

# Governance arrangements relating to an employment dispute at Amgueddfa Cymru – National Museum Wales

November 2023

This report has been prepared for presentation to the Senedd under the Government of Wales Act 2006.

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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

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## About this report

- 1 This report describes issues arising at Amgueddfa Cymru – National Museum of Wales.
- 2 Amgueddfa Cymru is a Welsh Government Sponsored Body, established by Royal Charter, and receives the bulk of its funding from the Welsh Government<sup>1</sup>. It is also subject to the regulatory oversight of the Charity Commission, and therefore regulated by both the Welsh Government and the Charity Commission.
- 3 Amgueddfa Cymru's President has overall responsibility for the Board of Trustees and is personally responsible to the Welsh Ministers for the conduct of Amgueddfa Cymru's affairs and its Trustees. The President is a Welsh Government public appointment.
- 4 The Director General of Amgueddfa Cymru is its chief executive officer. The Director General is also designated as Amgueddfa Cymru's Accounting Officer.
- 5 I have been unable to satisfy myself that its trustees discharged their legal responsibility to make sound and informed decisions in the best interests of Amgueddfa Cymru when they:
  - decided to engage in a mediation/negotiation process with its Director General/Accounting Officer<sup>2</sup>;
  - decided to delegate responsibility for approving the settlement arrangements to two trustees; and
  - set the terms of the delegations.
- 6 I therefore have significant doubt that the decision-making process that will result in payments to be made to the former Director General under the terms of a settlement agreement dated December 2022, complied with charity law, and that the payments arising from this process, which are disclosed within the Remuneration Report, conform with the framework of authorities governing them. For these reasons, on 29 September 2023, I qualified my 'regularity' audit opinion on Amgueddfa Cymru's Consolidated Accounts 2021-22.

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1 Although Amgueddfa Cymru is a recognised charity it is also a Welsh Government arm's length body, receiving circa £38.3 million from the Welsh Government during 2022-23, which equates to 87% of its total income.

2 From here on described as the former Director General.

- 7 I also included an ‘other matter’ statement in my audit certificate on Amgueddfa Cymru’s 2021-22 accounts to draw attention to disclosures made in its Annual Governance Statement regarding significant deficiencies in its governance arrangements during the year. These deficiencies arose due to a fundamental breakdown in the former Director General’s and former Chief Operating Officer/Deputy Director General’s<sup>3</sup> relationships with the former President.
- 8 I commented on these governance matters in a substantive report on Amgueddfa Cymru’s 2020-21 Consolidated Accounts in January 2022<sup>4</sup>. Aware of the weaknesses in Amgueddfa Cymru’s governance arrangements, the Welsh Government prioritised a review of Amgueddfa Cymru as part of its wider Tailored Review programme for its arm’s length bodies. The review commenced in February 2022.
- 9 This report refers to an employment dispute involving Amgueddfa Cymru, its former Director General, its former Chief Operating Officer, and its former President. My remit does not extend to resolution of employment disputes, and I do not therefore report on its merits nor do I detail every element of its complex and protracted resolution.
- 10 I do report on concerns regarding the payments made, and due to be made, by Amgueddfa Cymru to the former Director General and the circumstances surrounding those payments, including the involvement of Amgueddfa Cymru’s Board of Trustees and the Welsh Government<sup>5</sup>. I do not, however, report more generally on the performance of the former Director General or President in undertaking their respective roles.
- 11 My auditors and I have examined relevant evidence and information made available to us by Amgueddfa Cymru and where necessary sought clarification from Senior Executives. We have also reviewed certain evidence relating to Welsh Government processes but have not examined all aspects of the Welsh Government’s involvement in the employment dispute.
- 12 My auditors shared a draft of this report (or extracts of it), containing preliminary findings and conclusions with all parties being given the opportunity to comment. All comments received were carefully considered and where considered necessary or helpful amendments were made.
- 13 The conclusions set out in this report are based on the evidence reviewed. I have made recommendations for both Amgueddfa Cymru and the Welsh Government.

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3 From here on described as former Chief Operating Officer.

4 Amgueddfa Cymru – National Museum Wales, [Financial Report 2020/21](#), January 2022

5 The former Director General, the former Chief Operating Officer, the former President, and other Trustees (and their periods of service) relevant to this report are as set out in the Accountability Section of the Amgueddfa Cymru Statement of Accounts for 2021-22.

- 14 Alongside my examination of this matter, I and my audit team also considered the scope and findings of the Welsh Government’s ‘Tailored Review’, whose report was published in July 2023<sup>6</sup>. The Tailored Review report made 77 recommendations of which 27 related to Amgueddfa Cymru’s governance arrangements.

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6 Tailored Review Panel, Amgueddfa Cymru/Museum Wales, Final report of the Tailored Review Panel, July 2023

# Key findings

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- 15 In addition to the serious governance failures referred to above and covered in my substantive report on Amgueddfa Cymru's accounts of 2020-21 and in my qualified audit opinion on the 2021-22 accounts, there are other matters that I consider that it would be in the public interest to bring to the public's attention. In particular:
- the terms of the settlement agreement for the former Director General are significant and, in my view, novel, contentious and repercussive. Amgueddfa Cymru has not been able to demonstrate that it has acted in its best interests as a charity or that the settlement represents value for public money.
  - it is unclear to me whether the Welsh Government applied all relevant procedures for its own consideration and approval of the agreement.
  - the overall potential cost of the proposed settlement with the former Director General, the ill-health retirement of the former Chief Operating Officer and the resulting legal and advisory fees exceeds £750,000. Some or all of these costs could have been avoided.
- 16 These issues are expanded upon below and in the body of this report.

## **The employment dispute**

- 17 In June 2021, the former Director General and the former Chief Operating Officer submitted separate complaints to the Welsh Government, relating to alleged inappropriate actions and behaviour on the part of the former President of Amgueddfa Cymru.
- 18 At the time, Amgueddfa Cymru did not have adequate policies in place to deal with concerns raised by its senior officers and/or against a non-executive Board member. The Welsh Government dealt with both complaints under its own complaints handling process because the former President was a Welsh Government appointee.
- 19 Both officers also submitted grievances to Amgueddfa Cymru in September 2021 and, in October 2021 the former Director General submitted claims to the Wales Employment Tribunal against three respondents, namely Amgueddfa Cymru, Amgueddfa Cymru's former President and the Welsh Government.

