

Our ref: NB/mm

Ask for: Nick Bennett

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Nick Ramsay AM
Chair
Public Accounts Committee

By Email Only:
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Dear Nick

Public Accounts Committee Scrutiny of Accounts 2017/18

Thank you for your recent report on your Committee's Scrutiny of Accounts 2017/18, published on 19 March 2019. The report makes several recommendations relating to the Ombudsman which I will respond to in sequential order:

Recommendation 29. The Committee recommends that the Ombudsman's accounts more clearly and effectively report his performance. This should comply with best practice for financial reporting, setting out the Ombudsman's performance against his objectives, including those in his Operational and Three-Year Strategic Plans, as well as setting out his future plans and targets.

Response: I am pleased to report that, at my most recent Audit and Risk Committee, the auditors were able to confirm that our accounts do reflect best practice.

The Auditor General's certification in the 2017/18 Annual Report and Accounts that:

"In my opinion the financial statements:

- Give a true and fair view of the state of Public Services Ombudsman for Wales affairs...; and
- Have been properly prepared in accordance with HM Treasury directions issued under the Public Services Ombudsman (Wales) Act (2005)."

Members of the Public Accounts Committee might not be aware that for the past two years my annual report and accounts have been published jointly in order to ensure greater symbiosis between financial information, performance information, future plans and targets. Expenditure on each of my objectives is reported in accordance with good

practice. My new three-year Corporate Plan, commencing in 2019/20, more directly links key performance indicators to objectives. Suggestions for further clarity and effectiveness are always welcomed in a spirit of continuous improvement.

Recommendation 30. The Committee recommends that the Ombudsman sets targets for cost savings to reflect the full range of his activities. The performance against these targets should be reported each year in the Public Services Ombudsman for Wales Annual Report and Accounts.

Response: Given the ever-increasing number of complaints coming to my office, we have always sought to make cost savings that can be reinvested in frontline services for citizens. Budgets are reviewed each year, before allocations are made to budget heads. These allocations reflect target savings. In addition, unit costs are calculated each year – the cost per enquiry/complaint has been reduced by more than 40% over seven years. I will give this recommendation full consideration so this can be more effectively communicated in future Annual Reports and Accounts.

Recommendation 31. The Committee recommends that, to promote independence, the Ombudsman appoints an independent member to his Advisory Panel who does not sit on the Audit and Risk Assurance Committee.

Response: I think this recommendation misunderstands the relationship between my Advisory Panel and Audit and Risk Assurance Committee (ARAC). As a corporation sole, I ensure that both committees are stand alone and independent with clearly defined terms of reference. As neither I nor any of my staff are members of the ARAC it is wholly independent and it should not therefore be conflated with a traditional main board/ audit committee structure. The Advisory Panel provides strategic guidance and advice but is not responsible for governance matters. Governance matters are overseen by the Audit & Risk Assurance Committee, with support from internal and external auditors.

In this context I am also aware that my accountability was discussed in the course of the passing of the new PSOW legislation and that you have met with the Chairs of both the Finance and Equality, Communities and Local Government Committees to discuss how my accountability might be enhanced. With this in mind I would like to invite you and the other Committee chairs to the PSOW in Pencoed to meet staff and discuss this specific issue with me and Jonathan Morgan, the independent chair of the Advisory Panel and the ARAC.

Recommendation 32. The Committee recommends that, in the interest of transparency, the Ombudsman considers whether more information could be included in the accounts in respect of the future reporting of his potential liabilities and other aspects of his financial statements.

Response: We fully report our provisions and liabilities in our annual accounts in accordance with statutory financial reporting requirements and these are reviewed and approved by the Wales Audit Office as part of their annual audit of the annual accounts. However, in the spirit of continuous improvement I am very happy to give this recommendation full consideration.

Recommendation 33. The Committee recommends that the Ombudsman explains to the Committee his reasons for making special payments in 2017-18 to former members of staff. This should also set out why such payments were subject to a confidentiality clause.

Response: I am concerned that there is a lack of understanding around this matter. Settlement agreements are generally recognised and accepted as a means of formalising voluntary agreements between employer and employee. The agreements were made in accordance with the ACAS Code of Practice for Settlement Agreements. Employment settlement agreements generally include provisions for confidentiality around sensitive staff-related matters, for both the employee and employer.

However, this does not extend to whistleblowing – confidentiality agreements are not the same as non-disclosure agreements, which have had some prominence in the media recently. The settlement agreements referred to in the accounts related to three individual members of staff and each of the agreements included an express provision making it clear that nothing in the agreement prevented the individual from making a protected whistleblowing disclosure. The details included in the annual report and accounts were agreed by the external auditors and comply fully with the requirements of Managing Welsh Public Money.

In its report, the Committee stated: *“They should not be used as a matter of course to prevent former employees from disclosing the facts surrounding the termination of their employment or to deter them from raising issues about the services provided by their former employer (or “gagging” them).”* This phraseology can be emotionally loaded and potentially misleading and I am happy to put the record straight. During my period in office 23 members of staff have left their employment at PSOW. Settlement agreements were used in only three cases, therefore they certainly do not constitute any form of default position. For contractual reasons I am unable to provide details of the specific individual cases.

Yours sincerely



Nick Bennett
Ombudsman