



THE COMMUNITY COUNCIL OF ABERTILLERY & LLANHILLETH  
CYNGOR CYMUNED ABERTYLERI A LLANHILLEDD

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**NOTICE OF MEETING**

25 October 2021

Dear Councillor

You are summoned to attend an extraordinary meeting of Abertillery and Llanhilleth Community Council, to be held in the Council Chamber, Council Offices Mitre Street on **Wednesday 3 November 2021 at 7.00pm**. The agenda for the meeting is set out below.

Yours faithfully

David Cartwright  
Clerk

**AGENDA**

- 1. Apologies for absence and welcomes**
- 2. Declarations of interest or dispensations**
- 3. Questions from the public**
- 4. Wales Audit – Report for 2014-2015**
  - a) To accept the findings of the report *Unlawful Payments and Governance Failings* published by Audit Wales on 14 October 2021.
  - b) To consider whether the Council should seek recovery of the unlawful over-payments made to the Council's former Clerk and former Secretary referred to in the report.
  - c) To authorise officers to seek legal and regulatory advice in relation to fulfilling the decision of the Council with regards to b).

Members of the public are welcome to attend the meeting via Zoom. Anyone wishing to do so should contact [clerk.alcc@gmail.com](mailto:clerk.alcc@gmail.com). Any member of the public wishing to ask a question must submit the question in writing to [clerk.alcc@gmail.com](mailto:clerk.alcc@gmail.com) by 12pm on 26 October 2021.

# Unlawful Payments and Governance Failings – Abertillery and Llanhilleth Community Council

Audit year: 2014-15

Date issued: October 2021

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We welcome correspondence and telephone calls in Welsh and English. Corresponding in Welsh will not lead to delay. Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg a Saesneg. Ni fydd gohebu yn Gymraeg yn arwain at oedi.

Mae'r ddogfen hon hefyd ar gael yn Gymraeg. This document is also available in Welsh.

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Acting under delegated arrangements and on behalf of the Auditor General for Wales, I have issued this report under section 22 of the Public Audit (Wales) Act 2004, to draw the public's attention to significant failures in decision making and inadequacies in financial management and unlawful payments made at Abertillery and Llanhilleth Community Council.

This report sets out a number of inadequacies in the Council's governance and financial management and identifies that the Council made unlawful payments of gratuities to two members of staff.

The Council must consider the report and the recommendations made, in accordance with section 25 of the Public Audit (Wales) Act 2004.

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# Summary report

## Introduction

- 1 This report summarises my conclusions arising from my audit of Abertillery and Llanhilleth Community Council's (the Council) accounts for the 2014-15 financial year.
- 2 This report is an immediate report issued in the public interest under Section 22 of the Public Audit (Wales) Act 2004 (the Act). I have issued this report to draw the public's attention to the Council's failures in decision making and inadequacies in financial management and internal control. Given the nature of the issues I identified, I believe it is important that the public has a full and proper awareness of the events concerning the Council.
- 3 I also consider it appropriate to give the Council an opportunity to demonstrate the important steps already taken to improve arrangements and to ensure that the risk of such failures recurring is reduced to a minimum. In preparing this report, I have provided opportunities for those identifiable in the report and the Council as a whole to comment on my audit findings. This report reflects comments received from these parties.
- 4 I note that there are lessons to be learnt not just by this Council, but by all community councils in Wales.

## Abertillery and Llanhilleth Community Council

- 5 The Council is located in Blaenau Gwent and serves the communities of Abertillery and Llanhilleth. The Council is a statutory body established under the provisions of the Local Government Act 1972 and provides a limited number of local services and facilities.
- 6 During 2014-15, the accounting period to which this document relates, the Council had 19 councillors who were democratically elected by registered electors of Abertillery and Llanhilleth. The Councillors were not paid for undertaking this role. During 2014-15, the Council spent £142,175. This includes £84,651 on staff related expenditure of which £19,522.18 (before deduction of tax) was paid to the Clerk of the Council and £23,858.64 (before deduction of tax) was paid to the Council Secretary in the form of one-off gratuity payments on the termination of their employments. Most of the remainder of the Council's expenditure was spent in making donations to local community groups and causes.
- 7 The expenditure was primarily financed by making a precept (an order to collect money) against Blaenau Gwent County Borough Council (BGCBC). BGCBC in turn included the precepted amount within the Council Tax bills of residents of Abertillery and Llanhilleth. The expenditure of the Council was therefore primarily paid for by local residents through the Council Tax.
- 8 Community councils such as Abertillery and Llanhilleth are very small public bodies and normally rely on one key officer, the Clerk, to manage their administrative

affairs. In most cases, the Clerk is also appointed in the capacity of Responsible Financial Officer (RFO). The RFO is responsible for administering the financial affairs of the Council on a day-to-day basis. This usually involves receiving and recording income, preparing cheque payments for signing by members, administering payroll payments, maintaining the Council's accounting records and preparing annual accounts. During 2014-15, the Council's Clerk was Mr Graham Bartlett.

- 9 Notwithstanding the role of the Clerk/RFO, by law (the Accounts and Audit (Wales) Regulations 2014 (the 2014 Regulations)), the responsibility for the stewardship of Council funds, including ensuring that it has effective and efficient financial management, rests with the Council (that is, the members). This includes such things as establishing an appropriate system of internal control, including internal audit, and approving the annual accounting statements prior to submission to the external auditor for examination.

## Audit work undertaken

- 10 In accordance with the audit legislation in place during the 2014-15 financial year, the Auditor General for Wales (Auditor General) appointed an audit firm, Mazars to conduct the statutory external audit of the Council's 2014-15 accounts. During 2015, the Auditor General received correspondence from members of the public and some members of the Council raising concerns over the termination payments referred to in **paragraph 6**, and the overall governance of the Council. In view of the seriousness of the concerns raised, the Auditor General decided that the audit of the Council's 2014-15 accounts should be completed by auditors employed by the Wales Audit Office<sup>1</sup>.
- 11 Following initial audit enquiries, I considered it necessary to bring some matters to the attention of officers of Gwent Police to enable them to consider whether there was evidence of criminality. Gwent Police carried out its own lengthy investigation into these matters, and having sought advice concluded that it would not be in the public interest to seek to pursue a prosecution. I was unable to progress and conclude my audit until Gwent Police had completed its investigation.

## Key findings

- 12 My audit work found that:
- during 2014-15, the Council spent £84,651 on staff related expenditure. This includes £19,522.18 (before deduction of tax) paid to the Clerk of the Council and £23,858.64 (before deduction of tax) paid to the Council Secretary in the form of one-off gratuity payments on the termination of their

<sup>1</sup> When the Public Audit (Wales) Act 2013 was fully implemented, the Auditor General became the statutory auditor of all local authorities in Wales.

employments in October 2014. Most of the remainder of the Council's expenditure was spent in making donations to local community groups and causes. The Clerk participated in the decision-making process whilst disqualified from doing so. In my opinion the payment of these gratuities was unlawful.

- the Clerk and the Secretary received salary payments in excess of the amounts formally agreed by the Council and the Clerk added further unauthorised supplements to his pay.
- the Council failed to comply with its contract standing orders when purchasing goods and services, and as a consequence it is unable to demonstrate that it achieved value for money.
- the Council's management of its financial affairs was inadequate and did not meet legislative requirements.
- the Council failed to meet its legislative duty to put in place and maintain an adequate and effective internal audit.
- the Council's governance arrangements were deficient in several material respects.

## Recommendations and next steps

- 13 The matters set out in this report occurred several years ago. As the audit process was necessarily protracted by the lengthy police investigation, my audit team addressed the Council at a meeting held in December 2015 and I am satisfied that since then the Council has made considerable efforts to improve its governance and financial management arrangements. The Council has appointed new officers and several of the members of the Council who were involved during 2014-15 are no longer in office.
- 14 As a consequence, whilst I intend to continue to monitor the progress made by the Council to improve its arrangements, I am only making one recommendation in this report.

## Recommendation

### Recommendation

- R1 The Council should consider whether to seek recovery of the unlawful over-payments made to the Council's former Clerk and the former Secretary referred to in this report.

- 15 In making this recommendation, I wish to emphasise that I have found no evidence to suggest that the Council Secretary acted in bad faith. I consider that the overpayments to the Council Secretary were due to Council error, and that she had reasonable grounds to believe she was entitled to the amounts she received.

## Next steps

- 16 Sections 25 to 27 of the Public Audit (Wales) Act 2004 set out the steps that the Council now needs to take in response to this report.
- 17 In summary, the Council must now consider the report and its recommendations at a public meeting of the Council within one month of the date that I issue the report.
- 18 Prior to the meeting, the Council must place a notice advertising the meeting in a newspaper circulating in the area. This notice must set out the date and time of the meeting and how members of the public can attend.
- 19 At the meeting, the Council will need to 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.
- 20 The Council will then need to prepare a written response and agree the wording of that response with me before publishing its response in a local newspaper.

Ann-Marie Harkin  
Executive Director (Audit Services)  
October 2021

# Detailed report

The Council made unlawful gratuity payments to the Clerk and Secretary of the Council on the termination of their employments in October 2014 and the Clerk participated in the decision-making process whilst disqualified from doing so

**Community councils only had legal power to make gratuity payments to officers at the end of employment if those officers had a contractual entitlement pre-dating 16 January 2012 to receive such a payment**

- 21 In October 2014, the Council made payments of £19,522.18 to the Clerk of the Council, Mr Bartlett and £23,858.64 to the Council Secretary on their retirement as officers of the Council. The Auditor General was subsequently contacted by members of the public raising concerns regarding the legality of these payments. The payments made are in my view gratuity payments.
- 22 Gratuity payments are by their nature, discretionary payments. Until 16 January 2012, local councils were empowered to make gratuity payments to staff on the termination of employment (up to statutory ceilings specified in regulations). The power of local councils to make gratuity payments did not however create any duty or obligation to do so, nor did it create any contractual entitlement for members of staff to receive a payment.
- 23 Many local councils did decide to include an entitlement of staff to be paid a gratuity within their contracts of employment. The inclusion of such a clause did not enable councils to pay gratuities in excess of the maximum amounts set out in legislation. With effect from 16 January 2012, the Local Government (Discretionary Payments) Regulations 1996 were repealed, meaning that from that point on local councils had no legal power to make gratuity payments to members of staff when their employment ended, unless members of staff had a contractual clause in their contract of employment which pre-dated the repeal of the Regulations entitling them to be paid a gratuity payment. For those with a contractual entitlement, the amount which could lawfully be paid as a gratuity was subject to the maximum amount set out in the Regulations in force at the time the contract was entered into.