- 20 The complaints to the Welsh Government followed earlier tensions in the two officers' relationships with the former President. The employment dispute adversely affected Amgueddfa Cymru's governance arrangements from September 2021 to November 2022, which contributed to significant and potentially avoidable expenditure to help bring the dispute to an end.
- 21 The Welsh Government appointed an independent investigator to examine the complaints. The investigator's report was issued in November 2021. While not finding that the then President had clearly breached the terms of his appointment, it found that his behaviour had not always reached the highest standards and that his actions had left him open to accusations that he had not always been as objective and open as he could have been.
- 22 In January 2022, both the former Director General and former Chief Operating Officer submitted further grievances to Amgueddfa Cymru relating to what they alleged was bullying and discriminatory treatment by the former President. Following mediation in June 2022, the former Chief Operating Officer retired on ill-health grounds at the end of July 2022 and received a payment to settle any potential claim he may have had against Amgueddfa Cymru. We did not identify any concerns with the decision-making process leading to that payment.
- 23 In August 2022, the then Director General submitted another claim to an employment tribunal. Although the background to the claim was similar in nature, the Director General's second claim included allegations of victimisation, disability discrimination and suffering detriment as a consequence of making protected disclosures. This second tribunal claim was only against Amgueddfa Cymru and its former President.
- 24 Amgueddfa Cymru began a mediation process with the former Director General in October 2022. The former President and the Welsh Government were also parties to this process.
- 25 Amgueddfa Cymru's decision-making process concerning the resolution of the employment dispute with the former Director General was fundamentally flawed for various reasons, as set out in Part 3 of this report.

### The settlement agreement for the former Director General

- 26 The mediation process led ultimately to a settlement agreement on 5 December 2022, as a result of which both tribunal claims were withdrawn and both the then President and the then Director General agreed to end their appointments with Amgueddfa Cymru. The settlement agreement was signed by the former Director General and the former President in their personal capacities, Amgueddfa Cymru's Vice President on behalf of Amgueddfa Cymru, and the Welsh Government's Director of Human Resources on behalf of the Welsh Ministers.
- 27 The terms of the settlement agreement for the former Director General are significant and, in my view, novel, contentious and repercussive. Amgueddfa Cymru has not been able to demonstrate that it has acted in its best interests as a charity or that the settlement represents value for public money.
- 28 In the context of the Welsh Government being a party to the settlement agreement and the longstanding dispute that gave rise to it, it is unclear to me whether it applied all relevant procedures for its own consideration and approval of the agreement (see Part 5 of this report).
- 29 As part of the settlement agreement the former Director General is currently in a notice period running to the end of September 2024, during which he is on 'sabbatical leave'. His job title is 'Emeritus Fellow of the Museum' and he is no longer performing the role of Director General.
- 30 As part of the agreement, the former President recused himself of his role from 17 November 2022 and stepped down from his post on 31 December 2022, three months earlier than the scheduled end of his term.
- 31 In February 2023, following the agreement, the independent grievance investigation officer appointed to consider the Director General's grievances issued his report. The report did not find that the former President breached the Nolan principles<sup>7</sup> (the Seven Principles of Public Life) though it upheld some aspects of the grievances (See **paragraph 49**).

### Costs arising from the employment dispute

- 32 As at 22 August 2023 the overall potential cost of the proposed settlement with the former Director General, the ill-health retirement of the former Chief Operating Officer and the resulting legal and advisory fees stood at £757,613. Of this, Amgueddfa Cymru is expecting to be able to recover £131,230 through insurance, leaving costs to the public purse of £626,383. These figures do not include all related costs (see **paragraph 36**)
- 33 The £757,613 breaks down as follows:
- former Director General settlement: potential costs of £325,698, comprising:
  - £39,794 salary and £13,079 pension and national insurance contributions for the period 17 November 2022 to 31 March 2023;
    - £130,073 salary and £42,752 pension and national insurance contributions for the period 1 April 2023 to 30 September 2024<sup>8</sup>;
    - £50,000 tax free as compensation for injury to his feelings;
    - £30,000 maximum expenses for the period 1 April 2023 to 30 September 2024<sup>9</sup>;
    - £20,000 payment for loss of office on 30 September 2024.
  - former Chief Operating Officer: £12,000 on ill health retirement on 31 July 2022 to settle any potential claim against Amgueddfa Cymru.
  - external legal and other professional services: £419,915 to date.
- 34 The expected contribution from insurance includes £38,000 already paid towards the compensation for injury to feelings and an expected £93,230 towards costs of external legal and professional services.
- 35 The Welsh Government is contributing £40,500 to the overall costs set out above. Of this, £20,500 is a contribution towards external services for the mediation process and £10,000 is towards the compensation for injury to feelings. The Welsh Government will also contribute £10,000 towards the payment for loss of office.
- 36 The costs above do not include the time spent by senior Amgueddfa Cymru staff dealing with the issues, the resulting costs of Welsh Government, including officials' time, or my additional audit fee. Nor do they include costs arising from the recruitment of new trustees or Amgueddfa Cymru staff, or the cost of employing the former Director General during his recusal from the role between 17 November 2022 and 31 December 2022. They also exclude any expenses for the former Director General in the period 17 November 2022 to 31 March 2023.

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8 All salary costs are at 2022-23 salary rates and subject to pay inflation.

9 Travel and subsistence, and other administrative expenses (subject to provision of appropriate invoices)—as at 22 August 2023, the former Director General had not made an expenses claim.

## Amgueddfa Cymru did not have adequate policies in place to deal with concerns raised by its most senior officers and/or against a non-executive Board member

- 37 In June 2021, the former Director General and the former Chief Operating Officer submitted separate complaints to the Welsh Government, relating to alleged inappropriate actions and behaviour on the part of the former President. The former Director General and the former Chief Operating Officer considered that some of the former President's behaviour towards them constituted bullying and discrimination. The complaints followed earlier tensions in the relationships with the former President. Welsh Government told us, that on receipt of the complaints, and on several occasions subsequently, it offered both complainants the opportunity of informal resolution to the dispute, but the offers were not taken up.
- 38 In such circumstances it is important that public bodies have both informal and formal arrangements in place to resolve issues early, prevent matters escalating and avoid a breakdown in relationships. Amgueddfa Cymru had an established grievance policy and procedure, but it only applied to staff employed by Amgueddfa Cymru. It was not adequate to deal with the complaints of the former Director General and the former Chief Operating Officer because:
- the policy required any staff member wishing to raise a grievance formally to do so in writing to their immediate manager. Where the grievance was against the manager the policy required the matter to be raised with a more senior manager. As the Director General of Amgueddfa Cymru, the former Director General did not have a more senior manager with whom to formally raise a grievance.
  - the former Chief Operating Officer would have been required to submit his grievances to his line manager, the former Director General, who, in my view, would have been conflicted, as their concerns were of a similar nature.
  - the grievance policy did not set out what process should be followed if a grievance related to a non-executive Board member.
- 39 Although the grievance policy did not provide a route for considering their grievances, on 2 September 2021 the former Director General and former Chief Operating Officer submitted grievances to the Head of Human Resources at Amgueddfa Cymru. Amgueddfa Cymru acknowledged that the substance of the grievances was similar to that of their complaints submitted to the Welsh Government and so requested that the complainants await the outcome of the complaints made to the Welsh Government.

