

Payment to the Welsh Government's Former Permanent Secretary on Termination of Employment

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This report has been prepared under Paragraph 19(1) of Schedule 8 to the Government of Wales Act 2006 which provides that if the Auditor General for Wales thinks that it would be in the public interest to bring to the public's attention a matter coming to his notice in the course of an examination of auditable accounts, the Auditor General may prepare a report on that matter and as soon as practicable after preparing such a report lay the report before the Senedd. I have decided to issue a report in the public interest because in my view the way in which the Welsh Government made decisions regarding the former Permanent Secretary's working arrangements and determined to make a payment to her on the termination of her employment lacked transparency and did not comply with good governance principles. I consider that the facts regarding this matter should be brought to the public's and the Senedd's attention.

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Mae'r ddogfen hon hefyd ar gael yn Gymraeg. This document is also available in Welsh.

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Key messages

About this report

- 1 On 4 August 2022, I qualified my ‘true and fair’ and ‘regularity’ audit opinions on the Welsh Government’s Consolidated Accounts 2020-21 in respect of an ‘extra-contractual’ payment¹ of £39,123 that the Welsh Government made to the former Permanent Secretary – Dame Shan Morgan² – on the termination of her employment on 31 October 2021. I also included an ‘other matter’ statement in my audit certificate to draw attention to the disclosures made in the Welsh Government’s Governance Statement relating to this payment. I consider that disclosures in respect of the payment made to the Permanent Secretary are not consistent with knowledge gained during the audit.
- 2 The Welsh Government told my auditors that the £39,123 forms part of a total payment of £80,519 – not including the Permanent Secretary’s final month’s salary – which comprised three elements:
 - A payment in lieu of notice of £31,843
 - An untaken annual leave element of £9,553
 - An extra-contractual payment of £39,123 for additional days worked
- 3 The Welsh Government has indicated that £30,289 of the £39,123 payment relates to additional days worked in the 2019-20 and 2020-21 accounting years following the Permanent Secretary’s partial retirement in April 2018.
- 4 The Welsh Government told my auditors that £30,289 is included as an accrual in the 2020-21 financial statements. I have been unable to determine whether the expenditure in the financial statements is materially correct (‘true and fair’ opinion). More specifically, I have been unable to obtain sufficient, appropriate audit evidence about the Permanent Secretary’s working arrangements from April 2018 and consequently whether the Permanent Secretary was entitled to receive the payment. I have been unable to confirm:

¹ Managing Welsh Public Money sets out the main principles for managing resources that it notes should hold true across the Welsh public sector. It states that, ‘Extra-contractual payments are payments which, though not legally due under contract, appear to place an obligation on the Welsh Government or its public bodies which the courts might uphold. Typically, these arise from action or inaction in relation to a contract. Payments may be extra-contractual even where there is some doubt about the liability to pay, eg where the contract provides for arbitration but a settlement is reached without it. (A payment made as a result of an arbitration award is contractual.)’

² Unless stated otherwise, where we refer in this report to ‘the Permanent Secretary’ we mean the former Permanent Secretary. Dame Shan Morgan was a permanent member of the senior civil service appointed on a five-year fixed term contract for the period 6 February 2017 to 5 February 2022, but left the role on 31 October 2021 following the appointment of her successor, Dr Andrew Goodall. During the period of her employment, no changes were made to the Permanent Secretary’s written contract of employment.

- the basis on which the payment was made;
 - how the payment was calculated;
 - whether the Welsh Government had an obligation to make the payment; and
 - whether it is, or should be, included in the Welsh Government's financial statements 2020-21.
- 5 The Welsh Government did not keep contemporaneous records of its reasons for making the payment, the rationale for the amount paid or evidence of who authorised the payment. I have therefore been unable to satisfy myself that the payment was properly authorised in accordance with the framework of authorities governing the expenditure and whether the expenditure was incurred for the purposes intended by the Senedd ('regularity' audit opinion).
- 6 Given this uncertainty, I have also been unable to confirm that the audited Accountability Disclosures and the audited part of the Remuneration and Staff Report are in agreement with the accounting records and returns and are materially correct within the 2020-21 financial statements.
- 7 The Governance Statement includes the Welsh Government's explanation as to why the payment of £39,123 was made to the former Permanent Secretary. However, this explanation is not supported by contemporaneous evidence. To the extent that contemporaneous documentation does exist in relation to this payment, it does not support the commentary set out in the Governance Statement.
- 8 This report sets out more detail about the circumstances around the element of the payment that led to the audit qualification. It also provides information on the other elements of the payment. My auditors have examined all the evidence and information made available to them regarding the issues covered in this report and the conclusions set out in this report are based on that evidence. My audit of the Welsh Government's 2021-22 financial statements is still in progress. I will formally provide an opinion on the elements of the payment that relate to the 2021-22 financial statements when that audit is complete.
- 9 Before finalising this report, my auditors invited and I took account of comments from the Welsh Government and the former Permanent Secretary's representative. I also took account of comments from the Cabinet Office and MyCSP³ on relevant extracts of the draft report.
- 10 While this report provides further explanation of my concerns regarding the payment made by the Welsh Government to its former Permanent Secretary, it is not, and is not intended to be, a commentary on the Permanent Secretary's performance in her role or her dedication to duty. The Permanent Secretary has stated that she had no involvement in negotiating the amount paid to her by the Welsh Government on the termination of her employment.