**The process that led to the Clerk of the Council receiving a gratuity payment was fundamentally flawed, he participated in the decision-making process when disqualified from doing so and received £14,990 more than the statutory maximum that he could lawfully have been paid if he had a contractual entitlement to a gratuity**

**The Clerk of the Council did not have a written contractual entitlement to receive a gratuity payment on his retirement from the Council**

- 24 Mr Bartlett's predecessor as Clerk retired in 1989. Mr Bartlett's predecessor's contract of employment included a specific entitlement to be paid a gratuity on the termination of his employment. When he left the employment of the Council, he received a gratuity payment of £1,000 from a bank account which had been set up for the purpose of paying a gratuity.
- 25 Mr Bartlett was appointed as the Council's Clerk on 25 October 1989. On 20 December 1989, the Council entered into an employment contract with Mr Bartlett. The employment contract did not include any entitlement for Mr Bartlett to receive a gratuity payment when his employment ended.
- 26 Mr Bartlett told my auditors that around the time of his appointment he attended a meeting of the Council. He maintains that following that meeting, the then Chair of the Council and the then Chair of the Council's Finance Committee told him to pay £500 a year into a gratuity bank account. Mr Bartlett maintains that he carried out this instruction by transferring £500 a year of the Council's money into the gratuity bank account between 1989 and 2005. Mr Bartlett further maintains that three councillors from that time can confirm that it was agreed he should receive a gratuity on the termination of his employment.
- 27 Whilst I note Mr Bartlett's assertions, the minutes of meetings of the Council held in 1989 do not record that the Council agreed that he was entitled to be paid a gratuity and his contract of employment does not set out any entitlement for him to be paid a gratuity. Furthermore, whilst Mr Bartlett maintains that, following Council agreement, he paid £500 a year into the gratuity bank account each year between 1989 and 2005, the Council's financial records show that no payments were made into the Council's gratuity bank account until December 1992.
- 28 On 15 January 1992, minutes of a meeting of the Council's Finance and Organisation Committee record that Mr Bartlett informed the meeting that it was possible that legislation might change, and this could result in him being eligible to receive a gratuity payment. He recommended that 'the Community Council should be prepared for any eventuality that may come about and recommended that this money be set aside'. In my view, this minute demonstrates that as at 15 January 1992, Mr Bartlett understood he had no eligibility to be paid a gratuity on the

termination of his employment. For this reason, I have not considered it necessary to interview the former councillors referred to by Mr Bartlett in **paragraph 26**.

- 29 In December 1992, the Council made a first payment of £750 into the gratuity bank account. Further payments were made into the account during the period of Mr Bartlett's employment. The total amount paid into the account amounted to £14,502 as set out in **Exhibit 1**.

**Exhibit 1 – amounts paid into the Council's gratuity fund bank account in the financial years from 1989-90 to 2014-15**

From 1989 until 2014, the Council paid £14,502 into a gratuity fund bank account.

| Financial year | Amount paid into gratuity fund bank account |  | Financial Year | Amount paid into gratuity fund bank account |
|----------------|---------------------------------------------|--|----------------|---------------------------------------------|
|                | £                                           |  |                | £                                           |
| 1989-90        | 0                                           |  | 2003-04        | 500                                         |
| 1990-91        | 0                                           |  | 2004-05        | 500                                         |
| 1991-92        | 0                                           |  | 2005-06        | 800                                         |
| 1992-93        | 750                                         |  | 2006-07        | 802                                         |
| 1993-94        | 750                                         |  | 2007-08        | 800                                         |
| 1994-95        | 750                                         |  | 2008-09        | 850                                         |
| 1995-96        | 750                                         |  | 2009-10        | 850                                         |
| 1996-97        | 0                                           |  | 2010-11        | 0                                           |

| Financial year | Amount paid into gratuity fund bank account |  | Financial Year | Amount paid into gratuity fund bank account |
|----------------|---------------------------------------------|--|----------------|---------------------------------------------|
| 1997-98        | 500                                         |  | 2011-12        | 1,700                                       |
| 1998-99        | 500                                         |  | 2012-13        | 850                                         |
| 1999-2000      | 500                                         |  | 2013-14        | 850                                         |
| 2000-01        | 500                                         |  | 2014-15        | 0                                           |
| 2001-02        | 500                                         |  | <b>Total</b>   | <b>14,502</b>                               |
| 2002-03        | 500                                         |  |                |                                             |

Source: Council bank statements

- 30 On 19 March 2001, the Council entered into a new contractual agreement with Mr Bartlett. The 2001 contract superseded Mr Bartlett's 1989 contract in its entirety. The 2001 contract does not include any provision entitling Mr Bartlett to receive a gratuity.
- 31 In July 2014, Mr Bartlett sent Mazars a copy of what he indicated was his current contract of employment. This contract was dated 2 January 2005 and is based upon a model contract of employment agreed between NALC, SLCC and adopted by One Voice Wales. This contract superseded Mr Bartlett's 2001 contract.
- 32 The contract dated 2 January 2005 included the following contract clause providing for the Council to either enrol Mr Bartlett in the Local Government Pension Scheme or that it may make provision to pay a gratuity payment in accordance with the Regulations in force at the relevant time.

**'19.1 Pension**

The Council is a member of the Local Government Pension Scheme, which operates a contributory pension scheme, which you are entitled to join. Details of which are contained in the separate booklet provides. Delete if necessary

Or

**19.2 Gratuity**

The Council may make appropriate provision for the payment of a gratuity in accordance with the Regulations in force at the relevant time.'

- 33 The contract document has not been annotated to show which of these two options were chosen, however, I note that Mr Bartlett was not enrolled in the Local Government Pension Scheme. The contract does not provide Mr Bartlett with a contractual entitlement to receive a gratuity, it sets out that the Council 'may make appropriate provision' to pay a gratuity. It does not specify an amount to be paid to Mr Bartlett. It does specify that any payment would be in accordance with the Regulations in place at the time.
- 34 On 6 May 2015, the then Chairman of the Council delivered a document pack to the Wales Audit Office's premises. The document-pack included a further version of Mr Bartlett's contract of employment dated 2 September 2005. The document is a model contract of employment agreed between NALC, SLCC and adopted by One Voice Wales. I am unclear why the Council made a new contract with Mr Bartlett eight months after the contract referred to in **paragraphs 31 and 32**, as the terms were unchanged.
- 35 During the course of the audit, the Council found a further employment contract between the Council and Mr Bartlett dated 15 June 2007. This contract is a model contract of employment agreed between NALC, SLCC and adopted by One Voice Wales. The contract terms are identical to those contained in the 2005 contracts. In my view, none of these contracts provide Mr Bartlett with a contractual entitlement to receive a gratuity payment.
- 36 I recognise that the Council's actions in making payments into a gratuity bank account could be construed as creating an expectation that the Council would make a payment to Mr Bartlett on the termination of his employment. However, I also note that:
- payments into the gratuity bank account commenced in 1992 at Mr Bartlett's request, on the basis that he might at some future point have an entitlement to receive a gratuity payment (**paragraph 29**).
  - Mr Bartlett's employment contracts of 1989, 2001, 2005 and 2007 do not set out any contractual entitlement for him to be paid a gratuity. The 2005 and

2012 contracts provide for the possibility of the Council making a discretionary payment to Mr Bartlett on the termination of his employment of an unspecified amount and subject to Regulations in force at the relevant time.

- 37 I have therefore been unable to satisfy myself that Mr Bartlett had any contractual entitlement to receive a gratuity payment of £19,522.18 on the termination of his employment.

**The Clerk of the Council received a gratuity payment of £19,522.18, which was £14,989.78 above the maximum gratuity permissible under legislation**

- 38 As set out above, Mr Bartlett's contracts of employment did not set out an entitlement for him to be paid a gratuity payment on his retirement from the Council on 31 October 2014. The repeal of Regulations in 2012 empowering local councils to make gratuity payments meant that from that time local councils could only lawfully make gratuity payments to a member of staff if that member of staff had a contractual entitlement pre-dating the repeal of the Regulations.
- 39 I note that Mr Bartlett's contracts of employments made in 2005 and 2007 set out that the Council 'may make appropriate provision for the payment of a gratuity' and I accept that Mr Bartlett may have understood this to mean that he had a contractual entitlement to receive a gratuity payment on leaving his employment with the Council. I do not accept this view. The contractual clause does not specify any amount or form of calculation to determine what Mr Bartlett would receive, ie any payment would be entirely at the Council's discretion. Furthermore, I note that the contractual term further states that any gratuity payment would have to be 'in accordance with the Regulations in force at the relevant time'.
- 40 The amount of any gratuity which could be paid to Mr Bartlett under a contract made in 2005 or 2007 was governed by the Local Government (Discretionary Payments) Regulations 1996 (the Regulations). These were the Regulations 'in force at the relevant time'. The Regulations stipulate a ceiling on the amount of a discretionary payment a council can lawfully pay an employee on the termination of their employment and set out calculations for determining the prescribed maximum.
- 41 The maximum payable under the Regulations in Mr Bartlett's case was the lesser of:
- 3.75% of salary for each year of service between the ages of 16 and 70; or
  - 3.75% of the National Insurance lower earnings limit for each year of service between the ages of 16 and 70.
- 42 As Mr Bartlett's salary was significantly in excess of the National Insurance lower-earnings limit, any calculation of the maximum gratuity that could be paid should have been based on 3.75% of the National Insurance lower earnings limit and should only have taken into account Mr Bartlett's service up to the age of 70 (Mr

Bartlett was over 70 when he left the Council's employment). If the Regulations had been correctly applied, the maximum Mr Bartlett could have received, if he had a contractual entitlement to a gratuity, was £4,532.40. In the event he was paid £19,522.18.

- 43 I therefore consider that Mr Bartlett was paid £14,989.78 above the maximum gratuity permissible under legislation and this payment was contrary to law.

### **The process that led to gratuity payments being paid to the Council Clerk, and the Council Secretary in October 2014 was fundamentally flawed in several material respects**

#### **The Clerk misled the Council's appointed auditor, Mazars about his right to be paid a gratuity**

- 44 In 2013, Mr Bartlett informed the Council's external auditor, Mazars that he was intending to retire.
- 45 On 7 August 2013, Mazars wrote to Mr Bartlett regarding the gratuity bank account. The email outlined that Mazars had noted the existence of a gratuity fund provision but needed 'to ensure this meets the correct requirements'. Mazars requested a copy of Mr Bartlett's contract prior to 2012, (as all legislation empowering community councils to make gratuity payments was repealed with effect from 16 January 2012 and therefore only community council employees with a contractual entitlement to a gratuity pre-dating the repeal of the legislation could receive such a payment). Mazars also requested that Mr Bartlett supply copies of any advice the Council had obtained, for example from One Voice Wales. Mazars further requested that Mr Bartlett provide 'the calculations used and approval of payment'.
- 46 Mr Bartlett responded to the email on 12 August 2013 stating, 'I commenced working for the Community Council in 1989 and was employed under the same terms and conditions as the previous Clerk. I was informed that unlike some Councils, they did not pay into a pension fund but paid £500 per annum into a Gratuity Fund. In 2004 an agreement was reached between One Voice Wales and the Society of Local Council Clerks with regards to the terms, conditions and wages of Council Clerks. This agreement superseded all previous agreements and was implemented by the Council in 2005 – (Copy enclosed). This included a payment of 3.75% of gross wages to the gratuity fund – ie £850. Every member is given a copy of the financial report for year ending – for their approval or otherwise – relevant copy enclosed.'
- 47 I consider the statement provided by Mr Bartlett to Mazars was materially incorrect for the following reasons.
- Mr Bartlett was not offered the same terms and conditions as the previous clerk. Mr Bartlett's contract dated 20 December 1989 did not include any

entitlement to the provision of a gratuity whilst the contract of his predecessor did contain such a provision.