- 40 Amgueddfa Cymru expected that this would provide time for it to develop a new senior officer grievance policy, which would be suitable for considering and determining the grievances of the former Director General and former Chief Operating Officer.
- 41 The former Director General and former Chief Operating Officer agreed to this request but requested workplace ‘reasonable adjustments’ be made, including minimising direct interactions between the former President, the former Director General and the former Chief Operating Officer.
- 42 I consider that these adjustments had a detrimental effect on the overall governance arrangements of Amgueddfa Cymru. However, the former Director General has told my auditors that the adjustments were not the cause of poor board governance and that he had been raising governance concerns with both Amgueddfa’s President and the Welsh Government without success since December 2020. He told us that he:
- ‘took the step of complaining to Welsh Government, and subsequently raising a grievance to the Museum, because all prior efforts to resolve governance concerns informally between [the Chief Operating Officer], myself and the Senior Executive Team, and the Officers, had come to nothing’.
- 43 The former Director General has provided me with several items of correspondence confirming that he had been raising governance concerns internally and with the Welsh Government. For example, I note that he raised his concerns that the Board of Trustees was meeting in closed session without officers being present and that this was in breach of the Board’s Regulations but was informed by the former President that he had no role in governance issues.
- 44 In my view, whilst it would not have been appropriate for the Director General to have attended meetings about his grievances, it is difficult to see how the Director General could effectively discharge his Accounting Officer responsibilities without attending other meetings of the Board. Therefore, the Amgueddfa Cymru Board should not have agreed to the adjustments requested and should have sought an alternative approach to addressing the breakdown in relationships.
- 45 My auditors asked the Welsh Government how the former Director General’s concerns regarding governance were addressed. The Welsh Government told my auditors that it had sought to address concerns by offering informal mediation, holding weekly catch-ups between the then Director General and the Welsh Government’s Head of Human Resources and remaining in regular contact with the then President. Furthermore, the Welsh Government brought forward a tailored review of Amgueddfa Cymru’s governance arrangements to August 2022 which reported in July 2023, setting out several recommendations for improving the existing arrangements.

- 46 The former Director General told my auditors that he had been raising serious concerns as early as December 2020, and he has provided my auditors with copies of correspondence he sent to the Welsh Government from May 2021 onwards raising governance concerns. The 2023 tailored review report (**paragraph 45**) identified governance concerns and made recommendations for improvement. In my view the length of time understandably needed to undertake such a wide-ranging review meant that more immediate action was also necessary.
- 47 During the period covered by this report, Amgueddfa Cymru had a whistleblowing policy to enable employees to raise concerns about wrongdoing at work. Having reviewed the policy in place at the time, in my view the whistleblowing policy needed to be clearer about the routes open to staff to raise concerns about actions of members of the Board of Trustees.
- 48 The policy set out that employees could make whistleblowing disclosures to the Treasurer or the Chair of the Audit Committee who were both trustees, but it made no reference to the fact that employees could make disclosures directly to the Welsh Government as Amgueddfa Cymru's sponsor, or to the Charity Commission for England & Wales or myself as statutory 'prescribed persons' to receive disclosures. While I accept that the former Director General had raised several governance concerns, the adjustments he requested, which meant that neither he nor the former Chief Operating Officer would attend Board and Committee meetings (either in person or virtually), necessarily had a further detrimental impact on Amgueddfa Cymru's governance.

- 49 In February 2023, after settlement had been reached with the Director General, the independent grievance investigation officer appointed to consider the grievances of the former Director General and Chief Operating Officer issued his report. The report did not find that the former President breached the Nolan principles (the Seven Principles of Public Life). The report did not uphold many of the grievances, but did uphold some aspects in part or in full including:
- the former President publicly and privately undermined the former Director General, Chief Operating Officer and other staff when meetings were called in breach of the Regulations of the Board of Trustees.
  - the Board of Trustees held closed sessions without officers, including the former Director General and Chief Operating Officer, being invited to attend and failed to deposit the minutes and agendas of the closed meetings.
  - the former President undermined the former Director General by suggesting in an email he sent to him on 21 May 2021 that he was incorrect about the contentions he made in respect of closed meetings, and that he had no role in governance issues.
  - on some occasions specified in the report, the former President's actions broke the trust that is essential between the Trustees and staff

## The employment dispute adversely affected Amgueddfa Cymru’s governance arrangements between September 2021 and November 2022, which contributed to significant and potentially avoidable costs to help bring the dispute to an end, including £419,915 to date for legal and other professional services

- 50 Because of the workplace adjustments agreed, regular meetings of the Amgueddfa Cymru Board of Trustees did not take place during the period September 2021 to May 2022. Board business was conducted by email. If Board members had questions on a Board paper, they were required to email the question to the Board Secretary, who would forward the query to the relevant department and a response would then be provided to the initiator by email. Amgueddfa Cymru has told my auditors that some meetings did take place in this period, for example in January 2022, however we have seen no written minutes.
- 51 Amgueddfa Cymru’s governing documents – the Royal Charter and Statutes – do not include any provision for the Board to make decisions by email outside meetings. Any decision taken outside a Board meeting is to be taken by all Board members signing a written resolution to approve it.
- 52 While the Board acceded to these email arrangements, in my view they constituted poor governance practice with a detrimental effect on Board efficiency, effectiveness, and proper decision-making. Board members were not aware of others’ views and therefore could not make decisions based on collective knowledge, which resulted in a lack of proper collective scrutiny of decisions.

- 53 These arrangements also impeded the ability of the former Director General to properly exercise his Accounting Officer role set out in the Amgueddfa Cymru framework document, including:
- ensuring that significant problems are notified to the [Welsh Government] sponsor department as quickly as possible; and
  - providing the sponsor department with such information about [Amgueddfa Cymru's] performance and expenditure as the sponsor department may reasonably require;
  - Responsibilities in respect of the Museum's Board of Trustees...
    - advising the board on the discharge of its responsibilities as set out in [the framework] document, relevant legislation, the Minister's annual Remit letter or other communication; and any other guidance that may issue from time to time;
    - advising the board on the Museum's performance against its aims and objectives;
    - ensuring that financial considerations are taken fully into account by the board at all stages in reaching and executing its decisions and that suitable financial appraisal techniques are followed;
    - taking action as appropriate in accordance with the terms of the accounting officer's memorandum if the board or its Chairperson is contemplating a course of action involving a transaction which the Director-General considers would infringe the requirements of propriety or regularity, or does not represent prudent or economical administration, or, efficiency or effectiveness, questionable feasibility or is unethical.
- 54 During the period, September 2021 to November 2022, the Trustees held online meetings specifically to discuss the ongoing consequences of the grievances raised by the former Director General and former Chief Operating Officer. The former President told my auditors that he was not involved in these discussions.
- 55 No contemporaneous minutes were kept of the meetings and there was no written record of decisions taken. It is therefore unclear what was discussed, what information was provided to the Trustees, and what if any decisions were taken.
- 56 The former Director General and former Chief Operating Officer became aware that meetings were taking place. However, they were excluded from participating and were not sighted of any meeting papers, resulting in an escalation of distrust between them and the Board.
- 57 From October 2021, the employment dispute continued to escalate leading to Amgueddfa Cymru appointing legal advisors to advise on the employment issues and on associated governance matters. **Exhibit 1** sets out the key events which took place between October 2021 and August 2022.

