

Agenda – Y Pwyllgor Cyfrifon Cyhoeddus

Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Fideogynhadledd drwy Zoom	Fay Bowen
Dyddiad: Dydd Llun, 23 Tachwedd	Clerc y Pwyllgor
2020	0300 200 6565
Amser: 08.30	SeneddArchwilio@senedd.cymru

(Rhag-gyfarfod preifat)

(09.00 – 09.30)

Yn unol â Rheol Sefydlog 34.19, mae'r Cadeirydd wedi penderfynu gwahardd y cyhoedd o gyfarfod y Pwyllgor er mwyn diogelu iechyd y cyhoedd. Bydd y cyfarfod hwn yn cael ei ddarlledu'n fyw ar www.senedd.tv

1 Cyflwyniadau, ymddiheuriadau, dirprwyon a datgan buddiannau

(09.30)

2 Craffu ar Gyfrifon 2019–20: Sesiwn dystiolaeth gyda Llywodraeth Cymru

(09.30 – 11.10)

(Tudalennau 1 – 88)

Papur briffio gan y Gwasanaeth Ymchwil

Archwilio Cymru – Sylwebaeth ar Gyfrifon Cyfunol Llywodraeth Cymru 2019–20

PAC(5)–24–20 Papur 1 – [Cyfrifon Cyfunol Llywodraeth Cymru ar gyfer 2019–20](#)

PAC(5)–24–20 Papur 2 – Llythyr ar y cyd gan yr Ysgrifennydd Parhaol, Llywodraeth Cymru ac Archwilydd Cyffredinol Cymru (6 Tachwedd 2020)

PAC(5)–24–20 Papur 3 – Llythyr oddi wrth yr Ysgrifennydd Parhaol, Llywodraeth Cymru (29 Hydref 2020)

Shan Morgan – Ysgrifennydd Parhaol, Llywodraeth Cymru

Gawain Evans – Cyfarwyddwr Cyllid, Llywodraeth Cymru

David Richards – Cyfarwyddwr Llywodraethu, Llywodraeth Cymru



Andrew Slade – Cyfarwyddwr Cyffredinol, Grŵp yr Economi, Sgiliau a Chyfoeth Naturiol, Llywodraeth Cymru

3 Papur(au) i'w nodi

(11.10 – 11.15)

3a Gronfa Buddsoddi Cymru mewn Adfywio (RIFW): Llythyr oddi wrth Llywodraeth Cymru (11 Tachwedd 2020)

(Tudalennau 89 – 98)

4 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y busnes a ganlyn:

(11.15)

Eitemau 5 a 6 a'r cyfarfod ar 30 Tachwedd 2020

(Egwyl)

(11.15 – 11.20)

5 Craffu ar Gyfrifon 2019–20: Trafod y dystiolaeth a ddaeth i law

(11.20 – 12.00)

6 Blaenraglen waith: Rhaglen waith ar gyfer gwanwyn 2021

(12.00 – 12.15)

(Tudalennau 99 – 104)

PAC(5)-24-20 Papur 4 – Rhaglen waith Gwanwyn 2021

Mae cyfyngiadau ar y ddogfen hon

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

Shan Morgan
Ysgrifennydd Parhaol
Permanent Secretary



Llywodraeth Cymru
Welsh Government

Mr N Ramsay AS, Cadeirydd
Y Pwyllgor Cyfrifon Cyhoeddus
Senedd Cymru
Bae Caerdydd
CF99 1NA

6 Tachwedd 2020

Annwyl Mr Ramsay,

Mae Cyfrifon Cyfunol Llywodraeth Cymru 2019-20 wedi cael barn amodol ar sail gwahaniaeth barn rhwng swyddogion Llywodraeth Cymru a'r Archwilydd Cyffredinol ar ddehongli safon gyfrifyddu IAS37 – darpariaethau, rhwymedigaethau digwyddiadol ac asedau digwyddiadol; a'r modd y cafodd ei chymhwyso mewn perthynas â chymorth grantiau i fusnesau bach a'r sectorau hamdden, lletygarwch a manwerthu.

Y mater allweddol o ran Cyfrifon Cyfunol Llywodraeth Cymru ar gyfer 2019-20 yw a ddylid cydnabod rhwymedigaeth ar gyfer y cynlluniau grant hyn ar 31 Mawrth 2020. Mae gwahaniaeth barn ar hyn. Mae Llywodraeth Cymru a'r Archwilydd Cyffredinol wedi asesu'r cynlluniau grant yn erbyn IAS37. Daeth Llywodraeth Cymru i'r casgliad nad oedd angen darparu ar gyfer rhwymedigaeth yng nghyfrifon 2019-20. Nid yw'r Archwilydd Cyffredinol yn cytuno ac mae wedi rhoi barn wir a theg amodol ar y cyfrifon ar sail hepgoriad sylweddol o wariant yng nghyfrifon 2019-20. At hynny, pe bai Llywodraeth Cymru wedi darparu ar gyfer y rhwymedigaeth, byddai wedi mynd uwchlaw ei therfyn gwariant net awdurdodedig a gymeradwywyd gan y Senedd ar gyfer 2019-20. O ganlyniad, mae'r Archwilydd Cyffredinol wedi rhoi barn reoleiddra amodol hefyd.

Mae ein timau wedi cyfarfod droeon i geisio datrys ein gwahaniaeth barn, ond yn anffodus mae hwn yn un o'r achlysuron prin hynny lle mae Llywodraeth Cymru a'r Archwilydd Cyffredinol yn anghytuno'n sylfaenol ar fater cyfrifyddu technegol cymhleth. Mewn sawl ffordd mae'n anffodus nad ydym wedi gallu cytuno ar ganlyniad oherwydd,



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er gwaethaf yr argyfwng Covid, rydym wedi gweld gwelliannau pellach yn y gwaith o baratoi ac archwilio cyfrifon 2019-20, a'r ddau dîm yn bodloni'r terfynau amser yn llawn. Serch hynny, mae'r ddwy ochr yn cydnabod bod barn amodol ar y cyfrifon yn fater difrifol a byddwn yn sicrhau bod ein timau'n cydweithio'n agos i ystyried unrhyw oblygiadau posibl ehangach, ac yn gweithio drwy'r hyn y mae angen ei wneud yn awr o ran y farn amodol ar y Cyfrifon. Bydd yr Archwilydd Cyffredinol yn rhoi'r wybodaeth ddiweddaraf i chi ar wahân i nodi'r gofynion o ran y farn amodol ar y Cyfrifon.

yu gywir,
Shan Morgan

Shan Morgan
Ysgrifennydd Parhaol/ Permanent Secretary
Llywodraeth Cymru / Welsh Government

Adrian Crompton

Adrian Crompton
Archwilydd Cyffredinol Cymru/
Auditor General Wales
Archwilio Cymru/Audit Wales



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Shan Morgan
Ysgrifennydd Parhaol
Permanent Secretary



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Welsh Government

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Cadeirydd y Pwyllgor Cyfrifon Cyhoeddus
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29 Hydref 2020

TREFNIADAU CRAFFU'R PWYLLGOR CYFRIFON CYHOEDDUS AR GYFRIFON 2018-19 A'R ADRODDIAD BLYNYDDOL

Diolch am eich llythyr dyddiedig 21 Medi 2020. Amgaeaf isod fy ymatebion i'r cwestiynau a godwyd gennych:

- 1. Mewn perthynas ag ymateb Llywodraeth Cymru i Argymhelliad 1 yn ein hadroddiad, cytunwyd y byddech yn cyhoeddi papurau'r Bwrdd, ac eithrio papurau sy'n cynnwys gwybodaeth sensitif swyddogol a manylion personol staff, yn ychwanegol at yr agenda a'r cofnodion, sydd ar gael ar hyn o bryd ar wefan Llywodraeth Cymru. A fyddech cystal â chadarnhau pryd y bydd Llywodraeth Cymru yn dechrau cyhoeddi'r papurau hyn. Nododd yr Aelodau yn y cyfarfod fod yr agenda a'r cofnodion diweddaraf wedi'u cyhoeddi ar 30 Gorffennaf 2020 a hynny mewn perthynas â chyfarfod o'r Bwrdd ym mis Mehefin 2020.**

Bydd Llywodraeth Cymru yn parhau i gyhoeddi'r agenda a'r cofnodion ar ôl i'r aelodau gytuno arnynt yn y cyfarfod dilynol o'r Bwrdd. Ar ôl y cyfarfod nesaf o'r Bwrdd ar 23 Hydref 2020, byddwn hefyd yn dechrau cyhoeddi papurau'r Bwrdd nad ydynt yn sensitif nac yn cynnwys manylion personol.