- the SLCC booklet provided to Mazars which referred to a payment of 3.75% of gross pay into a gratuity fund was not adopted by the Council. The Council adopted the NALC, SLCC and One Voice Wales model terms and conditions which made no reference to a payment of 3.75% into a gratuity fund. Mr Bartlett's contracts state, 'the Council may make appropriate provision for the payment of a gratuity in accordance with the Regulations in force at the relevant time'.
- as set out in **paragraph 29**, the Council made no payments into the gratuity fund until December 1992, and only commenced making payments into the gratuity bank account after Mr Bartlett advised the Council in January 1992 that legislation could change resulting in him having an entitlement in the future to a gratuity payment.

48 On 19 August 2013, Mazars wrote to the members of the Council regarding the annual audit return for the year ended 31 March 2013. The letter informed the Council that following the repeal of the 1996 Superannuation Regulations, councils may only be able to make gratuity payments in the future where they are included as a contractual obligation in a contract of employment entered into before January 2012. Mazars advised that the Council seek legal advice before making any gratuity payments. The Council did not obtain any formal legal advice as advised by Mazars. The minutes of a meeting of the Council's Finance and Organisation Committee held on 8 October 2014 record that members agreed to recommend payments of £19,522.18 and £23,858.64 to Mr Bartlett and the Council Secretary respectively.

49 The Auditor General subsequently received correspondence from members of the public raising concerns regarding the legality of the 'termination efficiency savings' payments recommended for approval by the Council's Finance and Organisation Committee. The Auditor General referred these concerns to Mazars, the auditor appointed to undertake the statutory external audit of the Council's 2014-15 accounts.

50 On 23 October 2014, Mazars wrote to Mr Bartlett requesting the following information:

- 'The nature of these payments, ie why the Council is making the payment and what the payments represent;
- a calculation to support the amounts of the payments proposed;
- the statutory authority the Council is relying on to make these payments: and
- a copy of any legal and professional advice that the Council has obtained to confirm that the payments are lawful and that the proposed amounts are appropriate.'

- 51 On Monday 27 October 2014, Mr Bartlett hand-delivered a response to Mazars' offices in Poole. The documents provided included:
- two letters from a local firm of solicitors dated 24 October 2014 addressed to 'whom it may concern'. One letter related to the payment to Mr Bartlett, the second letter related to the payment to the Council Secretary. These letters indicate that the Council had a legal and contractual duty to make the gratuity payments.
  - a letter signed by the Chairman and Vice Chairman of the Council's Finance and Organisation Committee dated 24 October 2014 stating that they had 'met with the Constitutional and Deputy Monitoring Officer of Blaenau Gwent County Borough Council on 9 September 2014 for advice on Mr Bartlett's and [the Council Secretary's] contracts. We can confirm that the Officer's advice was that the Clerk and Secretary's payments were right and proper'.
  - two signed documents dated 13 October 2014 on the Council's letterhead. One document set out Mr Bartlett's acceptance of a 'termination efficiency' payment of £19,522.18. The second document set out the Council Secretary's acceptance of a 'termination efficiency' payment of £23,858.64. These documents stated that the payments were 'in accordance with Statutory Compensation Regulations.' The documents are signed by Mr Bartlett as the person who had calculated the amounts due, and by two councillors stating that they had checked the calculations.
- 52 As set out in **paragraphs 58 to 80**, I consider the content of each of these documents to be misleading and in some parts incorrect. Their purpose appears to have been, at least in part, to mislead Mazars that the payments were legitimate and that the Council had sought proper independent advice before committing to the payments. However, I note that the legal advice letters and the letter from the Chairman and Vice Chairman of the Council's Finance and Organisation Committee were produced after the payments had been made.
- 53 Mazars reviewed the documents provided by Mr Bartlett and reached the decision based on the documents provided not to challenge the legality of the payments per se. However, Mazars concluded that the payments were gratuity payments and not termination efficiency savings and were therefore taxable payments under s393B(2)(a) of the Income Tax (Earnings and Pensions) Act 2003.
- 54 On 29 October 2014, Mazars issued an advisory notice to the Council under s33 of the Public Audit (Wales) Act 2014 to the Council. The advisory notice required the Council to give Mazars 21 days' notice of any intention to make gratuity payments without deducting tax. However, the payments had already been made on 15 October 2014 without deducting tax. Mr Bartlett told my auditors in interview that at that time he understood the payments were 'termination efficiency payments' and could be made without deduction of income tax and National Insurance contributions.

- 55 Mazars told my auditors that it was unaware when it issued the advisory notice that the payments had already been made, and Mr Bartlett did not inform them of this fact when he visited their offices on 24 October 2014. Mazars told me that an advisory notice would not have been issued had it been made aware that the payments had been made. The purpose of an advisory notice is to seek to prevent an unlawful decision being taken or unlawful expenditure being incurred. It serves no function after the event.
- 56 It is my view that, in his interactions with Mazars, Mr Bartlett sought to mislead Mazars that he had a contractual entitlement to receive a gratuity equivalent to 3.75% per annum of his current salary. Mr Bartlett had no such entitlement. He provided documentation to Mazars which contained false information in order to support his claim to a gratuity payment he was not lawfully entitled to. I also consider that Mr Bartlett wilfully failed to inform Mazars that the gratuity payments subject to audit review had already been made, in advance of Mazars completing their audit work in respect of these payments. In my view, Mr Bartlett's conduct fell well short of the standard the public has a right to expect from a local government officer.
- 57 Whilst I consider that Mr Bartlett sought to mislead Mazars regarding his entitlement to a gratuity, I consider that Mazars should have done more to satisfy itself that Mr Bartlett had a contractual entitlement to a gratuity, and that any proposed payment had been calculated in accordance with relevant Regulations.

### **The information and advice the Council relied upon when deciding to make gratuity payments to the Council Clerk and Secretary were partial, inaccurate and inadequate**

- 58 As set out in **paragraphs 50 to 57**, on 27 October 2014, Mr Bartlett provided documents to the Council's external auditor, Mazars, which he claimed supported his and the Council's Secretary's right to be paid gratuities of £19,522.18 and £23,858.64 respectively.
- 59 I have set out my considerations of each of these documents below.

### **Legal Advice Letters**

- 60 Mazars wrote to Mr Bartlett on 23 October 2014 asking him to provide 'a copy of any legal and professional advice that the Council has obtained to confirm that the payments are lawful and that the proposed amounts are appropriate'. Following the request from Mazars on 23 October 2014 (received after the payments had been made) Mr Bartlett sought advice from a local firm of solicitors on his and the Council Secretary's entitlement to receive termination payments from the Council.
- 61 The advice letters Mr Bartlett obtained from the firm of solicitors are dated 24 October 2014 and were sent to Mazars to justify the payments. The letters set out that the legal advice being provided was to Mr Bartlett and the Council Secretary (not the Council). Mr Bartlett told my auditors that he accepts that 'it was

misleading as to who the advice was for', and he intended to go back to the firm of solicitors to get the advice letters re-addressed to the Council but did not do so. It was clear to me that the advice was not intended as advice for the Council. The letters are addressed to Mr Bartlett and the Council's Secretary who are referred to as the firm's clients.

- 62 The letter of advice addressed to Mr Bartlett states, that as Mr Bartlett's employment 'was shortly coming to an end, they [the firm of solicitors] had reviewed the contract (clause 19) terms and it was agreed that he [Mr Bartlett] should not receive a Local Government Pension but, rather, should receive a gratuity in accordance with the then current regulations. The letter confirmed that, 'in the event of the paying of a gratuity, it would amount to 3.75% of salary deposited monthly in a secure fund'. The letter also states, 'As this was a specific clause within our Client's Contract, we take the view that any failure to pay these funds would amount to a breach of Contract which would be actionable in the employment tribunal.'
- 63 As set out in **paragraphs 25 to 37**, Mr Bartlett did not have and never had a contract that stated that 'in the event of the [Council] paying ... a gratuity, it would amount to 3.75% of salary deposited monthly in a secure fund'. Furthermore, the letter of advice did highlight that under the relevant Regulations the maximum gratuity that the Council could pay Mr Bartlett in the event he had a contractual entitlement to receive a payment was £4,532.40, as opposed to the £19,522.18 he received.
- 64 The advice letter from the local firm of solicitors addressed in respect of the Council Secretary's gratuity payment states 'within the Contract (clause 6) terms were agreed that our Client should not receive a Local Government Pension but rather, should receive a gratuity being one-sixth of annual salary or twice the amount of salary at the date of termination (whichever is less). It is clear therefore that as a result of the period employed our Client is entitled upon cessation of her employment to the payment of a gratuity amounting to twice the amount of her current salary.'
- 65 The advice letter further states that 'We have had an opportunity to peruse the regulations which confirm that in the event of the paying of a gratuity, this will be in an amount equal to 3.75% of salary deposited monthly in a secure fund. The accumulated fund to be paid in total on termination of the employment, subject to the completion of five continuous years of satisfactory service'.
- 66 As set out, in **paragraphs 88 to 91** below, the Council Secretary had a provision in her employment contract setting out an entitlement to receive a gratuity payment of the lesser of one-sixth of annual salary or twice the amount of salary at the date of termination. The payment to the Council Secretary was in accordance with this provision. The relevant Regulations applicable to the Secretary's gratuity (Part K of the Local Government Superannuation Regulations 1986 (version in force from 1 April 1987) do not, however, state that the gratuity 'will be in an amount equal to 3.75% of salary deposited monthly in a secure fund. The accumulated fund to be

paid in total on termination of the employment, subject to the completion of five continuous years of satisfactory service.’ The legal advice in the letter is, therefore, inconsistent.

- 67 Furthermore, as set out in **paragraphs 22 and 23**, the relevant regulations prescribed a limit on the amount that councils could pay to a member of staff by way of a gratuity, and how this limit should be calculated. The amount paid to the Council Secretary was £15,890.11 above the maximum the Council had the power to pay.
- 68 I note that in November 2014, Mr Bartlett claimed reimbursement of £192 from the Council in respect of the legal advice he had sought from the local firm of solicitors in respect of both his own and the Council Secretary’s gratuity payments. As the legal advice was not advice to the Council, but was personal advice requested by Mr Bartlett, I consider that Mr Bartlett had no entitlement to claim reimbursement of these costs and the payment of £192 was contrary to law.
- 69 The Council should not have accepted the advice provided by Mr Bartlett from the solicitor he instructed because the advice was not independent legal advice, was never intended for the Council and was wrong.

### **Letter signed by the Chairman and Vice Chairman of the Council’s Finance and Organisation Committee dated 24 October 2014**

- 70 The minutes of a meeting of the Council’s Finance and Organisation Committee held on 8 October 2014 record that the ‘Clerk [Mr Bartlett] drew attention to Termination Efficiency Savings payments. These payments were proposed gratuity payments of £19,522.18 to be paid to himself and £23,858.64 to be paid to the Council Secretary, respectively.’ The minutes record that Mr Bartlett told the meeting that he, the Chair and the Vice-Chair of the Committee had met with Blaenau Gwent County Borough Council’s Deputy Legal Officer ‘for confirmation with regard to these payments’. Mr Bartlett informed the meeting that he had also received confirmation from ‘the Accountant at Blaenau Gwent County Borough Council’ that ‘the payments are in order’. The minutes record that ‘Order Number 7 2014/15 [a payment order which included the gratuity payments] was moved and recommended for payment.’
- 71 I have confirmed that Mr Bartlett, and the then Chairman and Vice Chairman of the Council’s Finance and Organisation Committee (Councillor Glyn Smith and Councillor John Tiley respectively) attended a meeting on 9 September 2014 with Blaenau Gwent County Borough Council’s then Community Council Liaison Officer at Blaenau Gwent County Borough Council’s offices. At this meeting, proposed payments to Mr Bartlett and the Council’s Secretary were discussed. Officers of Blaenau Gwent County Borough Council maintain that its Community Liaison Officer did not provide any formal advice on the payments, and no written advice was provided. The former Vice Chairman of the Council’s Finance and Organisation Committee has told me that whilst the meeting was held in the staff

canteen, his understanding was that it was a formal meeting to obtain advice on the payments. He recalls that the meeting was very short in duration, and that the Community Liaison Officer assured those present, that based on the documentation he had seen, there was no problem with the proposed payments. The Vice Chairman of the Council's Finance and Organisation Committee has told me that he was not involved in arranging the meeting, and he did not have sight of the documentation the Community Council Liaison Officer had been provided with to inform his advice.

