



Llywodraeth Cymru
Welsh Government

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Tailored review of Royal Charters of public bodies

Review of whether the Royal Charters are consistent with the other obligations and framework documents which apply to them.

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Introduction

1. In May last year we were commissioned to undertake a review as part of the Tailored Review Programme of Public Bodies in Wales. We were asked to consider, for those bodies which had Royal Charters, whether the provisions of the charters themselves were consistent with the other obligations and Framework Documents which applied to them. These were the provisions of the Charities Act and the Welsh Government Control Framework. We were asked to make recommendations if changes needed to be made. The underlying concern was that there might be an inconsistent attribution of responsibilities between the Boards and their Executives which might give rise to tensions and ambiguity.

2. Those public bodies in Wales which have a Royal Charter are the National Museum of Wales, the National Library of Wales, the Arts Council of Wales and Sport Wales. In addition, the Royal Commission on the Ancient and Historical Monuments of Wales has a Royal Warrant as part of its governance framework.

3. The National Museum, the National Library and the Arts Council are also all registered charities. Sport Wales has a subsidiary company which is a registered charity. The Royal Commission has been considering its Exempt Charitable Status in consultation with the Welsh Government.

Two important points at the outset

4. First, we are very conscious that, from the date on which it was originally commissioned, it has taken a considerable amount of time to produce this report. We apologise if this delay has caused inconvenience to those parties who have been patiently awaiting it. The cause has been largely due to some circumstances of David Richards, not related to work, which meant that little progress could be made for a long period. We hope that it is not too late for the work here to still be of some value.

5. Second, it is important for us to make clear that the analysis and views expressed here are entirely our own. While we hope that this report will assist with the development of policy it does not necessarily reflect the views of ministers or the corporate view of the Welsh Government.

The process

Our approach

6. We were fortunate that much of the groundwork for this review had already been completed by the Tailored Reviews team and we drew upon the documents and analysis which they had already prepared, which was extremely helpful. We did some more background research ourselves to help inform our thinking. In addition to this analysis:

- We wrote to each of the 5 bodies concerned to seek their views on the issue in question and received replies from each of them.
- We met representatives of the sponsor teams in the Welsh Government for bodies concerned to gather their views on the issue.
- We spoke to the Welsh Government Corporate Governance Centre of Excellence to gain their perspective.
- We thought that this issue might also have arisen in England, where there are a number of equivalent charter bodies as well, so at our request the Corporate Governance Centre of Excellence approached HM Treasury for their reflections.
- We met Audit Wales to consult them on whether they perceive this issue as a difficulty and, if so, how it might be addressed.

7. Finally, we reviewed the documentary analysis and the responses which we had received to these various consultations, and we produced the conclusions and recommendations which follow on in this report.

The framework documents

8. A Royal Charter is an instrument of incorporation granted by the Monarch, which confers independent legal personality on an organisation and defines its objectives, constitution, and powers to govern its own affairs. The terms of each Charter differ, depending on the individual requirements of the type of organisation that is being incorporated. Incorporation by Charter is a prestigious way of acquiring legal personality and reflects the high status of the body concerned. Most Royal Charters in Wales were granted in the early part of the last century. Those which relate to the bodies covered by this review go into some detail about the purpose of the body and how it should operate. It is possible for Charters to be updated or altered if the body subject to the Charter petitions the Privy Council to that effect with a majority vote.

9. The Charities Act legislation places specific responsibilities upon the Trustees of registered charities to ensure that their charities comply with the requirements of the legislation. This includes making sure that the charity is carrying out its purposes for the public benefit; that it complies with its governing documents and the law; that they act in their charity's best interest; that they manage the charity's resources responsibly; that they act with reasonable care and skill; and that they ensure their charity is accountable. Charities are regulated by the Charity Commission.

10. Each Welsh Government public body has a framework document which sets out the relationship between themselves and ministers, including roles and responsibilities, and the terms and conditions under which the Welsh Government pays grant in aid. The framework document also details the arrangements that have been put in place to monitor performance and delivery against the targets set out in the remit letter and the operational plan. It is agreed between the body and their minister and is signed by both parties. The document is not re-issued each year but must be reviewed periodically. Framework documents for individual bodies are based around a generic

template produced by the Welsh Government.