- 2. Rydych hefyd wedi dod i'r casgliad, mewn ymgynghoriad â Chadeirydd Pwyllgor Archwilio a Sicrwydd Risg (ARAC) Llywodraeth Cymru, na fyddai'n briodol cyhoeddi cofnodion neu bapurau'r Pwyllgor hwnnw. Yn eich llythyr, rydych yn cynnwys nifer o resymau dros hyn, ac rydym wedi nodi'r rhain.**



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Rydych hefyd yn nodi bod Llywodraeth Cymru yn gweithredu yn yr un modd â Llywodraethau eraill y DU a nifer o gyrff mawr yn y sector cyhoeddus. Aethom ati i gymharu'ch arfer presennol â disgwyliadau Llywodraeth Cymru o ran tryloywder yng nghyrff y GIG. Mae'n ofynnol i fyrddau ieuchyd lleol ac ymddiriedolaethau'r GIG yng Nghymru gyhoeddi agendâu, papurau a chofnodion cyfarfodydd eu 'pwyllgorau archwilio'. Gan fod Llywodraeth Cymru wedi derbyn ein hargymhelliad mewn perthynas â chyhoeddi papurau'r Bwrdd, hoffem ragor o fanylion am y rheswm dros ei phenderfyniad i beidio â gwneud hynny yn achos agendâu a phapurau ARAC.

Nid gyda chyrff ieuchyd nac awdurdodau lleol, y mae eu pwyllgorau archwilio a risg yn sicr yn ymdrin â materion pwysig, ond lle y byddai llai o sensitifrwydd fel arfer ynglŷn â'r materion a dan drafodaeth, y ceir y gymhariaeth fwyaf priodol. Rwyf o'r farn y ceir cymhariaeth well ag adrannau o Lywodraeth y DU ac adrannau llywodraeth eraill, lle y mae ein hymholiadau yn dangos na fyddai'n arfer cyffredinol i bapurau gael eu cyhoeddi. Mae'n bwysig yn fy marn i fod y trefniadau ar gyfer ystyriaethau ARAC yn darparu lle diogel ar gyfer trafodaeth lawn ac agored, ac ar gyfer fy nghynghori i, fel y Prif Swyddog Cyfrifyddu. Rwy'n poeni y gallai ansawdd y trafodaethau ddioddef os caiff papurau'r cyfarfodydd eu cyhoeddi.

Trafodwyd y mater hwn gyda Chadeirydd ARAC Llywodraeth Cymru sydd wedi cadarnhau ei fod yn fodlon rhannu cofnodion y cyfarfod yn gyfrinachol gyda'r Pwyllgor Cyfrifon Cyhoeddus, ond na all gytuno i rannu cofnodion a phapurau'n gyhoeddus.

- 3. Yn argymhelliad 7, rydym yn gofyn ichi gynnwys gwybodaeth fanwl yn egluro'ch llinellau atebolrwydd ac unrhyw fesurau sydd ar waith i ymdrin ag achosion posibl o wrthdaro buddiannau. Rwy'n sylweddoli y bu trafodaethau manwl â chi ynghylch hyn yn ystod ein sesiynau tystiolaeth er na chafodd y rhain eu hadlewyrchu'n llawn efallai yn ein hargymhelliad.**

Fodd bynnag, yng nghorff ein hadroddiad (paragraffau 157 - 165 ar dudalennau 44 - 46) mae'n amlwg bod ein hargymhelliad wedi'i wneud yng nghyd-destun yr angen i gael mwy o eglurder ynghylch eich atebolrwydd i Bennaeth Gwasanaeth Sifil y DU. Roedd ein pryderon yn ymwneud ag achosion posibl o wrthdaro buddiannau neu, yn wir, y canfyddiad o wrthdaro o'r fath. Teimlai'r Pwyllgor fod eich ymateb yn cyfeirio at eich rôl mewn perthynas â chyrff hyd braich a Chyrff Cyhoeddus Cymru ac nid eich llinellau atebolrwydd i Brif Weinidog Cymru a Phennaeth Gwasanaeth Sifil y DU.



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Byddem yn croesawu rhagor o wybodaeth i egluro'r diwethaf yn hytrach na'r cyntaf.

Rwy'n gwerthfawrogi, o'r tu allan, efallai ei bod yn ymddangos fel pe bai posibilrwydd o wrthdaro buddiannau ond, mewn ymarfer, mae'r trefniadau ar gyfer fy nghyfrifoldebau adrodd yn gweithio'n ddi-rwystr ac yn ddiraffferth. Mae Prif Weinidog Cymru, Pennaeth y Gwasanaeth Sifil a minnau yn gwbl glir mai at Brif Weinidog Cymru yn unig yr wyf yn edrych am gyfarwyddyd, o ran fy mlaenoriaethau personol ac o ran blaenoriaethau gwasanaeth sifil Llywodraeth Cymru. Nid yw Pennaeth y Gwasanaeth Sifil wedi ceisio dylanwadu mewn unrhyw ffordd ar y modd y cyflawnaf fy nghyfrifoldebau wrth wasanaethu Llywodraeth Cymru, ac ni fyddai'n ceisio gwneud hynny. Ond, fel yn achos Ysgrifenyddion Parhaol eraill y gwasanaeth sifil unedig, Pennaeth y Gwasanaeth Sifil oedd fy rheolwr llinell at ddibenion cwblhau fy asesiad rheoli perfformiad blynyddol ac wrth ymdrin â materion yn ymwneud â chyflog. Mae'r un trefniadau yn wir yn achos Ysgrifennydd Parhaol Llywodraeth yr Alban, ac mae hithau hefyd o'r farn ei fod yn gweithio'n effeithiol mewn ymarfer. Mae hyn yn golygu fy mod i hefyd yn gysylltiedig â rhwydwaith yr Ysgrifenyddion Parhaol, sy'n ddefnyddiol ar gyfer sianeli cyfathrebu anffurfiol a'r cyfle a geir i ddarparu safbwynt Cymreig. Fel aelod o Fwrdd y Gwasanaeth Sifil mae gennyf y cyfle hefyd i gyfrannu at arweiniad y gwasanaeth sifil ar faterion a fydd yn aml yn effeithio ar staff Llywodraeth Cymru yn ogystal â staff Whitehall.

4. Roedd fy llythyr dyddiedig 14 Mai 2020 hefyd yn ceisio gwybodaeth am ganlyniadau Ymatebion i'r Arolygon Argyfwng. Rydym yn croesawu'r wybodaeth yn eich llythyr dyddiedig 27 Awst 2020 ym mhwynt 7, ond mae eich ateb yn cyfeirio at 'Arolygon Pwls', yn hytrach nag 'Arolygon Argyfwng'.

Mae'n ymddangos bod rhywfaint o ddryswch ar y ddwy ochr yn deillio o'r cyfeiriad at amrywiol arolygon yn ystod y cyfarfodydd ac mewn gohebiaeth ysgrifenedig. Yn eich gohebiaeth ysgrifenedig rydych yn cyfeirio at 'Arolygon Pwls' ac 'Arolygon Argyfwng'. Byddwn yn ddiolchgar pe gallech egluro'r sefyllfa fel mater o frys.