- 72 Blaenau Gwent County Borough Council's Head of Legal and Corporate Compliance has confirmed that Blaenau Gwent County Borough Council's Principal Payroll Officer did have a conversation with Mr Bartlett but that this officer 'only provided informal information of a personal nature relating to the impact a termination payment could potentially have on personal taxation'.
- 73 I consider that the assurances given by Mr Bartlett to the Council's Finance and Organisation Committee were incorrect and should not have been relied upon by the Committee as the basis on which to recommend the payments be made. On 15 October 2014, in advance of the sums being recommended for payment to a meeting of the full Council, cheque payments of £19,522.18 and £23,858.64 were made to Mr Bartlett and the Council Secretary respectively. I consider that the payments made should not have been paid until a meeting of the full Council had considered the Committee's recommendation.

### **Signed documents dated 13 October 2014 relating to 'termination efficiency' payments for the Council Clerk and Secretary**

- 74 On 13 October 2014, Mr Bartlett delivered two signed documents on the Council's letterhead to the Council's appointed auditor, Mazars. One document set out Mr Bartlett's acceptance of a 'termination efficiency' payment of £19,522.18. The second document set out the Council Secretary's acceptance of a 'termination efficiency' payment of £23,858.64.
- 75 Whilst these payments were referred to as 'termination efficiency' payments, they were in fact discretionary payments or gratuities. Both Mr Bartlett and the Council Secretary had given notice to the Council that they were leaving their employments.
- 76 The document relating to Mr Bartlett's payment was signed by the Chairman of the Council, Councillor Glyn Smith. The document states that the payment of £19,522.18 was 'in accordance with Statutory Compensation Regulations'.
- 77 The document also states that 'on receipt of your completed option form and in accordance with Council's Termination Efficiency Savings Policy and the Audit Commission's Report, 'A Retiring Nature', this must be considered and approved by the Finance Committee'. Mr Bartlett has confirmed in interview that the Council did not have a 'Termination Efficiency Savings Policy'. Furthermore, an 'option

form' was not completed. Mr Bartlett told my auditors that the document signed by Councillor Smith was one used by a Welsh unitary authority and the Council had adopted this document for the purposes of calculating his and the Council Secretary's payment.

- 78 Attached to the document signed by Councillor Smith is a two-part form. The first part of the form shows the 'calculation of estimated efficiency savings payment'. Mr Bartlett is recorded as having calculated that he was due a payment of £19,522.18. The form does not set out how he calculated this amount. The form has been signed to confirm the calculations had been checked by two councillors (Councillor Rob Phillips and Councillor Smith). The second part of the form sets out Mr Bartlett's signed acceptance of a 'termination efficiency savings payment'. The signature is dated 13 October 2014.
- 79 In interview, Mr Bartlett told my auditors that the calculation was not based on the Regulations governing the payment of gratuity payments (although his contract stated that any gratuity payment was to be in accordance with the Regulation in force at the time). Mr Bartlett told my auditors that the amount of the payment was in fact based on the amount held in the Council's bank account set aside for gratuity payments. During the period of Mr Bartlett's employment, the Council transferred £14,502 into the gratuity bank account. On 4 July 2014, the balance on the account stood at £19,097.28. The difference of £4,595.25 being interest accrued on the account (£2,738.95) and a balance on the account which pre-dated Mr Bartlett's time in office (£1,856.33). On 4 July 2014, Mr Bartlett transferred £19,092.46 from the Council's gratuity bank account to the Council's current account. The Council had not at that stage authorised that any amount be paid to Mr Bartlett on the termination of his employment.
- 80 I consider that the actions of all those involved in certifying these forms fell short of the standard expected of public officials for the following reasons:
- whilst the then Chairman of the Council, Councillor Smith certified that the payments were 'in accordance with the Statutory Compensation Regulations', neither the Clerk nor the Secretary had any entitlement to a statutory compensation payment, and the amounts set out had not been calculated under any such regulations.
  - Councillor Smith certified that 'in accordance with Council's Termination Efficiency Savings Policy and the Audit Commission's Report, 'A Retiring Nature', this must be considered and approved by the Finance Committee'. The Council did not have a Termination Efficiency Savings Policy and the approval mechanism for payments made by the Council was governed by the Council's own Standing Orders and Financial Instructions and not by the Audit Commission publication referred to.
  - Councillor Smith and Councillor Phillips certified that they had checked the payment calculations prepared by Mr Bartlett. However, no payment calculations were prepared. Mr Bartlett has confirmed to my auditors that the amount he determined should be paid to himself was determined by the

amount the Council had accrued in the gratuity bank account and was not calculated in accordance with relevant legislation. Furthermore, part of the balance held in the gratuity bank account pre-dated the start of Mr Bartlett's employment with the Council.

- I consider that it was wholly inappropriate for Mr Bartlett to play any role in determining the amount that he should be paid as a gratuity on the termination of his employment. He had a personal and prejudicial pecuniary interest in this matter which, in my view, disqualified him from being involved in the decision-making process. He should have informed the Council that it needed to take impartial advice on what, if any, gratuity payment should be made. I also consider that members of the Council should have recognised that it was inappropriate for Mr Bartlett to be involved in determining the amount of his own gratuity payment.

- 81 In response to a draft of this report being considered by the Council, Cllrs Smith and Phillips stated that 'they would not have acted as they did in approving the unlawful gratuity payments if they had not had the legal advice that Mr. Bartlett had presented to them, and from the conversation that had been had with Blaenau Gwent County Borough Council's Legal Officer at the time'.

### **Mr Bartlett participated in the decision-making process leading to him receiving a gratuity payment despite having a prejudicial interest in the outcome**

- 82 It is essential that local government officers do not allow their own interests to conflict with their public duty. Where a local government officer has a prejudicial interest in a matter, (a prejudicial interest is one which a member of the public who knows the relevant facts would reasonably think is so significant that it is likely to affect an individual's judgement of the public interest) they must not misuse their official position or information acquired in the course of their employment to further their own interests. They should not, therefore, be involved in any decision-making process which relates to the matter in which they have a prejudicial interest.

- 83 I consider that Mr Bartlett had a prejudicial interest in the process that led to him receiving a gratuity payment from the Council in October 2014. Nevertheless, he participated in the process in several ways, including:

- on 9 September 2014, Mr Bartlett and the Chair and Vice Chair of the Council's Finance and Organisation Committee held a meeting with Blaenau Gwent County Borough Council's then Community Council Liaison Officer at which proposed payments were discussed. Mr Bartlett also held a meeting with Blaenau Gwent County Borough Council's Principal Payroll Officer to discuss matters relating to the proposed payments. No notes of these meetings were kept by the Abertillery and Llanhilleth Community Council representatives present. I consider that Mr Bartlett should not have been involved in such discussions as he had a prejudicial interest in the outcome

of any decision relating to the payment of a termination payment to himself (**paragraphs 71 to 73**).

- on 7 October 2014, Mr Bartlett completed a form which calculated the amount of the payment that he would be paid on the termination of his employment. I consider that there was no contractual or lawful basis for the amount calculated. Mr Bartlett should not have had any involvement in calculating his own termination payment (**paragraphs 74 to 79**).
- Mr Bartlett was present and participated in a meeting of the Council's Finance and Organisation Committee held on 8 October 2014, at which members agreed to recommend to the full Council that a 'termination efficiency payment' of £19,522.18 be made to Mr Bartlett on the termination of his employment. Mr Bartlett advised the Committee that he had received advice from Blaenau Gwent County Borough Council officers that the proposed payment to himself (and a payment to the Council Secretary) 'are in order' (**paragraph 70**).
- on 15 October 2014, Mr Bartlett processed a cheque payment to himself even though the full Council had not, at that stage, approved the payment (**paragraph 73 and 79**).
- on 24 October 2014, Mr Bartlett received legal advice from a local firm of solicitors which he had privately requested regarding his contractual entitlement to receive a termination payment. Mr Bartlett presented the advice to a meeting of the Council on 29 October 2014. The minutes of the Council meeting do not record that members were informed that the advice was Mr Bartlett's personal legal advice and was not advice intended for the Council (**paragraphs 60 to 69**).
- Mr Bartlett was present and participated in a meeting of the full Council held on 29 October 2014 at which the Council approved that Mr Bartlett receive a taxable payment of £19,522.18 (**paragraphs 84 to 85**).

84 The minutes of a meeting of the full council held on 29 October 2014 record 'Order number 7 (2014-15) was considered and agreed for payment. Clerk reported an advisory notice received with regard to the last two items, cheque 6617 and 6618, (Mazars' correspondence to Clerk, Leader of Council and Chairman of Council). Mazars' correspondence indicated an advisory notice had been served indicating the Termination Efficiency Savings Payments were not appropriate, therefore, subject to contractual agreements being confirmed by Council, both payments would be subject to PAYE and paid net rather than gross.'

85 These minutes also record that "it was a unanimous decision of Council that the contractual agreements did apply (correspondence from [a local firm of solicitors], to [the Council Secretary] – confirmed 'it is clear therefore that as a result of the period employed our Client is entitled upon cessation of her employment to the payment of a gratuity amounting to twice the amount of her current annual salary'. Correspondence from [a local firm of solicitors], to Graham Bartlett– confirmed 'It is clear, therefore that our Client is entitled on cessation of his employment to the

payment of the gratuity fund which has accrued.' Chair of Council and Chair of Finance and Organisation Committee, re-confirmed his visit to BGCBC Deputy Legal Officer, accompanied by Vice Chair of Finance & Organisation Committee where they received confirmation on this matter from the Deputy Legal Officer. Both payments to be subject to PAYE and paid net rather than gross and adjusted accordingly."

- 86 On 29 October 2014, Mr Bartlett repaid the Council £19,522.18 and the Council made a new payment to Mr Bartlett of £15,611.58 (£19,522.18 less tax). On 10 November 2014, the Council Secretary repaid the Council £6,822.21, the tax due on her gratuity payment.
- 87 I consider that Mr Bartlett participated in the decision-making process which led to him receiving an unlawful gratuity payment despite having a prejudicial interest in this matter. Mr Bartlett did not declare his interest in this matter, and in so doing, his conduct fell well short of that standard required of a local government officer.

