as these can interfere with the amplification and broadcasting equipment. If a fire alarm sounds, people should follow the guidance of the ushers and move to the nearest exit. We have had apologies today from one member of the committee, Aled Roberts; I am not aware of any others.

2.03 p.m.

Sesiwn Frifffio gan Archwilydd Cyffredinol Cymru ar Adroddiad Swyddfa Archwilio Cymru 'Cyrhaeddiad Addysgol Plant a Phobl Ifanc sy'n Derbyn Gofal'

Briefing from the Auditor General for Wales on the Wales Audit Office Report 'The Educational Attainment of Looked After Children and Young People'

[2] **Darren Millar:** I welcome Huw Vaughan Thomas, the Auditor General for Wales, and Stephen Martin, manager of performance audit, to the committee today. Auditor general, I invite you to make some opening remarks on your report.

[3] **Mr Thomas:** This report, considering the educational attainment of looked-after children, was published during the recess. Children in care—or looked-after children, according to the legal term—are part of an extremely complex system, in which the local authority becomes their corporate parent. An indication of that complexity is provided in the chart on page 8, which shows the number of organisations that interact with regard to the looked-after child. Their care is affected by the policies and practices of the Welsh Government, a range of local authority services, the support of foster carers and other carers, the commitment of schools and other education providers and, as I said, the effective involvement of a wide range of other services and organisations.

[4] In March 2011, there were 5,415 children and young people in Wales who were looked after. The numbers have risen by some 20% over the last five years. However, to put that in a wider context, less than 1% of children and young people are looked after. These children and young people face many difficulties. It is well reported that, as adults, they are over-represented in the number of those who are not in employment, education or training, those who are homeless and, sadly, those who are in the prison population. Between 1999 and 2001, the Welsh Government established several initiatives through the Children First programme and 'The Learning Country' policy. These and subsequent programmes and policies have sought to support and guide local authorities and other partners in improving their arrangements to help looked-after children and young people attain better educational outcomes.

[5] Our report considers whether the actions being taken across the Welsh public sector have been enough to improve significantly the educational outcomes for looked-after children. It compares the attainment of looked-after children with the attainment of other children in Wales and other parts of the United Kingdom, to see what progress has been

made. It then looks at ways in which the Welsh Government and others are working to achieve improvement.

[6] My overall conclusion is that the initiatives that the Welsh Government and local authorities have taken have contributed to some modest progress, but that many looked-after children are still not achieving their full potential. At present, the Welsh Government and partners do not have a shared, clear view about the improvement that they seek and the roles that everyone needs to play. There is some good practice at a local level, and a growing understanding of what works. However, there are also profound weaknesses in corporate parenting, in performance management and in understanding the resources that are required to achieve significant improvement. The developing roles of regions in the delivery of education and social care, and the development of policies to achieve improved educational outcomes for all children in Wales, could provide the opportunity to improve the planning, co-ordination and coherence of arrangements to support the education of looked-after children. I very much hope that this potential is seized by those involved.

[7] At this stage, I will hand over to Stephen, who will draw a few more details from the report and suggest some possible lines of inquiry that the committee might like to look at and some witnesses that the committee might wish to talk to.

[8] **Mr Martin:** First, I will summarise the educational attainment information. We found that there has been modest improvement in the attainment of looked-after children, but that their average level of attainment remains low. The gap between their attainment and the attainment of all children has not narrowed. For example, between 2007 and 2010, at key stage 3, which applies to children aged 14, the proportion of looked-after children achieving the expected level rose by four percentage points, from 18% to 22%, while the proportion of all children achieving that standard rose from 57% to 64%, or an increase of seven percentage points. So, there was an improvement for looked-after children, but not a significant narrowing of the gap. Among the older looked-after children, of those who left care aged 16 or over in 2010-11, just over half—or 56%—achieved one GCSE or GNVQ-equivalent pass. Of those leaving care on their nineteenth birthday last year, almost half of care-leavers were NEETs. In other words, they were not in employment, education or training. Having said that, a small proportion of looked-after children achieve well at school and go on to further and higher education. Unfortunately, however, there is no monitoring of the numbers who enter higher education, or of what any of these young people achieve after the age of 16.

[9] Turning to Welsh Government policy, the Supporting People section of the programme for government includes objectives to raise the percentage of care-leavers who are in education, employment or training, and to reduce the gap at key stage 4 between children in need, looked-after children and the general population. In fact, there is no target for that. Since 2006, there have been no national outcome targets for the Welsh Government, local authorities and others to work to together. We found that there was a lack of clarity about how different Welsh Government departments, policies and programmes should contribute to improvement. We found that there had been little consideration of the resources that would be required to achieve significant improvement. The ring-fenced funding—that £1 million that had been provided each year since 1999—has now ceased to be ring-fenced and is included within the wider school effectiveness grant. The committee may wish to explore with the Welsh Government, and representatives of other stakeholders, the response to our recommendation that the Welsh Government should work with local authorities, regional consortia and others to agree outcome targets and delivery plans, as well as giving consideration to the funding arrangements that can best be used to support further improvement.

[10] As Huw said, we have found quite a range of good practice examples in use locally in Wales, and elsewhere in the United Kingdom, and we particularly noted some excellent work

that has been done to widen access to higher education for looked-after children and care leavers. However, there was also inconsistency in the provision in different parts of Wales, and some of the good approaches, even where there has been full evaluation, have not been rolled out across Wales. We noted that in Scotland, a single point of knowledge and research in expertise had been developed in what they call the Centre of Excellence for Looked After Children in Scotland; we thought that the role that that played was positive. In England, there is the Centre for Excellence and Outcomes in Children and Young People's Services that is developing a similar role. We recommend that the Welsh Government and partners consider the establishment of a focal point for this expertise and research in Wales. The committee may wish to discuss with the Welsh Government and partners whether they would support such a development.

[11] Since 1999, the Welsh Government has introduced guidance to support and emphasise the importance of corporate parenting—the role of the local councillors and local authorities. Most local authorities have established corporate parenting groups, forums or committees of one sort or another. They vary in composition and in how they link into the formal structures of each council. We found that the reports to some of the corporate parenting groups often contain insufficient information to enable the councillors to exercise their full role as corporate parents—they are not given as much detail as is needed. Both councillors and local authorities have a key role in delivering the improved outcomes that the Welsh Government wants to see, but we found that the arrangements for assessing the progress that they were making in that delivery, at a national and overall level, were not very clear. The committee could, perhaps, help explore the way in which progress is assessed, reported and scrutinised at a national level, and the steps that the Welsh Government can take to help councillors be more effective as corporate parents.

[12] As Huw mentioned, the new arrangements for stronger regional collaboration being emphasised for the delivery of school and education services can have the potential to support the improvements for looked-after children. For example, there is one element of that in 2012-13—the regional consortia that had been established to help deliver the school effectiveness framework are being required for the first time to provide the school standards unit in the Welsh Government with information on predicted and actual outcomes for looked-after children. This sort of development may help focus attention on narrowing the attainment gap. At the same time, local authorities are expected to continue to develop their children and young people's partnerships, which we found had not set suitable outcomes in the past for looked-after children. These developments may provide clearer and more co-ordinated strategies for looked-after children and young people, but there is still a risk that accountability may be blurred, particularly where regional consortia for education do not align with the delivery groups and consortia for social care. The committee may wish to examine in more detail the Welsh Government's plans for supporting improvements for looked-after children through the school effectiveness framework and the regional consortia and how that would be progressed.

[13] In closing, it is worth mentioning that it is easy to lose sight of the views of the actual looked-after children and young people in this, as we look at the Government and public sector elements. We found that looked-after children and young people highly value their education, but many believe that they are not listened to sufficiently, and decisions about their care can sometimes pay insufficient attention to education issues.

2.15 p.m.

[14] We found that many looked-after children still make unplanned school moves during their school career as a result of their placement moves, some of which could be reduced. Similarly, our survey of foster carers revealed that they place a high value on education, though they believe that the children and young people that they give accommodation to need

additional support to be able to achieve their best at school. I will finish there, Chair.

[15] **Darren Millar:** Thank you, Stephen. What struck me in your opening remarks, auditor general, was the reference to the complex chart on page 8, and the number of different agencies and organisations—or parts of organisations—that are involved in this issue. You rightly point out that there does not appear to be a strategic plan as to what part each of those individual wheels in the cog play in order to improve educational attainment for looked-after children. Who do you believe should take the lead in terms of responsibility for such a plan? Should it be local authorities, the Welsh Government, or some other body?

[16] **Mr Thomas:** A clear responsibility is placed on the local authority to be the corporate parent, and we should not lose sight of that—that is where the responsibility lies. However, at the same time, confronted with that range of bodies, there is a clear responsibility on the Welsh Government to pull the strands together to make it easier for local authorities to interact with others, and to spread good practice. There is good practice—let me be clear about that. We came across several incidences of good practice, but it is about spreading that practice and getting it more widely accepted. An initiative such as the Scottish centre of excellence for looked-after children is a good model, where issues can be brought together, good practice can be developed and disseminated, and there is more central ownership of the issue.

[17] **Darren Millar:** Did you get a sense of why there did not appear to be a strategy for getting everyone working together towards the same outcome? There are obviously competing priorities as far as local education authorities and other bodies are concerned, which are competing for attention all the time, but why does it appear that there is no overarching strategic direction to everyone's work?

[18] **Mr Martin:** In 1999, the then Secretary of State wrote a letter about the outcomes of looked-after children. That was followed by the establishment of the Children First development here in Wales, the setting of clear targets, and a programme where local authorities could use management action plans and sign up to shared targets. That carried on until 2006, when those targets were dropped from the second version of the Learning Country and other Welsh policy documents, as part of a tidying-up and a reduction of the number of indicators and targets that were being used. We seem to then have gone into a period where it was thought that there might be a new strategy for vulnerable children that would pull this together, and the legislative competence Order went through. That resulted in the child poverty strategy, which, while it refers to some of the other developments, did not pull everything together in the way in which was perhaps needed, or which we might have hoped. However, there are many different policy issues going on at the same time, with the development of the school effectiveness framework, as well as a raft of education policies. Therefore, that pace of different policies coming up may be what was lacking—namely, someone to ensure that they were pulled together.

