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[redacted]
Via e-mail

Reference: BTC202223

Date issued: 25 October 2024

Dear [redacted]

Buckley Town Council: Audit of accounts 2022-23
Objection under section 31 Public Audit (Wales) Act 2004

I am writing for and on behalf of the Auditor General for Wales in relation to the objection you submitted by email on 13 September 2023 to the accounts of Buckley Town Council for the year ended 31 March 2023.

On 19 September 2023, my audit team contacted you by email to request clarification of your objection and to give you the opportunity to provide any further information you considered relevant. We did not receive a response and therefore proceeded on the basis of our understanding of your objection.

I have now completed my examination of the matters raised in your objection and set out below my findings and conclusions. I have only considered those matters that are relevant to the Auditor General's functions under the Public Audit (Wales) Act 2004 (the 2004 Act).

Matters related to member conduct and Council administration are matters for the Public Services Ombudsman for Wales. The Ombudsman's website is www.ombudsman.wales. The homepage provides a link to advice on how to make a complaint.

Grounds for objection

You raised the following matters in your objection:

Unlawful expenditure

- The Council did not follow a proper process for the appointment of a locum clerk and that the expenditure incurred is unlawful.
- The Council does not have in place proper arrangements to secure value for money in relation to the locum clerk's remuneration and travel expenses.

Financial Health and prudent financial decisions

- The Council has made imprudent decisions related to the insurance of the Old Buckley Baths Community Hall.
- It is unclear if there is a legitimate reason for the Council to incur this expenditure

Other matters

- The Council has advertised the town clerk vacancy twice but not interviewed any applicants.
- Members are authorising payments without receiving further detail. For example, salary payments are not detailed and an analysis was not provided for you on inspection.
- There is a conflict of interest between the Town Centre Support Officer (a contractor to the Council) acting as the Council's Town Events Organiser and the supplier of equipment for Christmas events.
- The Council has not reviewed a number of contracts for some time.

Exercise of Auditor General's functions under the 2004 Act

The following paragraphs set out my decisions regarding your objection.

Report in the public interest

Section 22 of the 2004 Act provides that the Auditor General must consider whether, in the public interest, he should make a report on any matter which comes to his notice in the course of the audit, in order for it to be:

a) considered by the body, or
b) brought to the attention of the public

The decision as to whether or not to issue a report in the public interest is a matter for the sole discretion of the Auditor General. Relevant factors taken into consideration include the quantum of any unlawful item of account or loss, whether there were significant failings in governance, whether the matters that might be the subject of a report are ongoing, whether there has been significant publicity in respect of the issues, whether the Auditor General has recommendations to make to the Council and whether the Auditor General believes that his independent view should be expressed in public.

In making your objection, it was not clear whether or not you were asking that the Auditor General issue a report in the public interest to draw attention to the issues you raised. We proceeded on the basis that this was your intention.

Decision on making a report in the public interest

Based on my findings set out in **Appendix 1** (which also covers certain other matters that you have raised), in this instance the matters do not appear to the Auditor General to require such a report.

The Auditor General is of the view that a more appropriate mechanism for him to report on issues relating to the Council satisfying itself that it acts within the law, would be his Annual Audit opinion, which he is intending to issue to the Council by 2 December 2024 and which will in due course be a public document.

Application to the court for a declaration that an item of account is unlawful

Section 32 of the 2004 Act states that where it appears to the Auditor General that an item of account is contrary to law, he may apply to the court for a declaration that the item is contrary to law. If the Auditor General decides not to make an application for a declaration, he must notify a person who has made an objection under section 31(1)(a) in relation to the item of account of his decision.

In making your objection, you identified transactions that you considered to be unlawful. However, it was not clear whether you were requesting that the Auditor General make an application to the court for a declaration that these items of account are contrary to law. We proceeded on the basis that this was your intention.

These transactions were:

- payments made to the locum Clerk during 2021-22 and 2022-23.

Decision on making an application to the court

For the purposes of section 32 of the 2004 Act, I have decided not to make an application to the court for a declaration that any item of account is contrary to law. The following paragraphs state my reasons for this decision and meet my obligation to provide you with a statement of reasons under section 32(6) of the 2004 Act.

Statement of reasons

In my opinion, it is not in the public interest to make an application to the court in respect of the payments made in respect of the locum clerks:

- the Council has specific powers to appoint staff on such terms and conditions as it considers reasonable;
- the appointment of the Locum Clerk in May 2022 followed a lawful process;
- while the Council could have improved the procedure followed in November 2022 to appoint a second Locum Clerk, the deficiencies are not such that in my opinion would render the procedure unlawful;
- payments made to both Locum Clerks were in accordance with the agreed rates of pay and expenses; and
- the rates of pay were not unreasonable compared to the NALC national scale.

