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Auditor General for Wales

Report in the Public Interest – inadequacies in governance and financial management – **Whitford Community Council**

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The person who delivered the work was Ian Hughes, under the direction of Anthony Barrett.

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Summary report

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 inadequacies in governance and financial management at Whitford 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.
- 3 The Council is in Flintshire and serves a population of approximately 2,300 residents. The Council has 12 elected members and spends around £48,000 annually on local services. It funds this by means of a precept of some £45,000 from Flintshire County Council. The County Council collects the precept through additional council tax charged to the Council's residents. Whitford 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.
- 4 In April 2017 the Council appointed a new Clerk and Responsible Financial Officer (RFO)¹, Mr Phillip Parry (referred to as 'the new Clerk'). The new Clerk took over from the outgoing Clerk, Mr Arwel Owen (referred to as 'the former Clerk').
- 5 Shortly after taking up his new role as Clerk to Whitford Community Council, Mr Parry contacted my audit supplier, BDO², to raise several concerns about the Council's governance and financial management. These concerns included dissatisfaction over:
 - the handover of Council records and assets by the former Clerk;
 - the lack of arrangements in place to administer payroll and Pay as You Earn (PAYE); and
 - the loss of money to the Council through its failure to reclaim VAT from HM Revenue and Customs (HMRC).
- 6 These concerns were drawn to my attention and I immediately instigated an audit of the Council's accounts working closely with our audit supplier BDO.
- 7 My audit findings show long-standing inadequacies in governance and financial management at the Council and are summarised below. They are considered in more detail in the remainder of this document.

¹ Although these are two distinct roles they will be referred to simply as Clerk for the purpose of this report.

² Following a retendering exercise, new audit suppliers were awarded contracts for the provision of external audit services on my behalf to community councils from 2015-16 onwards. In the case of Whitford Community Council the contract was awarded to the private accountancy firm, BDO.

Key findings

- 8 The Council has failed to discharge its responsibilities to establish appropriate governance and supervisory arrangements, relying instead on trust in the former Clerk.
- 9 The Council has not complied with the statutory timescales for preparing and approving its accounts for many years. The evidence shows that the former Clerk's tardiness was a significant factor in the Council's poor record in meeting the deadlines set under the Accounts and Audit (Wales) Regulations 2005 and 2014.
- 10 The former Clerk did not provide the Council with a complete and balanced account of its performance in adhering to these deadlines; he did not respond to numerous requests from the external auditor to supply the name and contact details of the Chairman so that they could escalate their concerns about compliance with statutory requirements.
- 11 In relation to payroll and PAYE, I have concluded that:
 - proper payroll records have not been kept by the Council as required;
 - there was a lack of proper arrangements to operate PAYE as expected by HMRC;
 - the former Clerk provided the Council with false assurances about the payroll and PAYE arrangements in place;
 - the former Clerk made private arrangements with a Payroll Bureau for 2016-17 and registered the Council with HMRC in March 2017 HMRC; but
 - at the time I instigated this audit (August 2017), the former Clerk had not remitted any tax or national insurance contributions to HMRC in respect of his period of employment with the Council between 2008 and 2015.
- 12 The Council has lost income because of its failure to recover VAT on eligible payments. Whilst the former Clerk has provided copies of two recent claims for reimbursement of VAT, HMRC has no record of receiving them. Furthermore, these claims are incomplete as they do not include all payments eligible for the recovery of VAT.
- 13 An examination of paid invoices has highlighted further deficiencies in the former Clerk's stewardship of the Council's finances. Insufficient payments were made to the Council's electricity supplier resulting in the account becoming significantly in arrears. Delays in settling the accounts for services provided by the unitary authority resulted in letters to the Community Council warning of impending legal action.
- 14 Shortly after taking up office in October 2008, the former Clerk made arrangements through the Council to appoint a new Internal Auditor, citing a conflict of interest with the previous Internal Auditor as the grounds for the change. I am not persuaded there was a case for the Council to make this new appointment, and the Council should have challenged the former Clerk more robustly about this change.