³ MyCSP is the Scheme Administrator for the Civil Service Pension Scheme.

Key findings

- 11 In **Part 1** of this report, I set out that the Welsh Government did not have clearly documented governance and accountability arrangements for the role of Permanent Secretary. This resulted, in my view, in a lack of clarity over how important decisions relating to a Permanent Secretary's employment should have been made.
- 12 In **Part 2** I set out that changes to the Permanent Secretary's working arrangements did not accord fully with the policy framework and were not adequately documented to show they were properly made and reported. More specifically:
- the Welsh Government's processing of the application for partial retirement was not fully in accordance with its policy framework;
 - inadequate documentation leaves me unable to confirm changes to the Permanent Secretary's working arrangements relating to her partial retirement were properly made and reported; and
 - I have similar concerns about the Permanent Secretary's working arrangements from April 2019 which were also, in part, outside the scope of the Welsh Government's policies.
- 13 In **Part 3** I set out that I have been unable to satisfy myself that the decision to make a payment of £80,519 to the Permanent Secretary on termination of her employment was properly made and, to date, properly accounted for. More specifically:
- **Payment in lieu of notice:** In the circumstances under which I understand the Permanent Secretary left her employment, she was not entitled to receive a payment in lieu of notice under the terms of her contract, but it would not have been unreasonable for her to seek a severance payment as compensation for the termination of her employment.
 - **Annual leave balance:** The untaken annual leave balance and the payment calculation were premised on the Permanent Secretary having a full-time working arrangement after she took partial retirement and accruing annual leave during a notice period.
 - **Extra-contractual payment:** The payment was premised on the Permanent Secretary having a part-time working arrangement after she took partial retirement. The number of days used to calculate the payment was arbitrary and without proper basis. And there is no contemporaneous documentation evidencing that the Welsh Government complied with the requirements of Managing Welsh Public Money.

Welsh Government response

- 14 I am not making specific recommendations in this report. However, the Welsh Government has already acknowledged that my examination of this matter has highlighted the need for improved processes concerning payments to senior staff. The Welsh Government told my auditors that it accepts that there was insufficient

contemporaneous documentation of the reasons why approval was given at various stages, that communication between the Welsh Government and the UK Cabinet Office could have been more timely and more detailed and that there were inconsistencies and deficiencies in the way that the former Permanent Secretary's entitlement to leave was calculated. The Welsh Government has set out to me actions that it will be taking:

- better documentation of agreements reached in these circumstances so that there is an adequate audit trail.
- reviewing the terms of reference of its Remuneration Committee so that the agreement of the Committee, or at least the Chair, is sought for individual exit payments or other significant changes to terms and conditions for staff at Director level and above.
- production of a documented set of processes, agreed with the Chairs of the Audit and Risk Assurance Committee and the Remuneration Committee, for dealing with any significant HR matters which arise in respect of the Permanent Secretary or other very senior staff of the Welsh Government. This will include guidance on notifying other interested parties.
- working with UK Cabinet Office to develop specific guidance for the line management of permanent secretaries in the devolved context⁴.

⁴ The Cabinet Office told my auditors that in the absence of a clear statement of accountability, it intends to work with the Welsh Government to draw up a protocol which sets out more clearly the Cabinet Secretary's role in the line management of the permanent secretaries to the devolved administrations.

Part 1: Governance and accountability arrangements

The Welsh Government did not have clearly documented governance and accountability arrangements for the role of Permanent Secretary

- 15 The position of Permanent Secretary to the Welsh Government carries with it the role of Principal Accounting Officer for the Welsh Ministers⁵ and personal responsibility for safeguarding the public funds for which they have been given charge.
- 16 The postholder is also the Head of the Welsh Civil Service and has delegated responsibility from the First Minister for personnel functions, including pay matters in respect of the Welsh Civil Service⁶. This delegation does not extend to matters relating to their own pay and contractual terms as this would represent an inherent conflict of interest. Pay and personnel arrangements therefore differ from other Welsh civil servants. For example:
 - the Permanent Secretary was appointed following public advertisement of the post and selection by a panel comprising the Head of the UK Civil Service, a Permanent Secretary of a UK Government department, a Welsh Government non-executive director and an external panel member.
 - the Permanent Secretary's pay, in common with other Permanent Secretaries across the UK, is not determined by the Welsh Government but by the Cabinet Office's Permanent Secretaries' Remuneration Committee. Any change to pay must be approved by the Cabinet Office.
 - the Permanent Secretary was issued with a written contract by the UK Cabinet Office setting out the principal contractual terms. The Permanent Secretary's contract is a standard contract for all UK permanent secretaries. The parties to the contract were the Permanent Secretary and the First Minister of Wales (as the appointing authority for the Crown). The contract was signed by the UK Cabinet Secretary on behalf of the First Minister. The Cabinet Secretary acts in the capacity of the Permanent Secretary's line manager.
- 17 The Permanent Secretary's employment contract set out the principal terms of that employment and, together with Welsh Government HR policies and guidance, constituted the terms and conditions of the Permanent Secretary's employment. The Welsh Government would have needed to agree changes to the principal terms, including matters relating to remuneration, with the Cabinet Office. Other