Mae Llywodraeth Cymru wedi parhau i feithrin dealltwriaeth drwy gydol yr argyfwng COVID-19 er mwyn deall effaith barhaus y brigiad o achosion ar brofiad ein gweithwyr o safbwynt eu gwaith a'u llesiant o ddydd i ddydd, er mwyn llunio ein cynnig cymorth i weithwyr a llywio ein dull strategol ar gyfer pontio'n ddiogel. Mae hyn wedi cynnwys cymryd rhan yn yr arolygon canlynol ar gyfer Gwasanaeth Sifil y DU gyfan, y cafodd Llywodraeth Cymru ganlyniadau ar lefel sefydliadol ar eu cyfer:



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- Arolwg 'Pwls' COVID-19 a gynhaliwyd gan Swyddfa'r Cabinet ym mis Mai 2020, a edrychodd ar effaith gynnar y brigiad o achosion o COVID-19 ar fywyd gwaith gweision sifil, eu llesiant a'r gefnogaeth a gawsant gan reolwyr, timau ac uwch-arweinwyr.
- Arolwg 'Profiad Gweithio Gartref' Leesman a gynhaliwyd gan Asiantaeth Eiddo Llywodraeth y DU ym mis Gorffennaf-Awst 2020, a edrychodd ar effaith, anghenion a phrofiadau gweision sifil sy'n gweithio gartref oherwydd COVID-19.
- Yn fwy diweddar, cynhaliodd Llywodraeth Cymru arolwg 'Dychwelyd i'r Swyddfa' rhwng mis Awst a mis Medi 2020 gyda charfan beilot o staff sydd wedi dychwelyd i weithio mewn swyddfa o ganlyniad i lacio mesurau'r cyfyngiadau. Ymchwiliodd yr arolwg hwn i brofiad staff o weithio mewn swyddfa a gofynnwyd iddynt fynegi eu barn a ydy Llywodraeth Cymru yn darparu amgylchedd gwaith diogel i alluogi hyn.

Mae'r canfyddiadau yn galluogi Llywodraeth Cymru i gymryd camau cadarnhaol yn seiliedig ar adborth staff i lywio'r pecyn cymorth sydd ar gael i unigolion a rheolwyr. Mae hefyd yn helpu'r sefydliad i gynllunio ar gyfer cyfnod pontio diogel, a gyflwynir fesul cam, a pharatoi ar ei gyfer, yn unol â'r cyngor diweddaraf gan y Gweinidogion ac o ran iechyd y cyhoedd.

Mae rhai o'r negeseuon allweddol sydd wedi deillio o'r arolygon uchod yn cynnwys:

- Mae'r staff wedi gweld newid sylweddol i'w profiad gweithio o ddydd i ddydd o ganlyniad i COVID-19, gyda bron pob aelod o staff (99%) yn gweithio o bell (yn gweithio o gartref yn bennaf) ac 84% yn dweud bod eu gwaith wedi newid i ryw raddau o ganlyniad i COVID-19.
- Yn gyffredinol, adroddodd y staff am brofiad cadarnhaol o weithio gartref ac roeddent yn arbennig o fodlon â'r dechnoleg a oedd ar gael i'w cynorthwyo i wneud hynny.
- Roedd gan y rhan fwyaf o'r staff fynediad at y dyfeisiau TG, yr offer (75%) a'r cymwysiadau/rhaglenni meddalwedd (91%) yr oedd eu hangen arnynt i weithio gartref, ond roedd yn ymddangos bod staff yn llai bodlon â'r offer sydd ei angen ar gyfer gweithio gartref gan gynnwys desgiau/byrddau ac offer argraffu, copïo a sganio.
- O safbwynt gallu cynnal cydbwysedd iach rhwng bywyd a gwaith a bod yn gorfforol egniol wrth weithio gartref, roedd y darlun ymhlith y staff yn fwy cymysg, gyda thua dwy ran o dair (67%) o ymatebwyr yn dweud eu bod wedi



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gallu gwneud hynny. Ceir arwydd bod y rhai sydd â chyfrifoldebau gofalu, yn enwedig rhieni, wedi ei chael yn fwy heriol sicrhau cydbwysedd.

- Canfu'r 'Arolwg Pwls' COVID-19 fod tua 1 o bob 8 ymatebydd (13%) yn dweud nad oedd eu lefelau llesiant wedi bod yn dda dros yr wythnos a aeth heibio, a dywedodd 43% fod eu lefelau llesiant yn dda. Fodd bynnag, adroddwyd am welliant nodedig mewn llesiant (meddyliol a chorfforol) gan y rheini a oedd wedi dychwelyd yn fwy diweddar i weithio mewn swyddfa. Er enghraifft, nododd 61% o ymatebwyr welliant yn eu lefelau llesiant cyffredinol ers dychwelyd i'r swyddfa, a oedd hyd yn oed yn fwy amlwg ymhllith y rheini yr oedd angen iddynt ddychwelyd i'r swyddfa am resymau llesiant (83%).
- Roedd tua hanner yn teimlo'n fwy cynhyrchiol yn y swyddfa ac yn ei chael hi'n haws gwneud eu gwaith. Fodd bynnag, amlygodd y canlyniadau bwysigrwydd parhau i gefnogi llesiant staff, gyda rhai staff yn ei chael hi'n anodd cymryd seibiant ers iddynt ddychwelyd.
- Yn gyffredinol, roedd profiad y staff o weithio yn y swyddfa yn gadarnhaol gyda'r mwyafrif yn dweud eu bod yn gwbl fodlon â'r trefniadau gweithio newydd yn y swyddfa (83%) a'u bod yn teimlo bod y mesurau newydd a roddwyd ar waith yn cadw pobl yn 'gwbl' ddiogel (85%).
- Adroddodd staff ynglŷn â lefelau uchel o gymorth gan eu rheolwyr a'u cydweithwyr, gyda thros 90% yn dweud bod eu rheolwyr wedi eu helpu i addasu a bod eu timau wedi gweithio gyda'i gilydd i gefnogi ei gilydd drwy gydol yr achosion o COVID-19.

5. Yn ogystal â hyn, yn ystod ein sesiwn tystiolaeth breifat gyda chi ar 4 Mai 2020, roeddem yn deall bod Llywodraeth Cymru yn cynnal 'Arolygon Clyfar' mewn perthynas â gwaith y Ganolfan Cydgysylltu Argyfyngau (Cymru). Byddwn hefyd yn ddiolchgar pe gallech gadarnhau hyn ac egluro diben a chasgliadau'r Arolygon Clyfar.

Diben yr arolygon clyfar dan sylw yn eu hanfod oedd casglu gwybodaeth am sgiliau cydweithwyr sy'n gwirfoddoli i ymgymryd â rolau heriol yn y Ganolfan Cydgysylltu Argyfyngau (Cymru). Defnyddiwyd y canfyddiadau i addasu a theilwra hyfforddiant i ddiwallu anghenion ein gwirfoddolwyr.

O ran dysgu o'r pandemig yn fwy cyffredinol, mae nifer o ôl-drafodaethau strwythuredig, interim, wedi'u cynnal ar lefel genedlaethol a rhanbarthol yng Nghymru. I gael trosolwg o'r ystyriaethau ar gyfer pennu mesurau sy'n gysylltiedig â



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gwersi a nodwyd ac arfer da nodedig sydd wedi deillio o'r ôl-drafodaethau hyn ac, lle y bo hynny'n briodol, o'r ffordd y dylid gweithredu'r mesurau hynny hefyd, rydym wedi sefydlu Bwrdd Prosiect COVID-19. Cadeirir y Bwrdd gan uwch-swyddog ac mae'r aelodaeth yn cynnwys uwch-gynrychiolwyr o asiantaethau ymatebwyr allanol allweddol sydd â'r cyfrifoldeb cyffredinol dros reoli'r ymateb amlasiantaethol i COVID-19.

