



WALES **AUDIT** OFFICE

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Audit of Accounts 2012-13
Caerphilly County Borough Council
Report in the Public Interest

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Status of report

This report in the public interest has been prepared in accordance with Section 22 of the Public Audit (Wales) Act 2004.

No responsibility is accepted in relation to any officer, member or any other person in their individual capacity or any third party.

The PwC team that assisted me in preparing this report comprised Lynn Pamment and Ian Davies.

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Summary report

Summary

1. This document is issued in the public interest under Section 22 of the Public Audit (Wales) Act 2004 (the Act). The Act requires me to consider whether, in the public interest, I should make a report on any matter which comes to my notice in the course of the audit, in order for it to be considered by the audited body or to be brought to the attention of the public. I have issued this report to draw the public's attention to a failure in governance arrangements and inadequacies in the processes adopted by Caerphilly County Borough Council (the Council) to determine the pay of chief officers. As a result of such failures the Council has, in my view, acted unlawfully with regards to this pay-setting process. I believe it is important that the public has a full and proper awareness of the events concerning the Council. I also consider it appropriate to give the Council an opportunity to explain the important steps it has taken to improve arrangements and to ensure that the risk of such failures recurring is reduced to a minimum.
2. In late 2012, I became concerned about the processes adopted by the Council to determine the pay of its chief officers. This concern was reinforced by correspondence I received from councillors and members of the public in my capacity as the statutory auditor of the Council. The concerns raised included matters of governance and probity. I determined that several of the issues raised were matters which fell within my statutory remit and should be investigated.
3. As the appointed auditor it is my responsibility to decide whether it appears to me that any item of account is 'contrary to law' before exercising discretion on whether to apply to the court for a declaration to that effect. In the course of my audit investigation, I sought to reach a conclusion on whether the Council lawfully determined the pay levels for chief officers. I have concluded that the decision by the Senior Remuneration Committee (the Committee) on 5 September 2012 to approve the recommended pay structure set out in the Chief Executive's report to that Committee was unlawful.
4. There are a number of matters that lead me to this conclusion. The first matter is in respect of the advertisement of the meeting. I have concluded that the meeting of the Committee had not been properly advertised in accordance with Sections 100A, 100B and 100E of the Local Government Act 1972 (the 1972 Act).
5. Section 100A of the 1972 Act (as applied to committees by Section 100E of the 1972 Act) requires that public notice of the time and place of the meeting of committees be given. This was not done in breach of Section 100A.

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6. Section 100B of the 1972 Act (as applied by Section 100E of the 1972 Act) requires that:
 - the agenda and reports for the meeting shall be made available for public inspection at least three clear days before the meeting; and
 - reports may be withheld if the proper officer (usually the Monitoring Officer) is of the opinion that the consideration of the item will not be in the public interest.
 7. The agenda for the meeting was not made available for public inspection contrary to Section 100B of the 1972 Act.
 8. We have established that the reports were withheld on the basis that the Monitoring Officer had determined that they were exempt items. The lack of advertisement of the meeting alone leads me to the conclusion that the decision was unlawful.
 9. In addition to my concern regarding the advertisement of the meeting, I also have concerns in respect of the following aspects of the meeting held on 5 September 2012:
 - Certain officers, including the Chief Executive, who would have been (and were) beneficiaries of the decision were present throughout the meeting to approve the salary increases. No declarations of interest were made and these officers did not leave the room whilst the decision was made. In doing so, they participated in the decision-making process.
 - The report presented to the Committee was authored by the Chief Executive who was a direct beneficiary of the decision made and who gave advice on a matter in which he had a pecuniary interest.
 - The report by the Chief Executive did not consider the full range of options identified by the Hay Group, as set out in the appendix to the report. Nor was there any detailed and explicit consideration of these options in the meeting of the Committee.
 10. In my view, these additional matters in themselves render the decisions taken by the Committee unlawful.
 11. At a Special Meeting of the Council on 17 January 2013, the Council voted to disband the Committee and to reserve future decisions on chief officers' pay to be a decision of full Council. The Special Council Meeting, following the receipt of external legal advice, also voted to rescind the decision of the Committee and to approve a compromise agreement with chief officers. This action has resulted in a new decision being taken in respect of chief officers' pay. As a result I have decided not to apply to the court for a declaration.
 12. Notwithstanding the action taken by Council on 17 January 2013, I consider that there are lessons to be learnt by the Council, in respect of the processes followed in the original decision by the Committee, which are set out in this report. On two previous occasions (2010 and 2012) the auditors have reported to the Council concerns about the need for proper processes to inform decision making.