- 15 The Internal Auditor's annual reports failed to draw the Council's attention to the deficiencies in its governance and financial management. The Internal Auditor kept few working papers to provide evidence of the work done. The evidence shows that, at best, the Internal Auditor was too willing to accept the assurances provided by the former Clerk, and he failed to exercise sufficient professional scepticism by testing the Clerk's assurances back to the Council's underlying records.
- 16 The Council has now put in place several changes that address the weaknesses and failings identified in this report. These include:
- scheduling a recurring annual meeting of the Council to consider in full the Annual Return for submission to the external auditor;
 - registering the Council as an employer with HMRC and ensuring income tax and National Insurance liabilities are properly accounted for and met in full;
 - liaising with HMRC to determine what VAT can be re-claimed under the circumstances;
 - reviewing and bringing fully up to date any outstanding financial commitments of the Council with contractors and suppliers; and
 - appointing a new Internal Auditor with appropriate terms of reference and oversight arrangements.

Detailed report

The Council has failed to discharge its responsibilities to establish appropriate governance and supervisory arrangements, relying instead on trust placed in the former Clerk

- 17 The Accounts and Audit (Wales) Regulations 2014³ (the Regulations) make provision with respect to the accounts and audit of bodies whose accounts are required to be audited in accordance with the Public Audit (Wales) Act 2004 (the Act).
- 18 The Regulations clearly specify that the Council is responsible for putting in place and ensuring that there is a sound system of internal control which includes adequate and effective financial management (2005 Regulation 4 & 2014 Regulation 5). This system of internal control includes adequate and effective internal audit (2005 Regulation 6 & 2014 Regulation 7).
- 19 The issues identified in this report demonstrate that financial management exercised by the Council was weak throughout the period under review. In particular, the Council failed to challenge inconsistent information and assertions made by the former Clerk, instead relying on the trust they had placed in him to administer the council's affairs.

The Council has not complied with the statutory timescales for preparing and approving its accounts for many years

- 20 The requirements for the preparation, approval and audit of Town and Community Councils are set out in the Accounts and Audit (Wales) Regulations 2014⁴ and supplemented by guidance set out in a practitioners' guide⁵.
- 21 Regulation 15, sets out the timetable for the preparation and approval of the annual accounts:
 - the council's RFO must prepare and certify that the accounts properly present the council's receipts and payments, or present fairly the council's financial position and income and expenditure. The certification is evidenced by the RFO signing and dating the accounting statements. Provision for signature and date are made in an annual return.

³ And previously the Accounts and Audit (Wales) Regulations 2005.

⁴ And previously the Accounts and Audit (Wales) Regulations 2005.

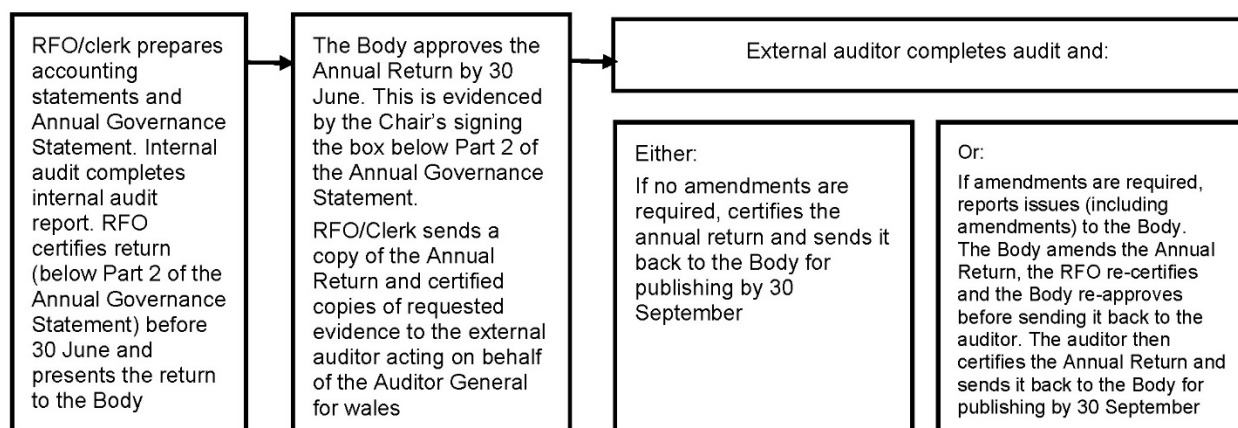
⁵ Governance and Accountability for local councils in Wales – a practitioner's guide (2011).

