

Abertillery and Llanhilleth Community Council - Objections to accounts

Audit year: 2020-21

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Contents

My audit work in response to objections made under section 31 of the Public Audit (Wales) Act 2004, identifies issues that the Council needs to address.

Summary report

I received two objections to the 2020-21 accounts made under section 31 of the Public Audit (Wales) Act 2004 4

Recommendations 4

Appendices

Appendix 1: Settlement payment 6

Appendix 2: Duplicate payment 9

Appendix 3: Budget setting and the 2019-20 precept 11

Appendix 4: Internal Audit and the Deputy Clerk 13

Summary report

My audit work in response to objections made under section 31 of the Public Audit (Wales) Act 2004, identifies issues that the Council needs to address

I received two objections to the 2020-21 accounts made under section 31 of the Public Audit (Wales) Act 2004

- 1 In August 2022, I received two objections to the Council's 2020-21 accounts. Both objections requested that I issue a report in the public interest and make an application to the Courts for a declaration that a specific item of expenditure was unlawful.
- 2 I concluded on these objections in August 2024. My conclusions were:
 - Although my audit work identified issues that need to be reported to the Council, I do not consider that these warranted a report in the public interest
 - I did not consider it necessary to make an application to the Courts for a declaration that an item of account is unlawful.
- 3 The objectors raised 4 main areas of concern. My detailed findings and conclusions are set out in appendices 1 to 4.
- 4 In addition to these matters, the objectors raised a small number of further issues. I refer the Council to my responses to the objections and the other minor matters.

Recommendations

Recommendations to the Council

Following the conclusion of my audit work, I make four recommendations to the Council to improve its governance arrangements

Recommendations

Conduct of members

- R1 All members should review the Code of Conduct and ensure that they comply with the Code at all times notwithstanding their personal views of particular issues being considered by the Council.

Recommendations

Reporting to Council

- R2 The Council should review its procedures for reporting matters to the full Council and ensure that all relevant issues are brought to the Council's attention.
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Budget setting

- R3 The Council must ensure that prior to setting its precept, it calculates its budget requirement in accordance with the requirements of the Local Government Finance Act 1992.
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Internal audit

- R4 The Council must ensure that it puts in place proper arrangements for internal audit and holds officers to account if no internal audit is undertaken in any financial year.

Appendix 1: Settlement payment

Unlawful expenditure – Settlement payment to former clerk

Basis of objection

- 5 In December 2020, the Council made a payment to its former clerk. The objectors believed that this payment was unlawful for the following reasons:
- The payment was not approved by the full Council as required by the Council's Financial Regulations.
 - The settlement agreement was signed on behalf of the Council by the acting Clerk and the then chairman without authorisation by the Council.
 - The acting Clerk had a pecuniary interest in negotiations with the former Clerk.
 - The payment has not been properly accounted for by the Council.

My audit findings

- 6 Following a breakdown in relations between the former Clerk and the Council, in November 2020, the former Clerk left the office on sick leave. His employment by the Council was terminated on 31 December 2020 by mutual agreement following the signing of a settlement agreement and a compensation payment to the former Clerk in December 2020.
- 7 The payment itself was made by Blaenau Gwent under the terms of its agreement to provide payroll services to the Council. The payment was included in the invoice for payroll costs for the period October 2020 – January 2021.
- 8 Regulation 7.7 of the Council's Financial Regulations states:
"7.7. Any termination payments shall be supported by a clear business case and reported to the Council. Termination payments shall only be authorised by Council."
- 9 The Human Resources Committee (HRC) considered the settlement arrangement on behalf of the Council. The HRC's terms of reference state that the Committee "will exercise on behalf of the council its powers relating to... termination of service... and all similar matters relating to employees... All matters concerning... disputes and consultations with employees and their representatives."
- 10 On 1 December 2020, the Council's HRC resolved "that the Chair [of the HRC] in partnership with the Deputy Clerk work together with the Clerks [sic] union representative so that a proposed conclusion could be brought back to the HR Committee as soon as possible for a decision to be made..."
- 11 The HRC met again on 8 December 2020. A confidential annex to the minutes of the meeting records that the settlement agreement was 'duly signed and witnessed, with all the three other members of the HRC also signing the agreement.'