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13. Officers and members have co-operated fully with my audit investigation, and have indicated to me that they accept that there are lessons to be learned.

Recommendations

Advertisement of meetings

- R1 The Council should review its procedures for the advertisement of meetings. Controls should be introduced to mitigate against the risk of omissions. As an example, adverts could be reviewed by an officer independent of the officer preparing them in order that any omissions can be identified.

Conflicts of interest

- R2 Clear guidelines should be produced and incorporated into the terms of reference of all decision-making forums in the Council in respect of the procedures to be followed when members, or those in attendance at such forums, may be influenced by a pecuniary or personal interest in the outcome of any decision to be taken. In particular, they should emphasise that such individuals are disqualified from participation in that process and that:
- they should declare an interest in the matter;
 - they should leave the meeting during any discussion of the matter; and
 - they should not have sole responsibility for making recommendations in relation to the matter, whether present or not.

Procedures for new committees

- R3 Where new committees or other decision-making bodies are set up by the Council, there should be clear terms of reference setting out the powers, responsibilities and procedures of the body. These should be formally adopted by the committee at its first meeting. Training should also be provided to members in respect of the requirements of the committee prior to its inaugural meeting to ensure that the terms of reference are understood.

Records of meetings

- R4 Records of meetings should be sufficiently detailed to provide information on the matters discussed. Any redactions should be the minimum necessary to address any exempt items. For sensitive matters, the record of a meeting should include a summary of any vote taken or state whether or not the vote was unanimous, so that members can agree with the accuracy of the minutes prior to their approval.

Clarity and comprehensiveness of reports to committees

- R5 Where review work is undertaken, either by an external body or internally, to support a report to a committee or other decision-making body, then the covering report should explicitly address the matters raised as part of the review work.
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Detailed report

Background

14. At its meeting on 26 June 2012, the Council considered a report of its Chief Executive containing two proposals: the agreement of a Pay Policy for publication; and the establishment of a delegated committee to deal with the pay and remuneration arrangements of the Chief Executive, directors and heads of service. Both of these proposals were agreed and a Senior Remuneration Committee was established. The Committee was politically balanced and consisted of five experienced members, each of whom held, or had held, Cabinet positions.
15. The inaugural meeting of the Committee was held on 5 September 2012. Along with the election of a Chair, the Committee considered a report from the Chief Executive, which sought:
 - approval for an updated chief officer banding structure which was detailed in the report at paragraph 4.12; and
 - approval for a Senior Pay Strategy, setting the pay for chief officers other than those in Band A at the 50th percentile of the benchmark determined by Hay Group, and for those in Band A at the 75th percentile, with effect from 1 August 2012.
16. The report set out that the approvals were sought in order to ensure that the Council's Chief Officer Team is resourced and structured to deliver against the challenges within the Medium Term Financial Strategy. There was also the risk of the loss of qualified and competent chief officers due to, what were viewed in the report, as the current uncompetitive pay arrangements. The Committee approved both of the recommendations in the Chief Executive's report.
17. The minutes of the meeting state that it was attended by members of the Committee in the presence of the Chief Executive, the Head of Legal and Governance and the Head of Human Resources and Organisational Development. The meeting was also attended by a representative of the Hay Group, which had been commissioned by officers to provide consultancy and benchmarking information on senior managers' pay to inform the Chief Executive's report and recommendations. The attendance by the Hay Group representative was not reflected in the minutes of the meeting.
18. At its meeting on 9 October 2012, the Council was asked to receive and note the minutes of the Committee meeting of 5 September 2012.
19. The minutes were not accompanied by the report that had been considered by the Committee. Consequently, information about the changes to the pay and grading structure for chief officers that had been considered and agreed by the Committee was not available for consideration by the Council. However, as noted above at the Council meeting on 26 June 2012, a Senior Remuneration Committee had been established with full delegated powers to consider and approve the pay and remuneration arrangements for senior management. Hence the Council on 9 October 2012 was not required to endorse the decision of the Committee but merely to note it. We also understand that the papers for the Committee were available to members on the Council's intranet the day after the meeting of the Committee took place.