[19] **Darren Millar:** Therefore, the setting aside of targets always seemed to be an interim measure, if you like, before other policy documents, and so on, pushed in—

[20] **Mr Martin:** There was also, at that point, a change in the number of performance indicators that were being collected, so there was a bit of a hiatus in some of the data. Many of the building blocks are there, but they just need to be pulled together, and to ensure that the different partners understand their different roles and what they are trying to achieve together.

[21] **Darren Millar:** You mentioned earlier, Stephen, the fact that we will have the regional education consortia across Wales. To what extent do you think that that might make it easier to improve standards over the next few years?

[22] **Mr Martin:** Potentially, it could be very useful, because, as we said, we found some inconsistency in delivery. We would hope that the regional consortia, which are looking to improve the outcomes for all children, but particularly for disadvantaged groups, would hopefully be able to spread best practice. Among the initiatives that have been well evaluated, for instance, is the idea of having a virtual school for looked-after children, with a virtual head and the local authority would see its group of children, for whom it is a corporate parent, as a school, and it would expect the same level of scrutiny of performance.

[23] Welsh local authorities, by and large, have been too small individually to run that in the same way as the successful pilot. However, at a consortium level it may work effectively, and provide that oversight, scrutiny, the ability to take that kind of approach forward and spread best practice. So, there is some potential there, coupled with the role of things such as the school standards unit, in monitoring the improvements at regional consortia level. We hope that those opportunities will be seized.

[24] **Darren Millar:** There will be a rationalisation of some of the planning framework for children and young people at local authority levels. I understand that the children and young people's plans will be incorporated into a single integrated plan of some sort. Do you think that that will improve, or be a barrier to improvement in this particular area?

[25] **Mr Martin:** If the aspirations for this group of children are well served within the school effectiveness framework and they are monitoring that, I do not think that slimming down the children and young people's plans and incorporating them in something wider needs to be detrimental. However, there is a risk that this group could be lost in that process.

[26] **Gwyn R. Price:** In your report it says that substantial progress has been made, and you recognise that. In the Scottish model, is there any specific road for the children and young people towards higher education?

[27] **Mr Martin:** I have to say that I have not followed through how far they have taken it to higher education. However, certainly, the group of people involved in Scotland, and in the centre in Scotland—the centre is based in the University of Strathclyde—would lead me to suggest that higher education would be one of the aspects that they will be looking at in some detail.

[28] **Mr Thomas:** We could find out more information for you.

[29] **Gwyn R. Price:** I am concerned that it may stop at a certain level and that they do not have the opportunity to go through to higher education. I would be grateful if you could follow that up for me.

[30] **Mr Martin:** Yes.

[31] **Darren Millar:** On the data collection around higher education, how can you be so confident that there is substantial progress being made, when, as I understand it, there is no data collected by the Welsh Government on the number of care leavers who complete, or enter, higher education?

[32] **Mr Martin:** It is a bit anecdotal, frankly. From different sources, we know that universities have been working through the Reaching Wider partnerships with local authorities and their looked-after children, to give them taster sessions in higher education and visits. The evaluations and reports on those events talk about young people's attitudes changing and in some cases to young people applying for higher education. However, there is no hard data that comes out of that. A few years ago, the Universities and Colleges Admissions Service included a check box in its application forms, which applicants of higher

education can check if they are looked after. There has been some monitoring of that, which the Higher Education Funding Council for Wales has had access to. The difficulty with it is that it does not in the case of those entering Welsh institutions distinguish between those who are coming from Wales and those who are coming from England. Also, it is at the point of application, not the point of entry, and many applicants do not subsequently enter higher education.

[33] You will also be aware of the establishment now of a right to bursaries for looked-after children and care leavers going into higher education. Some local authorities have reported that some bursaries have been taken up. Again, there has not been a pulling together since those bursaries were introduced. It is a question of how many bursaries are now provided in Wales for looked-after children who have gone into higher education.

[34] **Darren Millar:** Is there any rationale as to why the Welsh Government chooses not to collate that data; I understand it is collected in England and Scotland, for example?

[35] **Mr Martin:** We have not been given any, other than there is a general wish not to overburden local authorities and agencies.

[36] **Darren Millar:** Did you want to come in on this particular issue, Julie?

[37] **Julie Morgan:** No, not this one.

[38] **Darren Millar:** Okay. So, there is no rationale at the moment, but, presumably, you would like to see that data kept somewhere in order to monitor it.

[39] **Mr Martin:** Yes.

[40] **Mr Thomas:** We have seen a very encouraging start with the regional consortia. Once again, they are starting to measure this area. I can understand the rowing back of the number of measures that individual authorities are expected to report on. As regards looked-after children, we enter a period—essentially from 2006 to 2011—where there is a dearth of data, therefore, we are working on the best fit.

[41] **Mike Hedges:** We treat looked-after children as one whole area, but I think that there are a lot of different types. I wish to raise two points. In terms of the placement of children with grandparents, do they actually have as poor an overall attainment as those who are not placed with grandparents? Secondly, have you found any correlation, which I believe exists, between the number of moves that a child makes between foster carers, and especially between schools and end educational attainment?

[42] **Mr Martin:** I think that the brief answer is that the data analysis was not robust enough to draw conclusions. We have not been able to analyse kinship and grandparent placements separately from others in the data, so, while there are some anecdotes and individual experiences that they work both ways, the data is not strong enough to draw some of the inferences or to answer some of the questions that you have.

[43] **Mike Hedges:** Some data existed before, did there not? I know that Swansea council did some work on attainment against the number of moves. It actually found that, unsurprisingly, the greater the number of times a child moved and the greater the number of schools a child attended, the poorer the educational attainment.

[44] **Mr Martin:** It is certainly disappointing that there has not been a greater reduction in the number of unplanned school changes over the last 10 years. It has not altered a great deal.

[45] **Darren Millar:** Thank you, Mike. I call on Jenny, and then Lindsay.

[46] **Jenny Rathbone:** I felt that your report posed as many questions as it answered. As you point out on page 52, it is as much about culture as it is about structures. It is not clear to me as to what the response has been by local authorities. Clearly, the figures indicate a very mixed attainment level, but when the Deputy Minister for Children and Social Services wrote to local authorities in September 2008, what was the response? Presumably, the lead member for children had to devise a response. That is one question. You mention the very interesting case of Denbighshire establishing a councillors forum and the development of school governors as corporate parents. That is an interesting idea, but it would have been useful to have known a little more about that in terms of its effectiveness. It is a great idea, but has it worked? However, in the case of the Swansea scrutiny work, it would be useful to know whether any of the people who wrote that report are still with the council. Obviously, there was an election two months after that. This issue is as much about leadership and ownership by councillors and senior officials. This report does not really tell me where the real problems lie. I do not feel that I have enough information—perhaps a case study of where things seem to be working according to plan.

2.30 p.m.

[47] **Mr Martin:** The local authority position is that all local authorities will say and will have said to the Deputy Minister that they are committed to making improvements to the education of looked-after children, that they have set up corporate parenting groups specifically for that reason, which do a great deal, by way of having both a looked-after children education team and officers and celebration events for looked-after children, for example. I suppose that when you looked at the business that some of the corporate parenting groups did, we were left with a feeling that they were often content to be told that their performance had not improved very much on the numbers but that it was a small cohort and there were some difficulties with that group of children. They were not demanding to know the aspirations for this group of children and whether they were achieved, bearing in mind what could be expected for a particular child. They were not as rigorous as they could be and they were content to be given insufficient information. They were not strong enough in their role.

[48] **Jenny Rathbone:** So, you found no instances of challenge, then.

[49] **Mr Martin:** We found some instances of challenge, yes, but in other places it was not so good. There was the Swansea case, which the group picked up through its scrutiny, and Cardiff has also done some good work through its scrutiny. That raises the expectations of the council as a whole and of the role of the members and their understanding of what they should be looking for. We hope that, over the coming years, that will become evident and will work its way through. We are not yet able to trace in the data the cause and effect of the particular piece of work done in Swansea, but one hopes that it will have some impact.

[50] **Jenny Rathbone:** There is clearly a problem because, although these young people are progressing, they are not progressing as quickly as other young people in Wales and they are definitely not progressing as well as those in England. There appears to be quite a major issue with delivery here.

[51] **Mr Martin:** Improvements could certainly be made, yes.

[52] **Darren Millar:** Next we have questions from Lindsay, then Julie and Oscar.

[53] **Lindsay Whittle:** In your report, the statistics on pages 67 and 68 are really quite fascinating. Only one local authority, Merthyr Tydfil, had a rate of more than 50% for those

leaving school with five or more GCSE grades. I think that Merthyr was at 68%. However, Torfaen was only 21% and Newport was 23%. There is not much difference between those areas in socioeconomic terms, so I am wondering why Merthyr was more successful. We are a pretty close group of people as politicians in Wales. There are not many of us. We know each other—we are practically all related. So, with just 22 local authorities, I wonder why they cannot share this good practice. Did you find any barriers?

[54] **Mr Martin:** It is one thing to share the knowledge. It is another to get decisions made to implement that practice. So, although there are networks, particularly among looked-after children and education officers, who are quite good at sharing what they are doing, the decisions that may involve financial decisions over the medium term do not necessarily seem to follow. That is probably a barrier at management and leadership level. Some of these things are complex and difficult, because a lot of stakeholders are involved with quite small groups of children and young people, so it requires a fair degree of time and commitment to pursue changes. So, the barriers are perhaps at that level rather than information about different good things that work not being available to those who want it. That goes back to the point that Jenny Rathbone made about the commitment shown at that management and leadership level.

[55] **Lindsay Whittle:** Sorry to put you on the spot, and you do not have to answer if you do not want to, but would you say that that was a political decision?

[56] **Mr Martin:** Certainly not with a capital ‘p’. It is more about making sure that it is sufficiently on the agenda as an important issue. From our point of view, the statutory responsibility to be corporate parents means that it needs to be an important issue, but perhaps given that so many other competing things come along, this one cannot get the attention that it deserves.

