

Review of the Welsh Commissioners

July 2023



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Review of the Welsh Commissioners

July 2023



About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:
www.senedd.wales/SeneddPAPA

Current Committee membership:



**Committee Chair:
Mark Isherwood MS**
Welsh Conservatives



Adam Price MS
Plaid Cymru



Natasha Asghar MS
Welsh Conservatives



Mike Hedges MS
Welsh Labour



Rhianon Passmore MS
Welsh Labour

The following Member was also a member of the Committee during this inquiry.



Mabon ap Gwynfor MS
Plaid Cymru

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was laid before the Senedd, with details of the date on which it was carried out.
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Recommendation 10. We recommend that the Welsh Government provides information about the process to be adopted by it or Welsh Ministers to address potential conflicts of interest, arising due to the inclusion of the Commissioners within the Welsh Government’s accounting boundary and the related restrictions on their use of reserves. Most significantly, the related risks to independence where a Commissioner requests additional budget cover or funding for a review or investigation about the Welsh Ministers or Welsh Government..... Page 33

Recommendation 11. The Commissioners identify issues with the restrictions on their use of reserves following the designation, from February 2022, of their offices in the Welsh Government accounting boundary. Given the related risk to independence and potential other unintended consequences, the Committee recommends that the Welsh Government reviews the impact of the changes after they have been in operation for two years and provides an update to the Committee by September 2024. Page 33

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Recommendation 13. We recommend the Welsh Government reviews the impact on the Commissioners of bringing them into its accounting boundary. This should be completed two years after such changes have been in operation, with an update provided to the Committee by September 2024.....Page 34

Recommendation 14. We recommend the Welsh Government provides an update about the review the Minister for Social Justice has asked her officials to undertake into the scope of the Future Generations Commissioner’s work and responsibilities. The update should set out the timetable for its completion and when officials expect to provide advice to the Minister..... Page 37

Recommendation 15. We recommend the Welsh Government conducts post-legislative review of the legislation governing all Commissioners, including a review of the funding allocated to them, with an update provided to the Committee in due course..... Page 37

Recommendation 16. We recommend the Welsh Government reviews whether new legislation may impact upon the remit of Welsh Commissioners, ensuring there are adequate resources to incorporate extensions to their roles and responsibilities..... Page 37

Background

1. In its **Report** following its annual scrutiny of the Future Generations Commissioner for Wales (April 2022), the Senedd Equality and Social Justice Committee **recommended** that the Public Accounts and Public Administration Committee (the Committee) reviewed the resourcing arrangements of Wales' Commissioners.
2. The Equality and Social Justice Committee also recommended the Welsh Government evaluated the scope of the Commissioner's work and responsibilities "with a view to setting out a plan to support any future expansion".
3. On 27 April 2022, the Committee **considered** the Equality and Social Justice Committee's recommendation and agreed to undertake a review, deciding on 23 November 2022 to first seek written evidence to understand the current position from the **Welsh Government** and the **four Commissioners in Wales**:

 - The Children's Commissioner for Wales (Children's Commissioner).
 - The Future Generations Commissioner for Wales (Future Generations Commissioner)*¹.
 - The Older People's Commissioner for Wales (Older People's Commissioner).
 - The Welsh Language Commissioner.
4. In addition, the Committee **noted** its agreement to return to further scrutiny of the work of Welsh Commissioners as part of its annual accounts scrutiny work.
5. The Commissioners and the Welsh Government responded to the request for information, with the responses available on the **Committee's inquiry page**.

¹ At the time of evidence gathering the Future Generations Commissioner for Wales was Sophie Howe and all references within this report to the Future Generations Commissioner relate to Ms Howe. A new Future Generations Commissioner for Wales – Derek Walker was appointed on 1 March 2023. He did not contribute to this inquiry.

6. On 30 March 2023, the Committee considered the responses and agreed the responses received were sufficient to report on and there was no need to gather any further evidence through oral evidence sessions.

1. Budgets

The Budget Process

Estimates

- 7.** Our written consultation sought views on the budget process, including the timescales and engagement of the Welsh Ministers and officials, such as those in Partnership Teams (sponsors) within Welsh Government departments, with the Commissioners during it.
- 8.** Their governing legislation requires the Commissioners to submit their estimates of income and expenses (or their ‘budgets’) to the Welsh Ministers at least five months before the beginning of the financial year to which they relate, i.e. by 31 October each year.
- 9.** We asked what information is provided by Welsh Government officials, ahead of the Commissioners submitting their estimates, such as the Welsh Government’s best assessment of the level of funding available in future years and the factors the Commissioners should consider when preparing their estimates.
- 10.** The Welsh Government **said** officials share:

“...assumptions on planning and pressures as part of their engagement with the Commissioners and to support the earlier submission of draft estimates. This helped Commissioners to forecast budget pressures for different aspects of provision for the year ahead and for future years. They were encouraged to be pragmatic in terms of their requirements and to consider ways of making cost savings where these were possible.”