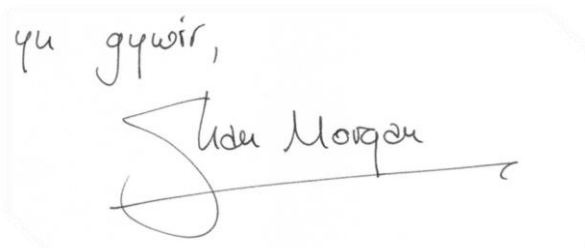
O ystyried natur estynedig yr argyfwng COVID-19, rydym hefyd wedi comisiynu adolygiad cyflym o ofynion adnoddau y Ganolfan Cydgysylltu Argyfyngau (Cymru) yn seiliedig ar yr hyn a ddysgasom o'i gweithredu hyd yma. Bydd yr argymhellion sy'n dod i'r amlwg yn ein helpu i ddarparu model staffio cadarn ar gyfer ein hymateb parhaus i COVID-19 ac, o bosibl, argyfyngau eraill cydamserol sy'n gofyn am Ganolfan Cydgysylltu Argyfyngau (Cymru) weithredol. Disgwylir adroddiad llawn yr adolygiad hwn yn fuan a chaiff ei ystyried ar frys gan y Pwyllgor Gweithredol.

6. Yn olaf, tybed a ydych yn cofio'ch bod, yn ystod y gwaith o graffu ar gyfrifon y llynedd, wedi ymrwmo i rannu papurau'r Bwrdd yn ymwneud â datblygu polisi ar ddefnydd mewnol o'r laith Gymraeg. Yn affodus nid ydym wedi cael y papurau hyn a gofynnwn am y wybodaeth ddiweddaraf yn y cyswllt hwn.

Rwyf wedi cynnwys papurau Bwrdd Llywodraeth Cymru gyda'r ymateb hwn. Fel y byddwch yn cofio rhannais strategaeth Llywodraeth Cymru '*Cymraeg: Mae'n perthyn i ni gyd*' gyda chi ar 28 Gorffennaf 2020. Gallwch weld copi o'r strategaeth ar wefan Llywodraeth Cymru:

<https://llyw.cymru/cymraeg-maen-perthyn-i-ni-i-gyd-html>
<https://gov.wales/cymraeg-it-belongs-to-us-all-html>

Sylwaf o'ch llythyr fod materion eraill hefyd yr hoffech fynd ar eu trywydd yn ddiweddarach yn y flwyddyn, a byddaf yn ymateb pan glywaf gennych unwaith eto.



yu gywir,
Shan Morgan

Shan Morgan
Ysgrifennydd Parhaol/ Permanent Secretary
Llywodraeth Cymru/ Welsh Government



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Board Meeting: 13 September 2019

AGENDA ITEM: [2]

Title of paper:	<i>The Internal Use of the Welsh Language</i>
Purpose of paper:	To update the Board on work underway since to develop a policy on the internal use of the Welsh language.
Action required by the Board:	The Board is asked to note this paper. The Welsh Government is required to produce and publish a policy outlining how it will “promote and facilitate” use of the Welsh language internally. This policy needs to be developed within a wider political context in which the Government has set a target of a million Welsh speakers by 2050 and has committed to “lead by example in promoting and facilitating the use of the language by our own workforce”. This paper informs the Board of the work underway to develop a policy with a view to agreeing a final version by November 2019.
Official presenting the paper:	Dylan Hughes, First Legislative Counsel (Director, Office of the First Minister)
Paper prepared by / cleared by:	Paper prepared by Dylan Hughes, ext 25 1649, and Bethan Griffiths, ext 25 6185. Paper cleared by Des Clifford.
TUS engagement/View point	TUS have been invited to all work stream meetings organised as a part of the work. The Permanent Secretary has also met with the head of the TUS to discuss the issues involved.
Date submitted to Secretariat:	4/09/2019

1. Background

- 1.1 Since the Board's meeting on 17 May 2019, at which this subject was discussed, work has been underway to further develop a policy for use of the Welsh language. The policy is intended to underpin an aspiration for the Welsh Government to become – by 2050 – an organisation within which all staff can understand Welsh, bilingual working is enabled and there is a significant increase in the use of the language. The purpose of this paper is to update the Board of work over the past months to develop a policy, and the remaining milestones before a policy is agreed later this autumn.
- 1.2 In 2017, the Welsh Government published a new Welsh language strategy, *Cymraeg 2050 – towards a million speakers*. The strategy's aim is to increase the number of people who routinely speak Welsh to 1 million by 2050. Achieving this will require a change of culture and the adoption of wide reaching language policies. As noted in the Strategy itself, the Welsh Government civil service has a vital part to play in assisting Ministers to reach the goal of a million speakers. This is not only in developing the necessary policies to promote the language across Wales, but also by leading the way as a public sector employer.
- 1.3 Like many other bodies the Welsh Government must also implement and comply with the Welsh Language Standards put in place by the Welsh Language Measure 2011. We have sought not only to comply with the standards but be an exemplar of a body which promotes use of the language. One of the Welsh language standards requires bodies to develop a policy on supporting and promoting the use of Welsh in the workplace. A task and finish group of senior civil servants was established in 2016 to make recommendations about the aims of the policy. This work was updated and submitted to the Board in May 2019 with an additional paper that focussed on learning from other public sector organisations who have developed innovative policies in this area. At that meeting the Board was supportive of the ambition presented.
- 1.4 One of the actions of the meeting was to discuss the vision at one of the Permanent Secretary's challenge sessions in order to consider how the vision could be implemented. At the subsequent challenge session on 16 July, a methodology for developing the policy over the next months was agreed, namely the establishment of five work streams, tasked with developing milestones to be achieved over a cycle of 5 year periods up to 2050 and an outline work programme for the first period of the policy: 2019-2024. It was also agreed that a programme board be established, to be chaired by the Permanent Secretary, to oversee the work.
- 1.5 The overarching goal of this first period is for the Welsh Government to become an exemplar by reference to comparable public bodies in

Wales, though this is to be set within the context of the longer term policy.

2. Issues for consideration

- 2.1 The current thinking is that the work streams will consider specific issues relating to the first five years of the policy, however, we intend to retain the work streams over the long term to review the effectiveness of the policy and the work programmes as they evolve. The five work streams underway, are:

Workforce planning and recruitment (led by James Owen)

This work stream is considering whether the system of specifying Welsh language skills as essential, desirable or not required is working effectively and whether a minimum level of Welsh language skills should be adopted for the purposes of recruitment and promotion. It is also looking at the potential impact of possible initiatives such as a Welsh specific civil service ‘fast stream’ or other graduate recruitment and development system and apprenticeships. More generally it is considering how use of the Welsh language could be mainstreamed across the Welsh Government, for example by moving away from a translation model of working to a situation in which documentation is routinely produced bilingually in all departments.

Training and Development (led by Nina Durant)

This work stream is considering the effectiveness of our current training and ways in which it could be expanded (were a minimum level of Welsh language skills to be introduced for example). It is considering the link between successful language training and a clear purpose for the training, and how learning can be supplemented by opportunities to use the language in work. This work stream will also need to consider what is required to reach each of the levels currently used to assess Welsh language skills and whether those levels remain suitable. Part of this exercise will require determining realistic timescales for developing “passive” Welsh language skills (i.e. being able to at least understand Welsh).

Technology and efficiency (led by Dr Jeremy Evas)

Crucial to all efforts to facilitate the use of Welsh will be utilisation of emerging technology; specifically translation tools and grammar aids that help people work effectively and accurately. More generally making use of Welsh Government ICT in Welsh should be made easier. Effective use of technology will need to mitigate, and ideally eliminate, any inefficiency that arises from working bilingually – an issue that is also being considered by this work stream.

Communications, internal practices and behavioural science (led by Natalie Pearson)

Leadership, clear messaging and winning 'hearts and minds' will be an important factor in delivering the vision. This work stream is considering how nudge theory could be used to encourage people to learn or to improve their Welsh language skills. It is also looking at how messaging might impact upon the policy, and what needs to be done to ensure positive impact. More generally we also know that we are prone to producing overly lengthy documents which increases the extent of the task of producing them bilingually. This work stream will need to consider what efforts can be made to change that culture and avoid inefficiency.

