



WALES AUDIT OFFICE
SWYDDFA ARCHWILIO CYMRU

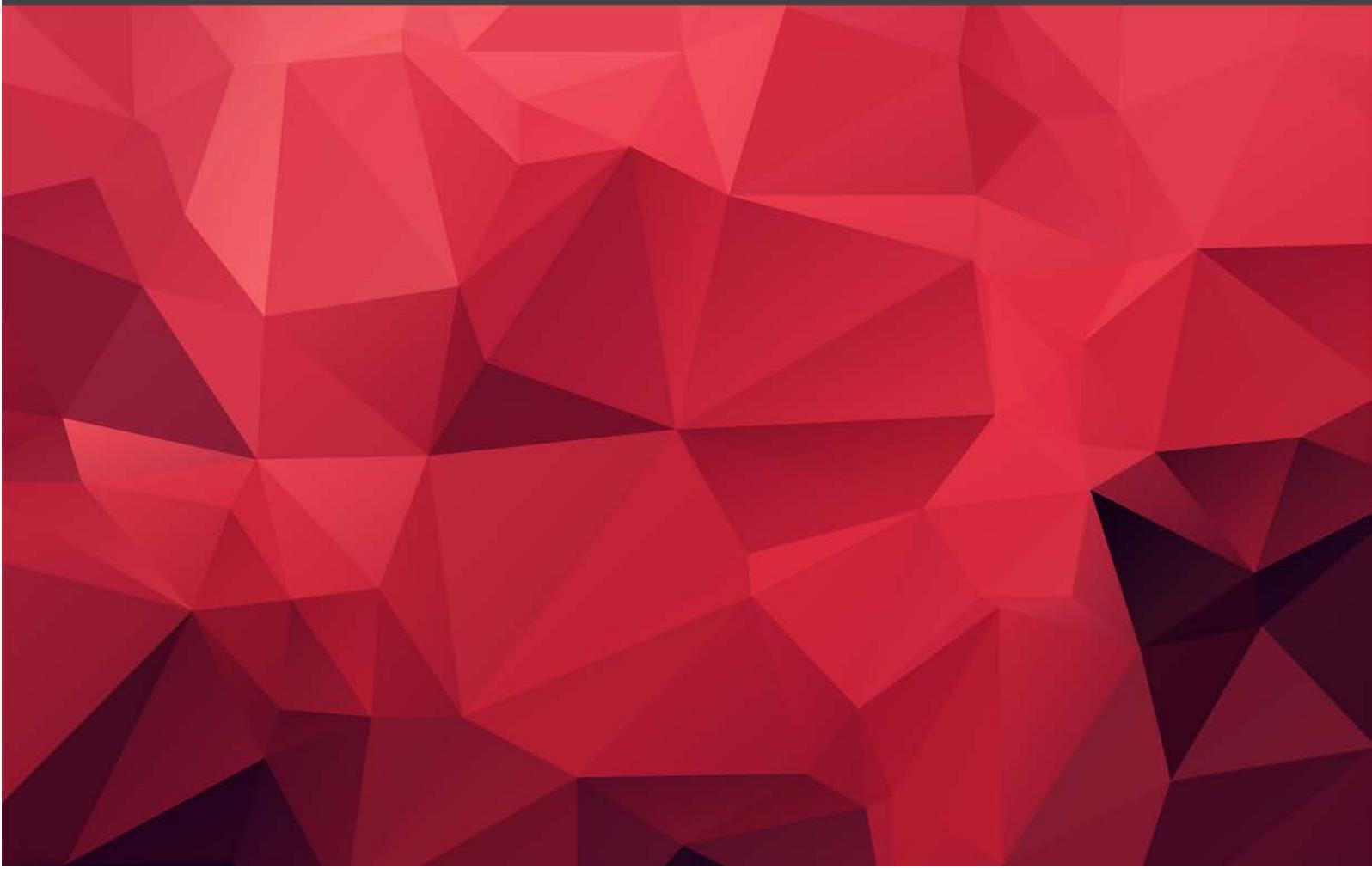
Archwilydd Cyffredinol Cymru
Auditor General for Wales

Report in the Public Interest – failures in financial management and governance – **Penally Community Council**

Audit year: 2015-16 and 2016-17

Issued: September 2018

Document reference: 546A2018-19



This report in the public interest has been prepared in accordance with Section 22 of the Public Audit (Wales) Act 2004. No responsibility is accepted in relation to any officer, member or any other person in their individual capacity or any third party.