**The Secretary's employment contract provided for her to be paid a gratuity on the termination of her contract, but the contractual provision was unlawful as it resulted in her being paid £15,890 more than permissible under legislation**

### **The Council Secretary had a contractual entitlement to receive a gratuity payment on her retirement from the Council**

- 88 On 5 June 1986, the Council appointed a temporary employee to provide cover for the Council's former Clerk/Typist who was on sickness absence. On the termination of the Clerk/Typist's employment, a meeting of the Council held on 8 April 1987 resolved to appoint the temporary employee as Council Secretary on a permanent basis.
- 89 On 1 October 1987, the Council entered into a written contract of employment with the newly appointed Council Secretary.
- 90 Paragraph 6 of the contract of employment sets out a provision for the Council Secretary to be paid a gratuity on the termination of her employment, 'Since the Secretary is not entitled to a pension of this post then, provided that the Secretary shall have served the Council for a period of at least five years from the 5th June 1986 the Council shall upon termination of this agreement ... exercise its power under the legislation relating to Local Government Superannuation to pay a gratuity to the Secretary or to her widower as the case may be. The amount so paid shall be no less than such proportion of the Secretary's annual salary at the date of such termination or death as shall be equivalent to one sixth thereof for each year of service or twice the amount of the Secretary's salary at the date of such termination, whichever is the less.'

- 91 I am therefore satisfied that the Council Secretary had a contractual entitlement to receive a gratuity payment from the Council on the termination of her employment, and the Council had the power to make such a payment subject to any maximum amount specified in the applicable Regulations at the time the contract was made.

### **The Council Secretary was paid £15,890 more than the maximum amount permissible under legislation**

- 92 As set out above, I am satisfied that the Council Secretary had a contractual entitlement to receive a gratuity payment from the Council on the termination of her employment, and the Council had the power to make such a payment subject to any maximum amount specified in the applicable Regulations at the time the contract was made.
- 93 In October 2014, the Council Secretary was paid £23,858.64 (before statutory deductions) as set out in her contract. However, the amount paid by the Council was significantly in excess of the maximum amount that could be paid under the relevant legislation in force at the time the Council granted her an entitlement to be paid a gratuity when her employment ended.
- 94 My auditors have calculated that the maximum that the Council could lawfully have paid as a gratuity to the Council Secretary was £7,968.52. I therefore consider that the Council paid £15,890.11 above the statutory maximum.
- 95 I accept that the Council Secretary had a legitimate expectation based on her employment contract that she would receive the equivalent of two years' salary when she left the Council's employment in 2014. I also accept that the Council Secretary acted in good faith and was paid what she believed she was entitled to receive.
- 96 The Council was responsible for ensuring that the contract it offered to the Council Secretary complied with relevant legislation, and it acted in error when granting her a contract which included an entitlement to be paid a gratuity in excess of the statutory maximum.

The Clerk and the Secretary received salary payments in excess of the amounts formally agreed by the Council and the Clerk added further unauthorised supplements to his pay

The Clerk received salary payments in excess of the amounts formally agreed by the Council and the Clerk added further unauthorised supplements to his salary to his own salary

**Between 1 April 2005 and 31 October 2014, the Clerk received £3,384 in salary payments that had not been agreed by the Council**

- 97 Until 2005, Mr Bartlett's pay as Clerk was determined locally by the Council. On 27 July 2005, the minutes of a meeting of the full Council record that having considered the Clerk's pay, 'Council Members approved the wages structure of Scale LC3, Benchmark 40, which should be applied to his salary.' This minute refers to the 'National Agreement on Salaries and Conditions of Service of Local Council Clerks in England and Wales 2004' negotiated by NALC and SLCC. From this time Mr Bartlett's pay was determined and subject to the NALC/SLCC national pay scale, and each year Mr Bartlett's pay was due to be uplifted by any nationally negotiated annual pay award.
- 98 At its meeting on 27 July 2005, the Council agreed that Mr Bartlett's pay should be at spinal point 40 of the national pay-scales. In the 2004-05 financial year, spinal point 40 of the national pay-scales was £30,747. This was based on a 37-hour working week. As Mr Bartlett's contractual hours were 25 hours a week, his pay was set at the pro-rata rate of £20,775 per annum. Mr Bartlett was responsible for administering the Council's payroll.
- 99 In September 2009, Mr Bartlett applied a 3.81% increase to his salary. However, the national pay award set by NALC and SLCC was 1%. This resulted in Mr Bartlett being paid at a rate higher than spinal point 40 of the national pay scales until his employment ceased on 31 October 2014. The cumulative amount of pay that Mr Bartlett received in excess of the amount payable at spinal point 40 was £3,384. When Mr Bartlett left the employment of the Council on 31 October 2014, his full-time equivalent pay amounted to £35,423, whereas spinal point 40 of the national pay-scale at that time was £33,998. **Exhibit 2** sets out the movements in Mr Bartlett's pay between 1 April 2005 and 31 October 2014 compared to the national pay-scales.

**Exhibit 2 – salary payments made to the Clerk of the Council compared to NALC/SLCC national scales**

| Financial year      | NALC/SLCC Pay-point 40 (£) | National pay award with effect from 1 April (%) | Spinal point 40 Pro Rata 25/37 (£) | Graham Bartlett annual salary as paid (£) | Annual increase applied to base pay | Cumulative over/(under) payment (£) |
|---------------------|----------------------------|-------------------------------------------------|------------------------------------|-------------------------------------------|-------------------------------------|-------------------------------------|
|                     | £                          | %                                               | £                                  | £                                         | %                                   |                                     |
| 2005/6              | 30747                      |                                                 | 20775                              | 20775                                     |                                     | 0                                   |
| 2006/7              | 31653                      | 2.95%                                           | 21387                              | 21389                                     | 3%                                  | 2                                   |
| 2007/8              | 32436                      | 2.47%                                           | 21916                              | 21912                                     | 2.44%                               | -2                                  |
| 2008/9 <sup>1</sup> | 33328                      | 2.75%                                           | 22519                              | 22449                                     | 2.45%                               | -72                                 |
| 2009/10             | 33661                      | 1.00%                                           | 22744                              | 23304                                     | 3.81%                               | 488                                 |
| 2010/11             | 33661                      | 0.00%                                           | 22744                              | 23344                                     | 0.00%                               | 1088                                |
| 2011/12             | 33661                      | 0.00%                                           | 22744                              | 23344                                     | 0.00%                               | 1688                                |
| 2012/13             | 33661                      | 0.00%                                           | 22744                              | 23344                                     | 0.00%                               | 2288                                |
| 2013/14             | 33998                      | 1.00%                                           | 22972                              | 23577                                     | 1%                                  | 2893                                |

| Financial year                | NALC/SLCC Pay-point 40 (£) | National pay award with effect from 1 April (%) | Spinal point 40 Pro Rata 25/37 (£) | Graham Bartlett annual salary as paid (£) | Annual increase applied to base pay | Cumulative over/(under) payment (£) |
|-------------------------------|----------------------------|-------------------------------------------------|------------------------------------|-------------------------------------------|-------------------------------------|-------------------------------------|
|                               | £                          | %                                               | £                                  | £                                         | %                                   |                                     |
| 2014/15<br><br>As at 31/10/14 | 33998                      | 0.00%                                           | 22972                              | 23813                                     | 0.99%                               | 3384                                |

Source: Council payroll records and NALC/SLCC published annual pay scales

<sup>1</sup> In March 2008 and April 2008, the Council Secretary was paid overtime for working an additional 15 hours per month. In May 2008, the amount being paid as overtime was incorporated into the Council Secretary's basic pay (see **paragraph 109**). The column, 'pay if national rates had been applied has been adjusted from 2000-09 onwards to reflect the change in hours worked.

100 My auditors reviewed the Council's minutes during this period but found no reference to the Council approving that Mr Bartlett be paid in excess of spinal point 40 of the national scales. Mr Bartlett was responsible for taking the Council's minutes.

101 Mr Bartlett informed my auditors that the difference may have occurred because on one occasion NALC/SLCC published an initial annual pay award percentage which was subsequently increased. However, the pay rates set out in **Exhibit 2** represent the finalised pay rates for each of the years in question and therefore this explanation does not explain the variance. Mr Bartlett has also suggested that the difference may have occurred because in 2015 his contracted hours increased by two hours a week 'for being the [Council's Responsible Financial Officer]'. However, as Mr Bartlett's pay did not significantly deviate from spinal point 40 of the NALC/SLCC national scales until the 2009-10 financial year (see **Exhibit 1**), Mr Bartlett's explanation has no merit. I also note that Mr Bartlett had been the Council's Responsible Financial Officer since the commencement of his employment in 1989.

**Between 1 January 2005 and 31 October 2014, the Clerk received £4,806 in payments that had not been agreed by the Council**

- 102 Most community councils have an overtime policy which enables employees, when required to work more than contracted hours, to claim additional pay for the overtime worked, subject to approval being obtained. The Council did not have an overtime policy in place during the period Mr Bartlett was employed as the Council's Clerk. The absence of such a policy does not prevent a meeting of the Council approving overtime payments. Where overtime is paid, the payments are subject to deductions of tax (and national insurance up to State Pension age).
- 103 Most community councils have an expenses policy which enables employees to reclaim expenses they have incurred on carrying out official council business. During Mr Bartlett's time as Clerk, the Council did not have an expenses policy. However, Mr Bartlett's contract of employment states that 'any travel, mileage, subsistence expenses incurred by the Clerk to the Council and approved by the Council will be paid at the agreed NJC rate laid down at the time'.
- 104 All payments made by the Council are required to be approved by a meeting of the Council. My auditors reviewed Council minutes covering the period 1 November 2013 to 31 October 2014. The minutes record that each month the Council approved a payment to Mr Bartlett referred to as 'Graham Bartlett Salary'. The minutes do not record that Mr Bartlett received any payment for overtime or reimbursement of expenses. Mr Bartlett took the Council's minutes.
- 105 In August 2015, Mr Bartlett's successor as Clerk of the Council provided my auditors with account books she had located within the Council's records. These books provided a breakdown of the monthly payments that had been made to Mr Bartlett since 2004. For all but three months, additional amounts had been added to Mr Bartlett's basic pay with the annotation 'MLG & OT'. Mr Bartlett has confirmed to my auditors that this is an abbreviated form for 'mileage and overtime'. The total of Mr Bartlett's salary payments, overtime payments and mileage payments combined was the amount the Council was asked to approve as 'Graham Bartlett Salary'. Mr Bartlett has confirmed that he did not complete expenses claims, keep a record of the overtime worked he was paid for nor seek specific authorisation for payment of overtime or expenses. He told my auditors that he worked significantly in excess of his contracted hours and did not claim all the expenses he incurred.
- 106 The amounts paid to Mr Bartlett do not appear to be based on actual overtime worked or expenses occurred. The monthly overtime and mileage expenses for 10 of the 12 months from November 2013 and October 2014 were between £48 and £49 as shown in **Exhibit 3**.