[57] **Julie Morgan:** We have spoken a lot about the huge number of people involved with looked-after children. How much work is being done with them directly to look at the barriers, as they perceive them?

[58] **Mr Martin:** One thing that happens is that you get a succession of reports—and perhaps this is one of them. In recent years, there have been reports from the Fostering Network and by Barnardo’s on the education of looked-after children. The Children’s Commissioner for Wales has written about ‘Lost in Care’ and some of the issues that came along there. So, that is what has happened rather than all this knowledge and information being gathered to inform a shared plan. That seems to be the element that has been missing in this.

[59] **Mohammad Asghar:** This is a very good report—and a very alarming report, with this increase in number. There are 18-month-old statistics there, but we like to see what the current position is, really. In paragraph 26 on page 14, it says that in England the spend per-pupil, the premium, is £600, while in Wales it is £450. Is this financial constraint the difference for children who are looked after and who are not getting education attainments?

[60] **Mr Martin:** The point that is being made there is that, in England, looked-after children are singled out as a category to get their pupil premium in addition to those receiving free school meals, while, in Wales, the pupil deprivation grant is not paid in relation to looked-after children as a group. So, in Wales, many looked-after children are not getting that premium for their schools. The funding regime in Wales is different and smaller.

[61] **Mr Thomas:** Of course, we have attempted estimates of what it would mean if the English formula were applied to Welsh schools.

[62] **Darren Millar:** Yes, I think that the figure in the report is around £2 million. That

would be the cost. Was there a correlation between educational attainment and the amount that was being spent by each of the local authorities? Did Merthyr, for example, spend a lot more per pupil on looked-after children's education than some of the other local authorities that did not achieve well?

[63] **Mr Martin:** We have not done an analysis in that detail, although the analysis that was done for the RAISE grant—raising attainment and individual standards in education in Wales—could not really find any direct correlation between the amount and the attainment. It struggled to find any correlation between the particular things that the grant was being spent on and attainment. It is one of these things as the numbers in each year cohort are quite small, and the research is not there yet to support there being a direct link.

[64] **Darren Millar:** Are there any further questions? I see that there are not, so we will move on to item 3.

2.39 p.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd
o'r Cyfarfod
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public
from the Meeting**

[65] **Darren Millar:** I move that

the committee resolves to exclude the public from the meeting for the discussion of items 4 and 7, in accordance with Standing Order No. 17.42.

[66] I see that the committee is in agreement, and so I ask that the public gallery be cleared, please.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 2.39 p.m.
The public part of the meeting ended at 2.39 p.m.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 2.59 p.m.
The committee reconvened in public at 2.59 p.m.*

**Bil Archwilio Cyhoeddus (Cymru)—Tystiolaeth gan y Gweinidog Cyllid ac
Arweinydd y Tŷ
Public Audit (Wales) Bill—Evidence from the Minister for Finance and
Leader of the House**

[67] **Darren Millar:** I welcome Jane Hutt to this particular session and also Reg Kilpatrick, who is the director of local government and public service at the Welsh Government and Nicola Charles, from legal services. Welcome to all three of you. Minister, if you could give us a few opening remarks on the purpose of the legislation that is before us, I would appreciate that, and then we will go on to some questions.

[68] **The Minister for Finance and Leader of the House (Jane Hutt):** Thank you very much, Chair. I am pleased to be here. This is an early opportunity for us to discuss this Bill, and I am grateful for that. I do not need to remind the committee of why we need this Bill, as we are all familiar with the reasons behind it, but I would like to comment on the positive

discussions that took place ahead of the Bill being introduced and thank you, Chair, and colleagues for engaging me and for my being able to engage with you in this way.

3.00 p.m.

[69] I did take on board the points that the committee made on the version of the Bill that we issued for consultation. We have a much stronger Bill as a result, which is how it should be, and one more focused on the key purpose, which is of course strengthening the governance and accountability arrangements relating to the Auditor General for Wales and the Wales Audit Office. Most significantly for the committee, we did recast the Bill so that it now provides for the Assembly to determine how it will scrutinise the work of the Auditor General for Wales, rather than prescribing the arrangements on the face of the Bill. That was clearly responding to issues raised with me on that point.

[70] We also addressed other points raised during the consultation, but we have retained those aspects of the Bill that I believe are crucial to its being effective in achieving its purpose and strengthening the existing governance arrangements. That is, the WAO must be a body corporate separate from the office of the AGW, with a duty to monitor the work of the AGW and a responsibility for holding the budget. The Bill maintains the independence of the AGW in relation to his or her audit functions.

[71] The consultation, as you saw, raised points that will be matters for consideration as part of the practicalities of implementation rather than as part of the development of the Bill itself—for example, regarding the process of appointing members. We put aside many of the consolidating and simplification provisions that were contained in the version of the Bill issued for consultation, so we now have a much shorter Bill with a clearer purpose. There will need to be a number of technical amendments at Stage 2 regarding terminology and those sorts of issues, but I am open to suggestions from the committee as to other amendments that we should consider. I am keen, however, that in considering the detail we never lose sight of the key features of the Bill, or allow them to be diluted.

[72] **Darren Millar:** I thank you for the way in which you and your officials have engaged with the committee. With the support that we had from our special adviser, we really appreciated the opportunity to engage with you in the way that we have on the draft Bill in particular. Minister, you have quite rightly pointed out that the Bill before us is significantly different from the draft Bill, particularly in relation to the attempt, if you like, in the original draft Bill to rationalise some of the existing accounting and audit legislation for local government. I know that you have had some discussion with the Wales Office about legislative competence issues. Do you want to expand a little on those issues and when you expect to be able to introduce a further Bill to address the consolidation of legislation that you wanted?

[73] **Jane Hutt:** I did allude to that in my opening remarks. If you look at the main outstanding issue in terms of taking this forward, it is regarding the Welsh Government's competence to make provision for the audit of chief constables in Wales. The Welsh Government is of the view that the provision to make the AGW the statutory auditor of chief constables in Wales is within competence, so we have sorted that out over the past few weeks. We are looking at these issues. For example, police authorities in Wales are audited by auditors appointed by the AGW under section 13 of the Public Audit (Wales) Act 2004, and the UK Government's Police Reform and Social Responsibility Act 2011 amends legislation to include police and crime commissioners. We really have made great progress. That is about chief constables in Wales, as well as the police and crime commissioners, being on the list of local government bodies in Wales, and all local government bodies in Wales are currently audited by auditors appointed by the AGW. So, it is the intention of the Welsh Government in this Bill to make the AGW the statutory auditor of all local government bodies in Wales. That

is why it would make sense for us to ensure that what we have for the commissioners we also have for the chief constables. So, good work is being done on that, but as I said, there is just this outstanding issue regarding the Welsh Government's competence to make provision for the audit of chief constables. We are working very well with the Wales Office. We have to get this Bill through now and then look for a suitable slot in the legislative programme, if we then want to pursue the outstanding issues in relation to legislative competence.

[74] **Darren Millar:** Thank you very much for that, Minister. One of the other issues that the committee has had concerns about, which you dealt with to some extent in the Bill as it is before us compared to the draft, was the level of prescription that was being given to the Assembly about how some of the functions of the Public Accounts Committee et cetera ought to operate. In section 29 of the Bill, there is a provision for the Assembly to decide on how it should exercise the functions conferred on it by the Bill that deal with the supervisory functions in holding the Wales Audit Office to account. However, paragraph 30(6) of Schedule 1 to the Bill requires that the Public Accounts Committee should specify the responsibilities of the auditor general as the WAO's accounting officer. Also, section 143 of the Government of Wales Act 2006 still confers certain holding-to-account functions on the Public Accounts Committee rather than the National Assembly. Is there the possibility for some confusion here, with the Assembly being responsible for sharing the functions out, rather than their being attributed directly to the Public Accounts Committee?

[75] **Jane Hutt:** I can appreciate, Chair, that, as a result of the changes that we made in terms of remitting these responsibilities to the Assembly, where you as the Public Accounts Committee fit is a very pertinent point. It is important that the provisions of the Government of Wales Act—both Acts—require the auditor general to take into account the views of the Public Accounts Committee about value-for-money reviews and economy, efficiency and effectiveness examinations. We are saying that they should be retained by the PAC, along with retaining the function of specifying responsibility that the accounting officer has for the accounts and finances of the WAO.

[76] We have retained those, as I said, but I would say that all other oversight functions in the Bill at the moment will transfer to the Assembly. However, the committee might wish to look at this issue and the fact that it is important that we are clear about what we do confer in terms of oversight-related functions on the Assembly. That, again, could be a possible consideration for an amendment at Stage 2, if you felt it was appropriate.

[77] **Darren Millar:** Okay. Thank you, Minister.

[78] **Gwyn R. Price:** Good afternoon, Minister. What other governance models did you consider when drawing up the Bill? For example, did you consider keeping the present arrangements, but imposing an Assembly-appointed advisory or supervisory board to oversee the organisation?

[79] **Jane Hutt:** Certainly, if you look at the explanatory memorandum, you will see that we looked at four options. It was very important to look at the governance models that would be appropriate in terms of taking this forward in the Bill. As you know, in a sense, I mentioned in my opening remarks the importance of moving forward in terms of public governance and being clear about the roles and responsibilities. I do not think that we need to go back over that history, but there was an absence of robust governance. The key question for you in terms of our scrutiny is that we must have arrangements that sustain the confidence of the public and provide assurance to them—and, indeed, the bodies audited and the Assembly—that we have this robust governance in place. Through the Bill, we have sought to ensure that we have a corporate WAO, that new arrangements provide the duties and responsibilities of the WAO and the AGW as they relate to his or her audit functions, and for those to be separated rather than vested in one person. We believe that the Bill remedies

governance weaknesses within the WAO and that a corporate WAO would have responsibility for the budget, employees and, indeed, for purchasing goods and services, which would remove or substantially reduce the opportunity for any AGW to act improperly. So, we believe that it has to be on that corporate model, and an advisory or supervisory board would have no executive functions.

