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URGENT

28 November 2023

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Our Ref: AFJ/DA
Your Ref:

Dear Sir

The Senedd's Public Accounts and Public Administration Committee - scrutiny of the Auditor General's report into "Governance arrangements relating to an employment dispute at Amgueddfa Cymru – National Museum Wales"

We are instructed by David Anderson, Ex Director General, and Ex Accounting Officer for Amgueddfa Cymru – National Museum Wales.

We are instructed to write to you following evidence given by representatives of the National Museum to your Committee on 16 November. Our client has listened carefully to the evidence given, and is aware that neither representatives were present at the National Museum at the time which is the focus of the Auditor General's report. We are therefore instructed to write to you to offer some corrections for the benefit of the public record of some of the representations made regarding governance arrangements at the National Museum at the time.

Our client has already written to the Auditor General about these issues, as part of his invitation for our client to respond to his draft Report before it was published. We also intend to send a copy of this letter to the Auditor General, with enclosures, and have also written to the National Museum's legal representatives, in case the Museum's representatives also wish to correct some of the points made on receipt of information enclosed with this letter of which they may not have already been aware. We understand that it is Welsh Government who are to give evidence to your committee tomorrow, but nonetheless, we trust that this letter will be of assistance to you as you deliberate on the overall evidence you will have heard during your Committee meetings, and also to appreciate that poor governance arrangements at the Amgueddfa far transcended and surpassed those which were engaged in for the purpose of the employment dispute between our client and the Amgueddfa.

As mentioned above, on 16 November, Amgueddfa Cymru's Chair and Chief Executive responded to questions from members of the Public Accounts and Public Administration Committee.



The great majority of statements were correct. However, some key statements were inaccurate. It is essential that they are corrected, as they;

- (i) directly concern the Museum's Governance and our client's actions as Accounting Officer from December 2020;
- (ii) were made at the Committee, and are in the public domain;
- (iii) are on the official record of the Senedd.

This should ensure that the Committee, and the public in Wales, are not misled.

Our client has no doubt that these were genuine mistakes. Neither the Chair nor the Chief Executive were at the Museum at the time, and have no direct personal experience of what happened, whereas our client and his Deputy Accounting Officer were present at the time.

Some of the key corrections concern formal legal advice provided to the Museum between September 2021 and July 2022. The Executive needed advice on Governance. Geldards were approached but told the Executive at the time that they had no one with expertise on this who could provide specialist advice. The Museum therefore obtained legal advice on Governance from Capital Law.

First correction

The new Chair of the Museum, at 1 hour and 22 minutes of the PAPAC meeting, stated that, "*The trustees acted on legal advice at every turn.*" This is not strictly correct. The President and the Officers at the time disregarded independent expert legal advice from Capital Law on their governance breaches, over a two-year period to December 2022.

On 18 May 2021 our client wrote, as Accounting Officer, to the President, the Vice President and the Treasurer, as well as the other Trustees, to express his concern that a number of Trustee meetings appeared to have been arranged in a way that was contrary to the Museum's Regulations and Code of Conduct. A copy is attached. On 21 May 2021 (copy also attached) the Officers wrote back to our client to tell him that, despite him being Accounting Officer, he was wrong, and had no role in Governance.

Then, in July 2021, our client discovered that circa 15 closed or secret Board meetings had been organised by the President in the previous 9 months, far more than he or other senior staff were previously aware of. (Copy attached). Because of this, Capital Law were asked by the Executive to provide advice on this aspect of Governance.

Their advice was that, in several key respects, the President and Officers were not acting in accordance with the Museum's Regulations and Code of Conduct.

On 7 September 2021 our client sent Capital Law's independent advice by email to the Officers, ccing Trustees, Senior Executive Team, and the Welsh Government, attaching Capital Law's independent advice. A copy of our client's covering email is attached for your attention. The advice from Capital Law is not attached as it was marked Confidential and Legally Privileged, but the Committee should easily be able to obtain a copy of this advice directly from the Museum or their representatives, or from Welsh Government. Our client received no reply to his email or Capital Law's advice from the Officers or the



Welsh Government. Instead, they continued to act for a further year in contravention of the Museum's Regulations and Code of Conduct.

Second correction – concerning the Museum's Audit Risk and Assurance Committee (ARAC)

Adam Price MS said [as translated from Welsh by the Senedd] at 57 minutes into the PAPAC meeting:

"One of the reasons that we have independent members on Audit and Risk Committees . . . is that circumstances do arise where the Board itself is conflicted . . . so that the ARAC Committee is another line of defence . . . Doesn't that slightly raise a question mark as to why they weren't involved . . . They didn't really have a role in this process. Wouldn't it have been wise to involve them because they are actually non-Trustee independent members of the Committee?"

Adam Price's question was not answered. However, the minutes of ARAC meetings in 2021 and 2022 show that there were two independent members of ARAC - [REDACTED] and [REDACTED] during the period of this governance dispute.

In May 2022 our client asked the administrative staff who serviced the Board to prepare a list of any closed meetings of the Board or its committees they had been asked to organise. They identified a list of 32 closed meetings over the previous 18 months, which is attached, the great majority of which the senior staff, including our client as Accounting Officer and the Deputy Director, were completely unaware. The sheer scale of these Governance breaches was shocking and wholly unexpected to our client.

The meeting of ARAC of 12 July 2022 discussed the 2021-22 Annual Accounts. It was attended by the Museum's internal auditors as well as Wales Audit. Our client read out a formal written statement of serious concern to members of the Committee about these unconstitutional meetings, based on wording agreed with Capital Law, which our client circulated subsequently by email to all those attending the Committee, and the wider Board. We attach a copy of this document.

Although being fully informed of the breaches of governance by the President and the Officers, and being formally asked by our client to comment at this meeting of ARAC in 12 July 2022, the two external members of ARAC, [REDACTED] and [REDACTED] refused to speak or take action, even when directly invited to do so by our client, let alone investigate these breaches themselves, then or after the meeting. This was an abnegation of one of their most important responsibilities as independent members.

Third correction

In response to a question from Adam Price MS, the Museum's Chief Executive said at 1hour 21mins that:

'We can't comment on the specifics of the case, I hope you understand why not . . . Of the multiple grievances raised through the investigations and the independent advice we obtained, only four were upheld, and they were governance technicalities.'

Our client is constrained to comment only on the audited accounts and governance of the Museum to the Senedd. To describe the four upheld grievances as 'governance technicalities' is misleading. They referred to serious breaches of essential good governance, without which no organisation can function effectively.



We urge you as a Committee therefore to consider the four upheld grievances which related to governance in more detail in order to establish for yourselves whether you are satisfied that describing these as 'governance technicalities,' is correct.

Reservation of the further right of response

All of the information in the Auditor General's two reports, the comments made by Adam Price MS and other Committee members, as well as statements by the Museum's Chair and Chief Executive, at the PAPAC hearing on 16 November 2023, are now in the public domain. Our client reserves his further right to request that any wrong or misleading information in respect of the governance of the Museum, and thereby his responsibilities as Accounting Officer for the governance at the Museum, are publicly corrected.

Yours faithfully

Darwin Gray

DARWIN GRAY LLP

CC Audit Wales Office; National Museum Wales' legal representatives, Geldards LLP