Funding levels and modifications to estimates

- 11.** The Welsh Ministers must examine the estimates the Commissioners submit, before laying them before the Senedd with any modifications the Welsh Ministers think appropriate.
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12. As part of their consideration of the submitted estimates, the Welsh Government **said** the Welsh Ministers considered the Commissioners' functions and the levels of resources they require. Funding issues were discussed in meetings between the Commissioners, partnership teams and the Minister.

13. The Welsh Government **noted** the resources for each Commissioner are linked to the role as set out in legislation. It **added** the Welsh Language Commissioner received a larger share of funding than the other three Commissioners, which reflected the wider powers of that Commissioner under the **Welsh Language (Wales) Measure 2011**. The Welsh Government **said**:

"The remaining Commissioners each receive broadly similar levels of funding: while their roles and responsibilities vary, each has a similar demand on resources which are largely driven by staffing costs."

14. The Welsh Government said processes are in place to agree modifications to the estimate; how they are communicated and agreed. We asked how significant these modifications have been and their impact on the work and plans for each office.

15. The **Children's Commissioner** said there is no agreed process for Welsh Ministers to agree modifications to the Estimate with her and the **Older People's Commissioner** said she had not been made aware of one.

16. According to the former **Future Generation's Commissioner**:

"My budget has been set by letter from the Deputy Minister and the publication of the Welsh Government budget, rather than by modification of my estimate after the event and the figures do not correspond to my estimates in the last few years, from what I can see."

17. The Commissioners noted they do not often receive in full the funding they requested and the Welsh Ministers/Welsh Government do not explain the differences between the Commissioners' submitted estimates and allocated budgets/funding. The Children's Commissioner **said**:

"We are not informed of the detailed reasons why our budget estimate may not have been granted in full."

18. The Older People's Commissioner **noted**:

"The response to my Estimate [for 2022-23] was not accompanied by a detailed explanation that reflected on my Estimate submission nor provided an explanation on the decision making process."

19. While noting instances where funding requests have not been granted, the Welsh Language Commissioner **said**:

"Since the Commissioner has been established, the Commissioner is not aware of any modifications that have been made to the Estimate after it has been submitted to Welsh Ministers."

20. The Welsh Government also **said** it, and the Commissioners offices, aim to "agree modifications if needed before final estimates were submitted in October".

Laying estimates before the Senedd

21. We reviewed whether the Commissioners' estimates could be located in the documents laid by Welsh Ministers before the Senedd. We found some estimates were laid at the start of the financial year to which they related and we were not able to confirm the Welsh Ministers laid the Future Generations Commissioner's Estimate for 2022-23 before the Senedd.

Timing

Budget notification

22. The Commissioners said they may receive confirmation of their budgets late in the financial year, at an undefined timepoint, which can significantly impact their financial planning, particularly regarding staffing resource and this creates uncertainty. The Children's Commissioner **said**:

“We receive confirmation of our budget late in our strategic planning cycle, sometimes as late as April of the new financial year, therefore making long-term business planning extremely difficult. Despite including three year forecasts in our budget, we are not informed by Welsh Government what the likely settlement will be in future years for us.”

23. The Welsh Language Commissioner **echoed** this, noting the uncertainty this creates:

“Official correspondence confirming the Commissioner’s budget has arrived very late, creating uncertainty during the formulation of the following year’s budget.”

24. The Older People’s Commissioner for Wales **explained** the potential impact:

“The significant risk with this late notification is that if, in future, I were to receive a cut to my baseline budget, I would be forced to restructure my organisation in the final months of the financial year...”

25. The former Future Generations Commissioner **said** the Welsh Government’s Draft Budget, which includes a budget line for her office, “often comes as a surprise” to her when it is published in the Draft Budget, usually in December. She noted a settlement letter from the relevant Minister should confirm the final budget position at a later date but her office did not receive this for 2022-23. However, the former Future Generations Commissioner said she received a letter from the Deputy Minister on 14 February 2022.

26. She **added** there seemed to be “inconstancy” in the way the budget is confirmed, and welcomed “certainty and early warning where possible in particular receiving [a] settlement letter earlier”.

Budgets 2023-24

27. For estimates for 2023-24, the Welsh Government **changed** the process and timetable. The Commissioners prepared and shared plans with Welsh Government officials early in Summer 2022, and then submitted early draft forecasts by July 2022. The formal estimate was then submitted in October. The former Future Generations Commissioner **said** this was a “better practice” as the statutory deadline is “too late in the process”.

28. The Older People’s Commissioner **said** the earlier approach would allow the Welsh Government to reflect on Commissioner cost pressures and be better equipped to make quicker and better-informed decisions regarding Commissioner budgets.

29. The Welsh Government **noted** Ministers have requested to continue the pattern of early draft forecasts to continue.

