

National Audit Office
Report of the Comptroller and Auditor General

National Museum of Wales:
1998-99 Accounts

Confidential

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The full accounts, from which this Report is taken, are published by the Stationery Office at 00.01 hours on Friday 19 November 1999, House of Commons reference HC17

Introduction

1 The National Museum of Wales (the Museum) was established by Royal Charter in 1907 and is a registered charity, trading as the National Museums and Galleries of Wales. It was a Non-Departmental Public Body sponsored by the Welsh Office until 1 July 1999, when this sponsorship responsibility passed to the National Assembly for Wales under Section 22 of the Government of Wales Act 1998.

2 Under Section 9 (8) of the Museums and Galleries Act 1992, I have responsibility for the audit of the annual accounts of the National Museum of Wales. This responsibility will be transferred to the Auditor General for Wales with effect from the 1999-2000 year of account. The accounts for 1999-2000 and subsequent years will be laid before the National Assembly.

3 In this Report, I set out the circumstances and details of an irregular payment made by the National Museum for Wales during the 1998-99 financial year and the impact of this on my audit opinion.

Regulatory Framework of the National Museum of Wales

4 The powers invested in the National Museum of Wales are set out in their Royal Charter. The Welsh Office (now the National Assembly) exercised sponsorship control of the Museum. The arrangements for this sponsorship are detailed in a Management Statement, which incorporates a Financial Memorandum.

5 The Management Statement, which was last updated in January 1997, defines the framework within which the Museum is required to operate. The Financial Memorandum sets out the terms and conditions under which the Secretary of State makes funds available for the discharge of the functions and objectives set out in the Royal Charter. In particular, the Financial Memorandum details the financial responsibilities of the Museum, setting out the occasions when the Welsh Office must be informed, consulted or approached for approval before activities are undertaken or expenditure incurred. This includes specific references to novel, unusual or contentious expenditure.

6 The January 1997 versions of the Management Statement and Financial Memorandum have been adopted by the National Assembly for Wales but are in the process of being reviewed and revised.

Departure of the Assistant Director (Resource Management)

7 In August 1998, the then Accounting Officer and Director of the National Museum of Wales, Mr Colin Ford, was presented with a report from the Head of Human Resources on matters concerning Mr Tim Arnold, the then Assistant Director (Resource Management). This senior post is analogous to that of the Principal Finance Officer of a government department, and carries the same responsibility for advising the Accounting Officer on matters of regularity and propriety. The issues raised in the report concerned various aspects of Mr Arnold's management style over a protracted period. They did not relate to any suggestion of financial irregularity or impropriety.

8 At an informal meeting on 24 August 1998, Mr Ford advised Mr Arnold that he had received allegations of mismanagement which, if proven, he considered sufficiently serious to merit disciplinary action. Mr Arnold stated that he was not aware of any possible mismanagement issues but was fully prepared to face disciplinary proceedings and was confident he would be exonerated. Mr Ford suggested that, given the nature and potential seriousness of the allegations, it was in the interests of both the Museum and Mr Arnold that a precautionary suspension be applied. Mr Arnold left the premises immediately following this meeting. In order to preserve the neutrality of Mr Arnold's position pending investigation of the allegations, Museum staff were advised that he was absent on sick leave.

9 At a second informal meeting on 26 August 1998 with Mr Arnold, at which the Museum's solicitors were present, Mr Ford stated that a full and thorough investigation into the allegations was required. The precise details of the allegations were not discussed at either meeting, but it was agreed that Mr Arnold should seek independent legal advice.

10 The Museum's solicitors advised Mr Ford that there was merit in exploring the scope for a settlement with Mr Arnold before the commencement of protracted investigations, which would have had to be conducted while Mr Arnold was suspended on full pay. Discussions on a 'without prejudice' basis between solicitors for both the Museum and Mr Arnold resulted in the Museum considering a termination of his contract. After considering a range of options including early retirement, redundancy and compensation in lieu of any claim for unfair dismissal, both parties reached a negotiated settlement.

11 Mr Arnold told my staff that he had continued to press the Museum for an explanation of the allegations that had been made. He added that the Museum's refusal to respond to his request had a considerable bearing on his decision to accept termination of his contract by mutual agreement.

12 On 5 October 1998, a formal 'Compromise Agreement' was signed between Mr Arnold and the National Museum of Wales. This Agreement, drawn up by the Museum's solicitors, included the following terms:-

- Mr Arnold's employment would formally terminate on 30 September 1998 by mutual agreement;
- Mr Arnold would receive £30,000 from the National Museum of Wales as compensation for loss of office. He would also receive a contribution of £1,450 plus VAT towards his legal expenses. This was equivalent to the cost to the Museum of six months' pay (£31,700 being his entitlement to pay in lieu of notice plus three months). Coincidentally, £30,000 is the maximum amount allowed before tax would be charged on such a payment;
- The Agreement constituted full and final settlement of any claims that Mr Arnold might have against the Museum;
- Mr Arnold undertook "not to disclose the terms of this Agreement or any details in relation to the disputes compromised by this Agreement to any third party save his Legal Advisor and immediate family or as required by law". This confidentiality clause was not binding on the Museum; and
- The Museum would, on request, provide a reference for Mr Arnold using the form of words set out in an attachment to the Agreement. No reason is given for his departure.