- 12 The agreement was signed by the then Chair and the Acting Clerk. A further member signed the agreement as a witness and there are a further three signatures on the agreement. These additional signatures are not identified. The signatures on the agreement are undated.
- 13 I am informed that the Public Services Ombudsman for Wales (the Ombudsman) has concluded that this confidential annex was not formally approved as a true record. As this issue has been dealt with by the Ombudsman, I have not considered it in any more detail.
- 14 The settlement agreement itself is dated 16 December 2020. It sets out that the former Clerk's employment terminated by mutual agreement on 31 December 2020 and that both parties had agreed to waive the required notice period. In return for a payment as compensation for loss of office, the former Clerk agreed not to bring any proceedings against the Council in any court or tribunal. The terms of the agreement appear to be standard terms of similar such agreements elsewhere.
- 15 In the absence of the then Clerk, the Deputy Clerk under his contract of employment became the Acting Clerk. The Council's Clerk is the proper officer for the Council and is responsible for the administration of the Council's business.
- 16 The payment itself was not reported to the full Council although the net payment related to the October 2020 – January 2021 payroll costs was reported.

My conclusion

- 17 The HRC's dealing with the dispute and settlement agreement was in accordance with its terms of reference.
- 18 The Council's Financial Regulations appear to deal with situations where establishment posts are being deleted through a voluntary severance or redundancy scheme. In this case, employment was terminated and a settlement payment made to protect the Council from the risk of significant additional costs being incurred from a claim for unfair dismissal being made to an Employment Tribunal.
- 19 In my opinion it would have been appropriate for the agreement to have been reported to the full Council in a closed meeting where the Council has resolved to exclude the press and members of the public. However, I understand that due to fractious relationships within the Council, there was a significant risk that details would have been leaked to parties outside of the Council itself. In fact, it is clear from correspondence I have received that such a leak has occurred.
- 20 It is essential that all members abide by the Members' Code of Conduct and refrain from disclosing confidential material they obtain while conducting council business, to members of the public who are not entitled to receive such information.
- 21 In his role as Acting Clerk, the Deputy Clerk was the appropriate officer to deal with the administration of the agreement and did not have a direct pecuniary interest arising from the negotiation of a settlement agreement with the former Clerk.

22 In summary, in my opinion, the payment to the Council's former clerk is not contrary to law:

- The payment made was a settlement payment to settle any liability the Council may have incurred as a result of a potential employment claim against the Council. Therefore, it was not a payment made to terminate employment.
- As such, the payment did not require the preparation of a business case under regulation 7 of the Council's Financial Regulations.
- It appears to me that the Human Resources Committee had authority to approve the payment.
- The payment has been accounted for in the 2020-21 accounts.
- Whilst there are deficiencies in how this payment was reported to the Council, I do not consider these to be sufficient to render the payment contrary to law.

Appendix 2: Duplicate payment

Unlawful expenditure – Duplicate payment

Basis of objection

- 23 The Council made a payment of £16,380.95 to Blaenau Gwent County Borough Council on 26 November 2020. You believe that this payment was unlawful for the following reasons:
- This payment was a duplicate payment and was not authorised by the Council.
 - The payment has not been properly accounted for by the Council.