⁵ Section 129(6) of the Government of Wales Act 2006

⁶ Under the Civil Service (Management Functions) Act 1992

personnel matters – those not covered within the written contract – would need to be dealt with by the Welsh Government in accordance with its agreed HR policies. In other words, there was no scope for the Welsh Government to introduce non-standard HR arrangements in respect of the Permanent Secretary outside of the policies that applied to all Welsh Government staff.

- 18 Despite the complexities of the various accountabilities of the role of Permanent Secretary, including how it operates within the Welsh Government's own governance framework and the accountability for the role to both the Cabinet Office Secretary and the First Minister, I have seen no evidence of the Welsh Government having clearly documented:
- which decisions relating to a Permanent Secretary's employment are reserved to the Cabinet Office, and which are decisions for the Welsh Government to take.
 - where decisions are for the Welsh Government to take, how those decisions should be taken and approved. This is particularly important given that the involvement of subordinate civil servants in decisions relating to a Permanent Secretary's terms of employment including pay, working pattern and leave entitlement would involve an inherent conflict of interest.
 - how 'line-management' responsibilities should be undertaken, and by whom. For example, performance management arrangements, leave and flexible working authorisation and record-keeping.
- 19 This resulted, in my view, in a lack of clarity over how important decisions relating to a Welsh Government Permanent Secretary's employment should have been made. This is the context to decisions taken by the Welsh Government that relate to the payment made to the Permanent Secretary on termination of her employment. As noted in **paragraph 14**, the Welsh Government has now recognised the need for improved processes concerning payments to senior staff.

Part 2: The Permanent Secretary's 'partial retirement' from 1 April 2018 and changes to working arrangements

Changes to the Permanent Secretary's working arrangements did not accord fully with the policy framework and were not adequately documented to show they were properly made and reported

The Welsh Government's processing of the application for partial retirement was not fully in accordance with its policy framework

- 20 The terms and conditions of the Permanent Secretary's employment from 6 February 2017 included:
- a basic salary of £160,000 a year. Any increase in salary to be determined by the Permanent Secretaries' Remuneration Committee. Salary to be reviewed annually with any changes notified in writing.
 - a requirement to work a minimum of 42 hours over a five-day week, including daily meal breaks of one hour.
 - a requirement as a senior civil servant to work such additional hours as may from time to time be reasonable and necessary with no entitlement to payment of overtime.
 - annual leave entitlement of 30 days per annum.
 - being entitled to apply for part-time working or flexible working arrangements – although the advert for the role in 2016 had specified that the work pattern was full time and not suitable for candidates who wished to work on a part-time basis.
- 21 At some point prior to February 2018, the Permanent Secretary expressed a desire to partially retire under the Rules governing the Principal Civil Service Pension Scheme (the PCSPS). Civil Service Pensions has issued a guide for members on partial retirement that clarifies the eligibility requirements for employees wishing to take partial retirement. The guide states that:
- '... partial retirement is allowed only if you agree with your employer to reshape your job so that your salary (together with any permanent pensionable allowances) reduces by at least 20%. You and your employer should expect the job reshaping to apply through to your final retirement. This is the equivalent of reducing your hours from full-time (5 days a week) to 4 days a week. Alternatively, you could agree to move to a lower-paid job. This could be a lower grade job or one which has fewer responsibilities than your current one.'

- 22 The reason why job reshaping is required for eligibility for partial retirement is that the intended purpose of partial retirement is to enable employees to transition gradually from employment to retirement. The Welsh Government's retirement guidance and procedures from May 2016 also state that:
- '... partial retirement, if agreed, allows employees to take some or all of their pension and carry on working on a reduced hours or grade basis beyond pension age and gradually move from work to retirement'.
- 23 On 12 February 2018, the Permanent Secretary and the Welsh Government completed an application to the PCSPS for partial retirement. The application form set out that the Permanent Secretary would take a 20% reduction in her pay, continue to work full time and that her role would be reshaped. The application was accepted by the PCSPS, and the Permanent Secretary commenced partial retirement with effect from 1 April 2018 and gained access to her accrued pension benefits.
- 24 As set out in **paragraph 16**, the Permanent Secretary's written contract of employment was issued by the Cabinet Office and signed by the Cabinet Secretary on behalf of the First Minister. In my view, any subsequent changes to these principal terms – including on matters such as pay, working hours and leave entitlement flowing from partial retirement – needed to be agreed by the Cabinet Secretary following discussion with the Welsh Government, including consultation with the First Minister. In my view the application was not properly approved for the reasons set out below.
- 25 The Cabinet Office has confirmed that with regards to the Permanent Secretary's partial retirement application such a change in working arrangements should have been agreed with the then Cabinet Secretary in advance, and 'had he been consulted, the matter should have been referred to [his] team which would have ensured that the respective HR teams in the Cabinet Office ... and Welsh Government ... would have been able to work together to progress matters appropriately'. However, the Cabinet Office told my auditors that the Cabinet Secretary was not notified at the time of the application and that he only became aware of the partial retirement in August 2019 in what appeared to be 'informal, personal correspondence' from the Permanent Secretary. The correspondence was therefore not passed to the relevant Cabinet Office team.
- 26 I have not seen any evidence that the then First Minister was made aware of the Permanent Secretary's partial retirement prior to the application or the decision to agree it. As set out in **paragraph 32**, the First Minister was subsequently informed by the Permanent Secretary by email in August 2019 of the partial retirement. The email emphasised that her working hours had not changed.
- 27 The Welsh Government's retirement guidance and procedures dated May 2016 set out how the Welsh Government will handle applications for partial retirement. The policy provisions include:
- 'applications [for partial retirement] must be made via the line manager to request consideration of partial retirement'. In the case of the Permanent Secretary the Cabinet Secretary was not informed of the partial retirement