External factors and statistics (led by Claire Bennett)

The proposed new school Curriculum (due to be in place from 2022 onwards) will have a significant impact on the future workforce in Wales as from the 2030s onwards all those leaving school should be able to at least understand Welsh. Similarly initiatives such as adding a Welsh language element to higher education qualifications such as a Masters in Welsh Public Administration could have a positive effect (in particular if linked to a Welsh fast stream). More generally developing a more European and international outlook in which all language learning is valued in Wales would assist. Cementing a link between language skills and work and career prospects could lead to a virtuous circle. Statistics will also play an important part due to the long term nature of the policy and the need to review the trajectory from now to 2050. This work stream is considering the rate of improvement on Welsh language skills that would be required over the 5 year cycles running up to 2050, and how these external factor would impact upon this (and upon the sustainability of the policy from 2050 onwards).

- 2.2 All work streams have now met once each, and the TUS have been invited to all meetings. A further meeting of work stream leads has also taken place to ensure that inter-dependencies between work streams are also carefully considered; for example statistical modelling by KAS colleagues on workforce trends and language skills, and the proposed trajectory from now until 2050 will have significant implications for both the recruitment and training work streams. All work streams are currently working on a series of actions within their areas that will facilitate and promote the use of the language within the organisation. This will form the basis of the overarching policy.
- 2.3 The timescale for developing the detailed policy is short and challenging, but we are under pressure to move quickly. The following timetable outlines work that has happened over the summer period, and outstanding milestones before the policy is agreed with Ministers and the Executive Committee.

- 16 July – Challenge session led by the Permanent Secretary to discuss how to draw up the draft policy and first work programme (2019-2024)
- Late July and August – draft wording of policy developed through work streams on different aspects of the policy and work programme
- 15 August – meeting of the Workforce planning and recruitment work stream
- 15 August – meeting of the Training and development work stream
- 29 August – meeting of the Technology and efficiency work stream
- 2 September – meeting of the External factors and statistics work stream
- 3 September – meeting of the Communications, internal practices and behavioural science work stream
- 4 September – All work stream leads’ meeting
- 5 September – Welsh Language Commissioner attends the Senior Leaders Group to discuss the use of the language within the organisation
- 13 September – Welsh Government Board consideration of progress on developing the policy
- 26 September – possible message from the Permanent Secretary on the European Day of Languages to all staff informing of the work happening on developing the policy
- Mid October – finalise draft policy, milestones and first work programme
- Mid October - Submit plans to the First Minister and Minister for the Welsh Language and International Relations for their agreement
- Formal consultation with Trade Union and staff
- By mid November – Executive Committee of the Welsh Government agrees policy and work programme
- November – message to all staff announcing the new policy and work programme

3. Resource implications

Financial Implications

- 3.1 The financial implications have not yet been costed as the process envisaged has been to agree upon a high level ambition to be followed by the implementation of a detailed policy. This policy would be subject to review every five years and would include a series of costed actions to be implemented during that period. Costing each of these actions is possible though experience suggests that initially at least increases in these costs will be modest in relation to, for example, training, as there is a significant amount of training available for Welsh Government civil servants through the National Centre for Learning Welsh’s *Work Welsh* programme without additional cost. Some costs will be hard to predict for example due to uncertainties in estimating the impact of emerging linguistics technologies.

Implications for staff

- 3.2 A vision and policy for developing the organisation's use of Welsh will of course have implications for staff. By putting gradual milestones in place over the long term to achieve the ultimate ambition of a bilingual organisation, and demarcating actions over periods of five years, we believe that staff would be broadly supportive. A pause and reflect approach at each milestone would be an opportunity to fully evaluate the impact of each intervention and put actions in place for the next period. Crucially, sufficient warning will need to be given before significant change is implemented.

4. Risks

- 4.1 As an organisation we are currently faced with the risk of not complying with the Welsh Language Standards, as the organisation has yet to adopt a meaningful policy for promoting the use of the language internally. By adopting an ambitious policy, and subsequently increasing our capacity to work bilingually, we would facilitate compliance with the Standards by increasing the organisation's capacity to provide services bilingually.
- 4.2 Pursuing an ambitious vision for use of the Welsh language within the Welsh Government does, however, bring its own risks – there is potential to alienate some staff (or potential staff) if the issue is not handled gradually and carefully with appropriate opportunity given to all who need to improve their Welsh language skills.
- 4.3 We also need to be conscious of our desire to attract talent to the organisation from elsewhere in the UK and potentially beyond. In the short to medium term all that is envisaged is a requirement to have at least a low level of 'courtesy' Welsh¹, and discussions with other organisations who have mandated a very basic level of skills suggest that this has not been a barrier in attracting ambitious and motivated recruits. Over the longer term, before adopting any wider reaching requirement, careful thought would be needed to ensure that we balance our Welsh language objectives with recruiting the best staff. We are already clear, however, that not immediately having requisite Welsh language skills will not be a barrier to joining the organisation.
- 4.4 Failing to achieve the vision or taking actions to pursue the vision that may be to the detriment of other Ministerial priorities is an additional risk that would require monitoring.

5. Communication

- 5.1 Good communication is a key requirement of developing the policy and ensuring that staff are supportive of this move, as the language can be an emotive subject. By setting short term milestones with appropriate,

¹ The Assembly Commission's new requirement can, for example, be met by completing a two hour course online.

rational interventions, reviewed every five years, staff would be consulted with at each step to ensure engagement and support. Key to staff support will be strong and visible leadership, as demonstrated by other organisations, both at political and civil service level.

6. General Compliance Issues

- 6.1 The Welsh Language Standards made under the Welsh Language (Wales) Measure 2011 require the development of a policy on the internal use of the Welsh language within the Welsh Government that facilitates and promotes the language.



Llywodraeth Cymru
Welsh Government

Board Meeting: 24 January 2020

AGENDA ITEM: [4]

Title of paper:	<i>Cymraeg. It belongs to us all.</i> Welsh Government Strategy on the internal use of the Welsh language
Purpose of paper:	The paper sets out the Welsh Government's long-term vision for developing the use of the Welsh language within the organisation, as well as shorter-term goals and actions for the period from 2020-2025.
Action required by the Board:	The Board is asked to note the paper, which was agreed by the Welsh Government's Executive Committee on 16 January 2020. For information, the paper will now also be submitted to the First Minister and the Minister for International Relations and the Welsh Language, before we begin a consultation with the TUS on its content.
Official presenting the paper:	Dylan Hughes, First Legislative Counsel Dr Jeremy Evas, Welsh Language Division Bethan Griffiths, Welsh Language Standards Team
Paper prepared by / cleared by:	Des Clifford
TUS engagement/View point	<i>TUS are content, having been consulted on the strategy from the outset and during its development</i>
Date submitted to Secretariat:	<i>20 January 2020</i>
Publication	

Background

- 1.1 The Welsh Government Board received an update on work to develop the strategy on 13 September 2019. The strategy underpins an aspiration for the Welsh Government to become – by 2050 – an organisation within which all staff can understand Welsh. This would enable staff to work bilingually from day to day and lead to a significant increase in the use of the language. EXCO agreed on 16 January 2020 that the strategy will now be presented to the First Minister and the Minister for International Relations and the Welsh Language to ensure that they have no concerns, before a consultation will be launched with the Trade Unions and staff.
- 1.2 In 2017, the Welsh Government published a new Welsh language strategy, *Cymraeg 2050 – towards a million speakers*. The strategy's aim is to increase the number of people who routinely speak Welsh to 1 million by 2050. Achieving this will require a change of culture and the adoption of wide reaching language policies. As noted in the strategy itself, the Welsh Government civil service has a vital part to play in assisting Ministers to reach the goal of a million speakers. This is not only in developing the necessary policies to promote the language across Wales, but also by leading the way as a public sector employer.
- 1.3 Like many other bodies the Welsh Government must also implement and comply with the Welsh Language Standards put in place by the Welsh Language Measure 2011. One of the standards requires bodies to develop a policy on supporting and promoting the use of Welsh in the workplace. A task and finish group of senior civil servants was established in 2016 to make recommendations about the aims of the policy. This work was updated and submitted to the Board in May 2019 with an additional paper that focussed on learning from other public sector organisations who have developed innovative policies in this area. At that meeting and its subsequent meeting of 13 September the Board was broadly supportive of the ambition presented.
- 1.4 Our proposed long term vision, therefore, is to take steps over the next 30 years to become a bilingual organisation. This process would begin with a shorter term goal for the first 5 years in which the Welsh Government would become an exemplar in promoting the language by reference to comparable public bodies in Wales. This would be achieved by pursuing 10 actions set out in the strategy. The shorter term goals and actions would be reviewed every 5 years with a view to implementing the overall vision by 2050.