13 On 8 October 1998, Mr Ford sent a memo to the Museum's Financial Controller requesting that a cheque for £30,000 be prepared and made payable to Mr Arnold. In this memo, Mr Ford stated "I have informed the Welsh Office of this payment". The Financial Controller raised the cheque and sent it to Mr Ford for signature, accompanied by a memo stating "I note you have informed the Welsh Office and assume you have their approval confirmed in writing (this must certainly be required by the NAO)". Mr Ford told my staff that he does not recall

seeing this memo and there is no record of his having done so. On 9 October 1998, Mr Arnold received the cheque for £30,000 and, on submission of an invoice from his legal advisors, the Museum also paid his legal fees of £1,730 (including VAT).

Consequences of the payment

14 During their audit of the 1998-99 accounts of the National Museum of Wales, my staff reviewed the documentation relating to this case held by both the Museum and their solicitors. They brought the case to the attention of Ms Anna Southall, who succeeded Mr Ford as Accounting Officer and Director of the National Museum of Wales on 1 November 1998, and also met with senior officials within the Museum's sponsor department at the National Assembly for Wales.

15 Ms Southall told my staff that these matters had been concluded before she had taken office. She had been consulted on the issues raised in relation to Mr Arnold's management style and had been made aware by her predecessor of the payments to Mr Arnold, and of the circumstances in which they were made in general terms. In particular, she had not seen the Compromise Agreement itself. She confirmed that she had received Mr Ford's assurance that all the necessary procedures had been followed and authorisations obtained. Ms Southall had also agreed the terms of the reference that the Museum provided for Mr Arnold.

16 The President, Vice-President and Treasurer of the Museum told my staff that they and the Chairman of the Museum's Personnel Committee had been properly consulted on the terms of the Compromise Agreement. They stated that in agreeing to these terms they had acted on the assurance of the former Director that all proper authorisations had been obtained. They told my staff that they had acted in good faith and in the belief that the solution offered value for money and was in the best interests of the Museum.

17 My staff established that neither verbal nor written approval from the Welsh Office had been sought by the then Director, either before or after reaching the Compromise Agreement with Mr Arnold. Officials in the sponsor department confirmed to my staff that they had no knowledge of the existence of the Agreement or of the payments made to Mr Arnold. They stated that they had been informed verbally by Mr Ford that there had been allegations of mismanagement of staff made against Tim Arnold; told of his intention to resign; and of discussions taking place about the termination of his contract; and subsequently notified that he had left the Museum's employment.

18 This notification was made in writing by Mr Ford on 7 October 1998. His letter stated:

“During his recent absence on sick leave, Tim Arnold took the opportunity to consider his future career development, having worked at [the Museum] for over fourteen years. He has concluded that a career move at this stage would be appropriate and has therefore resigned from his post as Assistant Director (Resource Management). By mutual agreement, his resignation took effect from 30 September 1998. I am sure you will join with me in wishing Tim well in his future career.”

Mr Ford also added a hand written footnote that said:

“I checked – you had not had one of these. Apologies.”

Mr Ford told my staff that he considers this wording to indicate that the contents of the letter had previously been discussed between himself and at least one Welsh Office official. He stated that he believed he had informed Welsh Office officials of the payment to be made to Mr Arnold and that they had not advised him that written permission would be required.

19 In my opinion, the payments made to Mr Arnold fall within the Government Accounting category of ‘novel and contentious expenditure’. Under paragraph 4.9 of the Museum’s Financial Memorandum, prior Welsh Office approval is required for any such payments. This was neither sought nor obtained at the time, making the expenditure irregular. Mr Ford told my staff that he recognises the existence of this paragraph and that, in normal circumstances, he would have relied on Mr Arnold to bring it to his attention. He also stated that he did not consider the payment to be ‘novel and contentious’.