In the event of receiving a request for information to which this document may be relevant, attention is drawn to the Code of Practice issued under section 45 of the Freedom of Information Act 2000.

The section 45 code sets out the practice in the handling of requests that is expected of public authorities, including consultation with relevant third parties. In relation to this document, the Auditor General for Wales and the Wales Audit Office are relevant third parties. Any enquiries regarding disclosure or re-use of this document should be sent to the Wales Audit Office at

infoofficer@audit.wales.

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.

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

The person who delivered the work was Deryck Evans, under the direction of Anthony Barrett.

Contents

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 failures in governance arrangements and inadequacies in financial management and internal control at Penally Community Council.

The Auditor General intends to issue a qualified audit report on the Council's Annual Returns for the financial years 2015-16 and 2016-17.

Detailed findings

Introduction	4
The Council failed to prepare its annual accounts for 2015-16 and 2016-17 in accordance with the statutory timetable	5
There is insufficient evidence to confirm whether or not proper arrangements have been made for the exercise of public rights	6
The Council has failed to maintain proper arrangements to administer payroll and PAYE, including the payment of the former Clerk's income tax to HMRC	7
The Council did not prepare a budget for 2015-16 or 2016-17 and did not approve the precept levied on Council tax payers for these financial years	8
There is insufficient third party documentation to support payments totalling £1,895 between 1 April 2015 and 31 March 2017	8
Recommendations	9
Next steps	10

Detailed findings

Introduction

- 1 This report is 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 failures in governance arrangements and inadequacies in financial management and internal control at Penally Community Council (the Council). I believe it is important that the public has a full and proper awareness of the events concerning the Council.
- 2 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 governance failures recurring is reduced to a minimum. There are lessons to be learnt not just by the Council, but by all community councils in Wales. The Council is located in Pembrokeshire and serves an electorate of approximately 1,350 electors and other residents of the village of Penally. The Council has 9 elected members and spends around £10,000 annually on local services. It funds this by means of a precept of some £11,000 from Pembrokeshire County Council. The County Council collects the precept through additional council tax charged to the Council's residents. Penally Community Council derives its funding from the public purse and its members are elected by local residents. The Council is, therefore, accountable to the local electorate.
- 3 Community councils such as Penally, by their very small local nature, normally rely on one key officer, the Clerk, to manage their administrative affairs. More often than not, 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. In particular, this involves receiving and recording income, preparing cheque payments for signing by members, maintaining the accounting records and preparing the annual accounting statements.
- 4 However, by law (the Accounts and Audit (Wales) Regulations 2014 (the 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.

The Council failed to prepare its annual accounts for 2015-16 and 2016-17 in accordance with the statutory timetable

- 5 Under Section 13 of the Act the Council must:
 - make up its accounts each year to 31 March or such other date as the Welsh Ministers may generally or in any special case direct; and
 - ensure that its accounts are audited in accordance with the Act.
- 6 The accounts are prepared in the form of a simple annual return which is sent to the Council each year. Regulation 15 of the Regulations requires that the Council approves the accounts before 30 June following the end of the financial year.
- 7 The Council has not complied with the statutory timescales for preparing and approving its accounts for the 2014-15, 2015-16 and 2016-17 financial years.