My audit findings

- 24 On 26 November 2020, the Council made a payment of £16,380.95 to Blaenau Gwent in relation to payroll costs for the period July – September 2020. This duplicated a payment previously made on 11 November 2020. The cashbook records this as 'Duplicate staff payment costs'
- 25 The duplicate payment arose due to uncertainty around whether or not the former Clerk had made a payment before he left work on sick leave. The duplicate payment appears to have been made due to a lack of proper communication between the Council's administrative staff. However, this occurred at a time of some upheaval within the Council.
- 26 In February 2021, the Council's cashbook records that it paid a further £17,561.36 to Blaenau Gwent for payroll costs for the period October 2020 – January 2021. Blaenau Gwent had issued an invoice for £33,942.30. This included the settlement payment. The payment made in February 2021 is the net of the October 2020 – January 2021 payroll costs less the amount of the duplicated payment.
- 27 I have reconciled the annual accounting statement for 2020-21 to the Council's cashbook, demonstrating that the accounting statement includes the transactions set out above.
- 28 While payments have been reported to the council, the Council did not receive a full explanation of the events surrounding the duplicated payment and how this was offset against the invoice received in relation to the October 2020 – January 2021 payroll costs.

My conclusion

- 29 In my opinion, it is not in the public interest to make an application to the court regarding the duplicate payment in respect of payroll costs made to Blaenau Gwent County Borough Council (Blaenau Gwent):
- The duplicate payment of £16,380.95 was made as a result of an administrative error.

- Although Blaenau Gwent did not refund the duplicated payment, it was offset against the next scheduled payment in February 2021.
- Consequently, whilst there are deficiencies in how the duplicate payment was reported to the Council, the Council did not suffer a loss as a consequence of the duplicate payment being made.
- The payment has been properly accounted for.

Appendix 3: Budget setting and the 2019-20 precept

Budget setting process and 2019-20 precept

Basis of objection

- 30 The Council raised its precept for the 2019-20 financial year from £112,916 to £234,000. You regarded the increase as unacceptable.
- 31 You noted that the Council received a draft budget from the then Clerk at its meeting held on 29 October 2018. This budget included a net budget requirement of £119,952. In preparation for the 16 January 2019 meeting, the then Clerk issued a budget report identifying a net budget requirement of £135,300.
- 32 You stated that at the 16 January 2019 meeting, Cllr Oakley circulated a further budget proposal with a net budget requirement of £234,000. You state that Cllr Oakley's motion to discuss his proposal was not included in the agenda for the meeting.

Audit findings

- 33 Section 41 of the Local Government Finance Act 1992 allows the Council to issue a precept and states that a precept issued to billing authority (in this case BGCBC) must state the amount that has been calculated as the Council's budget requirement for the year calculated in accordance with section 50 of the 1992 Act. Section 50 of the 1992 Act requires the Council to calculate:
- Its projected expenditure for the year ahead including an allowance for contingencies.
 - The financial reserves which the authority estimates it will be appropriate to raise in the year for meeting its estimated future expenditure.
 - Such financial reserves as are sufficient to meet so much of the amount estimated by the authority to be a revenue account deficit for any earlier financial year as has not already been provided for.
 - Its estimated receipts for the year ahead (excluding its precept).
 - The amount of the financial reserves which the authority estimates that it will use in order to provide for its projected expenditure.
- 34 The net of the above items is the Council's budget requirement for the year.
- 35 We have examined the budget reports presented to the Council by the then Clerk for both the 29 October 2018 and 16 January 2019 meetings. The October 2018 budget was an interim report and was further developed with the amended budget presented to the January 2019 meeting.
- 36 The proposal presented by Cllr Oakley proposed a significant 'overhaul' of the budget presented by the Clerk. Cllr Oakley's proposal was to increase the budget requirement and therefore the precept to £234,000.