Moving to a ‘Term of Government’ approach

30. In December 2021, the Welsh Government published its Draft Budget 2022-23 and its first multi-year Welsh Budget since 2017. We asked about the extent to which Welsh Ministers are providing indicative funding levels for the period beyond the following financial year by moving to a **‘Term of Government’** approach.

31. The former Permanent Secretary’s **letter** to the Public Accounts Committee of the Fifth Senedd noted the Welsh Government-commissioned review about its relationship with its arms-length bodies **included** the following “among the most significant” recommendations:

“...to move away from ‘annual’ remit letters, budget awards and business plans to a ‘Term of Government’ approach that will facilitate longer term planning and provide greater stability for our Arms-length Bodies, improve efficiency and effectiveness of the oversight arrangements.”

32. The Children’s Commissioner **noted** she would welcome a ‘Term of Government’ approach, **saying**:

“The current process makes it almost impossible to plan strategically long-term, due to uncertainty of funding, therefore I would welcome the opportunity of moving to a ‘Term of Government’ approach to enable better long term financial planning and resource allocation to be achieved”

33. The former Future Generations Commissioner would also welcome a term of Government approach to its funding allocations. She **noted** it “should be explored as a matter of urgency”. The Older People’s Commissioner **said** her submitted estimate included a three-year financial plan and she welcomed the inclusion of indicative allocations for 2023-24 and 2014-15 in the Welsh Government’s Draft Budget. She added:

“The provision of a Term of Government budget provides me with the opportunity to plan effectively from one year to another, with a degree of assurance regarding the future funding levels. This enables me to ensure that activities linked to the delivery of my statutory functions can be sustained from one year to the next, including the follow up of recommendations made and guidance issued in prior years”

34. The Welsh Government **recognised** the need to provide its partners with longer-term certainty of funding to aid financial planning. It **said**:

“Wales has only been provided with a funding settlement from the UK Government until 2024-25 and so there is limited scope for longer-term financial planning. It should be noted that Welsh Government plans to give longer term direction and certainty to the Commissioners – and to all devolved public bodies – have been affected by the revised budget process and the exceptional response needed by HM Treasury.”

Our View

35. It is important that the Welsh Government provides Commissioners with information ahead of the start of their budget preparations to support their

forward financial planning. We welcome the Welsh Government's confirmation that it shares its assumptions on planning and pressures during its engagement with Commissioners.

36. We note officials meet to discuss the budgets. However we are not aware if a timetable is in place for such discussions and for the sharing of information. As such, we believe the Welsh Government should provide certainty by setting a timetable for when it will provide information each year. The Welsh Government should provide an update to the Committee when it has agreed the timetable it intends to adopt.

Recommendation 1. We recommend the Welsh Government agrees a timetable for providing information each year to inform the Commissioners' budget preparation process. The Welsh Government should provide an update to the Committee when it has agreed the timetable it intends to adopt.

37. We note the Commissioners' views about the earlier engagement with the Welsh Government about their Estimates for 2023-24 and welcome the Welsh Government's confirmation the Welsh Ministers have requested to continue the pattern of early draft forecasts.

38. While the Welsh Government said processes are in place for modifying estimates, it is clear from the evidence we received the Commissioners are not aware of it. We recommend the Welsh Government provides information about the process to the Committee and Commissioners at the earliest opportunity.

39. Having confirmed processes are in place, the Welsh Government's evidence suggests they are not being used and changes to estimates are agreed with Commissioners prior to their submission by the statutory deadline. The Welsh Government did not explain, in its evidence, why this was the case.

40. We also noted Commissioners said they often do not receive in full the funding they requested. We would welcome clarification of the process since our understanding was that the estimates, with any modifications the Welsh Ministers think appropriate, should set out the agreed funding for the Commissioners for the forthcoming financial year.

Recommendation 2. We recommend the Welsh Government provides, to the Committee and Commissioners, information about the process for modifying the estimates submitted by Commissioners.

Recommendation 3. We recommend the Welsh Government clarifies why it does not appear to use the modification process to revise the Commissioners' estimates and explains why the estimates, as laid before the Senedd, may not set out the agreed funding for the Commissioners.

41. We note Commissioners' concerns about the timing of the confirmation from Welsh Ministers of their funding for the forthcoming financial year, which is often late and sometimes at the start of the financial year to which it relates. We acknowledge the potential implications of this on the Commissioners' work and their offices. We believe the Welsh Government should agree with the Commissioners a timetable for confirming their funding allocations for the forthcoming financial year.

Recommendation 4. We recommend the Welsh Ministers confirm the funding allocations for Commissioners according to a defined timetable, which provides sufficient time for Commissioners to plan their following years' budgets accordingly, and it takes a consistent approach in doing so.

42. We understand the advantages to the Commissioners of the inclusion of indicative allocations for 2023-24 and 2024-25 in the Welsh Government's Draft and Final Budgets for 2022-23. We agree that this enabled them to plan more effectively. We also note the Welsh Government recognises the need to provide its partners with longer term certainty of funding to aid financial planning. However, this was only possible when the UK Government provided a funding settlement until 2024-25 and this early indication is not always possible.