[80] **Gwyn R. Price:** Thank you; that has answered question 5 as well.

[81] **Julie Morgan:** Have you had any discussions with the National Audit Office about the arrangements that it has? I understand that the proposals in the Bill are similar to those of the National Audit Office.

[82] **Jane Hutt:** Yes, there certainly have been discussions, as we have sought to learn from all similar arrangements.

[83] **Julie Morgan:** Did you learn anything specific from the National Audit Office?

[84] **Jane Hutt:** I do not think so. Reg might want to come in, as he has done some work on that front.

[85] **Mr Kilpatrick:** As the Minister has said, we looked at other models and tried to learn lessons wherever we could. However, this Bill is a response to a particular set of circumstances in Wales and a particular set of circumstances in relation to us, the AGW, the WAO and the Assembly.

[86] **Julie Morgan:** In section 25, there is a requirement for the auditor general and the Wales Audit Office to agree an annual plan. How will you ensure that that happens?

[87] **Jane Hutt:** Both the WAO and the AGW as its chief executive will have a duty to agree an annual plan. So, it is laid out very clearly, and the importance of their agreeing an annual plan lies at the heart of their role and responsibility. If you look at the way in which they would bring together that annual plan, you will see that it will be through an agreement. The independence of the auditor general is clear in this respect in terms of a programme of work.

[88] **Julie Morgan:** So, you do not think that having to agree this plan in any way jeopardises the independence of the auditor general.

[89] **Jane Hutt:** No. The independence of the auditor general has been at the forefront of our concerns to get this right, while, as Reg has said, being very clear that we have to respond to the circumstances where we need robust governance in terms of the arrangements for the auditor general. If you look at the Bill, you will see that it is designed to ensure that it is the auditor general who determines his or her own work programme, maintaining independence, and it is the auditor general who determines, for example, the maximum amount of resources that will be needed to achieve that work. We see this as a balance between establishing appropriate governance and oversight arrangements for the auditor general and maintaining the principle that the auditor general's independence and discretion are not inappropriately limited. It is the auditor general who has the lead role in this respect, with the WAO needing to step in only if it feels that the auditor general's proposals are unreasonable. We have given the format, remit and responsibilities very clearly to the auditor general with the role of the Wales Audit Office and the non-executive members being one of partnership, engaging in a supportive role, but with the appropriate governance. Reg, do you want to come in on that point?

[90] **Mr Kilpatrick:** In section 8 of the Bill, we are very clear to set out in statute the fact

that the auditor general has complete discretion regarding the manner in which he exercises his functions and he is not subject to the direct control of the National Assembly or the Welsh Government. I do not think that we could be clearer than that about his independence.

[91] **Gwyn R. Price:** How does the Bill provide for the resolution of a dispute between the AGW and the WAO over the work programme and the statement of resources?

[92] **Jane Hutt:** I think that I have laid out clearly the fact that we see the discretion and independence of the auditor general in the development of the work programme. It would be very unlikely that an agreement would not be reached.

3.15 p.m.

[93] We are not expecting disputes. We have to, through scrutiny, consider these issues, but if there were a failure of either party to discharge the duty in terms of planning the work and having the financial resolution to underpin that, we would expect that the members of the WAO and AGW would have to consider their position. However, we think that it is very unlikely that agreement would not be reached.

[94] **Lindsay Whittle:** Good afternoon, Minister. Minister, in England there is a statutory code to manage the relationships between the auditor general and the audit office board. Did you consider making a similar provision in Wales?

[95] **Jane Hutt:** We considered it, but we did not feel that it was appropriate or necessary. Indeed, we thought it might be too prescriptive.

[96] **Lindsay Whittle:** Thank you, Minister. In relation to the question that Julie Morgan asked, can you explain how the potential for the board to reject the statement required by section 26—the auditor general’s work programme and estimate of resources—fits with section 8, which gives the Auditor General for Wales ‘complete discretion’ as to how his functions are exercised? There is a contradiction there.

[97] **Jane Hutt:** I have tried to explain that it is highly unlikely that we would be in that position. I do not think that there is a contradiction here. In terms of the situation that we have with the Bill, I have said that members of the WAO and AGW would have to consider their position, but I do not think that there is a contradiction. I am certainly not advised that there would be, because the Bill does not create a right of review before the court. However, if the WAO did not agree the annual plan or rejected the statement under section 26 relating to the work programme, that decision could be subject to judicial review. However, I hope that we would not get to that position in terms of what we would expect with regard to the responsibilities of the auditor general and those, importantly, publicly-appointed WAO members. I do not know whether Nicola wants to make any comment on this.

[98] **Ms Charles:** No.

[99] **Mr Kilpatrick:** To go back to that contradiction, or what people may perceive to be a contradiction, there is absolute clarity that the auditor general can exercise his functions independently. We believe that the process of the auditor general bringing forward an estimate of resources, and, on the basis of that, constructing a plan of action for the following year, is a robust process that, given a degree of reasonableness, should cause no fundamental contradictions between his independence and the preparation of a reasonable plan.

[100] **Lindsay Whittle:** What consideration have you given to other options for the preparation and consideration of the auditor general’s work programme, for example, giving the auditor general sole jurisdiction over their own programme for the statutory functions, but

providing a role for the board to decide whether to take on other work by agreement?

[101] **Jane Hutt:** As you said, we have to be flexible, and by agreement is the right approach. We hope that they would have that kind of robust relationship in terms of the WAO's functions and responsibilities in support of the AGW, and, of course, the AGW's independence is key to this. I do not think that looking for other options for the preparation of the work programme will necessarily give us any answers to this. It will be about ensuring that the roles, relationships and responsibilities are clearly defined, and a recognition, as there clearly is in the Bill, of the independence and authority of the AGW in terms of the importance of him or her developing a work plan that can be agreed and taken forward for public scrutiny and transparency.

[102] **Darren Millar:** Could I just touch on this issue of the independence of the auditor general? Is there not a possibility that, because the auditor general has to go to the board in order to seek approval for finances and the work programme, the board could fetter the auditor general, Minister? Therefore, is there not a pretty good reason for introducing a sort of statutory code of conduct, as has been done in England?

[103] **Jane Hutt:** We do not feel that that is necessary, but you may wish to explore it further. We feel that, in terms of the way that we would expect the WAO to develop the new arrangements in terms of duties and responsibilities, they relate to the audit functions of the AGW and it is important that they are separated. However, it will be a corporate WAO. If you have a corporate WAO with a budget, employees and responsibilities, I am sure that the relationships will be robust. In fact, we are remedying governance weaknesses within this Bill. We also expect the WAO and the AGW to exercise those powers effectively. As I said, it is for this committee and for this consideration to see whether there may be the need for an examination of a statutory code. We felt that that was overly prescriptive, but it is something that you may wish to consider.

[104] **Darren Millar:** The committee has, obviously, discussed arrangements on recent visits to Northern Ireland, for example. There is still some concern among committee members at the possibility of the board interfering with the work programme or, simply by restricting resources for the auditor general, preventing him from being able to undertake the work programme that he might want to undertake. Obviously, we will want to take some more evidence on that, Minister, and I appreciate the information that you have given us today.

[105] **Mike Hedges:** I see the auditor general's work as being in two distinct areas. When he is acting in the auditing of accounts, I think that he should be totally unfettered in doing that, and that he should have all the money and resources that he needs to carry that out. In terms of the other things that he does, such as the value-for-money exercises, there is much more discretion for other people to be involved in whether they were a good or bad use of resources. Have you thought of actually splitting them into those two, including what used to be the old auditor general's job, as you and I remember, Minister, when he only ever came to audit?

[106] **Jane Hutt:** As you say, independence is crucial in terms of the audit role and function. In terms of the model that we are developing, Julie Morgan asked earlier whether we had looked at the relationships and arrangements for the National Audit Office. In fact, the arrangements are very similar to those of the National Audit Office. Under the Bill, the auditor general will be a statutory independent officeholder, as has been said, with responsibility for independent exercising of audit judgments, as well as being a board member and chief executive of the WAO, which will provide audit services to the AGW, which, of course, was your question. As far as the NAO is concerned, we talked to HM Treasury colleagues when we were going through the Budget Responsibility and National Audit Act

2011. It has not encountered operational difficulties; certainly, the comptroller and auditor general has not, as far as we are aware. So, we feel that the model that we are developing is appropriate and fit for purpose for Wales. However, clearly, you need to test this out.

[107] **Darren Millar:** It is very early days, of course, in England as it stands. It will be interesting to see what happens over there.

[108] **Mohammad Asghar:** My question relates to the WAO board. How did you decide, Minister, upon the size and composition of the board, and, in particular, why did you decide that the board should include only one executive employee member?

[109] **Jane Hutt:** It is about trying to strike the right balance. Nine was considered to be too many and five not enough, so we have a bit of a pitch between the two. This is something on which you may have views in terms of the executive employee member or other executive member. Part of the process at this stage is to consider those points. However, it is clearly about a balanced judgment.

[110] **Mohammad Asghar:** What are your views on the auditor general's evidence that the board should have at least two executive members, while maintaining a non-executive majority?

[111] **Jane Hutt:** I have made my point that there may be a case for looking at this, and you will consider the issue of the executive members and their representation. It is very important that we ensure that we have non-executive members who have that role and responsibility. Also, let us face it, those non-executive members are part of the corporate body and have executive functions. You have to recognise that all members of the WAO will have executive functions and this is something that you may wish to look at in terms of balance.

[112] **Mr Kilpatrick:** Could I add to that? At the moment, the board is called a non-executive board. We may have a different term for that as we go forward, but there is nothing in the legislation that would prevent that board from inviting executives from the WAO—the director of finance, for example, or the human resources director—to sit alongside that board on a regular basis, either for specific issues or as attendees of the board.

[113] **Mohammad Asghar:** Minister, how do you believe the size and composition of the board will enable it to adequately undertake the executive functions of managing the budget, employing staff, and securing the provision of goods and services?