## Exhibit 1: chronology of key dates relating to the employment dispute, October 2021 to August 2022

Date / period*	Event
1 October 2021	<p>Amgueddfa Cymru’s Board of Trustees appointed a legal advisor from the Welsh Government procurement framework to:</p> <ul style="list-style-type: none"> <li>• review relevant governing documents, policies, and related documents;</li> <li>• advise the Trustees how they can continue to operate the Museum;</li> <li>• advise the Trustees on making a serious incident report to the Charity Commission and related issues;</li> <li>• advise in relation to responding to the grievances and what actions the Trustees are able to take; and</li> <li>• advise throughout the ongoing dispute.</li> </ul> <p>The former President has stated that he was not involved in the procurement process.</p>
8 October 2021	<p>The legal advisors appointed on 1 October 2021 submitted a Serious Incident Report to the Charity Commission on Amgueddfa Cymru’s behalf.</p> <p>A second Serious Incident Report was sent to the Charity Commission on 13 October 2023</p>
25 October 2021	<p>The former Director General submitted a claim to an employment tribunal against Amgueddfa Cymru, its former President and the Welsh Government. The claim was similar in nature to the former Director General’s earlier complaint to the Welsh Government and grievance to Amgueddfa Cymru.</p>

Date / period*	Event
30 November 2021	<p>The investigator appointed by the Welsh Government to examine complaints made by the former Director General and former Chief Operating Officer reported her findings and conclusions.</p> <p>She found:</p> <ul style="list-style-type: none"> <li>• ‘There are findings in this report that the President has in some respects undermined the Senior Executive Team, the Director General and the Deputy Director General. He has put undue pressure on the Director General to resign. He has also, by his actions, left himself open to suspicions that he has not been completely open with the Executive or Trustees.’ ‘However, a sense has been gained of a taking up of positions on each side, with the different parties concentrating on promoting their own views when compromise might have been in the better interests of the Museum.’</li> <li>• ‘Also the Director General and the Deputy Director General could have raised their concerns formally at an earlier stage and it is found that President should have paid more heed to the complaints that were raised informally.’</li> </ul>
7 January 2022	<p>Former Director General wrote to the Charity Commission highlighting that the final wording of the Annual Governance Statement had not been agreed, which could mean that Amgueddfa Cymru would miss the 31 January deadline for submitting its Annual Report and Accounts and that there were governance issues that needed to be resolved.</p>
19 January 2022	<p>Amgueddfa Cymru’s Board of Trustees appointed a further legal advisor through the procurement framework to provide advice on the employment dispute.</p> <p>The former President has stated that he was not involved in the procurement process.</p>
20 January 2022	<p>The former Director General and the former Chief Operating Officer each submitted further grievances to Amgueddfa Cymru.</p>

Date / period*	Event
11 February 2022	<p>Amgueddfa Cymru received a letter from the Deputy Minister for Arts and Sport, and Chief Whip following her consideration of the findings arising from the Welsh Government’s own investigation of the complaints made. The letter made clear that the findings of the investigation would not be shared with Amgueddfa Cymru while there was an outstanding employment tribunal claim.</p> <p>The Deputy Minister’s letter set out actions that needed to be taken in the light of investigation findings. She stated her expectation that Amgueddfa Cymru would expedite the grievance process for both the former Director General and the former Chief Operating Officer. She also informed Amgueddfa Cymru that she would be: ‘registering with the [Charity] Commission my grave concerns about the current operation of the Museum and inviting the Commission to exercise its statutory regulatory powers.’</p>
10 March 2022	<p>Amgueddfa Cymru’s Board of Trustees adopted a ‘...senior individual grievance policy’ which made provision for ‘an individual to raise issues about their employment, the actions of fellow employees or the actions of Officers or Trustees of the Board that affect them.’</p> <p>The policy sets out the process senior officers should follow in the event of them making a grievance, it also included arrangements for the independent investigation of such grievances and an independent appeal process.</p>
23 March 2022	<p>Amgueddfa Cymru’s Board of Trustees agreed to the appointment of an independent investigator to investigate the former Director General’s and former Chief Operating Officer’s grievances.</p>
23 June 2022	<p>Mediation took place to resolve the dispute involving the former Chief Operating Officer.</p>
31 July 2022	<p>The former Chief Operating Officer retired and received a payment from Amgueddfa Cymru of £12,000 to settle any potential claim he may have had against Amgueddfa Cymru and also a six-month contractual payment in lieu of notice.</p> <p>Payment was approved by Amgueddfa Cymru’s Board of Trustees and signed off by the Welsh Government’s Additional Accounting Officer. We did not identify any concerns with the decision process leading to that payment.</p>

Date / period*	Event
12 August 2022	Amgueddfa Cymru received confirmation that the former Director General had submitted a second claim to the employment tribunal. This claim was only against Amgueddfa Cymru and its President. Although the background to the claims was similar in nature, this claim noted whistleblowing detriment, victimisation and disability discrimination (failure to make reasonable adjustments).
End of August 2022	Amgueddfa Cymru’s Senior Executive Team sent a letter to the Board of Trustees to request a resolution to the situation as soon as possible. The Board of Trustees confirmed they had written a letter to the former Director General to urge him to enter mediation so that both parties could resolve the dispute, and the organisation could move on.

58 The failure of Amgueddfa Cymru to have proper and timely arrangements in place to enable it to examine and resolve the governance concerns raised by the then Director General and then Chief Operating Officer during the period December 2020 to October 2021 led to the situation escalating, relationships deteriorating and the efficiency and effectiveness of Amgueddfa Cymru’s operations being compromised. In my view, these deficiencies in governance arrangements contributed to significant and potentially avoidable costs.

59 Part four of this report considers costs arising from the terms of the settlement agreement for the former Director General. Separate to this, Amgueddfa Cymru has provided my auditors with a breakdown of its expenditure on external legal and other professional services relating to the employment dispute. The total amounts to £419,915 to date. The majority of the costs reported above have fallen to Amgueddfa Cymru. However, Amgueddfa Cymru has is now expecting to recoup £93,230 of the costs through insurance. The Welsh Government has also contributed £20,500 to costs associated with the mediation process (see **paragraph 119 and footnote 17**).