**Exhibit 3 – ‘Overtime and Mileage’ payments received by Mr Bartlett for pay months November 2013 to October 2014**

| <b>Pay Month</b> | <b>‘Overtime and Mileage’ payments received by Mr Bartlett</b> |
|------------------|----------------------------------------------------------------|
| November 2013    | £48.60                                                         |
| December 2013    | £48.60                                                         |
| January 2014     | £48.60                                                         |
| February 2014    | £48.60                                                         |
| March 2014       | £48.60                                                         |
| April 2014       | £48.00                                                         |
| May 2014         | £48.97                                                         |
| June 2014        | £48.00                                                         |
| July 2014        | £48.00                                                         |
| August 2014      | NIL                                                            |
| September 2014   | £27.00                                                         |

| Pay Month    | 'Overtime and Mileage' payments received by Mr Bartlett |
|--------------|---------------------------------------------------------|
| October 2014 | £48.00                                                  |
| <b>Total</b> | <b>£510.97</b>                                          |

Source: Council payroll records

- 107 My auditors extended their examination of the payroll account books to cover the period January 2005 to October 2014. They found that during this period Mr Bartlett received 'MLG & OT' payments amounting to £4,806.28 that was not specifically reported to or authorised by the Council.
- 108 During the financial years 2013-14 and 2014-15, the Council contracted with a local accountancy firm to provide payroll services to the Council. Under this arrangement, Mr Bartlett, notified the accountants of the gross salary to be paid to himself and the Council Secretary. The accountants used this information to calculate any statutory deductions due, produce payslips, and inform Mr Bartlett of the amount to be paid to him, the Council Secretary and HMRC. Mr Bartlett would then arrange for payments to be made by cheque and authorised by members of the Council.
- 109 Mr Bartlett, having been notified by the accountants of the amount due to him, added overtime and mileage to that amount each month as per **Exhibit 2**. In consequence, Mr Bartlett was paid more than the amounts specified by the accountants. As set out in **paragraph 102**, overtime payments are taxable payments. Mr Bartlett did not notify the Council's accountants that he was receiving such payments and the amounts were paid to him without income tax being deducted. Furthermore, as Mr Bartlett did not keep records to differentiate between overtime and expenses reimbursement, and he kept no record of expenses he incurred to support the payments he received, it is likely that all payments he received for overtime and expenses were taxable.
- 110 Mr Bartlett has told me that in his view the Council 'had a very good deal' because:
- he worked many hours of overtime for which he did not seek payment from the Council; and
  - he claimed 45p per mile travelled, whilst he could have claimed a higher mileage rate in accordance with his contract of employment (**paragraph 103**).
- 111 I do not agree with Mr Bartlett for the following reasons.
- the amounts Mr Bartlett paid himself were not based on actual expenses incurred and/or overtime worked.

- the payments in respect of overtime and expenses were not properly disclosed to the Council and were not approved by members of the Council. Mr Bartlett therefore had no entitlement to receive these payments.
- whilst Mr Bartlett was contractually entitled to be paid mileage for Council-related travel at national rates, he did not make any such claims. Mr Bartlett simply added an unsupported supplement to his pay for overtime and expenses without the knowledge or approval of members of the Council.
- Mr Bartlett failed to ensure that the overtime payments he made to himself had been appropriately taxed.

### **The Council failed to formally approve changes to the Secretary's contractual hours and in consequence the Secretary received salary payments in excess of the amount agreed by the Council**

- 112 The pay of the Council's Secretary was determined locally by Abertillery and Llanhilleth Community Council and was not based on nationally agreed pay-scales. In 2005-06 The Council Secretary received an annual salary of £8,544 and was required to work 22 hours a week. Between 2005-06 and the end of her employment on 31 October 2014, the Council Secretary's pay increased from £8,544 per annum to £11,929 per annum as set out in **Exhibit 3**.
- 113 The minutes of meetings of the Council during this period do not record that the Council was asked to authorise annual increases to the Council Secretary's pay. Mr Bartlett as Clerk to the Council administered an annual pay uplift. For most years, the annual increase paid to the Council Secretary was broadly equivalent to the national pay award published by NALC/SLCC. However, in 2007-08, 2008-09 and 2009-10, the Council Secretary's pay increased by 4.87%, 4.67% and 3.72%, compared to increases in the national pay scales of 2.47%, 2.75% and 1% respectively. As shown in **Exhibit 4**, the Council Secretary received £6,505 more in pay from 2004-05 onwards than she would have done if the Council had applied the NALC/SLCC national pay awards for this period.

**Exhibit 4: increase in the Council Secretary's pay from 1 April 2005 to 31 October 2014**

| Financial year      | The Council Secretary's base pay (£) | % year on year increase to pay | % annual published increase in the NALC/SLCC pay scales | Pay if national increases had been applied (£) | Cumulative over/(under) payment if national pay awards applied (£) | Overtime paid (£) |
|---------------------|--------------------------------------|--------------------------------|---------------------------------------------------------|------------------------------------------------|--------------------------------------------------------------------|-------------------|
| 2005/6              | 8,544                                |                                |                                                         | 8,544                                          |                                                                    |                   |
| 2006/7              | 8,797                                | 2.96%                          | 2.95%                                                   | 8,796                                          | 1                                                                  |                   |
| 2007/8              | 9,226                                | 4.87%                          | 2.47%                                                   | 9,013                                          | 213                                                                | 132.05            |
| 2008/9 <sup>2</sup> | 11,088                               | 4.67%                          | 2.75%                                                   | 10,573                                         | 728                                                                | 132.57            |
| 2009/10             | 11,680                               | 3.72%                          | 1.00%                                                   | 10,679                                         | 1,729                                                              |                   |
| 2010/11             | 11,708                               | 0.24%                          | 0.00%                                                   | 10,679                                         | 2,758                                                              |                   |
| 2011/12             | 11,708                               | 0.00%                          | 0.00%                                                   | 10,679                                         | 3,787                                                              |                   |
| 2012/13             | 11,708                               | 0.00%                          | 0.00%                                                   | 10,679                                         | 4,816                                                              |                   |

<sup>2</sup> In March 2008 and April 2008, the Council Secretary was paid overtime for working an additional 15 hours per month. In May 2008, the amount being paid as overtime was incorporated into the Council Secretary's basic pay (see **paragraph 113**). The column, 'pay if national rates had been applied' has been adjusted from 2000-09 onwards to reflect the change in hours worked.

| Financial year                | The Council Secretary's base pay (£) | % year on year increase to pay | % annual published increase in the NALC/SLCC pay scales | Pay if national increases had been applied (£) | Cumulative over/(under) payment if national pay awards applied (£) | Overtime paid (£) |
|-------------------------------|--------------------------------------|--------------------------------|---------------------------------------------------------|------------------------------------------------|--------------------------------------------------------------------|-------------------|
| 2014/15<br>To<br>(31/10/2014) | 11,929                               | 0.90%                          | 0.00%<br>(award of 1% made after 31/10/14)              | 10,786                                         | 6,505                                                              |                   |

Source: Council payroll records and NALC/SLCC published annual pay scales

- 114 In both March 2008 and April 2008, the Council's payroll records indicate that the Council Secretary was paid £132 in addition to her basic salary for working 15 hours overtime. From May 2008 onwards, the amount which had been paid in overtime was incorporated into the Council Secretary's base pay, resulting in an increase to her basic pay of 17.2%. No changes were made to the Council Secretary's contractual working hours and the minutes of the Council do not record that the Council approved this change or was informed of it.
- 115 Mr Bartlett told my auditors that at the time of this change he was absent from the Council due to ill health and therefore is unaware of how the decision was made to incorporate the Council Secretary's overtime into basic pay. The Council Secretary told my auditors that she was asked to attend and take minutes at evening Committee meetings of the Council during March 2008 and April 2008 whilst the Clerk was absent due to ill health. She was therefore granted 15 hours a month overtime to perform these additional duties. She also told my auditors that on the Clerk's return she was asked to continue to attend evening meetings of the Council and take minutes of these meetings, and the increase of 15 hours per month was therefore made permanent.
- 116 I have no reason to doubt the explanation provided by the former Council Secretary and note that she had no role in processing payroll payments. However, the Council should have formally approved the change in her contractual duties and the consequential increase to her pay. The Council failed to do so and as a result, in my view, those payments were unlawful.

## The Council failed to comply with its contract standing orders when purchasing goods and services and, as a consequence, it is unable to demonstrate that it achieved value for money

- 117 Community Councils are required by legislation to make standing orders with respect to making contracts for the supply of goods or materials or the execution of works. These standing orders must include provision for securing competition for such contracts and for regulating the way tenders are invited. The standing orders can specify a de minimis amount below which competition is not required and may authorise an authority to exempt a contract from the standing order requirements when justified by special circumstances.
- 118 The Council adopted standing orders and financial regulations governing the making of contracts for the supply of goods, materials and works. The financial regulations state that where the Council intends to enter into a contract for more than £50,000, 'the Clerk shall invite tenders from at least three firms to be taken from the appropriate approved list'. The financial regulations further state that:

'All members and Officers are responsible for obtaining value for money at all times. An officer issuing an official order shall ensure as far as reasonable and practicable that the best available terms are obtained in respect of each transaction, usually by obtaining three or more quotations or estimates from appropriate suppliers, subject to any de minimis provisions in Regulation 11 (I) below' (paragraph 10.3) and

'When [the Council] is to enter into a contract less than £50,000 in value for the supply of goods or materials or for the execution of works or specialist services other than such goods, materials, works or specialist services as are excepted as set out in paragraph (a)<sup>3</sup> the Clerk or RFO shall obtain 3 quotations (priced descriptions of the proposed supply); where the value is below £1,000 and above £100 the Clerk or RFO shall strive to obtain 3 estimates. Otherwise, Regulation 10 (3) above shall apply' (Paragraph 11.1i).

<sup>3</sup> Paragraph (a) provides a list of items exempt for the competition requirements. The goods and services procured by the Council were not exempt items under paragraph (a).

119 In summary:

- for contracts with a value of over £50,000, the Clerk was required to seek tenders from three approved suppliers. The Council did not award any contracts for over £50,000 in the 2014-15 financial year (or in preceding years).
- for contracts with a value of £1,000 to £50,000 the Clerk was required to obtain three quotations (priced descriptions of the proposed supply). During the 2014-15 year the Council awarded two relevant contracts. One for the provision of Christmas lighting (£19,685.78) and one for the provision of flower baskets (£1,422.00).
- for contracts with a value between £100 and £1,000, the Clerk was required to 'strive to obtain three estimates'. During the 2014-15 year, a further 10 contracts were awarded which met this description.

120 Mr Bartlett did not obtain three quotations for the provision of Christmas lights or flower baskets before entering into contracts for the supply of these items. Mr Bartlett has not provided an explanation why he did not to comply with the Council's standing orders and financial regulations when procuring Christmas lighting. He expressed his opinion that the Council received a good service and price. Mr Bartlett told my auditors that he had to procure the flower baskets quickly due to a royal visit to the town, but he provided no explanation why it was not possible to comply with the Council's standing orders and financial regulations.

121 My auditors reviewed the Council's financial records but found no evidence that Mr Bartlett sought or obtained estimates for any of the ten contracts awarded in 2014-15 with values of between £100 and £1,000.

122 During the course of the audit, my auditors were told that during the 2013-14 financial year, the Council paid a supplier £6,786 for the provision and installation of an audio loop system in the Council chamber. My auditors have confirmed that this payment was made, and that the Council's Clerk, Mr Bartlett placed the order for this. Mr Bartlett did not obtain three quotations for this supply as required by the Council's Financial Regulations. Furthermore, Mr Bartlett purchased the equipment without seeking the Council's authorisation, as required by the Council's Financial Regulation which states:

'The Clerk may incur expenditure on behalf of the Council which is necessary to carry out any repair replacement or other work which is of such extreme urgency that it must be done at once, whether or not there is any budgetary provision for the expenditure, subject to a limit of £200. The Clerk shall report the action to the Council as soon as practicable thereafter' (Paragraph 3.4).