Exhibit 1: dates of completion of the accounts

Financial year	Date accounts should have been approved by the Council	Date approved by Council
2015-16	30 June 2016	13 September 2017
2016-17	30 June 2017	13 September 2017

- 8 My review of the Council's minutes leads me to believe that the former Clerk, Mrs Carol Clemson, did not provide the Council with a complete and balanced account of its performance in adhering to these deadlines. A member of my audit team wrote to the former Clerk in August 2017 and met with the former Clerk and Chair on 16 October 2017 to discuss the late submission of accounts, at which point I was provided with the approved accounts for audit.
- 9 While the former Clerk's tardiness is a significant factor in the Council's failure to comply with its statutory responsibilities, the Council itself must take a degree of responsibility for this failure. I have found no evidence that the Council took any steps in relation to the overdue accounts.
- 10 The minutes of the October 2015 meeting record the receipt of the audited accounts for 2014-15. The minutes also note the recommendation made by the former appointed auditor, BDO, that the responsible financial officer should certify and the Council approve the accounts by 30 June each year. Notwithstanding this recommendation, the minutes of subsequent meetings do not record any concerns related to the delayed submission of the 2015-16 accounts until March 2017. This indicates to me that individual councillors do not understand their responsibilities in relation to the accounts.

- 11 In a written submission, the Council has observed that the audit team responsible for the audit was not itself proactive in following up the non-submission and that the audit database contained incorrect contact details. Furthermore, the Council was also dealing with other issues that are also raised in this report and therefore the 2016-17 accounts could not be completed on a timely basis.
- 12 Notwithstanding this, the primary responsibility lies with the Council to ensure that its accounts are audited within the statutory timetable. The Council acknowledges this in its submission.

There is insufficient evidence to confirm whether or not proper arrangements have been made for the exercise of public rights

- 13 Sections 30 and 31 of the Act make provision for public rights to inspect the accounts to be audited, to question the auditor about the accounts and to make objections before the auditor as to any matter in respect of which the auditor has a power to:
- apply for a declaration that an item of account is unlawful; and
 - any other matter in respect of which the auditor has the power to make a report under section 22 of the Act.
- 14 Regulation 17 requires the Body to give notice by advertisement to the public in one or more conspicuous places setting out the period during which the accounts and other documents are available for inspection and to provide the following details:
- the place at which, and the hours during which, they will be so available;
 - the name and address of the auditor;
 - the provisions contained in section 30 and section 31 of the Act; and
 - the date appointed under Regulation 21.
- 15 While the Council has stated that notifications of public rights were not issued until August 2017 and were displayed on noticeboards at that time, I have not been provided with sufficient evidence to demonstrate that the Council complied with the requirements of the Act. Therefore, I have appointed 18 September 2018 as the date from which local electors may exercise their rights under the Act.

The Council has failed to maintain proper arrangements to administer payroll and PAYE, including the payment of the former Clerk's income tax to HMRC

- 16 Most Community Councils, such as Penally Community Council, employ one official to undertake the legally separate roles of the Clerk and RFO. The majority of these officers work part-time, their hours varying from one to two days per week, to a few hours per quarter.
- 17 As an employer, the Council must deduct Income Tax and employees' National Insurance Contributions (NICs) from employees' pay and send the amounts deducted to HMRC each month or quarter along with employers' NICs. This system is called Pay as You Earn (PAYE). PAYE deductions must be paid to HMRC. All employers must also keep payroll records.
- 18 Based on the evidence I have seen in respect of payroll and PAYE at the Council, I have concluded that proper payroll records have not been kept as required.
- 19 The Council has prepared a summary schedule demonstrating that income tax has been deducted from the former Clerk's salary. However, the tax deducted had not been paid over to HMRC.
- 20 The Clerk as an officer of the Council, is an employee of the Council. The Council should provide any employees with a contract of employment setting out the terms and conditions of employment. Employment contracts provide clarity on the role and status of the Clerk and the remuneration arrangements for the post.
- 21 The Council did not provide the former Clerk with a contract of employment on her appointment. Documentation provided for audit suggests that the Council, or certain members, believed that the former Clerk had been appointed on a self-employed basis. Such a belief is erroneous and the Council should have ensured that it understood its responsibilities when employing the former Clerk. As a consequence of this omission, there is ambiguity about the salary to be paid to the former Clerk.
- 22 On receipt on the audit instructions for the 2016-17 audit in February 2017, the Council recognised that its arrangements have been inadequate and in February 2017, began to make arrangements to regularise the position. The Council has stated that it agreed the outstanding tax liability with HMRC as of August 2017 and that all payments due to HMRC have now been made.
- 23 In a written submission, the Council has stated that it has now agreed a contract of employment with the former Clerk.