application despite acting in the capacity of the Permanent Secretary's line manager.

- 'since partial retirement involves a change in hours, if partial retirement is agreed the process for changing hours would also be followed'. The process referred to involves the completion of a 'change of hours' form. My auditors have seen no evidence that such a form was completed.
- 'a decision will be reached by line management as to whether to allow a request on the basis of business need and it is therefore not guaranteed'. My auditors have seen no evidence of how or if the Permanent Secretary's application was considered in the light of business need, and I am unclear how this was possible given the lack of involvement in the process of either the Cabinet Secretary or the First Minister.

Inadequate documentation leaves me unable to confirm changes to the Permanent Secretary's working arrangements relating to her partial retirement were properly made and reported

- 28 As set out in **paragraphs 21 and 22** to be eligible for partial retirement under the pension scheme rules, the pension scheme member's job must be reshaped either by reduction in hours or by reducing responsibilities resulting in a reduction in pay of at least 20%. The partial retirement provisions were intended to enable the employee to gradually transition from employment to retirement.
- 29 The Welsh Government maintains that it reshaped the Permanent Secretary's job when she took partial retirement by agreeing that she could take an additional day's leave a month. The Welsh Government told my auditors that the change was approved by its HR Director and that he had the necessary authority to do so. For the reasons set out in **paragraphs 24 to 26**, I do not consider that the change that the Welsh Government maintains it made to the Permanent Secretary's working arrangements was properly approved. Furthermore, in my view there is a clear conflict of interest if a subordinate of the Permanent Secretary was able to authorise changes to her contractual terms.
- 30 In the course of conducting this audit, the former Permanent Secretary's representative told my auditors that the Permanent Secretary 'decided to apply for partial retirement for personal financial reasons. She had reached pensionable age after spending her whole career in the civil service accumulating pension benefits and it was in her judgment personally advantageous to take her pension to avoid and cease accruing pension' and that she 'applied for partial retirement knowing full well that the demands of a Permanent Secretary's role could only be undertaken effectively by working regularly over and above the minimum full-time hours in her contract, as she had been doing before her application and, indeed, as she had done in the previous senior roles which she had undertaken in the civil and diplomatic service'.
- 31 It appears to me from these statements that the Permanent Secretary was aware that her role could not be reshaped in a way which would enable her to transition

gradually from employment to retirement, and therefore calls into question whether the partial retirement was within the spirit of the pension scheme rules, and whether the application would have been approved if it had been referred to the Cabinet Secretary as it should have been.

32 While the Welsh Government maintains that the Permanent Secretary's role was reshaped from 1 April 2018, in July 2019 during my audit of the 2018-19 financial statements, the Welsh Government informed my auditors that the Permanent Secretary had taken partial retirement from 1 April 2018 and that although her pay had reduced by 20%, other contractual terms remained unchanged; she continued to work full time and her role and responsibilities remained unchanged. Other records and information from around that time and subsequently include:

- disclosures in the Welsh Government's published 2018-19 financial statements – the first financial statements after the Permanent Secretary's partial retirement – state: 'the reduction in Shan Morgan's salary from the previous year is a consequence of the decision to stop accruing pension in the PCSPS. This has reduced the cost of employment to the Welsh Government, but the role continues to be delivered on a full-time basis'.
- the Welsh Government's published annual Pay Policy Statements for the years following the Permanent Secretary's partial retirement disclose her status as that of a full-time employee.

- on 2 August 2019, the Permanent Secretary emailed the First Minister's Office stating:

'I thought the First Minister should be aware that last April I took what is described in the Civil Service jargon as 'Partial retirement'... As you can imagine, my hours have not reduced at all over the past year, rather the opposite! I'm telling you this because we're about to publish our Annual Accounts 2018/19 which show that my salary has reduced as a result of opting out of the Civil Service pension scheme. The Wales Audit Office seem to have misunderstood the situation and are querying how I could possibly take partial retirement in this job. The answer of course is that I haven't, and my working hours have not reduced in any way.'