- the members' meeting must consider the accounting statements and, following that consideration, approve the accounting statements for submission to the auditor by a resolution of the council; and following approval, ensure that the accounting statements are signed and dated by the person presiding at the meeting at which that approval was given; and
- these actions must be completed by 30 June following the end of the financial year.

22 Under Regulation 15(2), as soon as possible after the Council has approved the Annual Return it must be sent to the external auditor who in turn must complete the audit by no later than 30 September to enable the council to publish its audited accounts as required by the Regulations. The process is summarised in **Exhibit 1** below:

Exhibit 1: the accounts and audit process

The accounts and audit arrangements follow the process as set out below.



23 In my annual report on Financial Management and Governance in Local Councils for 2015-16, I reported that over 50 councils (8%) in Wales failed to comply with the statutory timetable for preparing and approving the accounting statements. Whitford Community Council is one of these.

24 Each year since 2009-10, the Council's external auditors have raised concerns with the Council about timeliness of accounts approval and submission for audit. The evidence that I have seen shows that the former Clerk's tardiness was a significant factor in the Council's unacceptable performance in meeting the statutory deadlines under the accounts and audit process.

25 Based on a review of the Council's minutes and discussions with the current Chair and Vice Chair, I also have concerns that the former Clerk did not provide the Council with a complete and balanced account of its performance. He did not respond to numerous requests made by the external auditor for the name and

contact details of the Chairman, so the external auditor could escalate concerns about compliance with statutory requirements. Under the circumstances I would have expected the external auditor to circumvent the Clerk and make their concerns known directly to Council members, and I understand that that is why the auditors made numerous enquiries.

- 26 I have set out in [Appendix 1](#) a summary of the timeliness issues raised by the Council's external auditor UHY Hacker Young with the Clerk, for the financial years 2009-10 to 2014-15.
- 27 The 2015-16 audit of the Council's accounts was undertaken by a new audit supplier, BDO. Its audit opinion was also qualified because the Council failed to comply with the requirements of the Accounts and Audit Regulations regarding the Council's approval of the Annual Return.
- 28 As set out in [Exhibit 1](#), the Council is now required to approve its Annual Return by 30 June. The 2015-16 Annual Return was signed by the Chairman and dated 30 June 2016. The minute reference to the approval of the accounts was entered by the Clerk as 137.2/16. Without further scrutiny the Annual Return demonstrates compliance with the 30 June approval deadline because it has been signed by the Chairman on this date and a minute reference is given for the Council's resolution.
- 29 Further scrutiny however reveals the following significant discrepancies:
- During the Council's meeting on 16 June 'the Clerk informed members that he would not be discussing the Financial Agenda items as he had sent the Annual Return to the external auditor for their consideration – these items would be discussed in the next meeting' (minute reference 137.2/16);
 - It was not until the next meeting of the Council held on 21 July 2016 that the Annual Return was approved (minute reference 157/16);
 - If minute 137.2/16 is accurate, it would have made no sense for the Clerk to have forwarded the Annual Return to BDO in advance of either it being signed by the Chairman or the internal audit report and certificate being completed (both are dated 30 June), as such a submission to the auditor would not meet the requirements of the Regulations.
- 30 There are further irregularities in the submission of the 2016-17 Annual Return, which are considered below.
- 31 The former Clerk stood down as the Council's Clerk in April 2017. Under these circumstances it would have been very difficult to complete in full⁶ the Annual Return for the year ending 31 March 2017. I would, however, have expected that the former Clerk would have kept the Council's accounts up to date and provided the new Clerk with a complete set of records. The new Clerk would then have been able to complete the Annual Return for 2016-17 and arrange for it to be approved by the Council before 30 June 2017.

⁶ To include arranging the internal auditor's report.