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- 20.** Subsequently, and in response to concerns raised by members and staff of the Council, as well as electors, the Council received external legal advice in relation to the decision taken by the Committee and the process followed.
- 21.** A Special Meeting of the Council was requested in line with the Council's constitution by five members. The request for the meeting was that 'we, the undersigned, hereby request the Mayor to call a Special Meeting of Caerphilly CBC as a matter of urgency in order that the question of rescinding pay rises for senior staff can be discussed properly by all councillors, after the presentation of a full report on the matter'.
- 22.** The legal advice referred to above was presented to the Council at its Special Meeting on 17 January 2013, along with a report from the Chief Executive, summarising the legal advice and advising the Council of its options. Whilst this report was authored by the Chief Executive, the report stated that to avoid any conflict of interest, the Chief Executive would absent himself from the meeting whilst his own remuneration was considered and this is what he did.
- 23.** The options for consideration by the Council at its Special Meeting were as follows:
- a)** Rescind the decision and place the senior officers on the old pay scales. The officers to be protected for 18 months on the terms and conditions introduced by the Senior Remuneration Committee.
 - b)** Rescind the decision, dismiss the officers and offer to re-engage them on their previous terms and conditions.
 - c)** Take the decision afresh but confirm existing terms and conditions will be maintained in accordance with the recommendations set out in the report to the Committee on 5 September 2012.
 - d)** Take the decision afresh but confirm the senior officer pay structure will be maintained in accordance with the recommendations set out in the report to the Committee on 5 September 2012, but with a different decision regarding the pay strategy. Implementation of any changes to terms and conditions to be achieved either by agreement with senior officers, or by dismissal and re-engagement on new terms and conditions.
 - e)** Rescind the decision by way of a negotiated compromise with the Senior Officer Group.
- 24.** The decision taken by the Council was (e), to rescind the decision by way of a negotiated compromise with the Senior Officer Group. This saw a reduction in the levels of pay awarded compared to the decision of the Committee. It was reported at the Council meeting that the decision would save £418,000 over four years. Although not stated at the Special Council Meeting on 17 January 2013, the Monitoring Officer has since informed me that the reduction will come into effect from 1 April 2013.

The decisions taken by the Senior Remuneration Committee were unlawful

25. The meeting of the Committee had not been properly advertised in accordance with Sections 100A, 100B and 100E of the 1972 Act. Section 100A of the 1972 Act (as applied to committees by Section 100E of the 1972 Act) requires that public notice of the time and place of the meeting of committees be given. This was not done, in breach of Section 100A.
26. Section 100B of the 1972 Act (as applied by Section 100E of the 1972 Act) requires that:
 - the agenda and reports for the meeting shall be made available for public inspection at least three clear days before the meeting; and
 - reports may be withheld if the proper officer (usually the Monitoring Officer) is of the opinion that the consideration of the item will not be in the public interest.
27. The agenda for the meeting was not made available for public inspection, contrary to Section 100B of the 1972 Act.
28. I have concluded that the lack of advertisement makes the decision of the Committee to be unlawful.
29. Council officers have informed us that the lack of advertisement was due to human error. From our interviews with staff, there is no evidence that the lack of advertisement was anything other than an error.
30. Certain officers who were among the beneficiaries of the decision were present throughout the Committee meeting on 5 September 2012, and no declarations of interest were made. In addition, the report presented to the Committee was authored by the Chief Executive. A person is disqualified from participation in a decision-making process if there is a real possibility that he or she would be influenced by a pecuniary or personal interest in the outcome of the decision as established by case law. Such an interest has to be declared. Individuals having such an interest are not entitled to participate in the decision-making process unless the interest is too remote or insignificant to matter. As such, we would have expected:
 - officers to have declared an interest in the proceedings;
 - officers to have left the meeting whilst the members of the Committee discussed the recommendations in the Chief Executive's report and reached their decision; and
 - the members of the Committee to have approved the terms of reference for the independent advice commissioned into remuneration (as a minimum in respect of the Chief Executive's pay).

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31. There were a number of considerations in the Hay report which were not referred to in the Chief Executive's report, and for which there are no notes of discussion in the minutes of the Committee meeting. These include:
- options for phasing of awards or performance-related payments;
 - the need for the Council to understand the return on its investment in any new pay structure; and
 - the need to consider the Council's strategic objectives about pay to inform the actions it takes on pay scales, for example, the option to do nothing, to pay competitively, to pay in order to attract the best and to consider opportunities to progress pay based on performance.
32. Interviews with members of the Committee confirm that there was little discussion in relation to these points. Rather, the focus was on the recommendations in the Chief Executive's report. There appears to have been some brief discussion in relation to performance-related pay, which was dismissed as an option. At least one Committee member confirmed that the focus of the discussion was on confirming that there was a problem with chief officers' pay that needed to be addressed, rather than on how that problem should best be addressed. We would have expected there to have been explicit consideration, in the meeting, of each of the points raised by Hay in its report, which were pertinent to how the issue of chief officers' pay be resolved.
33. I accept that the decision was ultimately taken by the members of the Committee. However, I am concerned as to the presence of the officers throughout the meeting, the lack of declarations of interest and the apparent failure to consider the options contained in the Hay report. In my view, the participation of these officers in the decision-making process renders the decision of the Committee ultra vires and therefore unlawful, on this further ground.