- 37 We have been provided with written notification of a proposed motion to the Council but are unable to conclude when this was submitted. We do however note that attached to the Agenda published on the Council's website, is Cllr Oakley's proposed budget for 2019-20 showing a budget requirement for £234,000.
- 38 This Cllr Oakley's proposal was circulated to members via email on 14 January 2019 along with a budget proposal from another member. This means that members received the proposal before the meeting, albeit without the required notice.
- 39 The minutes record the discussion held and that the members voted (by majority) to adopt Cllr Oakley's proposals.
- 40 Cllr Oakley's proposals included a proposal for additional projects and suggested the Council establish a working group to consider 'detailed costings and firm proposals for projects' to be reported to the Council in March 2019.
- 41 I further note that there has been a significant increase in the Council's precept in subsequent years and that it set a precept of £431,131 for 2024-25. I note that the Budget Proposal for 2024-25 is not available on the Council's website via the link attached to the 10 January 2024 meeting.
- 42 We therefore examined the budgets presented to the Council for each of the 2019-20 to 2022-23 financial years.
- 43 The Council's minutes record that the annual budget is subject to a considerable amount of debate each year. However, the Council does not appear to properly calculate its budget requirement in that it does not explicitly set out how it will finance the excess of its planned expenditure over the precept it determines.

My conclusion

- 44 We note that Cllr Oakley's budget proposal was not circulated to members with three clear days' notice. In addition, the budget does not include firm estimates of projected expenditure related to projects and therefore in my opinion does not meet the requirements of the Local Government Finance Act 1992.
- 45 The failure to provide Cllr Oakley's budget to members three clear days before the meeting is a significant deficiency. However, it is clear from the minutes that there was an extensive discussion around the three budget proposals circulated to members.

Appendix 4: Internal audit and the deputy clerk

Conduct of the Deputy Clerk (now the Clerk)

Issues raised

- 46 You raise the following concerns over the conduct of the then Deputy now current Clerk:
- 47 You allege that the then Deputy Clerk breached the Code of Conduct for officers by failing to declare interests in relation to the settlement payment referred to above.
- 48 You state that in July 2021 the Deputy Clerk misled the internal auditor (IAC Audit and Consultancy Ltd) stating that the Council had appointed an alternative internal auditor when in reality this was not the case.

Audit findings

- 49 In relation to a failure to declare a personal interest in the settlement payment to the former clerk, I have set out my audit findings in the paragraphs above. In my opinion the then Deputy Clerk had no personal interest and was acting in the capacity of the Council's proper officer. Given my findings above regarding the settlement payment, I do not consider this point merits further audit work.
- 50 The Annual Governance Statement presented for audit states that the Council did not make arrangements for an internal audit for 2020-21.
- 51 The Council approved the annual return at its meeting held on 27 April 2022. The minutes of this meeting make clear that there had been no internal audit.
- 52 The Council approved the appointment of IAC Audit and Consultancy Ltd (IAC) as its internal auditor in March 2021. The minutes record "Council RESOLVED to appoint IAC Audit & Consultancy Ltd on a 1-year basis and the provision of Internal Audit Services would be reviewed then."
- 53 The minutes for the Council's September 2022 meeting record that "the Council had resolved [on 31 March 2021] to appoint IAC Audit for twelve months from April 2021 in order to carry out internal audit of its accounts for 2020-21. However, those accounts had not been closed down until April 2022. No letter of engagement or contract with IAC Audit was entered into by Council and the twelve-month period covered by the resolution of April 2021 had now lapsed."
- 54 I have been provided with a copy of email exchanges between the then Clerk and Deputy Clerk and IAC between July 2021 and November 2021. In July 2021, the then Deputy Clerk sent an email to IAC stating that the Council had secured an alternative provider for internal audit for 2020-21.
- 55 I have not received a satisfactory explanation for the then Deputy Clerk's email to IAC in July 2021.

Conclusion

- 56 It is clear that the Council did not make proper arrangements to secure an adequate and effective system of internal audit for the 2020-21 accounts. However, this has been disclosed in the Annual Governance Statement and so I do not propose to take any further action in respect of this omission.
- 57 While I have not received a satisfactory explanation regarding the then Deputy Clerk's email of July 2021, matters concerning the conduct of Council officers are first and foremost for the Council to deal with.



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