Appeal to the court

Under section 32(7) of the 2004 Act, you may appeal to the court against the Auditor General's decision not to make an application under section 32. You must do this within 28 days starting with the day you receive this letter setting out the Auditor General's decision and his reasons. (The High Court and the county court have jurisdiction for the purposes of section 32 of the 2004 Act.)

Any appeal must be made by filing an appellant's notice in the prescribed form (Form N161) at the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL, within 28 days, calculated from the date on which you receive this letter. The procedures relating to statutory appeals are set out in the Civil Procedure Rules 1998 (as amended) and supplemental Practice Directions.

Should you make an appeal, the court has the same powers in relation to the item of account as it would have if the Auditor General had applied to the court.

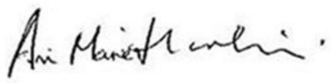
Next steps

As I have decided not to issue a report in the public interest or to make an application to the court, I intend to complete the Auditor General’s audit and issue the outstanding audit certificate and opinion in not less than 30 working days from today, ie not before 25 November 2024. This will allow sufficient time for you to consider whether or not you wish to appeal to the court as set out above.

I do not consider it to be in the public interest to undertake any further audit procedures in relation to these matters. Therefore, subject to any appeal you make to the court, I regard these matters closed, and we will not consider any further correspondence related to them.

I have copied this letter to Buckley Town Council.

Yours sincerely



Ann-Marie Harkin
Executive Director for Audit Services
For and on behalf of the Auditor General for Wales

Appendix: Audit findings and conclusions

Work carried out

In the course of my audit enquiries, I have considered:

- the written submissions of both you and the Council (including relevant internal records of the Council), whether specifically referred to in this letter or not;
- minutes of Council meetings including those held in private;
- information publicly available on the Council's website; and
- information publicly available on the Flintshire County Council website.

Unlawful expenditure related to the Locum Clerks

The Council appointed two Locum Clerk during the 2021-22 and 2022-23 financial years. These locum appointments were made to ensure the Council had a Proper Officer to enable Council meetings to take place while a recruitment process was undertaken to find a permanent Clerk.

In your objection email of 13 September 2023, you stated that the appointment of a Locum Town Clerk in both 2021-22 and 2022-23 did not comply with Standing Orders and was therefore unlawful.

Findings

Statutory powers for appointment of staff

The Council's powers to appoint staff are set out in the Local Government Act 1972 (the 1972 Act). Section 112 of the 1972 Act states that local authorities (including community councils) "shall appoint such officers as they think necessary for the proper discharge. of their functions." Officers appointed by councils "shall hold office on such reasonable terms and condition, including conditions as to remuneration, as the authority appointing him think fit."

Standing Orders

Emergency appointments for locum positions are not explicitly covered by the Council's Standing Orders. However, there is a requirement to have a Proper Officer to ensure Council Meetings can take place.

Locum Town Clerk Appointment 2021-22

Following the commencement of sickness absence of the then incumbent Town Clerk, the Council appointed a Locum Town Clerk in November 2021 under what the Council regarded as emergency circumstances. After a period of sickness absence, the incumbent Town Clerk formally retired from the post in February 2022.

The Council discussed the appointment of a Locum Clerk at an Extraordinary Council meeting held on 23 November 2021. The meeting was held in camera i.e. in private, due to the personal nature of the discussions and the minutes are not publicly available for this reason.

The meeting was summoned by the Council Chair (Mayor) at the time. Schedule 12 of the Local Government Act 1972 specifically allows the Chair to convene an extraordinary meeting at any time (LGA 1972 Sch 12, para 25). This is also set out in the Council's Standing Orders (Standing Order 20). The minutes record the sole purpose of the meeting to be the appointment of a Locum Town Clerk. The meeting was quorate with 15 members present, including the Mayor.

The minutes record "It was resolved- that the appointment of a Locum Town Clerk be approved and that the Mayor and VC of the Finance and Economic Development Committee be given Delegated Powers to Act in appointing a locum Town Clerk and the hours that would be required."

We identified subsequent correspondence between the Mayor and Vice Chair of the Finance and Economic Development Committee to Members seeking approval from the Council for the appointment of the Locum Town Clerk.

At a meeting of the Establishment Sub-Committee held on 14 February 2022 it was agreed that the vacancy for a permanent Town Clerk and Responsible Financial Officer was to be advertised on the Council website as a matter of urgency with a closing date for applications by 4 March 2022. Interviews were to be held a week later by a specially convened interview panel made up of four members. The Council also advertised the vacancy in the Flintshire Leader on 24 February 2022.

The Establishment Sub-committee also agreed that a temporary Contract of Employment for the Locum Town Clerk be agreed until a permanent Town Clerk was appointed and handover took place.

The Minutes of the Establishment Sub-Committee were approved as a correct and confidential record by the Council at the full Council meeting of 2 March 2022.