20 Furthermore, Appendix D, paragraph 4 of the Museum’s Management Statement states that “the terms and conditions of...any compensation payments in respect of redundancy or other forms of compulsory retirement...shall be subject to the approval of the Secretary of State for Wales with the consent of the Treasury”. Although this does not explicitly address the circumstances of this case, more specific guidance is set out in a general letter that was issued by the Treasury on 4 April 1994 (DAO (Gen) 3/94). The purpose of this letter was to ensure that all Accounting Officers were aware of the recommendations contained in the 8th Report of the Committee of Public Accounts (Proper Conduct of Public Business). The letter emphasised the Treasury’s endorsement of the Committee’s findings, which were set out in a tabular format and included the following:

Failure identified by PAC	PAC Recommendation
Ex gratia payments made without authority on termination of employment, sometimes in circumstances where disciplinary action might have been more appropriate.	As well as seeking authority from sponsoring departments for any payments to staff going beyond their delegated powers, public bodies should ensure that any such exceptional cases can be fully justified in all the circumstances.
From: <i>DAO (Gen) 3/94</i> – "Checklist of points in the PAC's 8 th Report on the Proper Conduct of Public Business"	

21 I consider that had Museum staff been aware that the necessary approvals had not been obtained in writing, making the payments irregular, the matter should have been brought to the attention of Ms Southall on her appointment. This is because in signing the 1998-99 annual accounts, her Accounting Officer responsibilities encompass the entire financial year, rather than just the period since her appointment. As Accounting Officer, she is required to send a 'Letter of Representation' to me with the annual accounts, which includes a statement that there are no novel, contentious, or irregular payments contained within the accounts. The Accounting Officer is also required to sign the Statement of Internal Financial Controls which, amongst other things, sets out the safeguards that the Museum has in place to prevent irregular expenditure occurring.

Corrective action taken by the new Director

22 On being informed by my staff of the existence of the Compromise Agreement and of the payments to Mr Arnold, Ms Southall acted both promptly and appropriately by writing on 9 August 1999 to officials in the National Assembly for Wales setting out the reasons for making the payments and asking for retrospective approval to be granted.

23 The main arguments cited by the Director in support of this application were that:-

- "the National Museum of Wales and its Director have clear obligations as a reasonable employer", particularly as Mr Arnold had been employed by the Museum for some 14 years;
- "the Director, as Accounting Officer, has clear obligations to ensure that whatever arrangement is agreed provides the National Museum of Wales, and thus the taxpayer, with value for money"; and

- “the Director needs to be mindful of the damage to an institution such as the National Museum of Wales that can arise from adverse publicity”.

24 On 7 October 1999 Mr David Richards, the Principal Finance Officer of the National Assembly for Wales, informed Ms Southall that, after careful consideration of the circumstances in which the payments were made, his Accounting Officer did not consider it appropriate to grant retrospective approval for the expenditure. In his letter, Mr Richards set out the reasons behind this decision:-

- “The events which precipitated Mr Arnold’s departure seem to have occurred because the [Museum] had not tackled the problem under the normal disciplinary arrangements. Had the [Museum] done so, the outcome might have been different;
- “We could not have accepted any settlement which included a confidentiality clause;
- “The argument that the special payment of £30,000 saved further expenditure is not a generally accepted principle in the public sector where the adoption of proper standards and procedures has a higher priority.
- “A concern to protect the Museum from publicity - and especially from adverse public criticism about the handling of Mr Arnold’s case over a long period of time - cannot provide grounds for setting aside disciplinary action, or for making a special payment to any individual from public funds.
- “The control documents which govern the Welsh Office’s relationship with the [Museum] spelled out with complete clarity that the [Museum] was obliged to seek the Department’s formal and express authority, in writing, in advance of making a payment in a case of this sort. The limits on the Accounting Officer’s delegated authority as regards the making of any payment are, and were, plain.”

25 In the light of this response from the National Assembly’s Principal Finance Officer, Ms Southall stressed to my staff that she considered the Museum staff and Council members involved had acted in good faith and in the belief that the settlement offered not only value for money, but was good employment practice and was in the best interests of the Museum. She also noted that one of the particular difficulties of this case was that Mr Ford had been considering

disciplinary action against the very officer responsible for advising him on matters of regularity and propriety. Mr Ford also told my staff that he considered that he and the other Museum staff and officers involved had acted in good faith throughout this case.

Impact on my Audit Opinion

26 I have given careful consideration to the nature of this expenditure and the circumstances under which it was incurred by the National Museum of Wales. In the absence of proper authority for the expenditure at the time the Compromise Agreement was negotiated with Mr Arnold, and in light of the refusal by the Accounting Officer of the National Assembly for Wales to grant retrospective approval, I have concluded that the payments to Mr Arnold and his legal advisors are irregular. The National Museum of Wales acted in breach of both its Financial Memorandum and Management Statement in not seeking and obtaining approval for the payments prior to negotiating the Compromise Agreement. I note also that the Museum did not comply with the instructions prescribed in DAO (Gen) 3/94 and set out in paragraph 20 above.

27 The 1998-99 accounts of the National Museum of Wales thus contain irregular expenditure totalling £31,730. In the overall context of the Museum's accounts, I do not consider this amount to be material. I am satisfied that the payments to Mr Arnold are correctly included within the senior staff salary bandings disclosed in Note 6(c) to the financial statements. Accordingly, my audit opinion on the 1998-99 accounts of the National Museum of Wales is unqualified.

John Bourn
Comptroller and Auditor General
15 November 1999

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