## Amgueddfa Cymru's decision-making process concerning the resolution of the employment dispute with the former Director General was fundamentally flawed for various reasons

- 60 The former President told my auditors, that as early as July 2021 he had proposed engaging in a mediation process, however the then Director General and the then Chief Operating Officer had refused to agree to the proposal.
- 61 The former Director General has told my auditors that he, the Welsh Government, the Board of Trustees and the President had all agreed in May 2022 to judicial mediation (ie mediation presided over by an Employment Tribunal judge) in November 2022. However, Amgueddfa Cymru maintain that while judicial mediation was proposed in March 2022 the former Director General did not consent to this. The Welsh Government told my auditors that it made multiple offers of mediation in respect of the dispute.
- 62 After receiving the Board of Trustees letter in August 2022 (see **Exhibit 1**), the former Director General agreed to an alternative form of mediation on condition that he could select the mediator. Given the situation and the need to resolve the matter, Amgueddfa Cymru's Board of Trustees agreed in principle to appoint and pay the costs of a mediator chosen by the former Director General.
- 63 On 28 September 2022, Amgueddfa Cymru's Head of HR and its external legal advisor met the former Director General's nominated mediator. Following the meeting his nominated mediator was appointed and the mediation process began in October 2022.
- 64 I am unclear whether Amgueddfa Cymru's Board of Trustees or officers of Amgueddfa Cymru made the decisions to enter the mediation process and to appoint the former Director General's nominated mediator. I am also not clear as to when exactly those decisions were made. However, it is apparent that on 5 October 2022, Amgueddfa Cymru's Board of Trustees met to consider these matters. The minutes of the meeting record that the then President voluntarily recused himself. The then President has told my auditors that he was also not involved in Amgueddfa Cymru's subsequent decision making regarding the resolution of the dispute and I accept this was the case. The 5 October meeting was another in a series of meetings focused on developments in the employment dispute. No papers were provided to members of the Board to inform their discussions and decision-making.

- 65 When, in June 2023, my auditors requested minutes of the 5 October 2022 meeting, Amgueddfa Cymru drafted retrospective minutes of the meeting (some eight months after the meeting took place). The minutes recorded that Amgueddfa Cymru’s external legal advisors:
- ‘provided an update to Trustees regarding proposals for mediation. The most immediate concern was for the Board to confirm who should represent the Museum [Amgueddfa Cymru] in the mediation process and to delegate authority to those representatives allowing them to bind the Museum to any settlement arrangements agreed with the Director General subject to support of Welsh Government and the Museum’s D&O underwriters. IT WAS RESOLVED, accordingly, that the Museum should be represented by the Vice President ... and [another named trustee] with authority to bind the Museum as noted above.’
- 66 Amgueddfa Cymru’s Governance Manager<sup>10</sup> sent the retrospective minutes to the current Trustees to approve by special resolution. The minutes were not comprehensive though did include the resolution to delegate responsibility to represent Amgueddfa Cymru in the mediation process and to bind the organisation to any settlement arrangements agreed with the former Director General.
- 67 I note that several of the trustees who in June 2023 signed the special resolution approving the minutes of 5 October 2022, had not been at the meeting. Some had not even been appointed at the time. As the minutes were not contemporaneous, I cannot be certain that they provide an accurate record of the meeting. Furthermore, I have significant doubt whether the resolution signed by Trustees in June 2023 was legally effective.
- 68 One of the trustees to whom the Board of Trustees granted delegated authority – allowing them to bind Amgueddfa Cymru to any settlement arrangements agreed with the former Director General subject to the support of the Welsh Government and Amgueddfa Cymru’s underwriters – was its then Vice President. The Vice President was designated an ‘Officer’ under Amgueddfa Cymru’s governing documents. However, the other trustee appointed was not an ‘Officer’. This is significant because the governing documents only enable the Board to delegate decisions to ‘Officers’ or to a committee of trustees.
- 69 The minutes of the meeting of 5 October 2022 do not specify whether the delegation granted was an ‘Officer’ delegation or a ‘committee’ delegation. If it was a delegation to Officers, then it was flawed because the second delegate was not categorised as such.

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10 Amgueddfa Cymru had appointed to a Governance Manager role following the retirement of the previous Board Secretary.

- 70 It may be arguable that the appointment of the delegates could constitute a committee even though the Board of Trustees did not expressly say so. However, if the delegation granted was to a committee, it does not contain the other matters required of a committee, such as a provision for presentation of reports to the Board of Trustees. I consider the failure of the Board of Trustees to clarify the form of the delegation it was granting and how the delegation was to operate was a significant governance oversight.
- 71 I am also concerned that the minutes of the meeting do not record that the Board of Trustees placed any parameters or limitations on a settlement that could be reached under the delegation, other than that it would need to be supported by the Welsh Government and Amgueddfa Cymru's underwriters. Nor do the minutes record that the trustees to whom the delegation was granted would need to report the outcome back to the Board of Trustees.
- 72 The Charity Commission has published guidance for trustees<sup>11</sup> which sets out the legal framework for charity trustees' decision-making. It provides that trustees must:
- act within their powers;
  - act in good faith and only in the interests of the charity;
  - make sure they are sufficiently informed;
  - take account of all relevant factors;
  - ignore any irrelevant factors;
  - manage conflicts of interest; and
  - make decisions that are within the range of decisions that a reasonable trustee body could make.
- 73 Trustees should be able to show that they have followed these principles to demonstrate that their decisions comply with their legal duties. While there is no one right decision that trustees can make, each decision must be within the range of decisions that a reasonable trustee body could make.

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11 Charity Commission, [It's your decision: charity trustees and decision making \(CC27\)](#), first published May 2013. The guidance was updated in June 2023 to reflect changes introduced by the Charities Act 2022.

- 74 The Charity Commission guidance also advises that trustees must take decisions in a way that meets the requirements of charity law and their governing document. This includes:
- following any specific requirements in the governing document about making decisions and conducting meetings;
  - taking decisions jointly (collectively), making sure all trustees have the opportunity to participate;
  - if using a power to take decisions outside a meeting, strictly following the provisions of this power;
  - if delegating to staff or sub-committees, having clear and robust reporting procedures and lines of accountability in place; and
  - recording decisions properly, so there is no doubt about what was decided and why.
- 75 Therefore, in my view before granting delegating powers at the meeting of 5 October 2022 to two trustees to act on their behalf, the Board of trustees should have:
- expressly identified the conflict of the President and any other conflicts, and determined how these conflicts should be managed;
  - identified their relevant powers including the power to settle and the power to delegate;
  - ensured that they had received and considered all necessary advice, including external legal advice, in relation to the proposed mediation, strength of the employment claims, appropriate terms and parameters of settlement etc;
  - demonstrated that they had considered all relevant factors and ignored irrelevant factors; and
  - considered and expressly decided what was in the best interests of Amgueddfa Cymru.
- 76 The Board of Trustees should have recorded these matters in the minutes, and certain basic matters, such as whether the meeting was quorate, so as to be able to demonstrate that it had taken its decision properly and in the best interests of the charity.
- 77 The minutes of the meeting of 5 October 2022 (and other Board meetings) do not record that these matters were considered. Consequently, the Board of Trustees cannot in my view adequately demonstrate that it complied with the Charity Commission guidance.

