

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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