[114] **Jane Hutt:** It is important that the WAO itself determines what support it needs to conduct its day-to-day business. We are getting into the detail here, but we need to reflect on it in terms of what goes on the face of the Bill and how we make that clear in terms of the responsibilities and powers. That is why we have proposed a number and a size. However, I think that it is important that the WAO determines those issues and, of course, they have the executive functions to do so. We must remember those specific functions that are vested in the chair of the WAO and the auditor general himself or herself.

[115] **Jenny Rathbone:** In coming up with your proposals, what consideration, if any, was given to providing for staff input in choosing the executive member of the board?

[116] **Jane Hutt:** This is something on which we need to get your advice. Election has been considered—election by the WAO staff themselves. There could be an appointment by the WAO non-executive members only, or you could have some other form of competition for WAO staff to put themselves forward for consideration. So, this is very open in terms of feedback and consideration by yourselves to ensure that we consider the best way of getting that staff input. We must remember how important that is. I know that you support the

position, in terms of the Bill, to have that employee appointment as critical and consider the best way to make that appointment. I have asked officials to consider options and work up some policy proposals. If you want to consider criteria or any options, it would be very helpful for me to hear them during this period.

3.30 p.m.

[117] **Jenny Rathbone:** What role do you think the staff member should play on the board? Is it to be a corporate member of the board, to be a sounding board for other staff members, or to provide expert management input to the board? How do you envisage that role?

[118] **Jane Hutt:** It is important that the employee appointment has power and responsibility alongside all the other members, so I envisage that they would have a clear responsibility as part of the board.

[119] **Jenny Rathbone:** Would they have the same responsibility as any other board member?

[120] **Jane Hutt:** Yes, they would be a corporate member of the board. Clearly, we have other examples: sometimes, there is a more formal trade union representation, appointment or delegation. They will have specific expertise as a corporate member of the board, which, I am sure, will be respected by other members.

[121] **Jenny Rathbone:** In your draft Bill, you have made it clear that, as far as you are concerned, the staff of the current Auditor General for Wales's office will be TUPEd across to the new Wales Audit Office, but the auditor general seems to think that they would not be covered by the Transfer of Undertakings (Protection of Employment) Regulations 1981. I wonder whether you could give us your view on that. He seems to be concerned that there might be expensive legal disputes over this matter. I am not at all clear as to why it would not be a case of a straight TUPE across.

[122] **Jane Hutt:** This is very important indeed. As it stands, the Bill seeks to ensure that TUPE will provide in full for the staff who are transferring, because they will be transferring from the current AGW to the new WAO, and we would expect them to be able to retain all their existing rights. There is clear policy guidance statutorily laid down, and 'Staff Transfers in the Public Sector' is the Cabinet Office's practice statement on transfer arrangements, which will be used. I note what the auditor general has raised with you—and I know that you are seeing him this afternoon—and I have asked officials to look at those issues and to review TUPE provisions to ensure that they are complete and can achieve the aim of protecting staff on their transfer to the new WAO. I would be happy to report back to the committee when we have had clarification on that.

[123] **Jenny Rathbone:** So, at the moment, you are not aware of any reason why there should not be a straightforward transfer under the TUPE regulations.

[124] **Mr Kilpatrick:** We have been in some discussions with the auditor general's staff about this issue but, from our side, we still have not quite bottomed it out. As the Minister said, we will bottom it out. The policy intention to transfer the existing terms and conditions is clear in the Bill, and we will report back on our progress with discussions.

[125] **Darren Millar:** I think that the committee would be strongly supportive of your somehow managing to achieve that intention on the face of the Bill.

[126] **Mike Hedges:** The Auditor General for Wales had a cost estimate for implementation of the Bill. The set-up and transitional costs would lie between £180,000 and £350,000, and

ongoing annual costs would lie between £200,000 and £650,000. Do you recognise those costs, and have you had any discussions with the Auditor General for Wales suggesting that those would be the costs incurred?

[127] **Jane Hutt:** To look again at the current budget of the AGW, in response to your question, Mike, it is £24.2 million. Full-year costs for the new WAO in 2014-15, for example, are estimated to be around £150,000—that is our estimate—and transitional costs for 2013-14 are estimated to be around £70,000, which include recruitment and appointment costs. We think that these costs are reasonable and proportionate, and we need to underpin them with the understanding that we need to be reputationally clear, so that we avoid any risk. However, I am very happy for us to share how these cost estimates have come through, working with the auditor general, and to work through the costings of the Bill.

[128] **Mr Kilpatrick:** I will just add to that. I have seen the auditor general's costs, and there is an issue around the HMRC and travel and subsistence, which he highlights in his response. If you remove that, the difference between our costs and those proposed by the auditor general are not as significant as they might first appear, and I suspect that, with some further work on what the net costs of the new system are, our estimates will get even closer.

[129] **Mike Hedges:** Finally, will you be having further discussions with the auditor general, so that you can come to an agreed set of costs?

[130] **Mr Kilpatrick:** We will definitely be having further discussions around the HMRC and the travel and subsistence issues. I am sure that, as part of that, we will talk about our respective cost estimates.

[131] **Jane Hutt:** Again, this is a bit like the TUPE issue for staff. We would want to come back to you, Chair, to clarify points, if that is helpful.

[132] **Darren Millar:** I think that the auditor general may be in a position to update us further on the potential implications of the HMRC issue, so we will look forward to receiving his evidence later. Mike, would you like to continue?

[133] **Mike Hedges:** Yes. I will move on now to data-matching. What discussions has the Minister had with the UK Government on the continuation of the national fraud initiative as a result of the decision to abolish the Audit Commission?

[134] **Jane Hutt:** There has been very close working. Our officials are in touch with both your counterparts and their counterparts in the UK Department for Communities and Local Government.

[135] **Mike Hedges:** Finally, have you discussed this issue with the Auditor General for Wales?

[136] **Jane Hutt:** There is now correspondence and contact between the AGW's compliance officer and us. Our officials had a letter from that person last week, which raised this issue, and we will work through it with the officer to clarify the points.

[137] **Darren Millar:** Are there any further questions from Members? I see that there are none. Minister, are there any closing remarks that you would like to make?

[138] **Jane Hutt:** I very much feel that I am taking this Bill forward on behalf of the public sector of Wales. I recognise that this is very much in your hands, with me providing, hopefully, the guidance, leadership and officials to assist. We have raised issues for clarification, and we know that we are at the point of clarifying issues on TUPE, on staff or

employee representation, and the final points that Mike Hedges made. I think that we will clarify those, and we can hopefully move forward to reassure the auditor general about his independence and the importance of his or her role, and to ensure that we have robust governance in place, with a Wales Audit Office that the people of Wales can feel confident in and that the Public Accounts Committee can clearly respect and work with closely.

[139] **Darren Millar:** I thank you and your officials, Minister, on behalf of the committee. We are very grateful for the genuine way in which you are approaching this piece of legislation, wanting to take on board the views of the committee. We are also grateful for the good, positive working relationship that the committee has had to date with your department and with you. We look forward to cracking on with this, now that it has hit our table, and seeing the process through to completion.

[140] **Jane Hutt:** Thank you.

3.41 p.m.

**Bil Archwilio Cyhoeddus (Cymru)—Tystiolaeth gan Archwilydd Cyffredinol
Cymru**
Public Audit (Wales) Bill—Evidence from the Auditor General for Wales

[141] **Darren Millar:** Okay, we will move on to item 6 on our agenda this afternoon, continuing with our evidence on the Public Audit (Wales) Bill, this time with the Auditor General for Wales, Huw Vaughan Thomas, Mike Usher, a group director of financial audit, at the Wales Audit Office and Martin Peters, the compliance officer of the Wales Audit Office. Welcome to you all.

[142] Auditor general, can you tell me whether you agree with the general principles of the Bill before us? Is there a need for this legislation?

[143] **Mr Thomas:** I have to say that some parts of this legislation are like the Dangerous Dogs Act 1991, in that we are legislating to shut the stable door and double-bolt it. However, what is important is that I support the principle of legislation to improve the statutory basis and the corporate governance of the auditor general and the Wales Audit Office. The problem is that the corporate body as proposed in the Bill does not meet that objective.

[144] The problem, very briefly, is that the Bill sets up a corporate body with a board that mixes supervisory oversight functions—monitoring and advising—with the functions of running the office, and this is where the real problem starts. By mixing these functions, the board's oversight ability is compromised. It cannot, for example, be objective about decisions on the recruitment of staff because it will have taken them. Related to that key problem is that if the board is to have executive functions, its proposed composition is flawed. I would be happy to elaborate on these points later, but, to get back to a more positive note, the Bill's objective for providing a better statutory basis for governance is right. It could be relatively easily achieved by providing for a supervisory board; one that is focused on the oversight functions rather than compromising it by exercising the executive functions. It is not only practical and affordable, but the best way forward. However, if there is a need to have a corporate body, with this mix of executive functions, some changes to the Bill are needed to make it workable and to remove the worst risks to audit independence. If that is the way in which the legislation is going to go, it would be better for the Bill to be closer to the Budget Responsibility and National Audit Act 2011, because that provides an existing recipe for a corporate body. That said, I would prefer to see a supervisory board.

[145] **Darren Millar:** Okay. Those were very bullish remarks to open the session with,

particularly the Dangerous Dogs Act reference. We look forward to teasing out some more information from you during the course of this session. Your main concern, then, is around the corporate board.

[146] **Mr Thomas:** It is indeed. I will give an example of something that occurred this weekend. Clearly, you would not expect me to go into the details of that, but basically, as you know, I have a forward value-for-money programme. It is one that I have shared with you, and I then decide to allocate resources, and that underpins my estimates. I had occasion at the weekend to consider something that arose out of correspondence from an Assembly Member, and the issues are such that I needed to change the programme of value-for-money studies to accommodate this, and to seek external support, because the issues were such that I needed to supplement the resources of the office to deliver it.

3.45 p.m.