11. The Welsh Government designates the Chief Executive (or equivalent most senior officer) of a public body which receives funding from the Welsh Government as the Accounting Officer with a personal responsibility and accountability for the safeguarding and proper use of the public funds awarded to the body. The specific responsibilities of the Accounting Officer are set out in an Accounting Officer Memorandum which accompanies the designation.

The views of the bodies themselves

12. We wrote to each of the bodies named above seeking their views on the issue. The letter said that:

“ our attention has been drawn.....to the respective roles of the Trustees, as set out in Charters and in the requirements of charity law on the one hand, and those of the Accounting Officer on the other hand. It would be helpful to know whether these separate requirements have caused your bodies any difficulties in the past and, if so, how you have resolved them; and whether there are any other issues which you feel it might be helpful to consider as part of this work. I would be grateful if you could also seek the views of your respective Boards. ”

13. We received helpful responses from each of the bodies. Some of the correspondence covered matters which were outside the scope of the review, though it was helpful to receive those views as well and they have not been overlooked.

14. In relation to the review, the National Library for Wales felt that, with one exception, no conflict existed between the various control and framework documents within which they had to work, though they also noted that at the

time of writing they were still awaiting the final version of an updated framework document. The exception related to the Welsh Government restrictions upon working capital and carry-over, which they felt to be inconsistent with the charitable status of the library.

15. The National Museum of Wales in one of their 2 separate responses noted that the museum had been in discussion with the Welsh Government about the application of the various control documents. They thought that the tailored review of the museum, just begun at the time of his writing, may provide valuable additional insight on the effectiveness of these framework documents and any potential challenges they may have caused to date.

16. We also received an additional response from the Board of the National Museum. This said that no issues in respect of the Charter had ever been brought to the attention of the Board, and that the view of the writer was that:

“ the Charter might be regarded as somewhat anachronistic as a foundation document but....has little relevance to the day-to-day operation of the Museum. Given the clear statement in the Framework Agreement that, in the event of conflict between the Charter and Framework Agreement, the Charter should take precedence, it's challenging to imagine circumstances giving rise to difficulties in this regard ”

The response went on to note that no issue had ever been brought to the attention of the Board in relation to conflicts between Charity Law responsibilities and the framework, nor were they aware of any circumstances whereby the precedence accorded to either Charter or Charity Law has compromised the obligations of either the Accounting Officer or museum set out in the Framework Agreement.

17. The Royal Commission on Ancient and Historical Monuments was in the process of seeking agreement to be recognised as a charity at the time of their

writing. They did not identify any specific inconsistencies between the various framework documents but noted the challenges of balancing the requirements of their role under their Royal Warrant with the expectations of the Welsh Government in respect of its public bodies.

18. Sport Wales responded that they had not identified any issues in relation to the various control documents, though they were at the time seeking to resolve issues between their charitable arm Sports Wales Trust and their parent body.

19. The Arts Council of Wales noted that the framework documents were clear about the precedence of Royal Charters and responsibilities under the charity law and noted that the Charter required them to carry out their charitable objects and that the trustees must be free to make their decisions and exercise their powers solely in relation to the interests of the council. They also noted that at the time of writing they were still awaiting the final version of an updated framework document.

The view of the Partnership Team

20. We had a helpful and informative meeting with some colleagues who undertake the partnership role in respect of the bodies concerned here. Issues in relation to the public appointments process, lines of communication and strategic oversight in the way in which the Welsh Government relates to its public bodies were explored. However, the team confirmed that they had not come across insuperable difficulties or matters to be resolved in relation to potential conflicts between the framework documents. They did feel though that an overhaul of the control documents would be helpful to deliver greater consistency and that there was a case for updating the Charters where appropriate, particularly in relation to how public appointments operated.

The view of the Corporate Governance Centre of

Excellence

21. The Welsh Government Corporate Governance Centre of Excellence told us that these matters had never been raised with them as an issue. They did note, though, that as Royal Charters are effectively the equivalent of legislation then it was important that they should be kept up to date where possible.

The view of HM Treasury

22. At our request, the Corporate Governance Centre of Excellence approached HM Treasury to see whether this had ever been raised as an issue with them in respect of England. In their response, Treasury noted that where there was a clash between statutory provisions and framework documents, it is the statutory provisions that need to take precedent, and that framework documents should be tailored to reflect those statutory provisions. They were not aware of any issues in England with perceived tensions between the standard AO model and the requirements of the Charities Act.