123 The Council had not provided in its 2013-14 budget for the purchase of an audio loop system. Mr Bartlett did not seek prior approval from the Council to purchase the equipment. The expenditure incurred by Mr Bartlett was £6,786. Mr Bartlett only had delegated authority to incur unbudgeted expenditure of up to £200. Mr Bartlett retrospectively reported the purchase to the Council. Mr Bartlett told my auditors that members had complained in a number of meetings that they had

problems hearing Council proceedings and that the Leader of the Council asked for something to be done about the problem. Mr Bartlett told my auditors that the contractor in question was in the Council building at the time, so he requested a quotation from the contractor and accepted that quotation. Mr Bartlett has not explained why he chose to disregard the Council's standing orders and financial regulations.

## The Council's management of its financial affairs was inadequate and did not meet legislative requirements

### The Council's management of its financial affairs was inadequate

- 124 The Accounts and Audit (Wales) Regulations 2014 (the Regulations) set out that councils must establish a sound system of internal control which facilitates the effective exercise of its functions and which includes arrangements for adequate and effective financial management. Arrangements for adequate and effective financial management include internal control arrangements and the keeping of proper financial records.
- 125 The members of the Council are responsible for ensuring that these legislative duties are met. The Clerk also has legal duties for financial management. Mr Bartlett, when appointed as the Clerk, was also appointed to the statutory role of the Council's Responsible Financial Officer (RFO). Under s151 of the Local Government Act 1972 the RFO has responsibility for the administration of the Council's financial affairs.
- 126 Mr Bartlett acted in this capacity until his paid employment ended on 31 October 2014. The Council's standing orders state that the RFO, 'acting under the policy direction of the Council, shall administer the Council's financial affairs in accordance with proper practices. The RFO shall determine on behalf of the council its accounting records, and accounting control systems. The RFO shall ensure that the accounting control systems are observed and that the accounting records of the council are maintained and kept up to date in accordance with proper practices. The RFO shall produce financial management information as required by the council. At least once a year, prior to approving the annual return, the council shall conduct a review of the effectiveness of its system of internal control which shall be in accordance with proper practices.'
- 127 Whilst auditing the Council's 2014-15 accounts my auditors found several examples where the Council's financial affairs had not been administered effectively. As set out previously, the Council did not have any written policies or procedures governing the payment of staff expenses or overtime, there was

ineffective control over payroll payments and standing orders relating to the purchase of goods and services were not complied with.

- 128 My auditors also found that the accounts submitted for audit were materially misstated in key respects including:
- the accounts did not include all transactions for the 2014-15 financial year;
  - the accounts did not agree to the underlying financial records including the cashbook to bank account reconciliation;
  - the cashbook did not include all the Council's 2014-15 transactions;
  - the cashbook to bank account reconciliation had been artificially balanced;
  - total receipts and payments recorded in the accounts were overstated due to incorrect accounting for gratuity payments; and
  - the accounts did not include the transactions or balance on one of the Council's bank accounts (the Chairman's Appeal Fund), and therefore the accounts were not an accurate record of the Council's financial affairs for 2014-15.
- 129 The Council's accounts for 2014-15 were prepared and certified by Mr Bartlett's successor as Clerk of the Council. However, my auditors examined the Council's accounting records for the 2012-13 and 2013-14 financial years and found that all the issues set out above, (other than the disclosure of gratuity payments) also applied to the 2012-13 and 2013-14 financial years during which period, Mr Bartlett was the Clerk of the Council.
- 130 I was particularly concerned that the Council's accounts did not and had not included transactions and balances on the Council's Chairman's Appeal Fund bank account for several years. Mr Bartlett's successor as Clerk of the Council told my auditors that she was not informed of the existence of the account when she took up office and only discovered its existence inadvertently. The account was not registered to the Council's address and the signatories on the account were not serving members of the Council. The Council holds no record of funds raised to be accounted for as part of the Chairman's Appeal Fund, or payments made from the Fund. It is not, therefore, possible to determine whether all income was paid into the bank account or that payments made from the account were legitimate.

## **The Council did not set a lawful budget for the 2014-15 financial year before issuing its precept to the County Borough Council**

- 131 Each year, the Council issues a precept to the council tax billing authority, Blaenau Gwent County Borough Council. The precept is the Council's primary source of income to fund the services it delivers. In determining the amount to be precepted, the Council must determine its budgetary requirement for the forthcoming financial year in accordance with the provisions of the Local Government Finance Act 1992.

- 132 The Act specifies that the Council must calculate its budget requirement by considering the aggregate of:
- the expenditure the Council estimates it will incur in the year in performing its functions;
  - such allowance as the Council estimates will be appropriate for contingencies in relation to expenditure;
  - the financial reserves which the Council estimates it will be appropriate to raise in the year for meeting its estimated future expenditure or to meet any deficit arising in an earlier financial year;
  - the sums which it estimates will be payable to the Council for the year, other than the precept; and
  - the amount of the financial reserves which the authority estimates that it will use in order to finance its expenditure.
- 133 The amount to be precepted is the aggregate of the above items. The legislation requires the full Council to approve the annual budget and the precept to be issued from Blaenau Gwent County Borough Council.
- 134 The Council issued a precept of £90,000 to Blaenau Gwent County Borough Council for the 2014-15 financial year. My auditors were provided with a paper drafted by Mr Bartlett entitled 'Strictly Private and Confidential Draft Estimates for 2014/2015'. The paper sets out the Council's budgeted expenditure for 2014-15 as £92,000 and recommends that the precept for 2014-15 should be set at £92,000. It further sets out that the difference between the budget and precept would be bridged as 'we should recover overspend from VAT returns'.
- 135 The budget set out in the paper prepared by Mr Bartlett does not meet the requirements set out in the Local Government Finance Act 1992 in several key respects.
- it does not adequately set out an estimate of the expenditure the Council would incur during the 2014-15 financial year, in that the budget substantially replicates the budget for 2013-14 without reference to the expenditure actually incurred during the 2013-14 financial year;
  - the budget makes no specific allowance for contingencies;
  - there is no reference in the paper to the level or use of financial reserves; and
  - there is no reference to estimated income which would be payable to the Council for 2014-15, other than the precept, (eg allotment rent, Chairman's Appeal Fund receipts etc).
- 136 The minutes of a meeting of the Council's Finance and Organisation Committee held on 15 January 2014 record that the Committee considered the 2014-15 estimates provided by Mr Bartlett and recommended that the estimates be submitted to a meeting of the full Council in January 2014. The minutes of the meeting of the full Council held on 29 January 2014 do not record that the

estimates were discussed, but the minutes state that 'the Clerk's recommendations for a standstill budget were accepted'.

- 137 As the 2014-15 budget did not meet the requirements of the Local Government and Finance Act 1992, the budget set by the Council and precept made on Blaenau Gwent County Borough Council were, in my view, contrary to law.
- 138 On 6 June 2015, the Council's Internal Auditor, Mr Lyn Llewellyn certified an internal audit report which forms part of the Council's Annual Accounts Return for the year ending 31 March 2015. In the report, he indicates that he had been unable to agree with the statement 'the annual precept requirement resulted from an adequate budgetary process, progress against the budget was regularly monitored, and reserves were appropriate'. In a letter to the Council dated 19 June 2015, Mr Llewellyn clarified that he had not been able to assent to the statement on the basis that there was no evidence from the Council's minutes that the budget was being monitored by the Council, and that he had reported the same finding in respect of the 2013-14 financial year. Mr Llewellyn recommended that to address this issue the Council 'consider purchasing an appropriate accounting software ... which will make financial management a lot easier'.
- 139 I agree with Mr Llewellyn's conclusion that the Council's budget was not being monitored by members of the Council. I also note, however, that Mr Llewellyn incorrectly certified that the Council's 'annual precept requirement resulted from an adequate budgetary process', despite the deficiencies in budget-setting highlighted above.

## The Council failed to meet its legislative duty to put in place and maintain an adequate and effective internal audit

- 140 Each community and town council in Wales is required by the Account and Audit (Wales) Regulations 2014 to 'maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control'.
- 141 The work of internal audit is crucial to providing assurance to members of the Council that the Council's control environment is sound and operating effectively, and that its accounting records are being properly maintained.
- 142 Councils should appoint internal auditors who are competent to perform the role required by legislation. The internal auditor must be independent of the Council and, therefore, able to report objectively on the work they perform. The internal auditor should be provided with clear terms of engagement and their performance and appointment reviewed on a periodic basis.
- 143 As a minimum, community council internal auditors are required to complete and certify an internal audit report which forms part of the council's Annual Account Return (the Return). The Return also includes the council's annual accounts and an annual governance statement (AGS). The Return is required to be submitted to

a meeting of the full council and members are required to approve the accounts and AGS. The internal audit report is an important part of the return because it provides members with assurance that the council has proper governance and financial arrangements in place, and that these arrangements are effective. When completing the internal audit report for 2014-15, the council's internal auditor was required to state, based on the internal audit work undertaken, whether they agreed with the statements set out in **Exhibit 4**.

- 144 Mr Lyn Llewellyn was the Council's Internal Auditor for the 2014-15 financial year. He had performed this role for several years, although I have not been able to find any documentation setting out how the Council appointed him to the role or setting out the terms of his engagement. Mr Llewellyn received a fee of £335 per annum for his work as the Council's Internal Auditor for 2014-15.

**Exhibit 5: statements that the Council's Internal Auditor was required to certify whether he agreed to when completing the internal audit report within the Council's Annual Accounts Return for the year ending 31 March 2015**

1. Have appropriate books of account have been properly kept throughout the year?
2. Have the Council's financial regulations been met, payments supported by invoices, expenditure approved, and VAT appropriately accounted for?
3. Has the Council assessed the significant risks to achieving its objectives and reviewed the adequacy of arrangements to manage these?
4. Has the annual precept requirement resulted from an adequate budgetary process, progress against the budget, was the budget regularly monitored and were reserves appropriate?
5. Was expected income fully received, based on correct prices, properly recorded and promptly banked, and was VAT appropriately accounted for?
6. Were petty cash payments properly supported by receipts, was expenditure approved, and VAT appropriately accounted for?

7. Were salaries to employees and allowances to members paid in accordance with Council approvals, and PAYE and NI requirements properly applied?
8. Were asset and investment registers complete and accurate, and properly maintained?
9. Were periodic and year-end bank account reconciliations properly carried out?
10. Were accounting statements prepared during the year on the correct accounting basis (receipts and payments/income and expenditure), agreed with the cashbook, and were they supported by an adequate audit trail from underlying records, and where appropriate, were debtors and creditors properly recorded?
11. Has the Council met its responsibilities as a trustee (if applicable)?