2. Issues for consideration

2.1 Our strategy on promoting the use of the language in the workplace is, in many respects, set by the political direction and legal framework already established. The strategy explains how this Government's aim of seeing one million speakers by 2050 underpins its objectives, and how we, as an organisation, will take reasonable and proportionate steps over time to achieve this ambition. To that end, this strategy is based on the following principles:

- **making a long term commitment and leading the way:** change will be incremental and will happen over time, but we intend to become an exemplar organisation in promoting the use of the language in the workplace;
- **investing in staff and providing opportunities to learn Welsh and develop language skills** – it is crucial that effective and convenient training is provided, with people given both time and motivation to continuously improve their Welsh language skills, whatever their current proficiency;
- **remaining an open, inclusive and diverse organisation** – everyone has the potential to be a Welsh speaker and this strategy does not conflict with our commitment to being open, inclusive and diverse – although Welsh language skills will progressively be needed for more posts, developing a bilingual workforce does not mean (or imply) those skills being a universal pre-requisite for joining the Welsh Government;
- **continuously reviewing our ways of working to facilitate the increased use of Welsh** – when we introduce new internal policies and initiatives we will review the extent to which they provide further opportunities for staff to use Welsh in their day to day work.

3. Resource implications

Financial Implications

3.1 The financial implications have not yet been costed as the process envisaged has been to agree upon a high level ambition to be followed by the implementation of a detailed policy. This policy would be subject to review every five years and would include a series of costed actions to be implemented during that period. Costing each of these actions is possible though experience suggests that initially at least increases in these costs will be modest in relation to, for example, training, as there is a significant amount of training available for Welsh Government civil servants through the National Centre for Learning Welsh's *Work Welsh* programme without additional cost. Some costs will be hard to predict for example due to uncertainties in estimating the impact of emerging linguistics technologies.

Implications for staff

- 3.3 A vision and policy for developing the organisation's use of Welsh will of course have implications for staff. By putting gradual milestones in place over the long term to achieve the ultimate ambition of a bilingual organisation, and demarcating actions over periods of five years, we believe that the vast majority of staff would be supportive. A pause and reflect approach at each milestone would be an opportunity to fully evaluate the impact of each intervention and put actions in place for the next period. Crucially, sufficient warning will need to be given before significant change is implemented. Our aim will be to ensure that staff see the strategy as an opportunity to be supported to learn rather than a threat.
- 3.4 The Trade Union Side has been engaged from the outset, with representatives invited to meetings and workshops convened to develop the draft strategy.

4. Risks

- 4.1 As an organisation we are currently faced with the risk of not complying with the Welsh Language Standards, as the organisation has yet to adopt a meaningful policy for promoting the use of the language internally.
- 4.2 As well as eliminating the risk of not complying with one specific Standard, adopting an ambitious policy would facilitate compliance with the remainder of the Standards by increasing the organisation's capacity to provide services bilingually.
- 4.2 Pursuing an ambitious vision for use of the Welsh language within the Welsh Government does, however, bring its own risks. If not handled carefully, there is potential to alienate some staff (or potential staff). Key to this is staff understanding that change would happen gradually and that appropriate opportunity would be given to all who need to improve their Welsh language skills.
- 4.3 We also need to be conscious of our desire to attract talent to the organisation from elsewhere in the UK and potentially beyond. In the short to medium term all that is envisaged is a requirement to have at least a low level of 'courtesy' Welsh¹, and discussions with other organisations who have mandated a very basic level of skills suggest that this has not been a barrier in attracting ambitious and motivated recruits. Over the longer term, before adopting any wider reaching requirement, careful thought would be needed to ensure that we balance our Welsh language objectives with recruiting the best staff. We are already clear, however, that not having requisite Welsh

¹ The Assembly Commission's new requirement can, for example, be met by completing a two hour course online.

language skills immediately will not be a barrier to joining the organisation.

5. Communication

- 5.1 Good communication is a key requirement of developing the policy and ensuring that staff are supportive of this move, as the language can be an emotive subject. By setting short term milestones with appropriate, rational interventions, reviewed every five years, staff would be consulted with at each step to ensure engagement and support. Key to staff support will be strong and visible leadership, as demonstrated by other organisations, both at political and civil service level.
- 5.2 We will also utilise the behavioural change insights relating to the Welsh language recently commissioned by the Welsh Language Division in our communications.

6. General Compliance Issues

- 6.1 The Welsh Language Standards made under the Welsh Language (Wales) Measure 2011 require the development of a policy on the internal use of the Welsh language within the Welsh Government that facilitates and promotes the language.



Llywodraeth Cymru
Welsh Government

Nick Ramsay MS
Public Accounts Committee Chair
National Assembly for Wales
Cardiff Bay
CF99 1NA

12 November 2020

Dear Mr Ramsay

REGENERATION INVESTMENT FUND FOR WALES: LEGAL SETTLEMENT

I am writing further to my letter of 24 February to draw to the attention of the Committee that the Welsh Government has now reached a settlement in relation to the legal action initiated with respect to the Regeneration Investment Fund for Wales (RIFW).

The Public Accounts Committee (PAC) report into RIFW published in January 2016 [<https://senedd.wales/laid%20documents/cr-ld10517/cr-ld10517-e.pdf>] was an important landmark for the Welsh Government. We are very conscious of the wide-ranging criticism it contained regarding the events which followed the establishment of the Fund in 2009. As a result, the report and the extensive Wales Audit Office investigation which preceded it have generated important changes to the way we conduct business. This has included a comprehensive programme of cross-government actions intended to improve our oversight of arms-length bodies. The Committee's report was also an important factor influencing the arrangements we established to manage the legal proceedings initiated in 2016 against RIFW's contracted advisors. The Committee has shown a continuing interest in the progress of this case and now that the legal action has been concluded I am pleased to be able to provide you with further information on the issues involved. Given the wide-ranging changes it has prompted I would also like to provide the Committee with an update on the wider lessons we have learned as a result of the RIFW case.

RIFW Legal Action

The suggestion that legal action should be initiated against RIFW's contracted advisors was one of the recommendations of the Committee's report in 2016. The Welsh Government's response to that report published on 8 March 2016 accepted all of the Committee's recommendations and confirmed that we had subsequently determined that legal action should be pursued. Initially the action took the form of pre-action correspondence setting out



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RIFW's case against Lambert Smith Hampton (LSH) and Amber Fund Management. On 19 December 2017 RIFW issued formal legal proceedings in the Business and Property Courts in Wales for breach of contract and professional negligence.

Although this was a complex case, the main burden of RIFW's legal action concerned the advice provided to the RIFW board in 2011 recommending a portfolio sale of the properties transferred from Welsh Government without those properties having been openly marketed. We argued that this advice amounted to a breach of contractual duties and had failed to generate best value. Amber and LSH strongly disagreed and argued that it had been a good deal in the circumstances and that at that time the board of RIFW and the Welsh Government had been happy to accept the deal. A more detailed note on the background to this case and the management of the legal proceedings is at Annex A.

The key aspects regarding our conduct of this case and which I would wish to highlight for the Committee are:

- i. The importance and complexity of this case was recognised from the very beginning of this process. We therefore established a multidisciplinary team led at Director level and with the support of the Head of Legal Services and which already had detailed knowledge to the background to this case. We retained this team throughout the proceedings
- ii. We also recognised the importance of professional advice. A team of commercial lawyers with expertise in commercial disputes was engaged from the outset. The original decision to initiate legal action and all key steps throughout these proceedings were taken in consultation with, and in accordance with the advice received from, that legal team
- iii. The combination of an experienced team and professional advisers enabled us to assess the risks involved throughout this process. Cases of this nature involve considerable expense and it was important to be able to continually keep under review the balance between the legal costs involved and the potential benefits of pursuing this action.