[147] I can take that decision myself. As the Bill is currently structured, I would have needed to have gone to the board to put a case and to reach agreement with it. It would have had to be prepared to change a part of the basis under which I had planned for the year, and the resources allocated. So, I see that as a good example of where this Bill falls short of delivering what I heard the Minister and Reg Kilpatrick saying they want to achieve, namely the audit independence of the auditor general.

[148] **Darren Millar:** Going back to that particular example, is it not the case that you are just not used to answering to a board, and that you do not want to have to go cap in hand, asking for permission to change your forward work programme, or is it really an issue where you believe there is an opportunity for you to be fettered in undertaking your work independently?

[149] **Mr Thomas:** I have been used to working with boards my whole life, so it is not a desire to avoid working with a board. Equally, I have been answerable, and accountable, in my public service all my life. However, as auditor general, I had to take a decision that something was important for me to audit. I took that decision and, as a consequence, I needed to revisit the resources and restructure them. The Bill requires me to have sought the agreement of the board corporately before it could be done. Clearly, you can create arrangements, and you can create delegations, and so on, but they compromise the issue of audit independence. In the BRANA Act, it is noticeable that the powers of the National Audit Office Bill are in respect of the non-statutory functions—they are not in respect of the statutory function, of which this was an example.

[150] **Darren Millar:** The BRANA Act is the Budget Responsibility and National Audit Act 2011, is it not?

[151] **Mr Thomas:** Yes.

[152] **Darren Millar:** I just wanted to clarify that.

[153] **Mr Thomas:** I am sorry, I was using shorthand.

[154] **Jenny Rathbone:** If the Bill was to separate out the statutory role of your office, which is obviously to do with auditing accounts and ensuring that money is spent for the purpose for which it has been allocated, and the other aspects of your job, would you have the same reservations about going to the board and saying, ‘We were going to do an X, Y, Z value-for-money report, but we need to transfer resources into something else that has arisen, which is more important’?

[155] **Mr Thomas:** Yes, it will help, because it clearly defines what I would be responsible for, in terms of producing estimates and so on. It would reduce the potential for disagreement, because, essentially, I am being asked under legislation to agree with the board my forward programme of work and to produce budgets and resources accordingly. However, if you more closely define it and say, 'Look, on this aspect, this is what the auditor general would be proposing, and, on the other side, that is where the board really exercises its right', you would be closer to trying to avoid some of the disputes. As I said, we have a model in the way in which the NAO is corporately governed—

[156] **Jenny Rathbone:** You are clearly concerned about this aspect of the board's role, as set out in the draft legislation. Would you envisage the possibility that you would not be fettered if your statutory role was excluded from its supervisory role?

[157] **Mr Thomas:** I will repeat myself, in order to make it absolutely clear: I would prefer a supervisory board. I have no objection to an executive board, if it was properly constructed. This Bill fails to deliver either. As a result, it runs a number of risks in terms of fettering judgment—not least in the extent to which my work needs to be agreed with the board. I am suggesting that the model that is provided with the NAO is one solution, and it has been shown to work.

[158] **Jenny Rathbone:** This is a complicated issue, but I think that one of the concerns that has forced us to look at all of this is around the role of a previous auditor general, who had a vested interest in not allowing proper oversight of what was being done. That is why we are proposing non-executive appointments—people with no vested interest; that would be in the job description—to ensure that the role of the office is being carried out appropriately. I do not understand why you think there is a danger that your role would be fettered. Assuming that we are capable of making appropriate appointments, why would these people not be able to respond appropriately when the work programme changed because of circumstances?

[159] **Mr Thomas:** I make no comment about the individuals who would be appointed to the board. They would be excellent, I am sure. It is about what the legislation says. In a sense, it is concerning that we have a piece of draft legislation that I consider flawed at a number of points.

[160] **Martin,** would you like to address the legislation? In particular, I think that sections 25 and 26 apply to this.

[161] **Mr Peters:** I would like to come back to the point about the NAO model and about there being a statutory element to this work programme—or 'strategy' as it is called in the Budget Responsibility and National Audit Act 2011—and a non-statutory element. Everything that the auditor general does is statutory, but some things are ancillary. There is benefit in taking away a veto that the board members would have on statutory functions, because there should not be any question that those should be freely exercised by the auditor general. There is, perhaps, merit in having some sort of control on ancillary functions. That is what happens with the NAO. However, that is not the whole story with this Bill. That is one of several problems, where the Bill is coming up with a control that at first sight looks fairly reasonable, but when you poke at it a bit you realise that it will have unintended effects.

[162] **Jenny Rathbone:** Such as what? That is why we are trying to scrutinise it, in order to design out those unintended effects.

[163] **Mr Peters:** The key one is board members having a veto on studies. For example, if the AGW thinks that a particular study is worth pursuing—

[164] **Jenny Rathbone:** Are we talking about value-for-money studies?

[165] **Mr Peters:** Yes.

[166] For example, if the AGW thinks that a particular study is worth pursuing, the test of reasonableness that is being suggested is applied to the approval process for the work programme and estimate of maximum resources required. ‘Reasonableness’ sounds good—nobody would be unreasonable—but what does it actually mean in practice? A board member might look in the dictionary and see that it says, ‘not immoderate’ reasonableness is ‘moderateness’. It has to consider all of the AGW’s functions. It is actually undertaking a test of what it is that the AGW should be allowed to do. I do not think that it is clear. There are no criteria in the Bill setting out what it should be doing in undertaking that test. It is a big ask of ordinary non-executive members to put them in that position without their being suitably guided on how to do that.

[167] **Jenny Rathbone:** However, it is surely perfectly possible for non-executive members to make appropriate value judgments about whether we should be studying X or Y in terms of value for money, given that it is never possible to do everything. There is always an element of having to choose what to concentrate on.

[168] **Mr Thomas:** Therefore, in terms of my forward programme, I may decide, having looked at the scene in Wales, that I want to look at certain areas. If we followed your argument, it would then be the case that there could be debate among the board, which could say, ‘No, we will go down this road, auditor general; that is what we want to do’, and I might say, ‘No, I want to study this’. We would then be into a disagreement about what the value-for-money programme should encompass. That is at the heart of the difficulty that we have in terms of the design of the Bill.

[169] **Darren Millar:** I think that that is precisely where you wanted to come in with some of your questions, is it not, Gwyn?

[170] **Gwyn R. Price:** Yes. Obviously, we asked you to expand on your concerns about the provisions of sections 25 and 26, and you have gone into that in great detail. However, having listened to you, I think that my next question is very relevant. I want to ask you to expand on your evidence on the lack of any dispute resolution process. As an ex-trade union official, listening to what you are saying, I can see that disputes will arise and that you will need someone to get between you in the ring to sort it out.

[171] **Mr Thomas:** I will ask Martin to expand on that one. However, there is also the issue of the tension in the Bill between my various roles. I am used to exercising multiple roles, but I am the auditor general and the chief executive of the Wales Audit Office—and therefore, I suppose, the person who is carrying out the wishes of the board—as well as the accounting officer. I am capable of carrying out all of those, but there are inherent tensions within me, if you like, in terms of approaching the subject.

[172] **Gwyn R. Price:** We would never have guessed that, but there you are.

[173] **Mr Peters:** I think that the main problem is that the Bill is setting up the potential for dispute rather than omitting a dispute resolution process. It would be better to avoid dispute in the first place, and the way to do that would be to go down the route of having a supervisory board, because you would not then have the members trying to veto the AGW’s choice of work, for example.

[174] With regard to how disputes could be resolved, we heard earlier the Minister suggest that we could consider our positions. We have also heard about the option of going to court. I do not think that the first option is terribly helpful in terms of getting studies done and

ensuring public scrutiny of public expenditure, and neither is the second option. In fact, I do not think that the second option is practical at all, because it is usual to take legal advice before going to court, but the AGW is reliant in terms of services, which encompass legal services, on what is provided by the WAO board. Under section 21, only the WAO may secure services, and that includes legal services, so the auditor general is reliant on advice that has been procured by the WAO. That is not a basis on which he can really go to court. I do not think that anyone could provide advice that was suitably independent if they were being paid by the WAO board when the dispute is with the rest of the WAO board. So, no, within the Bill as it stands, there is no suitable dispute resolution mechanism.

4.00 p.m.

[175] **Darren Millar:** Mike, did you want to come in on this?

[176] **Mr Usher:** Yes, briefly, Chair. A lot of the discussion this afternoon has been around dispute resolution, people acting reasonably and so on. A lot of this really goes to the heart of section 25—

[177] ‘the Auditor General and the WAO must agree upon’—

[178] and what happens if that agreement is not reached. It has been reassuring to hear the Welsh Government this afternoon talking about the importance of preserving the auditor general’s audit independence. It is that bit about ‘agree upon’ that is at the heart of a lot of these difficulties, so perhaps having something like ‘consult and have regard to’ may be a way around some of that. There are alternative ways of engaging between the auditor general and the board that may help to finesse some of those difficulties. However, there is an inherent tension around the requirement to agree and auditor independence, because what happens if an agreement cannot be made? Somebody has to back down; if it is the auditor general who backs down, then, by definition, his audit independence is being fettered. That is the fundamental difficulty.

[179] **Gwyn R. Price:** We should have somebody or some body at the end of the day to say, ‘The buck stops here’. Somebody has to make a decision in life and that is why we are here, around this table. So, we have to pursue the point that somebody would be able to resolve a dispute in the end.

[180] **Darren Millar:** You are absolutely right, because, on the face of the Bill as it stands, you effectively have two equals that are being created—neither of which is subordinate to the other—with this requirement to agree. It is Sod’s law that there will be a disagreement at some point, no matter how reasonable people try to be. So, how that will be dealt with is what we are really interested in. There is one suggestion in your paper, which Julie wants to ask you about.

[181] **Julie Morgan:** You say in your evidence that the National Audit Office has a statutory code to deal with the relationship between the Comptroller and Auditor General and the NAO board. Are you proposing that as something it would be good to have in this Bill?