43. We note the Public Accounts Committee of the Fifth Senedd recommended, in its report 'Delivering for Future Generations: The Story so far' (March 2021), the Welsh Government should carry out of a review of how it can provide longer-term financial security to the public bodies that are subject to this Act. It recommended this review should be completed in time to inform funding decisions in relation to the 2023-24 financial year.

44. The Welsh Government accepted in principle this recommendation, noting it remained its “aspiration to provide longer-term budgets for our partners and stakeholders and we remain open to exploring options to provide certainty where this is possible as it set out in our Budget Improvement Plan which we publish alongside our Draft Budget”.

45. The Welsh Government added it was moving to a programme of Term of Government Remits for its Arm’s Length Bodies, which it said “will be much more productive if we receive a multi-year settlement from the UK Government, which would enable us to provide bodies with longer-term indicative budgets”. We would welcome an update about the progress the Welsh Government has made with its plans to move to Term of Government remits, together with information about the timescales for completing the exercise.

Recommendation 5. We recommend the Welsh Government provides an update to the Committee about the progress it has made with its programme to move to Term of Government Remits for its Arm’s Length Bodies, together with information about the timescales for completing the exercise.

46. We believe the Welsh Ministers should lay the Commissioners’ estimates before the Senedd on a timely basis, and ahead of the start of the financial year to which they relate. This is crucial to ensure the Senedd and its Committees have the opportunity to scrutinise the resources made available to Commissioners, which allow them to discharge their functions effectively. We also believe they should be readily available and, as such, the Welsh Government should include the estimate on its website pages for the Commissioners.

Recommendation 6. We recommend that the Welsh Ministers lay Welsh Commissioners’ estimates before the Senedd on a timely basis and at the earliest opportunity each year following their decisions about funding allocations for the next financial year.

Recommendation 7. We recommend that, for openness and transparency, the Welsh Government publishes the Welsh Commissioners’ estimates on its website pages for the Commissioners.

47. We were not able to confirm the Estimate for 2022-23 for the Future Generations Commissioner has been laid before the Senedd. We request that

the relevant Welsh Minister confirms whether it has been laid and when this was carried out.

Recommendation 8. We recommend the relevant Welsh Ministers confirms whether the Future Generations Commissioner for Wales' Estimate for 2022-23 was laid before the Senedd, with details of the date on which it was carried out.

2. Current and future financial plans and challenges

48. We sought an assessment of the Commissioners' current financial position and an assessment of their future needs, in the context of the pressures on public funds. We set out some themes we identified from the evidence.

Current financial position

Staff costs

49. The Children's Commissioner **reported** fixed costs represented "quite a significant proportion" of total spending. These include staff costs.

50. The **Older People's** and **Welsh Language** Commissioners said staff costs equated to 77% of the offices' expenditure. The Welsh Language Commissioner **reported** this has increased from 59% in 2012-13, **adding**:

"When the body was set up the staffing structure consisted of 47 (full time equivalent) posts in addition to the Commissioner. Due to budget cuts maintaining a structure of 47 jobs has not been affordable. Roles have been removed and working hours of roles have been reduced. This has the effect that the number of staff has reduced to 42.8 full-time equivalents (including the Commissioner), and this has had an inevitable impact on the organisation's ability to achieve its objectives."

51. In July 2022, the Deputy Minister for Social Partnership announced, following discussions with the management and trade unions, staff in its Arm's Length Bodies (ALBs), staff would be paid at least the same as the minimum salary for their equivalent Welsh Government grade.

52. The Welsh Government identified nine ALBs who were "expected to be funded" to increase the minimum salary for one or more grades in their organisations. These included the Future Generations and Older People's

Commissioners. They did not include the Children's and Welsh Language Commissioners.

53. Pay levels for the grades were backdated to April 2021, with the Welsh Government allocating up to £652k a year from 2021-22 to 2024-25.

54. The former Future Generations Commissioner **stated** it would cost £36,000 to align the office's pay structures, of which only £32,000 has been funded by the Welsh Government. She **added**:

"The gap between cost of minima alignment and WG [Welsh Government] provided support is forecast to increase in future years, further eating into my budget."

Other Fixed Costs - Estates

55. The Welsh Language Commissioner reported plans to reduce the estate during 2023-24 when leases terminate or opportunities to break leases arise. Her 2023-24 Estimate refers to a plan to achieve £80,000 of savings by the 2024-25 financial year. The Welsh Language Commissioner **said**:

"Beyond the savings in relation to the office estate, there are few further opportunities to make financial savings. The reality is that inflationary pressures are likely to lead to an increase in the running costs of the organisation in the short/medium term as suppliers look to increase their prices".

