



Nick Ramsay AM
Chair
Public Accounts Committee

15 August 2018

Dear Chair

I am responding to your letter of 18 July in which you requested clarification of our response to a number of the recommendations in the Committee's report on the Welsh Government's initial funding of the Circuit of Wales project. I will address each of your points in turn.

I can confirm all of the recommendations within the Committee's report were accepted. In your letter, you specifically highlight our response to Recommendation 3, subsequently revised to Recommendation 1. This recommendation contains a number of elements. While I am content that there are appropriate controls in place to evidence value for money for the majority of our projects, I do accept that controls need to be strengthened to ensure value for public money in specific circumstances – for example, projects where contracts have not been exposed to competition or where payment is not dependent on delivery. This would include projects where there are linked companies or retainers being paid. We will take action to strengthen specific controls in those instances.

We have already implemented increased controls for funding provided via the Business Finance grant and raised the importance of checking linked companies when providing funding.

Escrow Account

You have asked about the timing of Welsh Government actions to recover the funds placed in the escrow account for the purchase of land.

The escrow deposit issue was highlighted in the AGW's report in April 2017 and lead officials were subsequently requested to investigate whether funds could be recovered by Welsh Government, either from the escrow account or Heads of the Valleys Development Company (HOVDC). At that time, the project remained a live proposal and the developers had ambitions to deliver the project without Welsh Government support. As such, and as the contract between HOVDC and the Marquis of Worcester for the land purchase was not due to expire until the end of December 2017, Welsh Government did not consider it appropriate to pursue any recovery action at that point.

In June 2018, officials requested the formal contract for the purchase of the land from Geldards in order to clarify the position regarding the escrow account. Geldards were the lawyers undertaking the legal due diligence on the Circuit of Wales project on behalf of Welsh Government.

The contract was provided to officials by Geldards in late June 2018. At that time, Geldards also informed Welsh Government officials the entire contract had been shared by HOVDC in February 2016, as part of a large volume of documents placed in an electronic data room in order to facilitate the legal and technical due diligence of the project. Although the contract between HOVDC and the Marquis of Worcester was included in this data room, it was only accessible by a limited number of people in order to maintain commercial confidentiality. Welsh Government officials with access were not aware the contract was amongst the documents provided.

The content of the contract for the purchase of the land was reviewed by officials on its receipt from Geldards in June 2018. The contract refers to an initial payment of £200,000 from the buyer (HOVDC) to the seller (Marquis of Worcester), £100,000 of which was released immediately to the seller, with the balance of £100,000 to be held in an escrow account by the seller's conveyancer until completion of the deal or the end of the contract period. The contract states that the seller has no liability to repay the monies held in escrow except in the event of seller default. As HOVDC were unable to complete the purchase by the end of December 2017, the contract lapsed and the seller's solicitor released the remaining £100,000 to the seller as required by the contract.

We have taken legal advice on this matter which confirms that £200,000 was expended in relation to the acquisition of the land, that payments were in accordance with the purchase contract, that the initial payment of £100,000 was not refundable in any circumstance and that the further £100,000 held in the escrow account would not have been repayable to HOVDC other than in the event of seller default, which did not occur. On that basis, neither the £200,000 nor any part of it is repayable to HODVC or subsequently, to the Welsh Government. Delay in dealing with this escrow issue did not therefore adversely impact on the Welsh Government's ability to recoup the funding.

The points made in the AGW's report about returnable deposits are still accurate but the detail of the entire contract provided by Geldards in June 2018 increased the understanding of both

Welsh Government officials and Wales Audit Office staff. Having seen the contract, it is now understood that the deposit was repayable only in the event of a seller default, not a buyer default.

The contract was not provided to the Welsh Government officials who provided oral evidence to the Committee in June 2017, and they were not aware that the document had previously effectively been made available to the Welsh Government in the data room. The information provided by Welsh Government officials to PAC at the evidence session in June 2017 was given in good faith and there was no intention to withhold evidence or mislead the Committee.

Legal advice has also been taken as to whether any of the Property Development Grant (PDG) could be clawed back by the Welsh Government but no grounds have been identified for doing so.

Welsh Government accepts that the full contract for the purchase of the land should have been obtained from HOVDC and recorded prior to any payment of the PDG. Lessons have been learnt from this investigation and increased controls will be implemented when escrow is used to ensure all appropriate evidence is obtained from funding recipients in a timely manner, so that we have a full understanding of the agreement to which it relates and ensure funding conditions provide for appropriate recovery.

Recommendation 6

You asked for the number of instances there have been in recent years in which officials have raised concerns about instructions from authorising officers to make payments. Following the debate in the chamber on 11 July 2018, the Cabinet Secretary for Economy and Transport issued a letter, dated 27 July, to you on this topic. A copy of the letter is attached (Annex 1) and details the processes available for officials to raise concerns of this type. The whistleblowing process was reviewed and strengthened in 2015/16 to increase the robustness of the process. The table below details the number of cases considered by the whistleblowing process since 2015/16.

Financial Year	Number of cases considered
2015/16	4
2016/17	6
2017/18	4

Recommendation 13

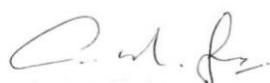
You asked about the degree of security the Welsh Government is expecting to achieve to safeguard its £7.3m debt from HOVDC arising from the Welsh Government loan guarantee.

The Welsh Ministers currently have a fixed and floating charge over the assets of HOVDC and all its subsidiaries. HOVDC has entered into a Company Voluntary Arrangement (CVA) with

its non-secured debtors and has insufficient assets to enable the Welsh Government to recoup its debt. The debt to Welsh Government is estimated to be £12.62m in July 2018. It is likely that Welsh Government will only be able to recoup a very small proportion of the debt if the status of the company remains unchanged.

To date, no formal request has been received from any prospective developers to release our security from HOVDC. If such a request was to be received, then the Welsh Government would expect either a significant financial contribution or a financial stake in the organisation requesting release of the security. Due consideration would be given to the type of financial stake offered, its status and priority relative to other investors and creditors, and the implications for the level of security provided to the Welsh Government. In such circumstances, expert advice would be sought.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Slade', written in a cursive style.

ANDREW SLADE
Director General
Economy, Skills and Natural Resources