The Council conducted interviews for two applicants on 15 March 2022. The successful candidate was the individual who had been acting as Locum Town Clerk. The Town Clerk appointment was ratified at the first subsequent full Council meeting held on 17 May 2022.

Conclusion

The emergency appointment of the Locum Town Clerk in the circumstances set out above appear to me to be:

- in accordance with the Council's statutory powers and Standing Orders; and
- not defective for any other reason.

Therefore, I do not consider that the May 2022 emergency appointment of the Locum Town Clerk was unlawful.

Locum Town Clerk Appointment 2022-23

The Town Clerk appointed in May 2022 subsequently resigned in early October 2022. The Council then placed an advertisement for a replacement on its website and in the Flintshire Leader with a closing date of 14 November 2022.

You state that the Council did not comply with its Standing Orders when appointing the Locum Town Clerk and that no other members, apart from the then Town Mayor, were involved in the decision prior to the appointment.

The Council argue that the emergency circumstances following the resignation of the Town Clerk necessitated the appointment of a Locum pending the outcome of the recruitment process for his replacement.

As noted above the Standing Orders are silent on such emergency appointments. The Council appears to have applied the previous delegated decision approval, granted in November 2021 (see above) to the appointment process for a new Locum Clerk.

The Locum Clerk had been recommended by the Council's internal auditor. He met with Council Members on 26 October 2022 to discuss the position and was appointed on a Locum basis on 21 November 2022.

The minutes of the Council Meeting of 13 December 2022, reference 186000 Resolved - That the appointment of Mr Shaun Jones as Locum Town Clerk and Responsible Financial Officer be received, noted and approved.

Conclusion

In my opinion, the Council's reliance on its previous delegation arrangement should have been made clear. However, the appointment of a locum clerk is a normal practice intended to ensure the ongoing, effective day to day management of the Council.

Although the delegation arrangement made in November 2021 would have been intended to deal with a one-off situation, it would not have been unreasonable for the same arrangement to be made in October 2022. (Of course, had the Council done so then there would be no question over the lawfulness of the appointment.)

Therefore, in my opinion, the failure to restate the delegated authority does not render the process contrary to law. I do not consider it would be in the public interest to take any further action in relation to this appointment.

Value for money – Locum Clerk

You state that the Council cannot demonstrate that it is achieving value for money in terms of the sums being paid to the Locum Clerk. I take this to indicate that you consider that the Council does not have in place proper arrangements to secure value for money in relation to the locum clerk's remuneration and travel expenses.

The National Association of Local Councils (NALC) publishes a national pay scale that is updated on an annual basis. This scale is not mandated for community and town councils, but many councils use the NALC scale to determine their clerks' pay.

Prior to beginning the appointment process for the Locum Clerk in November 2021, the Council contacted the Society of Local Council Clerks (SLCC) enquiring about locum services. SLCC's advice was shared with the Council at its 23 November 2021 Extraordinary Meeting. The advice sets out the standard hourly rates charged by Locum Clerks. These are stated as ranging from £25-£40 plus mileage which was said to be typically 45p per mile.

The Council Members had approved the vacancy advertisement placed in the Flintshire Leader which set out the minimum hours required of the Town Clerk position and would therefore have been aware of the pro-rata hourly rate associated with the role.

There was a necessity to have a Proper Officer in place pending the conclusion of the recruitment process.

The sums paid to the Locum Town Clerk were in line with both the NALC national scales and independent advice given in relation to hourly pay scales and typical milage allowance.

Mileage expense claims submitted were in line with the Locum Town Clerk's employment contract and were approved by the Finance Committee and had the requisite signatures.

The Locum Town Clerk did not exceed the maximum hours stipulated in the contract, and these were in line with those set out in the advertisement for the Clerk position.

Conclusion

Given the findings above, I do not consider that there is evidence to conclude that the Council has not made proper arrangements to secure value for money.

Multiple advertisements for the role of clerk and interviews

You state that the Council has advertised their Clerk vacancy twice and despite receiving applications, has not interviewed anyone for the position.

In relation to the vacancy advertised in February 2022, we set out above that interviews were carried out on 15 March 2022.

In relation to the vacancy advertised on 14 November 2022, a short list of three candidates was brought before the Establishment Sub-Committee on 15 December 2022.

Council Members considered the applicants against the stated essential criteria for the role and determined that none of the candidates satisfied the listed essential criteria and therefore were not invited to progress to the interview stage.

Minutes of the Council Meeting of 24 January 2023 record under minute reference 18631 “Resolved – That a second round of recruitment activity, with the Establishment Sub-Committee oversight be approved and actioned.“

There were two subsequent rounds of recruitment activity with oversight by the Establishment Sub-Committee.

The minutes of the Establishment Sub-Committee meeting of 13 April 2023 note that only one application was received in the second recruitment round. However, this was from a candidate who had previously applied and was deemed unsuitable.