- 32 The former Clerk, however, continued with the completion of the Annual Return including the facilitation of the internal auditor's report despite no longer being the Council's RFO. This resulted once again in the Council failing to meet the requirements of the Regulations. The reasons for this failing are set out below.
- 33 I understand that because of other commitments the former Clerk was unable to attend his final meeting with the Council which was held on 20 April 2017. The meeting was, however, attended by the new Clerk. The former Clerk provided the Council with a copy of the Council's annual accounts and a bank reconciliation statement. At the meeting the Council resolved to accept the accounts and for the Chairman and the former Clerk to certify the Annual Return. This was subsequently done. However, given the former Clerk was no longer in office and was, therefore, no longer the RFO, I do not consider it was appropriate for him to sign the Annual Return, as this did not meet the requirements of the Regulations.
- 34 On 3 August 2017 the former Clerk emailed BDO an extract from the 2016-17 Annual Return containing only the statement of income and expenditure for the year accompanied by a bank reconciliation document as at 31 March 2017. He advised BDO that he was in the process of getting the Annual Return re-signed and it would be with them shortly. Both the Council and its new Clerk were unaware of the former Clerk's ongoing communications with BDO and had no expectation that the Council would need to convene another meeting to approve the Annual Return.
- 35 In the absence of a fully completed Annual Return for 2016-17 received either by the Council or BDO, my audit staff requested a copy from the former Clerk on 11 September 2017. A copy was received on 13 September. This copy is unusual; it is a combination of a photocopy of a paper return incorporating a copy of an electronic version of the internal auditor's report. The internal auditor's report is dated 23 June 2017.
- 36 Given that the former Clerk continued to arrange for the completion of the 2016-17 Annual Return for submission to BDO, I am surprised that:
- he did not advise either the new Clerk or the Council he was doing so;
 - he did not provide a copy of the internal auditor's report to either the Council or BDO to ensure compliance with Accounts and Audit Regulations;
 - the Council has, to date, not received an invoice from its internal auditor for the work claimed to have been done in June 2017; and
 - no working papers are available to evidence the work performed by the Internal Auditor.
- 37 The further sections of this report highlight further instances where the former Clerk failed to provide a full and accurate account of his actions to the Council, together with concerns I have about the effectiveness of the arrangements for Internal Audit put in place by the Council.

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

- 38 Most Community Councils, such as Whitford, 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 or two days per week, to a few hours per quarter in connection with Council meetings.
- 39 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
- 40 Based on the evidence I have seen in respect of payroll and PAYE at Whitford Council, I have concluded that:
- proper payroll records have not been kept as required;
 - there was a lack of proper arrangements to operate PAYE as required by HMRC; and
 - the former Clerk provided the Council with false assurances about the payroll and PAYE arrangements in place.
- 41 The former Clerk was appointed as the Council's Clerk in October 2008. His starting salary was £5,140. In addition, the Clerk received a further £800 administration allowance and £400 typing costs. His total taxable remuneration was £6,340 per annum.
- 42 The Council's accounts initially support the former Clerk's claim that he adopted the Council's payroll system for the first year and a half after his appointment. Each month a cheque was approved by the Council for payment to HMRC in respect of PAYE for the former Clerk. However, the Council's bank reconciliations show that these cheques were never presented and were written back into the Council's accounts.
- 43 This matter was identified by the then external auditor UHY Hacker Young who reported it to the former Clerk, with a recommendation it should be followed up with HMRC as to why the cheques had not been presented. The Council's minutes show that the former Clerk provided the Council with a copy of the external auditor's report in December 2010 and stated that the matter had since been addressed⁷. The Council did not pursue the discrepancy any further and accepted the former Clerk's assurance that everything was now in order.

⁷ The matter was addressed by writing the un-presented cheques back into the accounts rather than pursue the matter with HMRC.

- 44 In March 2011, HMRC issued new guidance on the tax treatment of clerks of town and community councils. HMRC has determined that clerks cannot be treated as self-employed for tax purposes because the position of clerk is that of an office holder. In addition, where the clerk has other income, e.g. another employment or a pension, this means that their earnings should be subject to PAYE.
- 45 By the time HMRC had issued this new guidance, the former Clerk had negotiated an increase in remuneration of 28% (over three years), to £8,150 per annum (including an administration allowance). The former Clerk told my staff that this increase was necessary to bring his salary in line with the amounts being paid to other clerks in the district with comparable responsibilities.
- 46 Having secured a pay rise, the former Clerk failed to pay any income tax on his Community Council earnings to HMRC between 2011 and 2016. In addition, he also cashed some of his pay cheques at the bank rather than presenting the cheques into his bank account.
- 47 The former Clerk told my staff that it was always his intention to put proper payroll and PAYE arrangements in place. Despite claiming these good intentions, he took no action until 2016-17 when, co-incidentally, a greater emphasis was put on payroll and PAYE within the Auditor General's audit arrangements.
- 48 On 31 January 2016 the Auditor General published his annual report on Financial Management and Governance in Community Councils 2015-16. The report gave notice to Community Council's that Payroll and PAYE would be examined in detail as part of the 2016-17 audit of accounts. Clerks were notified by the Auditor General's audit supplier, BDO, in the spring of 2017 of the information that needed to be submitted to evidence that proper arrangements were in place of payroll and PAYE.
- 49 The Auditor General's audit suppliers were asked to seek evidence that:
- the council has registered with HMRC and is operating PAYE as required. This evidence could be in the form of returns to HMRC or confirmations from external payroll providers;
 - where councils are not registered, confirmation of the reasons why the council has not registered; and
 - the council is keeping proper payroll records.
- 50 In January 2017 a Council member resigned citing concerns about the Clerk's failure to properly account for PAYE as one of his reasons for standing down. The Councillor stated the following in his resignation letter to the Council dated 21 January 2017:
- 'On the question of accounts, we have no record over the last five years of Tax and NI deductions from the Clerk's salary, being an employee of the council, likewise the councils NI contribution. The council as an employer has a statutory responsibility for the collection of tax and NI contributions and to send such money to the HMRC. This should be clearly stated on the