Source: Council Annual Return form 2014-15

- 145 Mr Llewellyn set out his conclusions on each of these matters within his internal audit report and provided assurance to the Council that proper arrangements were in place in each of the 11 specified areas with the following exceptions:
  - the Council did not have in place proper budget monitoring arrangements; and
  - the Council had not assessed its significant risks.
- 146 The work undertaken by the Auditor General's auditors found that the Council did not have proper arrangements in place in many of the areas where Mr Llewellyn provided positive assurance to the Council, and the findings of my audit as set out in this document contradict the assurances given by Mr Llewellyn. **Appendix 1** sets out where my audit findings differ from those reported by Mr Llewellyn.
- 147 I am particularly concerned that Mr Llewellyn concluded that 'periodic and year-end bank account reconciliations were properly carried out'. A bank reconciliation matches the cash transactions and balances recorded in the Council's bank account to the corresponding transactions and balances recorded on bank statements. Reconciling the cashbook to the bank statements helps to confirm that cash records are correct and can help detect fraud and any cash manipulations.

A year-end reconciliation also helps to ensure that cash balances recorded in the year-end accounts are correct.

- 148 As set out in **paragraph 127**, the Council prepared a bank reconciliation for 2014-15 which appeared to show that the cashbook and bank statements had been reconciled. Mr Llewellyn told my auditors that he checked the bank reconciliation and confirmed that 'it was correct based on the records provided for internal audit'.
- 149 I do not accept Mr Llewellyn's explanation. A cursory audit examination of the bank reconciliation and the Council documents supporting that reconciliation would have identified that the reconciliation was inaccurate and flawed for the following reasons:
- the opening balance used in the bank reconciliation did not agree to the balance as at 1 April 2014 recorded in the 2013-14 accounts, cash book or bank statements;
  - the cashbook and bank records for 2014-15 did not agree to the 2014-15 accounts submitted for audit;
  - the closing cash balance as recorded in the cashbook and annual accounts did not take into account cheques that had been issued but not cashed at 31 March 2015;
  - the 2014-15 annual accounts included a discrepancy of £1,000 between the closing balance as at 31 March 2014 and the opening balance at 1 April 2014; and
  - the cashbook did not include all transactions that had gone through the Council's bank accounts in 2014-15.
- 150 As a result of the above, it was impossible for the cashbook and bank statements to have been properly reconciled, and I consider Mr Llewellyn's assertion to be incorrect.
- 151 Furthermore, as set out in **paragraph 6**, during 2014-15, the Council paid gratuity payments totalling £43,381 to the Council Clerk and Secretary (over 30% of the total expenditure for 2014-15). In view of the size and potentially contentious nature of these payments, I would have expected the Council's Internal Auditor to have reviewed the proposed payments, confirmed that the Council had obtained appropriate legal advice, that the recipients had a contractual entitlement to these payments, and that the payments had been calculated correctly. I consider that Mr Llewellyn did not take the steps necessary to confirm that the gratuity payments were legitimate.
- 152 On 15 May 2014, Mr Llewellyn wrote to Mr Bartlett 'Terminal Gratuity, I presume that the contract of employment contains provision for the payment of a gratuity on your retirement. Please confirm the position.' I have found no evidence, however, that Mr Llewellyn requested or obtained a copy of Mr Bartlett's contract of employment. Had he done so; he would have identified that it did not specify that Mr Bartlett had an entitlement to receive a gratuity.

- 153 Mr Llewellyn's correspondence of 15 May 2014 was considered by a meeting of the Council held on 28 May 2014. The minutes of the meeting state that 'members noted this requirement [the requirement for the contract to include an entitlement to a gratuity] is in compliance'. Mr Llewellyn should have obtained a copy of Mr Bartlett's contract to satisfy himself that i) Mr Bartlett had an entitlement to receive a gratuity and ii) the extent/value of that entitlement. He did not do so. Mr Llewellyn told my auditors that 'I again pursued the matter when I came to undertake the 2014-15 internal audit in June 2015.' The gratuity payments were made by the Council in October 2014.
- 154 In Mr Llewellyn's Internal Audit report for 2014-15, he set out that he had, with the Council's consent, contacted Torfaen County Borough Council to determine what pension benefits Mr Bartlett would have been entitled to had he been a member of the Local Government Pension Scheme. This enquiry seems to have been made in order to demonstrate that the gratuity paid to Mr Bartlett represented value for money. Mr Llewellyn states in the report that 'according to [an officer of Torfaen County Borough Council], the Council has got away quite cheaply in the circumstances'.
- 155 In my view, it was not Mr Llewellyn's role as the Council's Internal Auditor to make this enquiry, and the enquiry was itself irrelevant. Mr Bartlett was not a member of the Local Government Pension Scheme and had no entitlement to any benefits provided by that scheme. The statement that the Council had 'got away quite cheaply in the circumstances' was misleading because as set out above it made a gratuity payment to Mr Bartlett significantly in excess of the maximum he could lawfully receive as set out in **paragraphs 38 to 43**.
- 156 Mr Llewellyn was interviewed as part of my audit, and his audit working papers were examined. I have concluded that the internal work carried out was neither adequate nor effective, and insufficient work had been undertaken to support the assurances he gave to the Council.
- 157 Mr Llewellyn has stated that he disagrees with my opinion on the effectiveness of his internal audit. Nevertheless, I consider that the internal audit service provided by Mr Llewellyn to the Council was of a very poor standard. In my view, therefore, in respect of the 2014-15 year of account, the Council did not comply with its duty to 'maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control'.
- 158 The Council did not re-appoint Mr Llewellyn as its internal auditor for the 2015-16 year of account.

## The Council's governance arrangements were deficient in several material respects

- 159 During the audit, in addition to the matters set out above, my auditors identified numerous examples where the Council's governance arrangements were deficient including;
- Lack of a proper policy framework
  - Meeting minutes of a poor standard
  - Members of the public excluded from parts of Council meetings they were entitled to attend
  - Recruitment procedures inadequate, resulting in a complaint against the Council being upheld by the Public Services Ombudsman for Wales
  - Blank cheques were pre-signed by Council members
  - Sensitive documentation not held securely
  - Personal information relating to Council staff inappropriately made public
- 160 It is the duty of Members to ensure that the Council's governance arrangements are fit for purpose. In my view, Members of the Council did not adequately exercise this duty, and they placed over-reliance on the Clerk to ensure that governance arrangements were in place and operating effectively.
- 161 Since 2014-15, following the appointment of new officers, significant improvements have been made to the Council's internal governance arrangements. Whilst the Council continues to face several challenges, I am satisfied that the Council is now better placed to be able to demonstrate that it is delivering benefits for the people of Abertillery and Llanhilleth and complying with proper standards of good governance.

# Appendix 1

## Internal Audit's reported findings on the Council's 2014-15 accounts compared to the Auditor General's findings on the same issues

| Statement to be agreed/disagreed by the Internal Auditor                                                                                      | Conclusion of the Council's Internal Auditor | Conclusion of the Auditor General's auditors                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Have appropriate books of account have been properly kept throughout the year?                                                                | Yes                                          | No. The Council did not keep proper accounting records and the accounts presented for audit were materially misstated ( <b>paragraphs 124 to 128</b> ).                                                                                                                                                                                                                                                  |
| Have the Council's financial regulations been met, payments supported by invoices, expenditure approved, and VAT appropriately accounted for? | Yes                                          | No. The Council's financial regulations were not complied with in respect of the procurement of goods and services ( <b>paragraphs 117 to 123</b> ). Payments were generally supported by invoices and VAT accounted for. However, transactions on the Council's Chairman's Appeal Fund were not accounted for and not supported by invoices, receipts or payment confirmation ( <b>paragraph 130</b> ). |
| Has the Council assessed the significant risks to achieving its objectives and reviewed the adequacy of arrangements to manage these?         | No                                           | No. No evidence that the Council had assessed its significant risks or considered how to manage or mitigate risks faced.                                                                                                                                                                                                                                                                                 |

| Statement to be agreed/disagreed by the Internal Auditor                                                                                                                       | Conclusion of the Council's Internal Auditor                                                                                                     | Conclusion of the Auditor General's auditors                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Has the annual precept requirement resulted from an adequate budgetary process, progress against the budget, was the budget regularly monitored and were reserves appropriate? | No (in respect of budget monitoring). There was no evidence in the Council's minutes that the Council's budget was monitored on a regular basis. | No (in respect of both budget setting and budget monitoring). The Council's precept requirement was not based on an adequate budgetary process, and the budget was not set in accordance with legislative requirements. My auditors found no evidence that the Council's budget for 2014-15 was subject to review. <b>(paragraphs 131 to 139).</b> |
| Was expected income fully received, based on correct prices, properly recorded and promptly banked, and was VAT appropriately accounted for?                                   | Yes                                                                                                                                              | No. The Council has recorded that it received minimal non-precept income during 2014-15. My auditors found that transactions relating to the Chairman's Appeal Fund were not accounted for, and it is not possible to determine whether all monies due to the Council were banked <b>(paragraph 130).</b>                                          |
| Were petty cash payments properly supported by receipts, was expenditure approved, and VAT appropriately accounted for?                                                        | Yes                                                                                                                                              | Not applicable, the Council did not operate petty cash payments.                                                                                                                                                                                                                                                                                   |

| Statement to be agreed/disagreed by the Internal Auditor                                                                                       | Conclusion of the Council's Internal Auditor | Conclusion of the Auditor General's auditors                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Were salaries to employees and allowances to members paid in accordance with Council approvals, and PAYE and NI requirements properly applied? | Yes                                          | <p>No. Salary payments to employees were not in accordance with Council approvals. Expenses and overtime payments were made to the Clerk without authorisation, and the Clerk received overtime payments without statutory deductions being made (<b>paragraphs 97 to 111</b>).</p> <p>Increases to the Secretary's pay were not approved by the Council on an annual basis. There is no evidence that the Council approved incorporating 15 hours per month overtime payments into the Secretary's basic pay in May 2008 which led to a 17.2% increase in salary (<b>paragraphs 112 to 116</b>).</p> |
| Were asset and investment registers complete and accurate, and properly maintained?                                                            | Yes                                          | <p>No, the Council's asset register was not sufficiently detailed, eg the contents of the Council's offices were disclosed as a single item. The Council did not require or maintain an investment register.</p>                                                                                                                                                                                                                                                                                                                                                                                      |

| Statement to be agreed/disagreed by the Internal Auditor                                                                                                                                                                                                                                                       | Conclusion of the Council's Internal Auditor                                       | Conclusion of the Auditor General's auditors                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Were periodic and year-end bank account reconciliations properly carried out?                                                                                                                                                                                                                                  | Yes, periodic and year-end bank account reconciliations were properly carried out. | No. Whilst a year-end bank account reconciliation was undertaken, the cashbook was artificially balanced to the Council's bank accounts. A review of the reconciliation by the Internal Auditor should have identified that this key check had not been performed properly ( <b>paragraph 128</b> ).                 |
| Were accounting statements prepared during the year on the correct accounting basis (receipts and payments/income and expenditure), agreed with the cashbook, and were they supported by an adequate audit trail from underlying records, and where appropriate, were debtors and creditors properly recorded? | Yes                                                                                | No. The accounting statements were correctly prepared on a receipts and payments basis, but the accounting statements were materially misstated and did not agree to the Council's cashbook. Moreover, the cashbook had not been properly reconciled to the Council's transactions at bank ( <b>paragraph 128</b> ). |
| Has the Council met its responsibilities as a trustee (if applicable)?                                                                                                                                                                                                                                         | Not applicable                                                                     | Not applicable as the Council held no funds on trust.                                                                                                                                                                                                                                                                |





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telephone calls in Welsh and English.  
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galwadau ffôn yn Gymraeg a Saesneg.