The view of Audit Wales

23. We spoke to the senior audit manager in Audit Wales with responsibility for the Culture Bodies. They told us that they had not had any issues of this kind referred to them nor did they perceive there to be a problem in practice. They thought that all of the responsibilities conferred upon the bodies were important and all needed to be discharged together.

Conclusions, reflections and recommendations

Conclusions and recommendations on Royal Charters

24. None of the organisations or individuals whom we approached, including the bodies themselves, identified significant difficulties or obstacles with the current arrangements or proposed changes to the current arrangements. That of itself suggests strongly that there is not a case for making radical changes to the current system. All of the major changes which could be considered, including wholesale revisions to Royal Charters, replacing the Charters with enabling legislation, and reviewing the charitable status of our public bodies, carry with them their own costs in terms of disadvantages and time and effort involved in implementation.

25. We did consider the case for dispensing with the Charters and replacing them with primary legislation, but we would counsel against such a step. In the first place, a Charter is an indication of the status and value that a body has in public life in Wales, and we should respect that and not do away with it easily (and there would be likely to be significant objections from a wide variety of sources if we were to propose to do so). In the second place, the legislative timetable of the government is already under considerable pressure, and it would be likely to be some time before a suitable slot could be found. And, thirdly, the amount of time and resource – not just within the Welsh Government – involved in preparing legislation, consulting upon it, and getting agreement are likely to be disproportionate to the benefits secured. In the light of those arguments, and since there is no evidence of any insuperable difficulties, we conclude that there is not a convincing case for radical change in the current arrangements by seeking to replace the Charters with new primary legislation.

26. But that does not mean that we should ignore the existing inconsistencies between control documents. We should resist the temptation to seek to

harmonise the documents purely for the sake of neatness or a desire for spurious consistency. Immaterial differences can be managed successfully without recourse to changes. But we can see that there are instances where the inconsistencies between the Charter and other control frameworks are giving rise to difficulties in practice. The way in which the public appointments regime operates is a good example, where the way in which the Welsh Government would normally operate its arrangements can be inconsistent with the other strategic control documents in these circumstances. Where such instances are identified we can see the case for seeking to update the relevant Charter and to harmonise the control framework documents. This should be done where there is an actual business case for such an update and conducted – of course – on a partnership basis between the body concerned and the Welsh Government.

Some reflections on Charities Act obligations

27. We have heard it suggested that the responsibilities placed upon trustees by the Charities Act are in conflict with those placed upon the Accounting Officer since each ascribes ultimate accountability for financial control and management to different places in the organisation. This observation has been made a number of times in the past and we are aware that it has sometimes caused some tensions. Charities Act legislation gives the trustees – that is, the Board – specific responsibility for managing the organisation’s resources responsibly. The Accounting Officer Memorandum gives the Accounting Officer, who is the CEO of the body, overall responsibility and accountability for financial management of the organisation, with that accountability being to the Welsh Government and to the Senedd rather than to the Board.

28. This issue has been responded to in the past by saying that “it is both/and rather than a choice between one or the other”, and we think that there is a lot of wisdom in this approach. We recognise that if it came to a matter of law then the Charities Act legislation would trump the Accounting Officer Memorandum, since the former has statutory force, and the latter does not. But we would not expect

it to come to that in any responsible organisation where relationships are constructive, and communication is open and rich. We would expect Trustees to recognise the position of the Accounting Officer and vice versa, valuing the common ground of responsibility for the proper and effective use of the resources of the organisation.

29. Should there ever be an unresolvable difference of opinion between the Trustees and the Accounting Officer, the Accounting Officer Memorandum allows for resolution of the situation by requiring the Accounting Officer to seek a written instruction from their Board if they believe that they are being instructed to do something which is incompatible with their Accounting Officer responsibilities. Accounting Officers cannot, therefore, block unilaterally the intentions of a Board. There is a procedure which they are required to follow in those circumstances which allows for transparency and accountability, and for external scrutiny or intervention if that is deemed appropriate. The responsibilities of Trustees and Accounting Officers should be seen as complementary and there exists a mechanism for dealing with unresolvable differences of view.