56. The Children's Commissioner **noted** a reduction in office space of 64% in 2022-23 compared to 2015-16, which delivered cost-savings off £56,000 from the dilapidations provision and an average of £20,000 savings in rates and rental costs.

Impact on services

57. The Older People's Commissioner stated, in 2008, funding was provided on 18% of population being over age of 60. She added the 2021 census showed that is now 23.5% an increase of 30%. If funding followed a similar trajectory and was

adjusted for inflation, the Older People's Commissioner said her baseline budget would be £2.910m, compared to the £1.684m allocated for 2023-24. The Older People's Commissioner **added**:

"With greater resource I would be able to increase the capacity in my advice and assistance team to better meet demand and assist more people who are in need of support."

58. The former Future Generations Commissioner **noted**:

"I raised concerns about how my funding level is having a negative impact on the quality and level of my support and advice to Public Bodies and in turn their ability to fulfil their duties under the Act, which I reiterated in my estimate for 2023-24 explaining the real terms cut to the underestimated baseline budget coupled with an increase in demand for my services."

59. Her office **needed**:

"... significant additional funding to enable me to discharge both my duties and powers adequately, with more parity with other organisations, considering the very wide remit of my duties, their fluctuating nature and showing the Welsh Government's commitment to support the implementation of such flagship legislation envied worldwide."

60. The former Future Generations Commissioner also **noted** the Public Accounts Committee of the Fifth Senedd **concluded** her budget had not provided sufficient capacity to provide public bodies in Wales with the levels of practical and sector-specific support they have called for to implement the Act.

61. The Children's Commissioner **noted** the "significant pressures on public services and public finances", **adding** the role and responsibilities "can only be achieved by having a more sustainable funding model".

Future cost pressures

Staff costs

62. The Children’s Commissioner **noted** her office is facing increased staff costs. This is largely due to increased pension contributions, incremental in-band pay increases that mirror the Welsh Government’s and an increase in employer’s national insurance contributions. She **said**:

“In the last four years, the rise in pension costs (64%) has significantly outstripped the rise in our wage bill (11.4%).”

63. The Welsh Language Commissioner **noted** it has been “challenging” to meet demands from trades union for pay rises. The Welsh Government offer of 4% was met through savings, although it was £50,000 more than the amount planned.

64. The Older People’s Commissioner said her Estimate assumed awarding a 3% cost of living award to staff in 2023-24. However, she reported, if the Welsh Government awards a greater percentage, she will be expected to match it. The Commissioner could not see where to make savings to match the pay award.

Deficits

65. The Older People’s Commissioner **said** she welcomed the Welsh Government’s recognition of the severe funding pressures her office faced. However, while her office has been allocated additional funding for 2023-24, she is still forecasting a £12,000 deficit, although she expected to reverse this through financial management.

Additional funding for 2023-24

66. The Welsh Government **said** the Minister for Social Justice considered resource issues and was able to propose an increase in budgets for 2023-24 and 2024-25 for the Children’s, the Older People’s and the Future Generations Commissioners. However, it **noted** these increases are not guaranteed for future years.

67. It **reported**:

“Each Commissioner's revenue funding will receive a 6% increase in the next financial year (2023-24). This uplift assumes a 4% pay settlement in 2022-23 (the same as implemented in the Welsh Government for delegated grades outside the Senior Civil Service) and an assumed further 2% increase in 2023-24. Whilst this increase can be managed within the Commissioners' existing budgets for 2022-23, the increase in 2023-24 will mean that Commissioner should be able to continue to operate with the current numbers of staff, whilst continuing to align staff pay with Welsh Government pay scales. Without this funding, it is likely that the Commissioners would have had to shed some posts”.

68. The Welsh Government **added** the former Future Generations Commissioner also received resources for 2022-23 and 2023-24 to promote international interest in sustainable development and Welsh Government's well-being agenda aspirations.

69. In the context of modifications to the Commissioners estimates, the Welsh Government **said**:

“Commissioners have the opportunity to raise changes to expected resource outturn and cash needed at any time and during the regular review meetings with the partnership team”.

Our View

70. We welcome the Welsh Government's announcement about pay parity for staff at its ALBs, to ensure they will be paid at least the same as the minimum salary for their equivalent Welsh Government grade. However, we noted the former Future Generations Commissioner suggested the additional funding did not cover the related costs. We recommend the Welsh Government provides further information about the expected and actual allocations, as well as explain how it obtained assurance the funding would cover the expected costs.

Recommendation 9. We recommend the Welsh Government provide the Committee with information about the additional funding allocations,

announced in July 2022, for pay parity at the Arm's Length Bodies. This should include the evidence on which the expected and actual allocations were determined, well as assurance that the funding allocated is meeting the associated costs.

71. The Committee notes the significant staff costs and their impact on the Commissioners and their budget. The proportion of Commissioners' budget devoted to staff costs means that pay awards have a disproportionate impact on the resources of Commissioners, with the potential that insufficient resources are available for them to discharge their responsibilities. The Committee welcomes the additional funding allocated by the Welsh Government for 2023-24, but we remain concerned about the impact on future staffing resources posed by increasing staff costs, which are not reflected by increases in funding.