On the same day, the Permanent Secretary emailed the UK Cabinet Secretary in similar terms, noting also the potential for media scrutiny.

- on 7 October 2019, during scrutiny of the Welsh Government's 2018-19 financial statements, the Permanent Secretary stated to the Senedd Public Accounts Committee that:

'I have worked full-time for over 40 years in the civil service, so I've ended up in a very similar situation to the one that's been publicised for the doctors in relation to taxation. I decided, therefore, that I would end my contributions to the civil service pension scheme last April. That involves various rules that mean I have to take a 20 per cent reduction in salary ... I can assure you, Chair, that I'm not working any fewer hours at all. If anything, with Brexit, I'm working more.'

- 33 The Welsh Government has been unable to provide my auditors with any contemporaneous documentation to confirm that the Permanent Secretary's job was reshaped as described in **paragraph 29**. Being able to demonstrate that an employee's job can and has been reshaped to enable the employee to transition gradually from employment to retirement is crucial to being able to demonstrate that pension scheme rules have been met.
- 34 During my audit work, the Welsh Government wrote to MyCSP seeking confirmation that it had complied with the pension scheme rules in respect of the Permanent Secretary's partial retirement. The correspondence was drafted on the basis that the Permanent Secretary's job was reshaped when she took partial retirement on 1 April 2018. MyCSP confirmed that it was satisfied that the working arrangement the Welsh Government now maintains was entered into from 1 April 2018 would have complied with the partial retirement rules. As set out in **paragraph 33**, the Welsh Government has been unable to provide any documentary evidence that the job was reshaped when the Permanent Secretary took partial retirement. My auditors have subsequently provided MyCSP with relevant extracts of a draft copy of this report pertaining to the Permanent Secretary's partial retirement and working arrangements. I have taken MyCSP's response into account in finalising this report.

I have similar concerns about the Permanent Secretary's working arrangements from April 2019 which were also, in part, outside the scope of the Welsh Government's policies

- 35 From 1 April 2019, the Welsh Government maintains that it agreed that the Permanent Secretary was able to accrue a day a week as additional leave (partial retirement days), rather than one day a month, for time worked over and above a four-day working week, which she would take at the end of her contract. Such a change is outside the scope of the Welsh Government's HR policies. If the Permanent Secretary's working arrangements were changed from 1 April 2019 in this way, it would have resulted in the Permanent Secretary potentially being entitled to over 120 'partial retirement days' (around six months) before the end of her employment.
- 36 The Welsh Government has been unable to provide my auditors with any contemporaneous documentation relating to the decision it maintains it made about this further change to the Permanent Secretary's working arrangements. In my view such a change was a material change to the Permanent Secretary's written contract of employment, although no changes were made to that contract. I also consider that there has been insufficient transparency about that change in the context of the records and information listed in **paragraph 32**.
- 37 The Welsh Government maintains that its Director of Human Resources approved the working arrangements set out above, and that he had the requisite authority to do so. I do not agree with this view for the reasons previously set out in **paragraph 29**.

- 38 The Welsh Government's Director of Human Resources told my auditors that in early 2020 he held discussions with the Permanent Secretary regarding her working hours. No notes have been retained of these discussions.
- 39 On 6 March 2020, the Permanent Secretary emailed the Director of Human Resources stating:
- '... as you know, I took 'partial retirement' from the Civil Service in April 2019.⁷ Although my pay decreased by 20% and I was supposed to reduce my working hours by 20%, I have chosen to take only one day's additional time off each month (my office has the records). I would like to bank some of this unused time to take when I leave this job. Could you please confirm that this is possible, and how much of the unused time I will be able to take?'
- 40 My understanding of the Permanent's Secretary's email is that she considered that her working days should have been reduced to four days a week when she took partial retirement, and that she wished to 'bank' time she had or would work over four days a week, taking that time when her employment finished. It is not clear from the email whether she wished to take the banked days as non-working days or be paid for those days at the end of her employment.
- 41 The Director of Human Resources responded by email on the same day, noting that it would be possible to take up to 69 days leave of absence, over and above her annual leave entitlement in the final year (achieved by banking 25 days of standard annual leave over the term of her contract, carrying over 12 days of standard annual leave into the final year of her contract and by taking 32 'partial retirement' days).
- 42 The content of the Director of Human Resources' email pertaining to standard annual leave was consistent with the Welsh Government's HR policies. However, the proposal around 'partial retirement' days was not within the scope of those policies, in that no Welsh Government policy provides for civil servants to receive 'partial retirement' days or more leave than their contractual entitlement.
- 43 The Welsh Government maintains that the Permanent Secretary was entitled to be compensated for working more than the four days a week she was paid for, and that she was consistently working far in excess of these hours due to Brexit preparations and the COVID-19 pandemic. I do not doubt that in common with many other Welsh Government civil servants, the Permanent Secretary worked in excess of the hours she was paid to work. As set out in **paragraph 30**, the Permanent Secretary was aware that following partial retirement her role would require her to work significantly in excess of four days a week. However, the Permanent Secretary in common with other senior civil servants was not entitled to receive overtime payments, and my auditors have not been provided with evidence to demonstrate that other senior civil servants were able to accrue additional annual leave in excess of their contractual annual leave entitlement.