30. It could be argued that the demands of the Charities Act upon trustees can also skew accountability and can conflict with or frustrate some of the expectations of Welsh Government ministers. We would not expect this to be a practical difficulty in most circumstances. Each of the public bodies in question has their own unique and independent function in serving the people of Wales but each are funded largely by the taxpayer, and they are accountable to the nation for the way in which they discharge their functions. The legal duties and responsibilities placed upon trustees by the Charities Act legislation are appropriate and positive, but they are no different from what is expected of the Boards of public bodies which do not happen to be charities as well; and those duties should not impede the operation of a rounded accountability and governance framework which applies equally to all the public bodies of the Welsh Government.

Reflections on potential conflicts between the Board and the Accounting Officer

31. While most Boards and the executive do work together harmoniously, there is scope sometimes for lack of clarity or shared understanding about where the strategic responsibilities of the Board lie as opposed to those of the Accounting Officer and the Executive. Clarity of documentation is important in this respect, and the Welsh Government can help by regularly reviewing its Control Documents, including the Accounting Officer Memorandum, to ensure that references to the respective roles of the Board and the Executive are consistent and clear.

32. We have come across the suggestion that the responsibilities of the designated Accounting Officer mean that the Board cannot get involved in operational issues. This position is simply not correct. The responsibilities of the Accounting Officer and of the CEO are placed upon the same person and they overlap, but they are not synonymous. Accounting Officer responsibilities relate particularly to the control, management, and proper use of the financial and other resources under the control of the organisation. They are precisely specified in the Accounting Officer Memorandum which is issued to each Accounting Officer upon their appointment. The responsibilities of the CEO for the running of the organisation so as to deliver the strategic objectives set by the Board, and for which the CEO is accountable to the Board, run wider. The two are separate and should not be conflated.

Reflections on potential conflicts between a Board and its Executive

33. We note that the various control documents increase the scope for possible tensions around the boundary between the role of the Board and that of the

Executive. This is certainly not a new issue, nor is it confined to that of public bodies which have a Charter, or charitable status, or both. There are two types of boards in the public bodies landscape in Wales. Some are advisory; but most are executive, with responsibility for setting the strategic direction of the organisation, monitoring the performance of the organisation, and holding the executive to account. Those respective responsibilities should be set down clearly in the framework document of the organisation and agreed by both the board and the executive as part of the process of signing off the document.

34. But however clearly the control framework documents are written, tensions and misunderstandings can still emerge. It has occasionally been the case in the past in public life in Wales (and here we are drawing on experience outside the public bodies involved in this particular piece of work, and also going back a number of years) that a CEO has felt that their Board was too hands-on and was trying to take over the day-to-day running of the organisation, while the Board for their turn do not have sufficient confidence that the organisation, for which they ultimately accountable, is being managed properly and effectively. At times the reverse can also be the case: the executive can feel that their board is insufficiently rigorous in providing scrutiny and challenge.

35. This is not a new phenomenon, nor a particularly rare one. Tensions about where the boundary lies between the role of the board and the role of the executive are not unusual. A clear control framework is an essential prerequisite for addressing this situation when it arises, but it is usually not enough. A general statement of respective roles and responsibilities cannot always deal with the specific issues that may be causing tensions. Fundamentally these are issues of relationship and communication and the way to deal with them is through dialogue, openness and honesty, and a willingness to understand the point of view of the other party and come to a mutual agreement. If such an agreement cannot be reached then there should be no unwillingness to seek the assistance of a third party to help to resolve the issue, and a benign external point of view can often help to move things on. On occasions these tensions can be a result of a relationship breakdown rather than anything else, and in those

instances, it is that breakdown which needs to be addressed and resolved.

Reflections on the relationship between a public body and the Welsh Government

36. While the framework documents seek to provide that clarity, drafting cannot fill this space entirely or provide for every eventuality. It also requires mutual respect and care on both sides, coupled with constructive dialogue. We can understand the potential for wider tensions about role and expectations. A public body is conscious that it has functions and responsibilities independent of the Welsh Government and may feel that sometimes the Welsh Government fails to recognise those as sufficiently as it should do. The Welsh Government, on the other hand, will feel that since it is usually the main provider of the funds of that body then it is entitled to set the overall framework and objectives to which those funds should be applied; and that it has a responsibility to ensure that those funds are properly safeguarded, which it does through the Accounting Officer mechanism.

37. This is part of the mature and two-way relationship which was envisaged in the review of public bodies which took place a few years ago. The key here is a dialogue based upon mutual respect and listening.

David Richards
Tara Croxton

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