There are weaknesses in the governance procedures at the Council

34. Regardless of the legal position, the concerns I have outlined above are significant from a governance perspective and represent a failure in good governance procedures by the Council.
35. As well as the weaknesses noted above, there are other areas in which I have concern from a governance perspective. These concerns relate to the procedures for the first meeting of a new committee, the clarity of the report presented to the committee and the records of the committee meeting.

The procedures for the first meeting of a new committee should have been more robust

- 36.** The Council has confirmed that no formal terms of reference for the Committee existed. Terms of reference would have provided more guidance on:
- responsibilities for initiating reviews of remuneration;
 - any requirement for commissioning independent advice and who should do this; and
 - the respective roles and responsibilities of members and officers.
- 37.** We understand that the members of the Committee are all experienced members (including a former and current Cabinet member with Human Resources responsibilities). Whilst this means that there was expertise in relation to Human Resources matters, the members do not appear to have received any induction in relation to their roles and responsibilities on the Committee, and the purpose and powers of the Committee itself. We would have expected that at an inaugural meeting, which dealt with such a sensitive matter, there would have been an initial session setting out the roles, powers and responsibilities of members. It would also be expected that one of the early items for consideration would be to consider the Committee's terms of reference.
- 38.** We understand that the Council appointed the Hay Group in 2004 as its retained independent experts on senior pay. For the specific exercise to advise on chief officers' remuneration, the Hay Group was commissioned by officers. A representative from the Hay Group was also present at the Committee meeting. Members of the Committee played no part in procuring this independent advice, for example in setting terms of reference for the advice, and did not consider the advice without officers present. We would expect such a committee to play a role in the commissioning of such independent advice directly, as a minimum in relation to the Chief Executive's pay, for example by approving the terms of reference of the review to be undertaken in order to provide the advice. In the absence of terms of reference for the Committee, the members would have lacked guidance on the respective roles and responsibilities of members and officers in the commissioning of such advice.

The report presented to the Committee lacked clarity in certain respects

- 39.** Whilst most members stated in interviews that they were aware of the salary points at which the officers would be paid as a result of the implementation of the recommendations in the Chief Executive's report, this was not reported to, or discussed in, the meeting. At least one member stated that he was unaware of how the pre-existing bandings for officers would 'map' into the proposed bandings and hence the implications on salaries. There should have been a clear presentation of the implications of the proposed banding structures on individual salaries in the Chief Executive's report and discussion on this point by the Committee.

The records of the meeting were inadequate

40. The minutes of the meeting are very brief and so there is no adequate record of the discussion that took place. Whilst we understand that some redaction of discussion is necessary given the exempt nature of the reports, this has meant that it is not possible to resolve some inconsistencies in recollections of the meeting. Furthermore, there was at least one inaccuracy in the minutes:
- The minutes do not disclose that a representative of Hay Group was present in the meeting. We understand that many of the questions by the members were addressed to, and answered by, this representative so this is not a trivial omission.
 - The minutes do not record whether the approval of members was unanimous. One member contends that he did not vote in favour, a claim disputed by all others present. We understand that an issue has been raised with Public Services Ombudsman for Wales in relation to how members voted.
 - One councillor contends that officers did leave the meeting while the recommendation was debated by members and a decision reached. This version of events is not borne out by interviews with all others present.
41. We would have expected the minutes to provide an accurate record of the meeting and that for a sensitive matter such as this, to have recorded whether or not the vote was unanimous.

Next steps

42. The Council is now required by Section 25 of the 2004 Act to consider this report at a full meeting of the Council within one month of the date of this report. At the meeting, the Council must decide:
- whether the report requires it to take any action;
 - whether the recommendations in the report are to be accepted; and
 - what action (if any) to take in response to the report and recommendations.

Acknowledgements

43. I wish to express my appreciation to officers and members of the Council for their co-operation during the audit.



Anthony Barrett
Appointed Auditor
06 March 2013



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