- 78 I also have significant concern regarding the scope and terms of the delegation itself. As a matter of good governance, and as reflected in the Charity Commission guidance referred to in **paragraphs 72 to 74**, I would have expected the delegation to set out:
- clear parameters to the delegation – in this case, the financial and other parameters for settlement, what the Delegates are authorised to do, a requirement to seek legal advice on the terms during the mediation and before binding Amgueddfa Cymru etc;
  - a requirement for referral back to the whole Board for approval outside those agreed parameters;
  - authority to sign the settlement documentation; and
  - requirements for reporting progress and the outcome of mediation back to the full Board.
- 79 The Charity Commission guidance also notes that where Trustees delegate decisions, they must have clear and robust reporting procedures and lines of accountability in place to ensure that delegated authority is exercised properly. High risk and novel decisions should not be delegated. In my view, the settlement arrangements reached by Amgueddfa Cymru with its former Director General were novel, contentious, and repercussive. Therefore, in accordance with the Charity Commission guidance they should not have been delegated.
- 80 In my view, the scope of the delegation agreed at the 5 October 2022 meeting is unclear. The resolution simply provides that ‘the Museum should be represented by the Vice-President, ... and another trustee [at the mediation] with authority to bind the Museum.’
- 81 The former Director General, the former President, another Amgueddfa Cymru trustee, the Welsh Government’s Director of Human Resources, the mediator, and legal representatives of each of the parties all signed a mediation agreement dated 11 October 2022, prepared by the appointed mediator.
- 82 On 20 October 2022, Amgueddfa Cymru’s Board of Trustees, after consideration of legal advice, decided that the cost of the former President’s legal fees in relation to the dispute would be borne by Amgueddfa Cymru. Amgueddfa Cymru has not borne legal fees incurred by the former Director General.

- 83 In the week commencing 14 November 2022, further meetings were held between the mediator and each of the parties to reach agreement on a settlement that each party could accept. Present at these meetings were Amgueddfa Cymru’s Director General, President, another trustee, and the Welsh Government’s Director of Human Resources and their representatives. The then President told my auditors he:
- “was not consulted in respect of, and not responsible for, the terms that were agreed with the former Director General that caused him to withdraw the complaints that he had issued with the Wales Employment Tribunal”.
- 84 Following the mediation meetings, I understand that the two members of the Board of Trustees who had been delegated authority instructed Amgueddfa Cymru’s legal advisors to draw up a ‘Heads of Terms’ document based on what had been agreed within the mediation process. However, it is arguable that the delegation only covered the mediation process and did not extend to approving of the Heads of Terms.
- 85 I would also have expected the Board of Trustees to have been kept up to date on the Heads of Terms and Settlement Agreement, to enable the Board to comply with their duties of oversight and accountability.
- 86 In summary, the decision-making process concerning the resolution of the employment dispute with the former Director General was, in my view, fundamentally flawed as Amgueddfa Cymru did not:
- demonstrate it had taken into account all key considerations;
  - comply with the Charity Commission guidance;
  - comply with its Royal Charter and Statutes;
  - adequately document its decision-making process.

## The terms of the settlement agreement for the former Director General, amounting to potential costs of £325,698 are, in my view, novel, contentious and repercussive and Amgueddfa Cymru has not been able to demonstrate that it has acted in its best interests as a charity or that the settlement represents value for public money

87 On 17 November 2022, a ‘Heads of Terms’ document was signed by Amgueddfa Cymru’s former Director General, its former President, its appointed legal representative, and the Welsh Government’s Director of Human Resources. The former President told my auditors that:

“The terms that related to the former Director General had been negotiated with Amgueddfa Cymru and the Welsh Government, [the former President] had no responsibility for those negotiations.”

88 The ‘Heads of Terms’ document set out that:

- the Director General would recuse himself with immediate effect from his role as Director General due to health reasons, but he would fulfil certain specified engagements as agreed with Amgueddfa Cymru.
- Amgueddfa Cymru would pay the Director General the sum of £50,000 tax free as compensation for injury to his feelings without admission by Amgueddfa Cymru of liability, and on the condition that he would withdraw his two employment tribunal claims.
- from 1 April 2023, the Director General would work a period of 18 months’ notice, during which he would be on sabbatical leave. He would spend the first 12 months of his notice period on his existing Director General contractual terms and conditions of employment, albeit he would not be required to discharge the role of the Director General and would no longer hold the title. During the last six-months of his notice, he would work two days a week, again on his current terms and conditions of employment, pro-rated to reflect the fact he would no longer be full time.

- during this 18-month notice period his job title would be ‘Emeritus Fellow of the Museum’.
  - Amgueddfa Cymru would contribute a maximum of £7,500 in 2023-24 and again 2024-25, so up to £15,000 in total, to cover travel and subsistence costs (subject to provision of appropriate invoices). As of 22 August 2023, no claims had been made.
  - Amgueddfa Cymru would contribute a maximum of £7,500 in both 2023-24 and 2024-25, so up to £15,000 in total, on account of administrative costs (again subject to the provision of appropriate invoices). As of 22 August 2023, no claims had been made.
  - on 30 September 2024, his employment with Amgueddfa Cymru would terminate with a further payment of £20,000 for loss of office.
- 89 The Heads of Terms document also set out that, with the employment tribunal claims withdrawn, the former President would recuse himself of his role from 17 November 2022 and that he would step down from his post on 31 December 2022, three months earlier than the scheduled end of his term.
- 90 Although not articulated in the Heads of Terms document, the former Director General’s salary for the recusal period to 31 March 2023 amounted to £39,794. His salary for the 18-month period from 1 April 2023 to 30 September 2024 amounts to £130,073 at 2022-23 salary rates and subject to future pay inflation. Amgueddfa Cymru’s expected national insurance and pension contributions for the period 17 November 2022 to 30 September 2024 amount to a further £55,831.
- 91 Further to the agreement of the Heads of Terms document, the two delegated members instructed Amgueddfa Cymru’s legal advisors to draw up a written settlement agreement based on the Heads of Terms. This was to set out the specific details of the agreement and the responsibilities of each of the parties involved.
- 92 On 5 December 2022, the former Director General, the former President, Amgueddfa Cymru’s Vice President on behalf of Amgueddfa Cymru and the Welsh Government’s Director of Human Resources on behalf of the Welsh Ministers signed the settlement agreement. This settled the dispute without acceptance of liability.
- 93 I have described my concern about the delegation granted on 5 October for the Vice President to sign the Settlement Agreement on behalf of Amgueddfa Cymru (see **paragraphs 60 to 86**). The terms of the delegation appear to provide joint authority for the delegates whereas the Settlement Agreement is only signed by one of them. I therefore consider in these respects the delegation falls short of expected governance standards.