schedule of accounts. If tax and NI contributions are not to be collected by this council then it is important that HMRC should confirm this’.

- 51 The former Clerk registered the Council for PAYE with HMRC in March 2017 shortly before his departure. In the same financial year he had tried to reinstate a payroll system by means of the online self-assessment portal maintained by HMRC and by seeking assistance from a local Payroll Bureau.
- 52 I do not consider it to be a co-incidence that the former Clerk’s action in his last year of office to introduce payroll and PAYE arrangements happened at the time that the external auditor wished to see evidence of these arrangements, together with the formal concerns expressed by a long serving Councillor to the Council.
- 53 What is even more concerning is that throughout his time in office, the former Clerk had provided the Council with minuted assurances that proper arrangements were in place for both payroll and PAYE.
- 54 Shortly after his appointment the former Clerk prepared a set of internal financial controls for the Council. Paragraph nine of the Documentation of Internal Financial Controls states:
- ‘The Responsible Financial Officer will ensure that salary payments due to the clerk are in accordance with the agreed scales by the Council and are subject to the appropriate deduction of income tax and NI, keep appropriate employment records and submit an annual return to HM Revenue and Customs by use of their online facility’.
- 55 The former Clerk asked the Council annually to approve these internal financial controls.
- 56 Based on the evidence I have seen, the assurances provided to the Council by its former Clerk about the effective operation of internal controls were inconsistent with his actions. It is difficult to see what further action the Council could have taken under the circumstances particularly since no concerns about the operation of payroll and PAYE were raised by its Internal Auditor. This is considered later in the report.

The Council has lost income because of its failure to recover VAT on eligible payments

- 57 As a body covered by Section 33 of the Value Added Tax Act 1994, the Council can reclaim VAT incurred on purchases. To do so, the Council should obtain proper VAT receipts and invoices setting out the relevant details of VAT paid and the supplier’s VAT registration number.
- 58 Shortly after being appointed in April 2017 the Council’s new Clerk examined the accounts to determine what VAT he could reclaim. He identified that no VAT claim had been made during the tenure of the former Clerk. He wrote to HMRC to confirm this, and they wrote back stating that the last claim that they had received

from the Council was for the period ending 31 March 2005. They had paid the claim amount of £1,535.20.