⁷ The Permanent Secretary had taken partial retirement from 1 April 2018, not April 2019 (paragraph 23).

- 44 The offer made to the Permanent Secretary by the Director of HR is in my view significant because the extra contractual payment made to the Permanent Secretary at the end of her employment on 31 October 2021 (**paragraphs 67 to 75**) appears to have been loosely based around this email exchange. There is no contemporaneous record that any decisions were made around the time of the discussions in early 2020.
- 45 On 6 October 2020, the Director of Human Resources emailed the Welsh Government's Corporate Governance Unit, copying in the Welsh Government's Director of Finance stating, 'I can confirm that there has been no reduction in [the Permanent Secretary's] contracted hours. She is still contracted to work on a full-time basis.' I have been unable to reconcile this statement with the position of the Welsh Government that it was agreed that the Permanent Secretary could accrue a day's additional annual leave a week from 1 April 2019.

Part 3: Payment to the Permanent Secretary in October 2021

I have been unable to satisfy myself that the decision to make a payment of £80,519 to the Permanent Secretary on termination of her employment was properly made and, to date, properly accounted for

‘Payment in lieu of notice’ – £31,843

In the circumstances under which I understand the Permanent Secretary left her employment, she was not entitled to receive a payment in lieu of notice under the terms of her contract, but it would not have been unreasonable for her to seek a severance payment as compensation for the termination of her employment

- 46 The Permanent Secretary (who was a permanent member of the Senior Civil Service) was appointed on a five-year fixed term contract for the period 6 February 2017 to 5 February 2022 but left the role on 31 October 2021 following the appointment of her successor who took up post on 1 November 2021.
- 47 The Permanent Secretary’s employment was terminated on 31 October 2021, before the end of her five-year appointment term. My understanding is that the First Minister requested that the contract be terminated early as the Permanent Secretary’s successor had been identified, and he wanted a programme of reforms to be led from the outset by the person who would be in post throughout the period of the new Senedd. In these circumstances, the Permanent Secretary agreed that her contract be ended ahead of its fixed term and for her civil service employment to end on the same date. The Cabinet Office told my auditors that it holds the same understanding of the circumstances that led to the termination of the Permanent Secretary’s contract and employment.
- 48 The Permanent Secretary’s contract of employment specifies notice periods which apply in respect of employment termination. Different notice periods apply depending on the reasons for termination, as follows:
- if the First Minister in his capacity as the appointing officer for the Crown terminates the employment, he is not required to give written notice to the employee, but will normally provide written notice to the employee, (except where the termination is due to gross misconduct). The period of notice normally given by the employer depends on the reason why the contract is terminated.

- if the employment is terminated by agreement between the First Minister and the employee, the employee is not entitled to a notice period.
 - if the employee decides to leave the employment, they are required to give three months' written notice to the Cabinet Office/Head of the Civil Service and to the Welsh Government's Director of Human Resources.
- 49 The Cabinet Office has also told my auditors that under the standard permanent secretaries contract which applied to the Welsh Government's Permanent Secretary, leavers who leave their employment by agreement, which I understand to be the case in this instance, 'are not entitled to a period of notice terminating their employment unless they are leaving on Voluntary Exit (VE) or Voluntary Redundancy (VR) terms in line with the Civil Service Compensation Scheme (CSCS⁸)'. The Permanent Secretary did not leave her employment on Voluntary Exit (VE) or Voluntary Redundancy (VR) terms in line with the CSCS.
- 50 The Welsh Government maintains that it made a payment in lieu of notice to the Permanent Secretary (based on a 12-week notice period) and disclosed this in its 2020-2021 financial statements. The process that led to the payment is set out below.
- 51 On 7 September 2021, the Director of Human Resources emailed the First Minister's Office requesting approval for a payment in lieu of notice, stating: '... we are aiming for a last day of service for [the then Permanent Secretary] of 31st October and a start date for [her successor] of 1st November. The FM is aware but I need his formal approval to make a Payment in Lieu Of Notice to [the then Permanent Secretary] and a payment for un-used leave – standard arrangements for all staff so I don't believe the FM needs to formally approve that element to expedite things. Once I have that Cabinet Office will write to [the then Permanent Secretary] confirming. Can you check that the FM is content and get back to me please?'
- 52 The First Minister's Office responded to the email from the Director of Human Resources on the same day setting out that the First Minister was content to agree to make a payment to the Permanent Secretary in lieu of notice, with the understanding that 'she would remain available for consultation during that period (up to what would have been her contractual date)'. While the Director of Human Resources forwarded this email to the Cabinet Office, he did not set out the basis on which the Permanent Secretary was entitled to a payment in lieu of notice.
- 53 In my view, the First Minister was not provided with sufficient information to make an informed decision regarding the proposed payment. The email from the Director of Human Resources did not refer to the Permanent Secretary's contractual provisions in respect of notice periods, did not specify the length of notice period the payment would relate to or the payment that would arise. As set out above, the payment was based on the incorrect premise that the Permanent Secretary was eligible to receive a payment in lieu of notice. As set out in **paragraphs 48 and 49**,

⁸ The maximum compensation that can be paid to a member over pension age is six months' pay plus three months in lieu of notice.

the Permanent Secretary was not eligible to a period of notice if the termination was by agreement (other than in specific circumstances that did not apply in this instance), and therefore she was not entitled to receive a contractual payment in lieu of notice.