- 94 Overall, the total financial value of the different elements of the settlement agreement relating to the former Director General was £325,698. Most of this cost falls to Amgueddfa Cymru although the Welsh Government contributed £10,000 towards the compensation for injury to feelings and Amgueddfa Cymru has covered a further £38,000 of that cost through insurance. The Welsh Government will also contribute £10,000 towards the payment for loss of office (see **paragraph 119**).
- 95 The amount of the settlement is significant and, in my view, novel, contentious, and repercussive. I set out some key areas of concern below:
- the courts have set clear guidelines for compensation to be awarded where a claimant successfully claims injury to feelings. There are three bands (the lower, middle, and top bands), which increase annually. The top band, which is reserved for the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment, was £29,600 to £49,300 at the time the settlement agreement was entered into. A tribunal has jurisdiction to make awards more than the upper limit of the top band, but this is very rare, and is reserved for exceptional circumstances. The compensation agreed with the former Director General for this element of his settlement was marginally above the top point of the band. The Welsh Government and Amgueddfa Cymru have told my auditors that as the former Director General had made two separate and distinct claims to employment tribunal, in principle this could have resulted in two or more ‘injury to feelings’ or ‘loss of employment’ awards.
  - to all intents and purposes, the settlement agreement provided the former Director General with a notice period of just over 22 months. However, the former Director General’s contract of employment specified a 12-month notice period (this would have been payable had Amgueddfa Cymru terminated the Director General’s contract with immediate effect). For the period from 1 April 2023 to 30 September 2024 the Heads of Terms document stated explicitly that the former Director General would be ‘under no obligation and will not be accountable to Amgueddfa Cymru other than in the manner explicitly stated in this Agreement’ (i.e., to comply with the obligations set out in the legally binding settlement agreement).’
  - during the recusal period from 17 November 2022 to 31 March 2023, the former Director General was effectively placed on a period of ‘gardening leave’. He was not required to perform services on behalf of Amgueddfa Cymru – apart from attending a small number of meetings, including a trip to Qatar in November 2022 – but continued to be paid his normal salary.

- the extent of the duties the former Director General will perform as an Emeritus Fellow of the Museum between 1 April 2023 and 30 September 2024 are not specified and, based on the provisions set out above, there will be no accountability to Amgueddfa Cymru for this role. Relevant to the provisions for expenses, the Heads of Terms document stated:

“For the avoidance of doubt, [the former Director General] shall be permitted to attend the American Association of Museums Conference in Denver in 2023 and 2024, and also two Museum Association Conferences in 2023 and 2024.”

- the terms include an additional payment of £20,000 by way of compensation for the termination of the former Director General’s employment on 30 September 2024, despite the extended notice period.

- 96 As set out in Part three of this report, Amgueddfa Cymru’s trustees are required to act in the best interests of the charity and to ensure that they make decisions that are sufficiently informed, take account of all relevant factors and ignore any irrelevant factors. It is therefore imperative that trustee decisions and the reasons for those decisions are properly documented to demonstrate that trustees have made decisions in the best interests of the charity. This is particularly important in the case of such a sensitive issue as Amgueddfa Cymru’s entering a settlement with its former Director General.
- 97 I am advised that Amgueddfa Cymru sought advice from its external legal advisors throughout the employment dispute. Therefore, it is possible that there may have been information available which Amgueddfa Cymru’s trustees could have considered and would have helped provide justification for the amount and structure of the settlement.
- 98 However, Amgueddfa Cymru and its Board of Trustees have been unable to provide my auditors with contemporaneous documentary evidence that:
- they took advice on the likelihood of success of the claim in the employment tribunal, risks and value of claim etc;
  - the Board of Trustees placed any parameters or limitations on the settlement that could be reached under the delegation; or
  - the Board of Trustees agreed a mechanism for the delegates to keep it informed of progress made.
- 99 Therefore, I am not satisfied that Amgueddfa Cymru’s trustees took into account all relevant considerations and disregarded irrelevant considerations when agreeing settlement terms with the former Director General.

- 100 The Welsh Government told my auditors that off the back of a very difficult and protracted situation, “the overall settlement agreed, which included agreeing to settle multiple claims and making arrangements for the dignified exit for the former President and former Director General”, can reasonably be considered “a good least cost outcome for the public purse”.
- 101 Amgueddfa Cymru told my auditors that “the settlement arrangements agreed with the former Director General, the former President and Welsh Government represented value for public money”.
- 102 In my view Amgueddfa Cymru has not been able to demonstrate that it has acted in its best interests as a charity or that the settlement represents value for public money.

## In the context of the Welsh Government being a party to the settlement agreement and the longstanding dispute that gave rise to it, it is unclear to me whether it applied all relevant procedures for its own consideration and approval of the agreement

- 103 Where a decision is made that is deemed novel, contentious or repercussive the Welsh Government has specific procedures that it expects its arm's length bodies to follow. These are described in the 'calling-in arrangements' set out to manage the relationship between the Welsh Government and arm's length bodies.
- 104 The Welsh Government introduced revised calling-in arrangements in 2019 and communicated these to its arm's length bodies<sup>12</sup>. At the time of the events described in this report the Framework Document governing the relationship between the Welsh Government and Amgueddfa Cymru had not been updated to reflect the revised arrangements. I am aware that the Welsh Government consulted its arm's length bodies on changes to the framework documents earlier in 2023.
- 105 Calling-in arrangements should be reflected in Managing Welsh Public Money<sup>13</sup>, which sets out the fundamental principles for the management of public funds. Managing Welsh Public Money requires public bodies to 'refer to their sponsor Branch any issues which appear novel, contentious or repercussive'. It also says that 'The Welsh Government's public bodies should operate to these same standards [of authorisation of special payments] unless there are good reasons to the contrary (e.g., overriding requirements applicable under the Companies Act). Sponsor Branches must ensure that their oversight arrangements (see Chapter 7) enable them to be satisfied that their public bodies observe the standards'.

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12 Welsh Government, [DAO \(Wales\) 02/19 – Calling-in arrangements](#), July 2019

13 Welsh Government, [Managing Welsh Public Money](#), January 2016

- 106 The revised calling-in arrangements describe different procedures to those held in Managing Welsh Public Money, whereby decisions are categorised into ‘approval’ or ‘pre-notification’ dependent on the decision being made. A decision which is deemed novel, contentious, or repercussive<sup>14</sup> falls under ‘pre-notification arrangements’. In such circumstances, the expectation is that Chief Executive Officers [or their equivalent] would notify their Welsh Government sponsor division of the proposed decision to allow the Welsh Government to provide appropriate advice. The arrangements set out that, in conjunction with the appropriate Welsh Government policy teams, the sponsor division would prepare advice to discuss with the Welsh Government’s Public Bodies Unit who in turn would seek the written advice of the Welsh Government’s Corporate Governance Centre of Excellence and any other body with expertise in the issue.
- 107 There is no general expectation that such decisions require formal Ministerial approval. However, the arrangements provide for ‘further advice’ in respect of the Additional Accounting Officer and Minister, on an ‘as appropriate’ basis. They also state that should the body decide to disregard the Welsh Government’s advice, the sponsor division may escalate the matter to the relevant Minister. The arrangements indicate that Ministers reserve the right to overrule a decision taken by a public body which, after discussion, is not justifiable.
- 108 While it might be argued that the Welsh Government’s revised calling-in arrangements set out in its letter of July 2019 supersede the requirements of Managing Welsh Public Money, the contradiction between the two is not conducive to robust stewardship of public money. In April 2020, the Welsh Government indicated to the Senedd’s Public Accounts Committee that a planned update of Managing Welsh Public Money had been impacted by the COVID-19 outbreak. A revised version of Managing Welsh Public Money has yet to be produced.
- 109 In this case, the Welsh Government was itself a party to the settlement agreement and the longstanding dispute that gave rise to it. The Welsh Government’s Director of Human Resources participated in the mediation process, including agreeing the Heads of Terms and signing the settlement agreement (see **paragraphs 81 to 93**).