We established our structures for overseeing the legal action in the spring of 2016. The multidisciplinary team continues to be in place to ensure that resources tied up in the fund while the case continued can now be released safely to support work elsewhere.

Legal Settlement

I am pleased to be able to report to the Committee that a settlement in this case was reached on 29 July 2020 and that this dispute has therefore been resolved without the need to incur the costs associated with a trial. This settlement has been reached on a commercial basis and without any admission of liability by any party. The detailed terms have been incorporated into a confidential settlement agreement between the parties. As a result of the settlement, Ministers have confirmed that the £40.7 million contained in the Fund as at 31 March 2020 can now be made available to support future investments across Wales. Annex A which describes our approach to the legal proceedings also provides further information on the steps which eventually led to this settlement.

You will appreciate that the decision to agree a negotiated settlement also involved a delicate assessment of risk and potential benefits. Pursuing this case involved significant legal costs and those costs would have increased still further had the case progressed to trial. The arrangements we have had in place since 2016 to oversee these proceedings placed us in the best possible position to make these difficult judgements in consultation with our legal advisers. The RIFW oversight team had an extremely detailed understanding of the weaknesses as well as the strengths of our case. They were therefore in a good position to interrogate the professional advice we received and assess the impact of the various twist and turns in this case as we approached a trial this autumn.

I am, therefore, able to assure the Committee that from an Additional Accounting Officer perspective I am satisfied with the process we followed in the conduct of these legal proceedings. I was also satisfied with the process we followed in determining whether to settle in advance of a trial and the terms on which ultimately we did settle. It is important to underline that the decision to agree a settlement of this case and the terms of that settlement were fully in line with the advice from our legal team, including Counsel. We were clear, therefore, that we should recommend this settlement in advance of a trial to Ministers. We were satisfied that a settlement at this time was the right decision and represented a positive outcome for the public purse given the balance of risks and uncertainties involved in a complex legal case of this nature.

Although the terms of the legal agreement are confidential, it includes specific provision for responding to any further queries which the Committee may have with regard to this matter.

Lessons Learned

In providing this update to the Committee I also think it is important to underline the very wide range of lessons which the Welsh Government has learned as a result of the RIFW case and the very significant changes that have as a consequence been made to our working methods. We are acutely conscious that in 2016 the then First Minister felt the need to apologise during a plenary session in the Senedd for the Welsh Government's oversight of the RIFW project. I would, therefore, like to draw the Committee's attention to the report at Annex B which provides a summary of the main changes made to Welsh Government corporate procedures as a result of this case.

The majority of the changes referred to in Annex B refer to the internal workings of government. But on a more strategic level I would also highlight the impact which RIFW has had in generating a much more sophisticated approach to our use of loan finance. An important aspect of the Auditor General's report into RIFW was that the original concept of a recyclable fund to support regeneration projects rather than traditional grant finance was sound. It is notable therefore that as a result of this case and in areas as diverse as refurbishing empty properties to investing in small firms we are now making far more creative use of loan finance - especially in the Housing and Regeneration portfolio. This is generating a wide range of public benefits and allowing us to make better use of the funds we have available. What the RIFW experience has highlighted is that realising these benefits is crucially dependent on adopting a far more rigorous assessment of risks and benefits.

Conclusion

I am satisfied from an Additional Accounting Officer perspective that the decision to agree settlement terms in the RIFW legal action was in the public interest. The decision involved a careful assessment of risks and benefits but, as a result of careful oversight of this case

throughout, we were in a position to be able to make a clear recommendation to Ministers. Another important benefit of having agreed a settlement is that it removes the significant uncertainty which has surrounded this matter over such a long period. Ministers have announced separately that the public funds tied up in RIFW can now be made available to support future investments across Wales. I hope the Committee will see that as an organisation we have reflected on the lessons we needed to learn as a result of this difficult case.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tracey Burke'.

Tracey Burke
Director General, Education and Public Services

Annex A

REGENERATION INVESTMENT FUND FOR WALES – LEGAL ACTION

Background

The Regeneration Investment Fund for Wales (RIFW) was established by the Welsh Government in 2009 as an arms-length, wholly owned Limited Liability Partnership (LLP) designed to pursue regeneration projects under the EU JESSICA Fund. The £55 million fund was originally made up of £25 million of European Regional Development Fund convergence funding and £30 million from the Welsh Government. Some £20 million of the Welsh Government contribution was in the form of a transfer to RIFW of a portfolio of 18 properties. The portfolio included land at Lisvane in Cardiff which subsequently achieved significant value on the basis of its inclusion in Cardiff's Local Development Plan.

Amber Fund Management (Amber) was appointed to manage RIFW and its business assets, subject to the direction of RIFW's Management Board and on the basis that it would sub-contract with Lambert Smith Hampton (LSH) for the provision of asset management and investment management services. LSH's responsibilities included services relating to the management, value enhancement and sale of the properties. In February 2012 RIFW exchanged contracts with South Wales Land Developments for the sale of 15 of the properties. The sale price was £21.75million plus a share of any future profits achieved on two of the properties in Monmouth and Lisvane.

The circumstances surrounding that portfolio sale were subsequently the subject of a report by the Wales Audit Office [\[hyperlink\]](#). The Auditor's General's concerns which led to the investigation included the fact that the land assets had been sold as a portfolio; that they were sold privately without being offered on the open market; the failure to offer other options to the RIFW board; the failure to report interest from other potential purchasers; and the fact that LSH went on to represent the purchasers of the property without informing the RIFW board. The summary chapter of the Auditor General's report provides a concise account of the conclusions he reached surrounding the circumstances of that sale and the Welsh Government's oversight of RIFW from the outset.

The Public Accounts Committee (PAC) report into RIFW which followed on from the Auditor General's investigation was published in January 2016. That report made a number of recommendations regarding RIFW but also in relation to the Welsh Government's oversight of arms-length bodies more generally. One of the recommendations was that Welsh Government should consider initiating legal proceedings against RIFW's contracted advisors. The Welsh Government's response to the report in March 2016 confirmed that all of the Committee's recommendations had been accepted. Following an exchange of correspondence in which the two contractors denied any liabilities in this case, formal legal proceedings were initiated by RIFW in December 2017 with a court hearing eventually scheduled for the autumn of 2020.

RIFW's Legal Case

RIFW's legal case closely mirrored the concerns expressed by the Auditor General regarding the portfolio sale of the land assets transferred to the Fund. RIFW's case was that the manner in which Amber and LSH conducted the sale amounted to breaches of their contractual duties. RIFW further argued that had it not been for these breaches it would not have sold the 15 properties in the manner that it did. Rather it would have managed those properties over a

longer period and engaged in a phased disposal which more closely matched the Fund's investment requirements.

Amber and LSH denied RIFW's claim in full. They argued that the claim did not take proper account of the context in which RIFW was established and operated, or the fact that it was established to invest in regeneration projects and not to manage land assets. They further argued that the sale to SWLD had obtained good value and had allowed RIFW to move on to focus on its primary purpose and that more than one source of valuation evidence had supported this case.

We were acutely aware of the risks surrounding the decision to pursue legal action in this case. The basis of our claim involved a highly technical contract where what constituted a 'reasonable' discharge of contractual duties was always likely to be a matter of dispute. In addition, the land assets involved had already been the subject of at least three valuation exercises as a result of earlier investigations and each had produced a different estimate of the land's value at the point of sale. We were also conscious that the financial benefits which might potentially have been derived from a legal action of this nature needed to be set against the very significant legal costs which legal action would involve. On the other hand, we were also aware that in the absence of any movement from the parties following pre-action correspondence RIFW was due to make significant payments to the contractors under the terms of the original contract. And given our very serious concerns (and the Auditor General's concerns) about the way those duties had been discharged we were clear that those payments would have been very difficult to defend. As we sought to balance these risks the crucial factor was that the legal advice we received suggested very clearly that there were solid grounds reinforcing our concerns. The decision to launch formal proceedings in December 2017 was wholly in line with this advice and was taken following a careful assessment by the team of the risks and potential benefits involved.