- 54 The Welsh Government told my auditors that its legal team was made aware that consideration was being given to a payment in lieu of notice. However, formal legal advice was not requested.
- 55 While, in the circumstances under which I understand the Permanent Secretary left her employment she was not eligible to receive a payment in lieu of notice, I accept that it would not have been unreasonable for the Permanent Secretary to seek a special severance payment as compensation for the termination of her employment. Nor, in my view, if the Welsh Government had properly considered, approved and recorded such a decision would it have been unreasonable for it to make such a payment.
- 56 However, the Welsh Government treated the payment in its 2020-21 accounts as a payment in lieu of notice, rather than as a special severance payment. While the Welsh Government sought the First Minister's approval to make a payment in lieu of notice, it did not seek his approval to make a special severance payment. Under the requirements of Managing Welsh Public Money, special severance payments are required to be approved by the First Minister. As the Welsh Government did not treat the payment as a special severance payment, there is no evidence that it considered the appropriate tax treatment of such a payment. I note and accept that the Permanent Secretary could have sought to leave under the terms of the CSCS, and this could have resulted in her receiving a higher value payment than the 'payment in lieu of notice' payment she received.

Annual leave balance – £9,553

The untaken annual leave balance and the payment calculation were premised on the Permanent Secretary having a full-time working arrangement after she took partial retirement, and accruing annual leave during a notice period

- 57 As set out in **Part 2** of this report, the Welsh Government now maintains that the Permanent Secretary's working arrangements changed from 1 April 2018 and again from 1 April 2019. Notwithstanding these changes, the Permanent Secretary received a full-time equivalent annual leave entitlement throughout her employment.
- 58 On 7 January 2021, the Permanent Secretary's Office emailed the Welsh Government's Director of Human Resources asking:
- '... can I please just check that [the Permanent Secretary] still has an allowance of 31 days annual leave? (We're not sure if [the Permanent Secretary's] 20% days impact this or not). I'm about to send [the Permanent Secretary] a copy of her annual leave sheet and just want to double check we've got all the numbers right.'

- 59 The Director of Human Resources responded on 8 January 2021, suggesting that the Permanent Secretary's leave allowance should be reduced to reflect the change in hours. That same day, the Permanent Secretary's Office wrote to an HR officer querying from when the reduction in the Permanent Secretary's annual leave entitlement should apply. The response from the HR officer on 13 January 2021 was:
- '...it seems that when [the Permanent Secretary] took partial retirement on 1st April 2018 she opted to reduce her salary rather than her hours. Therefore, she should continue to receive the full leave entitlement of 31 days.'
- 60 The Permanent Secretary's Office wrote again to the Director of Human Resources requesting confirmation of the Permanent Secretary's leave entitlement since she took partial retirement. The Director of Human Resources responded on 13 January 2021 stating:
- 'I have discussed with [an HR officer], as [the Permanent Secretary] has not technically reduced her days – just her pay, there should be no reduction to her leave allowance.'
- 61 On 16 June 2021, an HR officer prepared a briefing note for the Welsh Government's Director of Governance and Ethics setting out options for addressing the Permanent Secretary's untaken annual leave balance at the end of her contract period (5 February 2022). The briefing note related to the Permanent Secretary's standard annual leave entitlement. It did not refer to any changes to the Permanent Secretary's working hours.
- 62 The briefing note was premised on the Permanent Secretary having an annual leave entitlement of 31 days. The Permanent Secretary's contract of employment specified that she was entitled to 30 days a year annual leave. The Welsh Government told my auditors that this difference is due to a carry-across of entitlement from her previous roles in the Senior Civil Service but has not provided my auditors with any documentation to support this.
- 63 The Director of Governance and Ethics replied to the briefing note on 22 June 2021, supporting the recommended proposal that the Permanent Secretary be paid for untaken leave at the end of her employment due to the unusual COVID-19-related circumstances but emphasising that other members of staff in a similar position must be treated in the same way. The Director of Governance and Ethics also set out that given the likely scrutiny that arrangements in respect of the Permanent Secretary would be given, it would be necessary to consult the Chair of the Welsh Government's Audit and Risk Assurance Committee and the Chair of the Remuneration Committee before finalising any arrangements. In the event, the Chairs were not consulted.
- 64 The Welsh Government's records indicate that the Permanent Secretary had an outstanding annual leave balance of 18 days at the end of her employment. This balance was also premised on an entitlement to accrue annual leave over a 12-week period of notice, but in the circumstances under which I understand the Permanent Secretary left her employment, the Permanent Secretary was not

entitled to a period of notice (**paragraphs 46 to 56**) and the Permanent Secretary was not entitled to accrue leave for this period.