3. Collaborations

72. The Equality and Social Justice Committee’s conclusion and recommendation made specific reference to delivering economies of scale by sharing “backroom functions”.

73. This was something explored by the Public Accounts Committee (PAC) of the Fourth Assembly. While noting its observations about the limitations of the then Commissioners to realise savings through greater collaboration and merging back-office functions, we sought an update from Commissioners about how they collaborate and the benefits arising from any joint working or sharing of backroom functions and staff. We also asked what learning had occurred from these experiences, whether any functions are shared with other public bodies/regulators in Wales.

74. In their written evidence, the Commissioners provided examples of how they collaborate and work in partnership with other bodies. While not an exhaustive list, these included:

- A **Memorandum of Understanding** is in place between the four Commissioners and the Public Services Ombudsman for Wales (the Ombudsman), which directly refers to the organisations being “open to joint working whether this may be more effect and appropriate to our joint remits”.
- Inward and outward **secondment opportunities**.
- Collaboration on **joint training and audit procurement**, supporting interviews across organisations, providing hot desking facilities and sharing office space. For example, the **Welsh Language Commissioner sublets** space to the Future Generations Commissioner.
- **Joint meetings** between the Commissioners, Ombudsman and Auditor General to discuss their corporation-sole roles and work of organisations.
- The former Future Generations Commissioner **said** collaboration, including sharing staff, had increased expertise and the cross-fertilisation of knowledge and skills. As such, her office was keen to continue collaborating, as were the other Commissioners.

75. However, the Welsh Language Commissioner **noted** “sharing resources can lead to both positive and negative experiences”, **adding**:

“...it is essential to carefully consider the benefits and potential impact of sharing resources before outweighing the potential benefits of financial savings.”

Savings/benefits

76. Some Commissioners provided examples of the cost savings they have made. For example, the Welsh Language Commissioner **sublet** office space to the Future Generations Commissioner between April 2016 and December 2018 saving £177,000.

77. However, the Older People’s Commissioner **noted** there are limits to cost-savings:

“Whilst I recognise the importance of collaboration and the real benefits that this way of working brings, there are minimal cost-savings that can realised for my organisation, as was recognised by the Public Accounts Committee in 2015 and the Welsh Government in 2016.”

78. The **Older People’s** and **Children’s** Commissioners said their staff do not operate in silo; they work across specialisms and, as such, the concept of ‘backroom’ staff does not apply. The Welsh Language Commissioner **noted** the office had been “unable to take full advantage of this”. She added her office operated through the medium of Welsh.

79. The former Future Generations Commissioner **said**:

“Collectively, between the Commissioners offices, we think that working on joint programmes and sharing resources to help us deliver front line activities would be more efficient than sharing back-office resources”

Our View

80. The Committee welcomes the examples of collaborative working outlined by the Commissioners and encourages these where there is a clear mutual benefit in doing so, as well as areas for joint working. However, it is notable that the evidence given by the Commissioners accords with that heard by our predecessor Committee: there are clear limitations to the savings that can be made.

81. While we encourage the Commissioners to work together to identify further areas of possible collaboration, we acknowledge that barriers may exist that make this impracticable.

Changes to Government of Wales Act 2006 (Budget Motions and Designated Bodies)

Background

82. Amendments to the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 in December 2021 brought the Commissioners within the Welsh Government's accounting boundary, **with effect** from February 2022.

83. In the Annual Accounts and Report for 2021-22, the then interim Welsh Language Commissioner **set out** the impact of the change on the organisation's budgetary and financial management information:

- The funding allocated to the organisation within the Welsh Government's budget is approved by the Senedd;
- A budget is set for resources, capital and non-cash expenditure;
- The organisation must not exceed the budget, without approval of a supplementary budget from Welsh Government, following a request for additional funding;
- A process will be put in place to monitor expenditure against budget;
- Cash drawdowns should not exceed the organisation's requirements; and
- At the end of any quarter monies held in the bank should not exceed the equivalent of 5% of the annual grant-in-aid budget.

84. The Committee considered the impact of the designation of each office under the changes to the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 on the Commissioners' current and future financial position. We explored the main challenges in moving to the new arrangements and the most significant changes as a result of them.

Impact

Reserves

85. Historically, Commissioners were able to utilise reserves without seeking resource budget cover from the Welsh Government. They used reserves to manage additional expenditure requirements. However, they are no longer able to do so and all Commissioners raise this as an issue in their written evidence (Children’s Commissioner, who referred to reserves as the ‘general fund’, Future Generations Commissioner, Older People’s Commissioner and the Welsh Language Commissioner).

86. The Welsh Language Commissioner **said** the new system, based on early experiences, is assumed to make it difficult for Commissioners to bridge the period between the end of one financial year and the beginning of the next.