- 59 The former Clerk has provided a different account. In 2013 the former Clerk wrote a letter to the Council's then external auditor, UHY Hacker Young, responding to the issues raised after the 2012-13 audit of accounts. He assured the external auditor that VAT was being reclaimed on an 'ongoing basis'. We have found no evidence to support this statement made to the auditor.
- 60 The issue was raised again in a letter as part of the following year's audit of accounts. The former Clerk provided the Council with a copy of UHY Hacker Young's letter when it met on 18 September 2014. In response to the item regarding non-recovery of VAT, the former Clerk assured the Council he would 'in future reclaim VAT on an annual basis'.
- 61 On the face of it, the former Clerk's assurance that VAT would be claimed annually in future appears plausible. The former Clerk advised my audit team that he had submitted two claims for reimbursement of VAT between 2014 and 2016. He provided copies of these two claims:
- a VAT claim for the period 10/2/2014 to 15/03/2016 totalling £2,462.13 dated 19 April 2016; and
 - a VAT claim for the period 15/04/2016 to 15/12/2016 totalling £811.21 dated 23 January 2017.
- 62 The new Clerk, however, has been informed by HMRC that there is no record of HMRC either receiving or settling these claims. HMRC has further noted that even if received they would not be paid because the period must end on the last day of a calendar month.
- 63 The new Clerk has compared the VAT reclaim documents and the Council's invoice file and has raised several concerns. Firstly, the amounts entered for monthly payments to the Council's electricity supplier do not directly agree with the amounts shown on the paid invoices, and the VAT element on several eligible payments has been omitted from the claims.
- 64 In examining the Council's file of paid invoices the new Clerk has raised further concerns about the financial stewardship of his predecessor. At the time of his appointment the Council was in arrears (of some £2,400) with payments to Scottish Power because of a failure by the former Clerk to settle the full amounts due. An examination of the Council's minutes showed that payments to Scottish Power had been irregular and poorly managed by the former Clerk.
- 65 In May 2011 the former Clerk arranged for the Council to approve six cheques totalling £4,506.70 to Scottish Power to clear two years of unpaid energy charges. In doing so the former Clerk brought its account up to date with the energy supplier. His explanation for the build-up of arrears was a failure by the energy company to supply invoices for the utilities provided. Despite clearing the arrears in 2011, the former Clerk failed to keep payments up to date and the arrears built up again. The Council was not made aware of this.

- 66 The Council's new Clerk has now made arrangements through the Council to bring the account with Scottish Power into balance.
- 67 The new Clerk also noted from the records that there was also a poor payment history between the Council and Flintshire County Council to the extent the unitary authority had threatened legal action to recover sums due. Again, the Council was not aware of this as it had not been drawn to their attention by the former Clerk.

The Council has not maintained effective arrangements for internal audit

- 68 The Accounts and Audit (Wales) Regulations 2005 required all community councils in Wales to have an adequate and effective system of internal audit in place, and the 2014 Regulations continue this requirement. The role of internal audit is to examine key areas of the Council's governance and financial management and highlight any material deficiencies.
- 69 Shortly after taking up office, the former Clerk made arrangements through the Council to appoint a new Internal Auditor (Compacc, Complete Accountancy Services UK Ltd) citing a conflict of interest with the previous Internal Auditor as the grounds for the change. The new Internal Auditor also understood this was the reason for his appointment but also believed that the change was to secure better value for money to the Council. He also told me that although there was no friendship between him and the former Clerk, they were former colleagues. I have not seen any evidence from the Council's records to support the explanations given by the Clerk for appointing a new Internal Auditor, and I consider that the Council should have challenged the former Clerk's advice more robustly.
- 70 The Council's internal audit arrangements were, in my view, ineffective. The Internal Auditor's annual reports have failed to draw the Council's attention to the deficiencies that have been clear to me whilst conducting this work.
- 71 The evidence set out below shows that, at best, the Internal Auditor was too willing to accept the inaccurate assurances provided by the former Clerk, and he failed to exercise sufficient professional scepticism by testing the Clerk's assurances back to the Council's underlying records.
- 72 The Internal Auditor has told my staff that he frequently asked the former Clerk about his payroll status and was assured that his tax returns were in order and were compliant with the requirements of his other main employer. He was under the impression that the former Clerk's tax was being deducted through the payroll of his other main employer (see later). However, I have seen no evidence that the Internal Auditor challenged this assertion or raised any concerns about the absence of proper payroll and PAYE arrangements with the Council.
- 73 During this time the Internal Auditor completed and signed the relevant part of the Annual Return confirming that proper arrangements were in place. This positive assurance is inconsistent with the evidence I have seen as set out above.

74 After the 2015-16 internal audit a report was issued to the Council which contained the following observations:

'PAYE

The Clerk had a computer failure during the year and tried to restore his files where it was found that the latest backup of that time had not been successful and that the backup available to him was out of date.

The Clerk informed the Inland Revenue and a copy of the file submitted to them for their records.

This resulted in payments relating to 2015-16 not being paid until April 2016. The Clerk is paid gross and pays the tax liability from that amount. The Community Council has agreed that the payroll should be managed by a local accountant.

VAT £2,462

VAT claims have been submitted to HMRC for part of 2013/14, 2014-15 and 2015-16. These claims have not been paid and the Clerk is pursuing payment and has been unsuccessful to date. The Council has asked him to seek advice from a local Council.