[182] **Mr Thomas:** It is part of what I would suggest. I am arguing that if you wish to go down the corporate executive model, then something that is closer to BRANA is desirable. Part of the advantage of that is the code, which is intended to reflect the comptroller and auditor general’s discretion—how the auditor’s audit independence is being safeguarded—and to ensure that the board’s decision-making does not stray into those areas. The point is that, by itself, it will not be a resolution to this Act, because the Act requires there to be agreement. It is part of the package of BRANA. The other thing that I would say is that codes have a distinct advantage: they are not on the face of primary legislation and they can

therefore be updated more easily. They still have a statutory basis, but they can be updated more easily than if they had a formal primary legislative basis.

[183] **Julie Morgan:** So, are you saying that there should be a code?

[184] **Mr Thomas:** A code would be desirable, yes.

[185] **Darren Millar:** The Minister in her evidence suggested that a code would be overly prescriptive and that it would be too difficult to get a code together. Why do you think that the Minister has that view?

[186] **Mr Thomas:** I am not sure why the Minister has that view. In legislation, codes are used when you do not wish to keep having to recourse to primary legislation, particularly if they are capable of being updated. After all, you can conceive of the code as being something that would be looked at regularly by the Assembly and given the support that, ‘Yes, that looks right’. So, a steer is being taken. If issues arise in practice where we need to set out a better understanding of the relationship between the AGW and the board, then this is the right vehicle. It could be updated; it is more of a living document.

[187] **Mr Peters:** I just want to add something in terms of the value of a code. A code is particularly valuable when you are trying to set up a corporate body. It is an additional way of trying to protect the auditor general’s independence. It is also useful in that it can be a handier document than relying on the face of legislation, because it allows more commentary and it allows provisions to be considered side by side. I hope that that was not too much.

[188] **Julie Morgan:** You say in your evidence that there is no equivalent to section 9(2) in the BRANA Act. Why do you think that this particular section will be problematic for the AGW, for you?

[189] **Mr Peters:** That is right. There is no direct equivalent of this in the BRANA Act. Section 9(2) prevents the AGW from doing anything that is a function of the board. So, that means employing staff or securing services. There is a question as to what employing services means. It is clear enough that employment contracts will not be made out in the name of the auditor general, but in terms of getting the work done, does that mean that the auditor general is not able to instruct staff to do work at particular times? Does it mean that, when he has a contractor, he cannot say, ‘You’re not performing sufficiently well, so I’m not going to use you any more’? Perhaps all those things would have to be done through the WAO board, which seems a bit of an encumbrance, particularly if you are trying to be agile and to do audit work that responds to particular issues as they develop.

[190] There is also a bit of a problem in terms of the way that that interacts with the delegation provision, which is in paragraph 29 of Schedule 1, under which the WAO may delegate its functions to the AGW, but there is nothing there to reconcile that ability to delegate and the prohibition of him from exercising functions. So, there is a tension there.

[191] **Julie Morgan:** I found that slightly confusing. Perhaps you are looking at this with more fears than are necessary.

[192] **Mr Thomas:** We are looking at it from the point of view that we have had a number of experiences of people challenging audits, and we need to make sure that we are pretty watertight. In future, as Martin was indicating, I will not be able to do anything that the WAO board can do. Therefore, in a sense, that brings the WAO board, unless there is a very careful scheme of delegation—which is why I am arguing for the code—into the position of needing to take a view on some of the issues on which I am taking a view. For example, are we satisfied that one of the firms is delivering audit services satisfactorily? That is a judgment

that I will have to take. The contracts will be in the name of the WAO board and probably not in my name and, therefore, because it is a corporate body, the WAO board will have to satisfy itself that it is taking a proper decision. So, that is why I keep coming back to the fact that the legislation is creating an executive board, and, having listened to the Minister's evidence to you, I think that that was recognised in what she said. There is a need to ensure that if we go down that route, we revisit the composition of the board and what is expected of its members.

[193] **Mike Hedges:** Before we go into that, I have two questions. I am familiar with investigating NHS trusts and they are set up with a corporate board, and do not seem to have problems with their chief executives administrating a whole range of things, so why would you be different? The other question concerns the fact that I see you doing two things. In your old role, as you will remember, all an auditor general did was audit. They went in to local authorities and other bodies and all that they did was audit them. There is an argument, which I would put forward, that you should be unaffected in what you audit: you should decide who you audit, when you audit and how you audit any body in Wales. However, the value-for-money exercises started coming in in the 1980s, did they not? So why that should be unfettered, I am not quite sure.

[194] **Mr Thomas:** I think, with respect, that you are actually looking at it through local authority eyes. The comptroller and auditors general in democracies have, for a long time, been able to look at the wider function of audit. What you are describing is what came in as extra statutory duties in terms of the local government Acts. Yes, I do that, but equally, most of my work—for example, the work that you are currently considering on River Lodge, the work that you will be looking at in terms of AWEMA, and the work that I commissioned over the weekend—comes from my general, value-for-money powers to investigate. That is my choice as auditor general. I see from the balance of evidence coming before me whether there is an issue that needs full examination and investigation, such that I need to switch resources to it. That, to me, is the unfettered ability of the auditor. What I am arguing against is where the Bill moves that judgment into the board.

[195] **Lindsay Whittle:** You said that you have previously worked with boards. You said in your evidence that there are not enough executive members on the board. How many executive members should there be?

[196] **Mr Usher:** We have been giving this quite a lot of thought in terms of composition and, as the auditor general said at the start of this session, we feel at the moment that the requirements in the Bill fall between two stools. It is almost a supervisory-board composition in terms of the only executive members being the auditor general and an employee-representative member, yet it is an executive board in terms of what it is being expected to do. We have been looking to see if we can find an equivalent in a public body elsewhere that has the set of responsibilities that the board will have with that kind of prescribed composition, and, to be absolutely honest, we cannot find one. You have a chair and four other non-executive directors, and that is five in total on this board, plus an auditor general, plus an employee representative, so a board of seven. In terms of the responsibilities that that board would have, around employing staff and so on, we feel that there will be a need for an increased number of executive members on that board, although they should still be in a minority. I think that it is an important governance principle that the non-executives should be the majority, but we would prefer a board of, say, nine—keeping the five comprising the chair and four non-executives, plus the auditor general, two senior management representatives, and the employee representative. A 5:4 split would, we think, equip the board with the capacity, skill sets and experience, and so on, to be able to discharge the functions that the Bill requires around the board taking executive functions. If we were to adopt the supervisory-board model, then the composition as it stands is probably fine. At the moment it is neither one thing nor the other, and there is a need to decide which way this is going to jump. Either the composition needs to change or the role needs to change, but at the moment

it is neither one nor the other.

[197] **Lindsay Whittle:** It is interesting to be passionate about being members of boards, is it not? They say that we in Wales like committees and boards, and here we are all getting passionate about that—I think that it is great. Whether we have one or four members, what are your views on how such members of the board should be appointed?

[198] **Mr Usher:** There are probably two issues there. One is that, as currently constituted with the employee member—and the explanatory memorandum sets out the intention behind that, which the Minister touched on earlier—it is important that that representative member unambiguously represents the views of all staff. We have two trade unions recognised in the WAO, and a number of staff who are not members of either union, so we would certainly see the sense of giving all employees in the WAO an opportunity to help choose who that person should be, which takes us down some kind of election-type route. With executive members, if you were to add those to the board structure, then you would ordinarily expect that to be done on the recommendation of the chief executive—the auditor general—to the board for confirmation. It would be probably that kind of route. So, there are two different answers depending on the nature of those in-house members.

[199] **Lindsay Whittle:** Would they not be open to public appointment and advertisement?

4.15 p.m.

[200] **Mr Usher:** On advertisements, certainly, those executive members would need to be employees of the WAO. So, as for some form of competition within the organisation, why not? However, I think that it would be necessary for them to be sufficiently senior in their role and expertise to be able to contribute meaningfully to board discussions alongside the auditor general and the staff representative.

[201] **Darren Millar:** On this issue of executive members, when we asked the Minister why there was only one, one of the responses we had—I think it was from Reg—was that there is nothing to preclude the attendance of senior officers within the WAO at any corporate board meeting whereby they could be asked to contribute to the discussion ongoing around the table. Is that not sufficient to satisfy you? That is, if there were a corporate body along the lines of the one that exists, that ought to give a sufficient inside view, as it were, when the body makes its decisions.

[202] **Mr Thomas:** I think that we are back into the area that I have argued about in relation to the code, in this case, and what might be the standing orders of the particular board. My concern is that there should be adequate consideration, guaranteed by the board, of issues. If it is responsible for resources, then it will need resource advice. Just as it can invite others to attend—indeed, one would expect that in the course of a board's meeting—so it can disinvite others, and I think that it is right that if the board is taking a decision about resources, for example, somebody is there, as of right, who is able to speak to the resource issues. So, yes, it could be much bigger, but I think that there is a need to balance the executive and the non-executive members, and, again, if you were to adopt the BRANA recommendation, that Act required a mix on the board.

[203] **Mike Hedges:** In further education colleges, they have a situation in which vice-principals and the heads of finance and others attend as of right, even though they are not members of the corporation, in order to advise the corporation on their areas of expertise. Why would that not be the method here?

[204] **Mr Thomas:** Again, I would say that there is nothing to prevent the board from having a wider range. As for why it does not apply here, I am afraid that we are back to the

argument about what audit independence means and making sure that the board is able to get proper advice when taking its decisions.

[205] The other area, of course, is really quite clear: it is the argument about the board in executive mode. As a supervisory body, I think that the board would not need executives to be present; it would have non-executives, and it could even be a larger body that represents people who could speak for the audited bodies. Obviously, it would have to watch current interests. However, you would have much wider stakeholder involvement, it seems to me, in a supervisory board.

[206] **Mr Peters:** There is also the issue that, with a corporate body, if you are just calling in senior managers to give their views, you do not have the ownership going back into the implementation of decisions. You have, if you like, a board that is making decisions that it does not itself have to deliver; it does not have enough people who are responsible for delivering those decisions, and that will not help the effectiveness of the organisation. That is if you want a corporate body.