87. The Welsh Government **said**:

“Commissioners have the opportunity to raise changes to expected resource outturn and cash need at any time and during the regular review meetings with the partnership team. If the Minister approves any changes, there are two ways of providing additional resource budget cover, although both involve formal notification of the changes in writing to the Commissioner.”

Independence of Commissioners

88. The Children’s Commissioner **said**:

“...the inclusion of our office in the [Designation] Order does present a risk, which we have highlighted on numerous occasions to Welsh Government, as there are potential unintended consequences of these changes in relation to the independence of this institution.”

89. This is echoed by the Welsh Language Commissioner, who **noted** a situation may arise where it is necessary for the Commissioner to conduct an

investigation, or investigate a significant legal case relating to the Welsh Government, or to which it is a party.

90. The former **Future Generations Commissioner** made the same comments about independence, as did the Older People’s Commissioner who **noted**:

“From 2008 to March 2022, reserves were able to be retained and independently managed. These reserves played an essential role within my overall financial management approach and were integral to maintaining my independence from the Welsh Government and the successful delivery of my Strategic Plan. They enabled me to manage risk effectively, ensured business continuity and the ability to deliver against my statutory duties when faced with unforeseen and unforeseeable issues.”

91. The Older People’s Commissioner also **said** the Welsh Government has put measures in place to mitigate the risk to Commissioners’ independence, as did the **Welsh Language Commissioner**. They noted, should a Commissioner request additional funding to conduct an investigation or legal proceedings, this would be decided by the First Minister or another Minister, rather than the Minister responsible for allocating funding to the Commissioner.

92. While recognising these steps, the Older People’s Commissioner **believed** there is still a risk of potential conflict of interest.

93. The Children’s Commissioner **said**:

“The [impact of the designation] order sees us having to request additional funds to undertake pieces of work, such as undertake statutory reviews or examinations of Welsh Government, from Welsh Government itself. There remains lack of clarity about the method by which this may be requested or the rationale for it being granted or how. This consequently has the potential to compromise the independence of my office and curtail my ability to undertake additional work.”

94. She **added** the risk could be mitigated if plans were put in place to make the office accountable to Senedd, rather than Welsh Ministers.

95. Similarly, the former Future Generations Commissioner **stated**:

“On the question of independence, it might be useful for the Committee to explore and make recommendations as to whether our independent offices should be funded by government or by parliament.”

Welsh Government support and response

96. The Welsh Government **said** “no support is required for the designation process other than to explain the process and impact, which we have done on numerous occasions since the initial consultation in 2019”. Welsh Government officials **continue** to work with Commissioners and all relevant public bodies on the application of the financial framework.

97. It noted it has **increased** the Commissioners’ cash limits:

“To ensure that excessive levels of cash do not build up, the Welsh Government has a standard tolerance of 4% of the cash grant-in-aid received during the year and 2% at the end of the year. As the Commissioners may need cash to investigate a Welsh Minister or the Welsh Government, this tolerance was increased to 5% for each Commissioner and arrangements were agreed that would avoid them having to seek resource budget to carry out these investigations from the Minister being investigated should this situation arise.”

98. It **added** the framework, to be agreed and put in place with Commissioners, will reflect this.

99. In her written evidence, the former Future Generations Commissioner **noted**:

“The Minister for Social Justice recognised the difficulties that I faced with operating within a very limited budget and as an interim

measure, my grant-in-aid for 2021-22 was increased to allow me to carry over into 2022-23 a level of useable reserves of £300k. Another £171K has been proposed for 23-24”.

Our View

100. We share the concerns of the Commissioners in relation to the restrictions on their use of reserves following the designation, from February 2022, of their offices in the Welsh Government accounting boundary. We note, with concern, the related risks to their independence, and potential other unintended consequences. We would welcome information about the process the Welsh Government intends to adopt in such circumstances.

101. We also note the mitigation appears to include an increase in the level of cash the Welsh Government allows the Commissioners to hold, to address the risk relating to them having insufficient resources to investigate the Welsh Ministers or the Welsh Government, should they need to do so. However, the Committee would welcome information about the evidence supporting the level of increase in the cash limits agreed for Commissioners, as well as the engagement between the parties about it.

Recommendation 10. We recommend that the Welsh Government provides information about the process to be adopted by it or Welsh Ministers to address potential conflicts of interest, arising due to the inclusion of the Commissioners within the Welsh Government’s accounting boundary and the related restrictions on their use of reserves. Most significantly, the related risks to independence where a Commissioner requests additional budget cover or funding for a review or investigation about the Welsh Ministers or Welsh Government.

Recommendation 11. The Commissioners identify issues with the restrictions on their use of reserves following the designation, from February 2022, of their offices in the Welsh Government accounting boundary. Given the related risk to independence and potential other unintended consequences, the Committee recommends that the Welsh Government reviews the impact of the changes after they have been in operation for two years and provides an update to the Committee by September 2024.