Oversight of RIFW Legal Proceedings

Given the complexity of this litigation and the importance we had attached to securing a successful outcome for the public purse we were anxious to ensure effective oversight arrangements from the outset. Importantly we were able to ensure that the multidisciplinary team that coordinated both the Welsh Government's response to the Auditor General's report and our closure of the Fund in October 2013 was retained to oversee the legal action. This team was led at Director level and with the full support of the Welsh Government's Head of Legal Services. This has ensured that our oversight of this highly complex legal case has been informed by a detailed understanding of the history of the Fund and of the conduct of the contractors which had been commissioned to advise the RIFW board and manage the Fund's business.

The multidisciplinary team drew on expertise from the Housing and Regeneration Department, Land Division and Legal Services Department. My predecessor and I have been provided with regular reports on the team's work. The team made sure that key decisions throughout this process - including the original decision to initiate legal action and the negotiating brief for the later mediation sessions - were approved by the Principal Accounting Officer. The team also ensured that Ministers were kept fully briefed on our conduct of the case.

Geldards solicitors were appointed to act on RIFW's behalf in pursuit of the claim. The commercial legal team provided a degree of continuity having also advised us during the period when the fund was originally suspended. The decision to pursue legal action was

based on advice received from Leading Counsel and all significant steps subsequently taken in the litigation were taken in consultation with, and in accordance with, advice from, the same QC. He led RIFW through two mediation sessions where we sought an earlier resolution to this dispute and continued to be our lead advisor in shaping the negotiations which ultimately resulted in a settlement. The legal claim was also informed by expert advice from an independent property adviser.

Overage Provisions

One of the additional factors which coloured the conduct of this case has been the evolving position on overage achieved by RIFW as a result of the portfolio sale. The sale terms agreed in 2012 included provisions whereby RIFW would benefit from any uplift in value achieved by SWLD (within certain time windows) on two of the properties. These overage payments were in addition to the original sale price but only applied to the properties in Monmouth and Lisvane. SWLD completed the sale of the Monmouth property in 2015. This generated an overage payment to RIFW worth £5 million. The situation surrounding Lisvane is slightly more complicated in that SWLD have yet to complete a sales process that has been underway for some time. At the moment the sales in Lisvane have generated gross overage receipts of circa £9 million, but which will be subject to certain contractual deductions. In addition two further overage payments are anticipated but at this time the relevant sale transactions have not been completed. These overage sums that RIFW will receive are in addition to the original £21.75 million sale price generated in 2012. The share of profits generated for RIFW as a result of these onward sales was one other aspect of this case that the oversight team had to take into consideration in formulating their advice which led to the legal settlement.

Reaching a Settlement

Our initial claim made clear that we would be prepared to enter into an alternative dispute resolution process to examine whether our claim for damages could be resolved without having to incur the significant costs associated with a formal court hearing. Although the circumstances of every case are different, the very clear legal advice we received was that the majority of cases of this nature settle out of court. Having failed to secure meaningful progress towards resolving this case by the end of 2018 it was agreed between the parties that we would, therefore, enter a mediation process to explore whether we could resolve the claim. Mediation subsequently took place in February 2019 but was unsuccessful. The parties entered a second mediation process on 26 May 2020 but that was also unsuccessful. Subsequent to that second mediation process it was important for us to maintain a close watch on these proceedings and the RIFW team continued to balance the strength of our legal claim against the risks associated with a legal hearing. We were also aware that each of the parties would be conscious of the very significant escalation in costs associated with the final stages of the preparations for a court hearing which in this case had been scheduled for October 2020. Despite having failed successfully to mediate a settlement in May 2020 we therefore continued to actively review – in conjunction with our legal advisers – whether there was a public interest in settling this case prior to trial. Eventually these discussions resulted in our reaching agreement with the other two parties on settlement terms on Friday 31 July. The terms of the settlement are confidential but conscious of the Committee's continuing interest in this case the agreement does allow us to respond to any further queries you may have on this matter.

Conclusion

I am satisfied from an Additional Accounting Officer perspective that the decision to agree settlement terms without having to incur the costs associated with a trial was in the public

interest. Throughout this process we have drawn upon expert legal and professional advice. The decision to agree a settlement of this case involved a careful assessment of the risks and potential benefits associated with continuing to trial. That assessment was made by a team that was intimately involved in all aspects of this complex case and therefore able to carefully interrogate the expert advice available to it. The decision to agree a settlement was fully in line with the expert legal advice we received.

The other benefit of having agreed a settlement in this case is that it removes the significant uncertainty which has surrounded this matter over a long period. The public funds tied up in RIFW can now be made available to support future investments across Wales. And we can do so harnessing a variety of policy approaches that reflect a more sophisticated approach towards community regeneration projects as a consequence of the experience gained in this difficult case.

Annex B

REGENERATION INVESTMENT FUND FOR WALES – LESSONS LEARNED

As well as recommending that we should consider legal action, the PAC report on RIFW was critical of our oversight of the Fund and of certain aspects of the Welsh Government's working methods at the time. A number of changes were made to our internal working arrangements during the last Senedd term as an immediate response to the Auditor General's findings. Now that the legal action with regard to RIFW has been concluded this paper summarises the lessons learned as a result of this case and the further actions taken as a consequence during the current Senedd term.

The most prominent areas of improvement have been:

- i. **Supervision of Arms-Length Bodies** - a central element of the PAC Report into RIFW related to the Welsh Government's supervision of arms-length bodies. Significant changes have been made to improve the coordination of our work in this area throughout this Senedd term. The role of our new Public Bodies Unit is now well established. We have improved the training made available to board members of public bodies. And we have issued far stricter and more detailed guidance on the role of Welsh Government observers on external boards
- ii. **Corporate Governance** - we have also established a corporate governance centre of excellence to improve our oversight of governance across the organisation. In addition we continue to draw on lessons coming out of the RIFW history in our continuing training programmes and our wider work on good governance
- iii. **Additional Accounting Officer Support** - the experience gained during the RIFW investigations has also influenced the structures we established to support Additional Accounting Officers. The period since the RIFW land sale in 2012 has for example seen an important evolution of Audit, Risk and Assurance Committees supporting each of the Additional Accounting Officers across government. The same is true of the Operations Teams which support each of the Additional Accounting Officers in discharging their corporate and Accounting Officer responsibilities. The work of these teams also provides us with a much stronger understanding of major projects (like RIFW) being managed across departments and the risks associated with those projects. The arrangements put in place by Operations Teams to manage budgets and projects transferring between departments following Ministerial portfolio changes were also introduced as a result of this case. The management of these issues following the 2016 Senedd elections demonstrated that we now have much more robust procedures in place in line with the Committee's recommendations.
- iv. **More Effective Use of Loan Finance** - another impact of the RIFW experience is that it has led to the more effective use of loan finance across government. The original report from the Auditor General in 2015 highlighted that the concept of being able to recycle loan finance in support of regeneration projects was sound. We have reflected on that observation and over the last eight years made far greater use of loans rather than grants where that is possible. Loan finance is for example at the heart of our Help to Buy Cymru programme which has made more than £500 million

available by way of equity loans since 2013 to support the purchase of more than 10,000 new homes. In addition, we have invested some £80million in the Wales Property Fund and the Stalled Sites Fund to provide loans that support the construction of new homes by SME builders who are unable otherwise to access project finance.

Each of these projects are managed by the Development Bank of Wales. Each therefore benefits from the ability of the Development Bank to conduct expert due diligence to scrutinise individual loan applications. The introduction and oversight of each of these projects has also been informed by a clear and developing appreciation of the risks surrounding these sorts of development. Responding to the concerns regarding RIFW caused us to look again at the way that we utilise loan rather than grant finance across the wider Housing and Regeneration portfolio. These examples highlight the value for money benefits we have derived as a result.

In conclusion I am able to inform the Committee that these legal proceedings have been settled and that we can now move on to make best use of the resources that have been tied up in the fund. But I hope you will see that we have as an organisation learned a number of important lessons from the RIFW experience.

Mae cyfyngiadau ar y ddogfen hon