Standing Order, Financial Control, Financial Regulations and Risk Assessment were carried out in council meeting convened for this purpose on 14 May 2015.

Conclusion; the overall recording of records is satisfactory and compliant with the accounts and audit guidelines.'

- 75 There are worrying discrepancies between the observations above, what the former Clerk has told my staff and what is reflected in the documentary evidence available.
- 76 The former Clerk has told my auditors that he approached a local Payroll Bureau in February 2017 for assistance in compiling payroll records for 2016-17 and a PAYE return to HMRC. The former Clerk confirmed to my staff that there had not been any computer failure; he had not been able to create a PAYE return any earlier than 1 April 2016 since the self-assessment system did not facilitate retrospective year PAYE transactions.
- 77 The Internal Auditor's statement that payments relating to 2015-16 were not paid until April 2016 is factually incorrect; there had been no such payments.
- 78 Finally, in respect of Internal Audit's observations on payroll, I have seen no evidence corroborating the statement that the Council had agreed that the payroll should be managed by a local accountant. What has come to light, however, is that the individual assisting the former Clerk from the Payroll Bureau is the Internal Auditor's wife. She is also employed by Compacc, Complete Accountancy Services UK Ltd.
- 79 The Internal Auditor has stated that his wife has a practicing certificate to undertake payroll processing and that this aspect of the business is independent from the activities he undertakes as an internal auditor for local councils. He has further stated that the payroll work was done after the internal audit had been completed and that there was a proper separation of duties between the Internal

Auditor and the person responsible for processing the payroll. Whilst this may be his view, I consider that there was a clear conflict of interest that the former Clerk should have drawn to the attention of the Council.

80 Turning to the observations on VAT, I have seen evidence that, in a short report prepared at the end of the 2010-11 audit, the Internal Auditor highlighted the need for VAT to be reclaimed.

81 The Internal Auditor did not raise the matter again until 2015-16. At this audit, other than noting the position stated by the Clerk, no work was done by the Internal Auditor to check the accuracy of the claims or to follow up the reasons for non-payment by reference to any correspondence the Clerk had claimed to have with HMRC. The Internal Auditor did not highlight any concerns about late payments or significant levels of arrears with two of the Council's main suppliers of services. These would have been apparent from the invoices the Council had received.

82 Earlier I reported that the former Clerk, despite no longer being employed by the Council, maintained control over the completion and submission of the Annual Return for 2016-17 including arranging for the Internal Auditor to complete the internal audit. The Internal Audit Report for this last year makes the following observations for Payroll:

'No work undertaken on PAYE as work undertaken by external audit as part of thematic review'.

83 It is interesting to note that by this time the Internal Auditor decided not to provide positive assurance to the Council on its payroll and PAYE arrangements but to defer the matter to the scrutiny of the external auditor instead.

84 In the light of the discrepancies noted above, I asked the Internal Auditor to make available copies of the following documents:

- their formal appointment notice by the Council and the agreed terms of reference;
- copies of any internal audit reports provided to the Council other than the one referred to above for 2015-16; and
- copies of working papers supporting the positive assurances given annually to the Council.

85 In response the Internal Auditor stated that he maintained few records; his custom and practice is to make annotations on the Council's own documents rather than maintain working papers of his own. He has provided some examples of where this has been done. The Internal Auditor has explained that any other documentation he may have prepared was held on a PC. According to the Internal Auditor a family member had recently dismantled that PC without his knowledge and taken the hard drive abroad as part of a business venture. The Internal Auditor could recover some documents from memory sticks, but these do not support the positive assurance given in the Internal Audit sections of the Annual Returns.

86 I referred earlier in [paragraph 36](#) that the Council has, to date, not received an invoice from its Internal Auditor for the work claimed to have been done in June

2017. The Internal Auditor has told me that he was led to believe by the former Clerk that his appointment would continue for the 2016-17 accounts. However, given that this decision was never discussed or approved by the Council, he considers his appointment to be voided and does not intend to submit an invoice to the Council.