Recommendation 12. The Committee recommends the Welsh Government provides information about the evidence supporting the level of increase in the cash limits agreed for Commissioners, as well as the engagement between the parties about it.

102. Given the changes on their budgetary and financial management, we recommend the Welsh Government reviews, after they have been in operation for two years, the impact of bringing the Commissioners within its accounting boundary.

Recommendation 13. We recommend the Welsh Government reviews the impact on the Commissioners of bringing them into its accounting boundary. This should be completed two years after such changes have been in operation, with an update provided to the Committee by September 2024.

4. Post-legislative review

103. Our evidence gathering considered the roles and responsibilities of each Commissioner's Office, which are detailed comprehensively in their respective **responses**. We explored how these have changed over time and the implications of any financial impacts of these changes.

104. All Commissioners note changes to their roles and responsibilities since the posts were established. However, they report the funding they receive from the Welsh Government has not been uplifted to reflect the additional roles and responsibilities and/or has not kept pace with inflation, changes to the demographic and Welsh Government strategies.

105. For example, the Children's Commissioner **noted** the changes to her roles and responsibilities, adding:

"...all related activities resulting from these changes [to the office's roles and responsibilities since the role was established] are welcomed by this office but are flagged here for the purposes of this inquiry as evidence that our scope of work has increased but our funding has not."

106. The Welsh Language Commissioner **said** her organisation's funding has been eroded in real terms by 37% over the 10 years to 2021-22. While the Older People's Commissioner **said**:

"...if the cost estimate that the Welsh Government utilised in 2008 for effectively operating my office had tracked inflation, my 2023/24 baseline funding would now be £2,238,000, which is £554,000 or 38% more than my 2023/24 baseline budget."

107. The former Future Generations Commissioner **said** the Regulatory Impact Assessment, which accompanied the Well-being of Future Generations (Wales) Bill, included estimates of its financial implications that "substantially underestimated" the costs of meeting the statutory duties placed on the role.

108. She **explained**, among other things, this was because ‘[a]t the time it could not have been known that public bodies between them would set in excess of 350 well-being objectives (with thousands of steps to meet them)’. She also **said** her governing legislation prevented her from generating a profit through charging for services, which she said would be useful to bring new incomes.

109. The Welsh Government **said** there are many potential benefits to conducting a post-legislative evaluation of the Well-being of Future Generations (Wales) Act 2015, including the role of the Commissioner. The Minister for Social Justice **advised** officials to explore the scope and need for an evaluation with an update to be given to this Committee and the Equality and Social Justice Committee “later in 2023”.

110. The Welsh Government said no formal reviews have been conducted to consider the other Commissioners’ costs, other than the 2014 review of the Children’s Commissioner.

Our View

111. We note the Welsh Government’s evidence appears to reiterate the **response** the Minister for Social Justice gave in May 2022 to the recommendation from the Equality and Social Justice Committee. This recommended the Welsh Government carry out an evaluation looking at the scope of the Future Generations Commissioner’s work and responsibilities with a view to setting out a plan to support any future expansion. As such, it suggests little progress has been made in the intervening months. We recommend the Welsh Government provides an update about this work, including the timetable for its completion and when officials expect to provide advice to the Minister.

112. We note the evidence from Commissioners that their roles and responsibilities have expanded through changes to their governing legislation and as a consequence of other legislation placing requirements on them. The offices of each Commissioner should be adequately resourced to adapt to expanded remits. As such, we recommend the Welsh Government conducts post-legislative review of the legislation governing all Commissioners, including a review of the funding allocated to them, with an update provided to the Committee in due course.

Recommendation 14. We recommend the Welsh Government provides an update about the review the Minister for Social Justice has asked her officials to undertake into the scope of the Future Generations Commissioner's work and responsibilities. The update should set out the timetable for its completion and when officials expect to provide advice to the Minister.

Recommendation 15. We recommend the Welsh Government conducts post-legislative review of the legislation governing all Commissioners, including a review of the funding allocated to them, with an update provided to the Committee in due course.

113. It is important that the estimates of the financial implications of proposed legislation recognises all organisations likely to be affected by its provisions, with the additional costs and savings/benefits included in the Explanatory Memorandum and Regulatory Impact Assessment. The Welsh Government should ensure adequate resources are available to the Commissioners where new legislation impacts on the roles and responsibilities of the Commissioners.

Recommendation 16. We recommend the Welsh Government reviews whether new legislation may impact upon the remit of Welsh Commissioners, ensuring there are adequate resources to incorporate extensions to their roles and responsibilities.

Annex 1: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the Committee’s website.

Reference	Respondents
CFS 01	Children’s Commissioner for Wales
CFS 02	Future Generations Commissioner for Wales
CFS 03	Welsh Language Commissioner
CFS 04	Older People’s Commissioner for Wales
CFS 05	Welsh Government