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14 Including but not restricted to proposals that are non-standard for the sector, are politically sensitive and/or likely to attract negative media attention, could result in unwelcome consequences for the organisation and/or for the wider public sector, or could set a precedent for the sector and wider public sector.

- 110 I consider that, given the Welsh Government was itself party to the agreement and contributing to the overall cost, it would have been prudent for it to have considered the proposals under the requirements on the Welsh Government for special payments in Managing Welsh Public Money regardless of the revised calling in arrangements for arm's length bodies. Under Managing Welsh Public Money, the settlement agreement (special severance<sup>15</sup>) would have required First Minister approval.
- 111 More generally, I consider that the circumstances of this case raise questions about the clarity and robustness of processes for scrutiny of proposals relevant to the calling-in arrangements for arm's length bodies where the Welsh Government is itself a directly involved party.
- 112 My audit team has seen e-mail exchanges between the Welsh Government's sponsor division and its corporate governance unit concerning the settlement agreement. The extent of the Public Bodies Unit's involvement is not clear from the evidence my team has received. My audit team has not been provided with any specific written advice from the Welsh Government to Amgueddfa Cymru concerning the settlement agreement itself, notwithstanding the involvement of the Welsh Government's Director of Human Resources in that process.
- 113 My audit team has also seen Ministerial Advice from the sponsor division to the Deputy Minister for Arts and Sports, and Chief Whip dated 6 December 2022. The Welsh Government told my auditors the Ministerial Advice was based on legal advice it had received. The Ministerial Advice was copied to the First Minister, the Counsel General, the Minister for Economy, the Minister for Social Justice, and the Welsh Government's Permanent Secretary.
- 114 The advice indicated that the proposed settlement raised novel and contentious issues and noted that, 'Officials involved in the mediation agreement believe that the package can be justified in order to reach an agreement and help resolve the ongoing situation'. The significant and full total value of the settlement – as summarised in Part four of this report – was not indicated in the advice.
- 115 The advice summarised the outcome of the mediation process and the settlement agreement that had been reached. While it set out certain details about the recusal period from 17 November 2022 to 31 March 2023 and the employment arrangements from 1 April 2023 to 30 September 2024, the advice did not set out the employment costs arising from those arrangements or explain that the former Director General's contractual notice period was 12 months (**see paragraph 89**).

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15 Special severance payments are paid to employees, contractors, and others outside of normal statutory or contractual requirements, when leaving employment in public service, whether they resign, are dismissed or reach an agreed termination of contract.

- 116 The advice did not seek overall approval for the agreement but asked the Minister to agree to issue letters to both the former President and former Director General thanking them for their service, to agree temporary arrangements for the duties of President, and to issue a statement on changes to the Board of Amgueddfa Cymru. The Welsh Government released that statement on 9 December 2022<sup>16</sup>.
- 117 The advice suggests that the sums involved in the compensation for injury to feelings and for loss of employment were reasonable. In the case of injury to feelings, the advice set this against the possible (unquantified) costs in defending tribunal proceedings and the likely prospects of success. I note that the advice stated that the sum of £50,000 for injury to feelings was ‘in the highest bracket of injury to feelings awards that an Employment Tribunal can award’. It did not make clear that the upper band for such awards was £29,600 to £49,300, albeit that tribunals can make higher awards in exceptional cases (and can make more than one award if the claimant has made more than one separate and distinct claim).
- 118 The advice suggested the £20,000 compensation for loss of employment was reasonable considering the former Director General’s length of service and commitment shown to Amgueddfa Cymru.
- 119 The advice addressed financial implications for the Welsh Government. It sought the Deputy Minister’s agreement for the Welsh Government to provide additional funding to Amgueddfa Cymru in two separate contributions of £10,000 towards the overall £50,000 compensation for injury to feelings and the £20,000 payment on termination of employment. It also sought agreement for the Welsh Government to contribute up to £30,000 (though expected to be circa £20,000)<sup>17</sup> towards the costs of the mediation itself.
- 120 Other matters covered by the advice included agreement for the former President of Amgueddfa Cymru to lead a governance review of the status of Cadw (which the Welsh Government subsequently announced on 12 December 2022<sup>18</sup>). It also sought agreement concerning costs associated with the recruitment campaign for a new President and Vice President (which the advice put at up to £40,000).

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16 Welsh Government, [Written Statement: Update on Amgueddfa Cymru](#), 9 December 2022

17 In practice the Welsh Government contributed £20,500 towards mediation costs (see **paragraph 59**). The contributions towards compensation for injury to feelings and on termination of employment are as stated.

18 Welsh Government, [Press release](#), 14 December 2022

## Recommendations

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- 121 I am making recommendations to both Amgueddfa Cymru and the Welsh Government arising from some specific aspects of this case.
- 122 As noted in **paragraph 14**, the Welsh Government's recent Tailored Review has made recommendations of its own on wider matters relevant to Amgueddfa Cymru and its governance arrangements.
- 123 I also understand that as part of the mediation process for the employment dispute, the former Director General asked that lessons be learned from the process for public bodies in Wales.
- 124 This report should also be read more generally as a reminder to all public bodies of the importance of the proper application of governance frameworks and principles to safeguard public money and public confidence.

## Recommendations table

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- R1 Amgueddfa Cymru should review its internal control arrangements to ensure that it has measures in place to ensure compliance with the principles detailed within Charity Commission guidance: It's your decision: charity trustees and decision making (CC27).
- R2 Drawing on the learning from the employment dispute at Amgueddfa Cymru, the Welsh Government should work with its arm's length bodies to ensure grievance policies and whistleblowing policies address the scenario of concerns that are raised by their most senior officers and/or that are directed at Board members and ensure broad consistency of approach.
- R3 The Welsh Government should clarify the procedures to be followed in circumstances such as the employment dispute at Amgueddfa Cymru where it is itself a party to novel, contentious, or repercussive proposals arising from its arm's length bodies.







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Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg a Saesneg.