The Establishment Sub-Committee resolved to proceed with a third round of recruitment and would look to engage professional support, with the cost of this to be approved ahead of any appointment.

Conclusion

I conclude that the recruitment process for the appointment of a Town Clerk was followed in compliance with the Standing Orders. Advertisements had been placed in both instances, with Members determining suitability of candidates for interview. The locum position is not covered by the Standing Orders, with such appointments made in emergency circumstances, pending the conclusion of the recruitment process described above.

Financial Health and Prudent Financial Decisions

You queried whether there was a legitimate reason for the Council to meet the cost of insurance for the Old Buckley Baths Community Hall and how this is viewed given that a company has been created and three Councillors are Directors. You also queried the earmarked reserve, the continuation and affordability of the arrangement.

Audit findings

The ownership structure of the Old Buckley Baths building is publicly available as is its charitable trust status. The charitable trust, The Old Buckley Baths Community Hall Ltd (the Trust), is run by eight trustees from Buckley Town Council, Flintshire County Council and the Coal Industry Welfare Association.

The Trust was created in 2012 to take control of the derelict building, to apply for funding and to consider plans for the future use of the building. Transfer of ownership of the asset was finalised in 2014 with a £50,000 reserve earmarked by Buckley Town Council as part of the terms of the transfer.

Details of the terms of the transfer agreement, appointment of trustees and other background information can be found with the papers provided to the Flintshire County Council Standards Committee meeting held on 2 November 2015.These minutes are available on the Flintshire County Council website. Minutes of meetings dating back to 2014 are not available on Buckley Town Council's website.

The Council make annual financial assistance contributions to the insurance costs of the Old Buckley Baths building under Section 111 of the Local Government Act 1972.

The Limited Company as charitable trust owner of the building is the policyholder and not Buckley Town Council. The public liability insurer for Buckley Town Council is Zurich, who may separately have given guidance on liability in relation to the proximity of the Old Bath's building, but this is not related to the financial assistance payment in Voucher 12706.

The earmarked reserve is an historical arrangement, agreed as part of the transfer of ownership of the building from Buckley Town Council and the Coal Industry Welfare Association to the charitable trust. The contributions to the cost of insuring the building are met by the annual financial assistance payment.

Conclusion

The Council has exercised a lawful power to provide financial assistance in relation to the charitable trust.

Other Matters

Authorisation of payments

You state that Members are authorising payments without any details behind them and that the minutes of Council meetings do not include a detailed list of payments. You further note in your email that there is no breakdown of salary amounts provided to the Council and the salary figure was not broken down for you when you inspected the accounts.

We found that Finance & Economic Development Minutes and agendas demonstrate members were provided with a detailed breakdown of payments made in the period. Furthermore, the minutes note that the Locum Town Clerk provided bank reconciliation reports and summary of receipts and payments set against the approved budget.

Section 30 of the Public Audit (Wales) Act 2004 sets out your rights to inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them and to make a copy of these documents.

However, section 30 (3) of the Act states that nothing in this section entitles a person to inspect any accounts or other document to the extent that the accounts contain, or the document contains, personal information. Section 30 (4) defines personal information to include information relating to the fact that the individual holds or has held an office or employment with the Council.

Therefore, I conclude that you would not be entitled to inspect an analysis of salary payments.

Events organised by the Town Events Organiser

You state that there is no documentation to support quotes had been sought from other companies to demonstrate that value for money has been received in relation to events organised by the Town Events Organiser. You state that the Council hires Christmas event items from a company connected to the Council's Town Events Organiser.

For 2022-23, we found that the value of events items hired by the Town Events Organiser from the company you refer to totalled £1,600.

- Voucher 12841: £300 for stage hire for fireworks night
- Voucher 12858: £1,300 stage for Christmas lights switch on

Financial Regulation 11.1.(i) states that where the contract value is below £5,000 and above £500 the Clerk or RFO shall strive to obtain three estimates.

The internal audit report for the 2022-23 year did not identify any issues related to the awarding of contracts during 2022-23.

In view of the value of the contracts awarded and the wording of the of the Financial Regulations it would not be in the public interest to undertake any further audit work in relation to this matter.

Long-running contracts

You state that you had identified a number of contracts which had not been reviewed for some time.

We identified two long-running contracts:

- the Town Events Contractor; and
- a cleaning services contract.

Both of these contracts had been entered into in 2020 for a three-year period with a one-year extension option.

Both contracts were put out to tender on the Sell2Wales website and advertised on the Councils website in the year 2023-24.

The cleaning contract was awarded to a new supplier following the bidding process.

The Town Events contract tender received only one bid and has been awarded to the previous contractor as the sole bidder in the tendering exercise.

The awarding of contracts received full Council approval in February 2024.

The tendering process was completed in compliance with the revised Financial Regulations.