- 65 In my view, the Welsh Government's position regarding the Permanent Secretary's working arrangements is inconsistent. If the Permanent Secretary was entitled to the annual leave allowance of a full-time employee, she had no entitlement to receive additional leave/partial retirement days on the basis of being a part-time worker (**paragraphs 67 to 75**). If her working hours were reduced after taking partial retirement and further reduced from 1 April 2019, she was not entitled to a full-time annual leave allowance⁹. Part-time employees are not eligible for a full-time annual leave entitlement.
- 66 I also note that the daily rate used to calculate the payment for untaken annual leave was based on the Permanent Secretary working full time. If, as the Welsh Government now maintains, the Permanent Secretary was remunerated for working part-time, (four days a week and accruing a 'partial retirement day' each week), the daily rate was incorrect and should, in fact, have been higher.

Extra-contractual payment – £39,123

The extra-contractual payment was premised on the Permanent Secretary having a part-time working arrangement after she took partial retirement

- 67 As set out in **paragraph 35**, the Welsh Government now maintains that in April 2019 the Permanent Secretary started to accrue a day a week as 'annual leave' or 'partial retirement days' to be taken at the end of her contract. In my view, this arrangement was novel and contentious. It was not supported by sufficient documentary evidence, was inconsistent with other documentary evidence, did not comply with Welsh Government HR policies and procedures and there was insufficient transparency about it.

The number of days used to calculate the payment was arbitrary and without proper basis

- 68 There is no contemporaneous record to support the number of 'partial retirement days' that the Permanent Secretary had accrued or taken since April 2019. In July 2021, the Permanent Secretary's Office developed a working document to capture how the 'partial retirement days' could be calculated. The document indicated a total of 148 partial retirement days. Separately, it also suggests a total of 146 days,

⁹ If the Permanent Secretary was only required to work four days a week from April 2019, she would have had an unused leave balance of around 0.5 days at the time she left her employment on 31 October 2021. If the Permanent Secretary was required to work a day less each month in the year from April 2018 to March 2019, she would not have had an outstanding leave balance when her employment ended.

arrived at by combining what are described as 73 partial retirement days and 73 annual leave days.

- 69 My auditors have examined the calculations and relevant communications about them but have been unable to satisfy themselves that the basis for these balances was robust. The methodology is unclear, inconsistent, and inaccurate and is not based on a specific record of actual days worked. A subsequent briefing note provided by an HR officer to the Director of Human Resources and the Director of Governance and Ethics recommended that the Permanent Secretary be asked to take some of her unused leave for her three months' notice period and pay her for the remainder.
- 70 On 7 September 2021, the Permanent Secretary's Office emailed the Director of Human Resources and stated, 'following discussion I can confirm that [the Permanent Secretary] will have 74 days of leave [partial retirement days] remaining as of 31 October'. The email did not provide any evidence to support how the balance of 74 days had been calculated.
- 71 The Welsh Government has confirmed that the Director of Human Resources made an offer to the Permanent Secretary to pay 74 'partial retirement days', based on half of the 148 'partial retirement days' between 1 April 2019 and 5 February 2022. The number of days used to calculate the payment was therefore arbitrary and without proper basis. The Welsh Government told my auditors that 'a normal rule of thumb when exit payments to Welsh Government staff were being considered is to offer about half of what might be considered to be a full entitlement and that practice was followed in this instance'.
- 72 As set out in **paragraph 51**, on 7 September 2021 the Director of Human Resources emailed the First Minister's Office to seek approval for the payment in lieu of notice. In my view, the email should have explained the prospect of the extra-contractual payment which I consider was the most contentious element of the overall payment made to the Permanent Secretary because it was not within 'standard arrangements for all staff' and there was no provision for partial retirement days within the Welsh Government's HR policies.

There is no contemporaneous documentation evidencing that the Welsh Government complied with the requirements of Managing Welsh Public Money

- 73 Managing Welsh Public Money categorises extra-contractual payments as one type of 'Special Payment'. I have been unable to conclude definitively whether the payment constituted an 'extra-contractual' payment, but I agree the payment is a 'Special Payment'. In my view, the payment was also novel, contentious and potentially repercussive and, in accordance with Managing Welsh Public Money, should have been referred formally to the Welsh Government's Corporate Governance Unit for consideration/determination.

- 74 Furthermore, Managing Welsh Public Money specifies that special payments need to be justified properly in the public interest, with particular emphasis on value for money, and consideration given to the following factors:
- The nature and circumstances of the case
 - The amount involved
 - The legal advice, where appropriate
 - The management procedures followed
 - An assessment of the value for money of the case
 - Any non-financial aspects
 - Whether the case in question could have a wider impact
- 75 My auditors have seen no record that the Welsh Government considered these factors in advance of the payment being made.



Audit Wales
24 Cathedral Road
Cardiff CF11 9LJ

Tel: 029 2032 0500

Fax: 029 2032 0600

Textphone: 029 2032 0660

E-mail: info@audit.wales

Website: www.audit.wales

We welcome correspondence and telephone calls in Welsh and English.
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