The Council has since taken several important steps to address the governance weaknesses highlighted in this report

- 87 At the time the new Clerk took over the role of Clerk to Whitford Community Council in April 2017, there were significant weaknesses in governance arrangements and inadequacies in financial management. The new Clerk has briefed the Council fully on his findings, and the Council has reflected carefully on the events that have taken place.
- 88 It is clear from the evidence that I have seen, and from what Council members have told me, staff at the Council placed considerable trust in their former Clerk and they too readily accepted his spoken and written assurances. Their trust and faith in the former Clerk was reinforced by the knowledge that he was also employed by the Wales Audit Office. Moreover, this sentiment is also shared by the Council's former Internal Auditor, who told me that the former Clerk could manipulate the respective parties because of his standing and used the trust and integrity associated with his position to his advantage.
- 89 The position in this case is, however, more worrying because of the immediate change in Internal Auditor following the Clerk's appointment in 2008 without, as far as I can see, any legitimate grounds. The Internal Auditor failed to perform the role they are meant to undertake on behalf of the Council, i.e. to independently scrutinise the work performed by the Council's key member of staff and report any irregularities without fear or favour.
- 90 Since the new Clerk was appointed he has, in tandem with the Council, put in place several changes that address the weaknesses and failings identified in this report. These include:
- scheduling a recurring annual meeting of the Council to consider in full the Annual Return for submission to the external auditor;
 - registering the Council as an employer with HMRC and ensuring income tax and National Insurance liabilities are properly accounted for and met in full;
 - liaising with HMRC to determine what VAT can be re-claimed under the circumstances;
 - reviewing and bringing fully up to date any outstanding financial commitments of the Council with contractors and suppliers; and
 - appointing a new Internal Auditor.

- 91 Under the current external audit regime the Auditor General has put in place for Town and Community Councils, the external audit supplier places significant assurance on the annual declarations made by the Council, its RFO and the internal auditor. Whilst in the majority of cases, this provides a balanced and cost effective audit, there are occasions, such as in this case, when the assurances provided are inconsistent with the true position set out in the underlying records.
- 92 Wales Audit Office staff have been prohibited from April 2017 onwards from holding office as Clerk to a community council. The Wales Audit Office introduced this restriction to safeguard audit independence following the Auditor General becoming auditor of community councils (on the expiry of the appointments of audit firms) in 2015. It was this restriction that led to the resignation of the former Clerk.

Recommendations

Exhibit 2: my recommendations to the Council are:

Recommendations	
R1	The appointment of the Internal Auditor should be reviewed annually and the results of this review should be minuted.
R2	The Council should ensure it has a documented terms of reference for its Internal Auditor.
R3	The Council should consider inviting the Internal Auditor to the annual meeting where the internal audit report is discussed to facilitate an open and honest exchange of views.
R4	The Council should ensure it receives a copy of the external auditor's annual report and certificate and that it is formally considered in a meeting of the Council.

Next steps

- 94 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.

- 95 The Council will then need to prepare a written response and agree the wording of that response with me before publishing its response.

A handwritten signature in blue ink, appearing to read 'AJ Barrett'.

Anthony Barrett

Assistant Auditor General

For and on behalf of the Auditor General for Wales

6 September 2018

Appendix 1

Concerns raised by external audit about the Council's compliance with the Accounts and Audit (Wales) Regulations 2005 and 2014

Each year the appointed auditor Hacker Young expressed concerns about the Council's compliance with the Accounts and Audit (Wales) Regulations 2005 and 2014.

Exhibit 3: issues raised by the appointed auditor

Audit Year	Issues raised by the appointed auditor Hacker Young
2009-10	Concerns raised with Clerk over late submission of the Annual Return. Clerk failed to provide auditor with name and contact details of Chairman but provided assurances that procedures would be put in place to ensure compliance with audit requirements.
2010-11	Concerns raised with Clerk over late submission of the Annual Return. Clerk failed to provide auditor with name and contact details of Chairman as requested.
2011-12	Concerns raised with Clerk over late submission of the Annual Return.
2012-13	Concerns raised with Clerk over late submission of the Annual Return. Clerk failed to provide auditor with name and contact details of Chairman but provided assurances that procedures would be put in place to ensure compliance with audit requirements.
2013-14	The auditor informs the Clerk that they are considering issuing a Report in the Public Interest setting out concerns over late submission of the Annual Return. Auditor also informs Clerk that he has failed to file the Annual Return within the statutory deadline for all the last five years.
2014-15	The Internal Auditor's report is dated 28 September 2015 – it should have been available for the Council's consideration (within the Annual Return) before 30 June 2015.

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