The Council did not prepare a budget for 2015-16 or 2016-17 and did not approve the precept levied on council tax payers for these financial years

- 24 The Local Government Finance Act 1992 requires councils to calculate and approve the annual budget. Section 41 of this Act allows councils to issue a precept, the basis of which is determined, in accordance with Section 50, by the calculation of the budget requirement.
- 25 Regardless of this statutory requirement, the budget is important as it:
- results in the setting of the precept for the year;
 - gives the council authority to spend money in accordance with approved spending plans and financial regulations; and
 - provides a basis for monitoring progress during the year by comparing actual to planned spending.
- 26 The budget is a crucial element of effective financial management and accountability and ultimately reduces the amount of time councils spend managing their financial resources. In the absence of adequate budget setting and monitoring arrangements, councils are unable to effectively manage public funds and demonstrate compliance with statutory requirements.
- 27 During the course of my audit I was unable to find evidence that the Council prepared a budget for the 2015-16 or the 2016-17 financial years. The Council has prepared a budget for 2017-18. However, this budget does not fully comply with the requirements of the Act.

There is insufficient third party documentation to support payments totalling £1,895 between 1 April 2015 and 31 March 2017

- 28 As part of my audit, I examined payments made by the Council to ensure that the payments:
- are supported by third party evidence in the form of invoices or receipts;
 - have been approved by the Council; and
 - made equal the sums approved and recorded as due on the relevant invoice.
- 29 The keeping of invoices and receipts is an essential means of demonstrating that payments have been made for bona fide purposes.
- 30 My audit identified payments with a total value of £1,895 that are not supported by third party evidence. The Council provided a copy of the relevant cheque stubs but this does not provide any evidence as to the payee details. Each of the payments

had been approved by the Council and the payment made matched the sum approved. **Exhibit 2** identifies that the majority of this total relates to three payments. In total nine payments were not supported.

Exhibit 2: payments not supported by invoices

Payee	Number of payments	Total sum unsupported by invoices
Smart Gardens	2	£1,320
Zurich Insurance	1	£271

Recommendations

31 My recommendations to the Council are set out in **Exhibit 3** below.

Exhibit 3: recommendations

Recommendations	
R1	The Council must ensure that the Statement of Accounts is prepared and approved by 30 June each year.
R2	The Council must ensure that individual councillors understand their responsibilities for the annual accounts.
R3	The Council must ensure that the accounts are submitted for audit promptly following approval.
R4	The Council must ensure that it complies with the requirements of the Act and the Regulations promptly in relation to the 2015-16 and 2016-17 accounts.
R5	The Council should retain sufficient evidence to demonstrate that it has complied with its statutory duties.
R6	The Council must ensure that it maintains proper payroll records and pays tax deducted to HMRC promptly.
R7	The Council must ensure that it issues an agreed contract of employment setting out the terms and conditions of employment for the Clerk.
R8	The Council must ensure that it prepares a budget in accordance with the Local Government Finance Act 1992 prior to setting its precept.
R9	The Council should monitor its expenditure against this budget throughout the year (eg by quarterly comparisons of expenditure against budget).

Recommendations

R10 The Council must ensure that it obtains and retains invoices or receipts for all payments made.

Next steps

- 32 The Council is now required by section 25 of the Public Audit (Wales) Act 2004 to consider this report at a full meeting of the Council within one month of the date of the report. 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.
- 33 The Council will then need to prepare a written response and agree the wording of that response with me before publishing its response.



Anthony Barrett

Assistant Auditor General

For and on behalf of the Auditor General for Wales

6 September 2018

Wales Audit Office
24 Cathedral Road
Cardiff CF11 9LJ

Tel: 029 2032 0500

Fax: 029 2032 0600

Textphone.: 029 2032 0660

E-mail: info@audit.wales

Website: www.audit.wales

Swyddfa Archwilio Cymru
24 Heol y Gadeirlan
Caerdydd CF11 9LJ

Ffôn: 029 2032 0500

Ffacs: 029 2032 0600

Ffôn testun: 029 2032 0660

E-bost: post@archwilio.cymru

Gwefan: www.archwilio.cymru