[207] **Mike Hedges:** I will not go into other bodies that work in that way. Going back to an answer that we had earlier on the appointment of the staff representative, are you saying that out of the however many staff you have, anybody can nominate himself or herself, or be nominated by others, and you would have a straight ballot to decide?

[208] **Mr Usher:** That could certainly be one approach that could be taken. It is important that all staff have an opportunity to contribute to the selection of who that individual would be—I would just make the point that not all staff are members of either of the recognised trade unions—rather than it simply being a union nominee.

[209] **Mike Hedges:** Sorry to revert to further education, but that is exactly how the staff representatives in further education colleges are elected. They do not have to be a member of either of the unions, although they will probably try to get their members to support one of the candidates. However, the reality is that anyone can stand and anyone can be elected.

[210] **Mr Usher:** Yes, which is fine.

[211] **Mohammad Asghar:** Would you kindly let us know your views on the provisions within the Bill for the Assembly to oversee and hold the WAO to account?

[212] **Mr Thomas:** The Bill as it is currently drafted certainly provides a better formulation in that it gives the Assembly the power; I expressed concerns about the first draft of the Bill in that it tightly defined the PAC and was highly prescriptive. However, there are areas where it looks like some of the amendments consequential to the decision to make that change have not been carried through into the draft Bill. So, there are still some areas of confusion. I think that you asked the Minister about that earlier. So I think that does need tidying up. However, once again, I argue that if you had a supervisory board it could have the function of advising the Assembly in support of its oversight. Going back to an earlier point about dispute resolutions, if there was a dispute about the resources, a supervisory board would be in a better position to report concerns directly to the Assembly than a corporate body that owns the resources itself.

[213] **Mohammad Asghar:** Will you also tell us how you estimated the cost of Bill, given that your estimate differs significantly from those of the Minister?

[214] **Mr Usher:** The costings were explored with the Welsh Government in the earlier session as well and I would like to say that I was reassured to hear Reg say that he acknowledged the HMRC issue. We are in discussion with the Welsh Government and

HMRC on that, and that is potentially quite a significant cost element. However, leaving that aside, you are absolutely right to say that our estimates are higher than those set out by the Welsh Government, and that is because we have gone through it in some detail, thinking about the practical application and implementation of the Bill's requirements. Some of the costs are one-off, transitional costs, while others would run year on year.

[215] The one-off costs relate to the staff time involved in reviewing, rewriting and reconstructing many of the internal corporate processes and arrangements that we operate. Unsurprisingly, as an audit office, we are heavily constrained in terms of the way in which we do our audit work by professional standards, internal operating procedures relating to audit quality and so on, and there are human resources procedures. A lot of that needs to be worked through line by line with amendments made et cetera. I will give you a few examples. There is a requirement relating to the code of audit practice, which has been included. We have had a look at the cost of that. On new schemes of delegation, many of our HR policies, such as the staff handbook, disciplinary policies and grievance policies, would need to reflect the creation of this new corporate body. At the moment, many things are routed through to the auditor general, such as grievance appeals; all of that will need to be reconstituted under new arrangements. On the creation of standing orders and operating guidance, I think that, in our written evidence, we referred to a degree of duplication with both the corporate body and the auditor general needing a strategic equality plan and a freedom of information publication scheme, and so on. We would also need quite a lot of technical and legal advice.

[216] In terms of other costs, Reg referred earlier to the HMRC issue and to taxation on travel and subsistence, which is quite a large one. However, there are also TUPE requirements, which I think we would probably want to say a little more about later. The absence of a TUPE-like provision in the Bill as it stands is of concern, both to us and to staff in the organisation. In relation to the scope for employment disputes around the harmonisation of terms and conditions, and so on, we know from experience, when the WAO was created in 2005, that there were two sets of terms and conditions from the NAO and the Audit Commission. Such things give rise to time and cost around resolving disputes. On remuneration, we consider that the estimates made by the Government for costs underestimate the costs that will be incurred in remunerating the members of the board, given the quite extensive roles that they will have in terms of the number of estimated days that they will need and the daily rates to attract people of sufficient calibre. We would be happy to provide a note to the committee on costs in a bit more detail if that would be helpful to you.

[217] **Darren Millar:** Yes, I think that we would appreciate that.

[218] **Mohammad Asghar:** Auditor general, we heard the Minister mention, and you also mentioned, the negotiation with HMRC and advice, but can you not negotiate with it on your side to get your views put forward and get the job done, rather than telling the Government Minister what to do?

[219] **Darren Millar:** May I also ask a question? Obviously, the WAO has some HMRC issues anyway in relation to travel and subsistence, et cetera. How many of those issues relate to the same sort of question here?

[220] **Mr Thomas:** They do not. Because the WAO employs the staff and allocates them to me as AGW to carry out the work, we have two corporate bodies, and there is a risk that the travel and subsistence will, as a result, be taxed because it is applied by one body of services to another body. We are trying to bottom that out.

[221] **Darren Millar:** So it is a completely different issue from the other one on which you have ongoing discussions as the WAO with HMRC?

[222] **Mr Thomas:** Yes.

[223] **Darren Millar:** Okay, I think that that was the clarity that we needed on that particular issue. Gwyn, you have already touched on this in terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

[224] **Gwyn R. Price:** Exactly. What are your concerns about the TUPE arrangements regarding the transfer of staff from your employment to the new WAO? What discussions have you had with the Minister about the concerns regarding TUPE?

[225] **Mr Thomas:** I have very real concerns in terms of TUPE. I would be very happy to continue the discussions, although I have not actually spoken to the Minister directly about these issues. Certainly, we have been making these points to the officials advising her. On TUPE, I have to pass that over to my expert on these matters, Martin.

[226] **Mr Peters:** The key thing for us is that we believe that the TUPE regulations per se do not apply to this proposed transfer. There are transfer provisions in the Bill, but that is not the application of the TUPE regulations. A few elements of the TUPE regulations have been taken and put in the transfer scheme, one of which is the right to object to transfer. It reflects a fundamental right to choose who your employer is, but it is practically not terribly useful to an employee or an employer because it amounts to what is much the same as a resignation. It does not provide any assurance as to employment continuity to a staff member, and neither does it provide any assurance to an auditor general that there will be sufficient staff to do the work.

[227] The transfer provisions also rub up against some of the employment provisions in the Bill. Paragraph 20 of Schedule 1 says that, in employing staff, the WAO must ensure that staff are employed on terms that are broadly in line with those of the Welsh Government. One of the features taken from TUPE broadly is that the staff transferring have their contracts preserved at that point in time. However, when they enter employment with the WAO, although they might have their terms preserved at the point of transfer, they run into this employment provision which says that the terms have to be broadly in line with those of the Welsh Government.

4.30 p.m.

[228] They probably are broadly in line, on the whole, but there only needs to be one or two cases where things are out of kilter for there to be disputes. They take up time and could potentially cost us a lot of money. The other thing about the transfer is that it is only necessary if you are setting up a corporate body. As in several other ways, a corporate body is perhaps not the best option—a supervisory body might be the best option—so a transfer is unnecessary and an unnecessary expense.

[229] **Gwyn R. Price:** To follow up on that, Chair, the staff have to be protected. Although they are coming over on perhaps some of TUPE, they should coming over on all of TUPE. They should not be going backwards in life; they should be going forward and taking the best option. If it is causing a problem with money, you need to resolve that before bringing the TUPE regulations in.

[230] **Mike Hedges:** Could you provide us with a paper on the reason as to why you do not think that TUPE would apply?

[231] **Mr Peters:** I certainly can. Off hand, I can tell you that the main reason is that this transfer is a machinery of public administration change and therefore it falls within an exception that arises in European case law, called the Henke exception. There was a German

case, which determined that wherever you were changing the machinery of government, the TUPE regulations would not apply.

[232] **Darren Millar:** Surely, when the new NAO arrangements were put in place there would have been similar concerns at that time, would there not? Was the legislation framed in such a way to allow for TUPE?

[233] **Mr Peters:** I think that the situation is different with the NAO because it has been established for some time as the NAO. There was some doubt about its corporate existence until recently, but it is a very steady state organisation that has not had lots of transfers in. We have the WAO as it currently exists; it is made up of NAO people and Audit Commission people. When you look at the Audit Commission people, you will see that some of them come from district audit, others from the Department of Health. There are many inherited terms and conditions and so forth, many of which are rather different, and there is much more scope, because of the history of the WAO, for problems in terms of transfers than there is with the NAO.

[234] **Mr Thomas:** In addition, there is a very interesting and subtle difference in wording. Instead of 'broadly in line', the BRANA Act has the better formulation, which is 'has regard to'. That is exactly the wording used in quite a lot of public appointments by Westminster, where people are appointed and their salaries determined with 'regard to'. That allows that degree of interpretation to take place, whereas what we have suggested here is 'broadly in line'. That is an important difference.

[235] **Jenny Rathbone:** I am still struggling with this. I think that the general agreement is that we should enable the employees with x job description to transfer across to another organisation with exactly the same job description. Whether it is TUPE or something 'with regard to', that is what we are trying to achieve. Surely it must be possible for someone to come up with a formula to enable that to happen.

[236] **Mr Peters:** You would have thought so, but the Bill, as it stands, has not achieved that.

[237] **Jenny Rathbone:** All right; we therefore need to work on that.

[238] **Mr Peters:** Yes.

[239] **Darren Millar:** Do you have any closing comments that you wish to make, auditor general?

[240] **Mr Thomas:** Obviously, the committee will also be hearing evidence from others and will be making its own judgment. I would reiterate that this Bill falls between two stools. The choice has to be made between going for a proper supervisory model or for a proper executive model. Trying to do both will not work.

[241] **Darren Millar:** Okay. With those closing remarks, I thank you very much indeed, auditor general. Thank you, Mike and Martin. We have appreciated your evidence today. There will be a copy of the transcript for you to look at and to suggest any amendments if there are any factual inaccuracies. Thank you very much.

[242] We will now go back into private session, as we agreed earlier in the meeting.

*Daeth rhan gyhoeddus y cyfarfod i ben am 4.35 p.m.
The public part of the meeting ended at 4.35 p.m.*

