

# Report in the Public Interest – Unlawful Expenditure and Inadequate Arrangements to Secure Value for Money – Magor with Undy Community Council

Audit year: 2018-19

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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 internal control at Magor with Undy Community Council that has resulted in the Council incurring expenditure that I consider to be unlawful.

This report explains these failures and concludes that the Council did not have in place adequate arrangements to secure economy, efficiency and effectiveness in its use of resources. As consequence of these failings, the Council has in my view, incurred expenditure totalling £86,068 that is contrary to law. I also make recommendations to address those failures. 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 Magor with Undy Community Council's (the Council) accounts for the 2018-19 financial year. In the course of the audit, matters relating to the Council's arrangements for financial management and governance were brought to my attention. In considering these matters, I identified significant failures in decision making, inadequacies in financial management and internal control and a breakdown in relations within the Council. These failures lead me to conclude that the Council did not have in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources
- 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.
- 4 I note that there are lessons to be learnt not just by this Council, but by all community councils in Wales.

## My audit work

- 5 My audit work on town and community councils focusses on an annual return completed by the councils and submitted to auditors working on my behalf. The annual return contains the annual accounting statements that the Council is required by law to prepare, and an annual governance statement which sets out how the council has managed its financial affairs.
- 6 Correspondence I received during the audit gave me cause for concern that there were potential issues with the Council's financial management and governance arrangements. I therefore exercised my discretion to undertake more focused audit work.
- 7 During the course of the audit, my audit team examined documents including accounting records, correspondence held by the Council and the Council's minutes. My team also interviewed current and former councillors and members of staff.
- 8 My findings and my conclusions from the audit work are set out below. Where possible, information provided during interviews was corroborated to documentary evidence. If it has not been possible to corroborate information provided, I have not

relied on that information when drawing my conclusions but have referred to the information in this report.

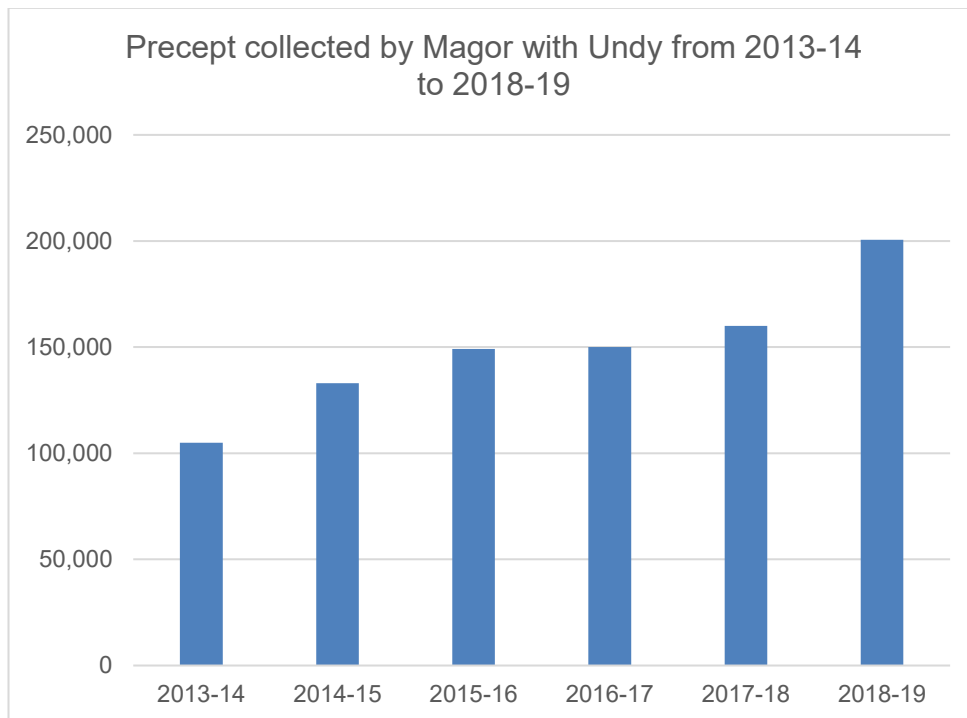
- 9 I am issuing this report after an unusually lengthy clearance process. The clearance process seeks to confirm the factual accuracy of the report and to obtain observations on the overall conclusions drawn.
- 10 My normal clearance procedure is to firstly provide relevant extracts of the report to individuals identifiable from the report in order to give them an opportunity to answer the findings and to correct any inaccuracy. Having reflected on comments received, I may update my provisional findings before providing a copy to the Council as a whole.
- 11 This clearance process was carried out in the period from January 2020 to March 2020. The process itself was protracted due to the amount of information provided and additional correspondence received. Individuals identified in the detailed report have been provided with two opportunities to comment.
- 12 The clearance process is not a matter of negotiation to produce an agreed report. While agreement as to fairness and factual accuracy may be desirable, reports do not have to be agreed in order to be published. Comments as to fairness and factual accuracy are taken on their merits.
- 13 Responsibility for the conclusions and opinions expressed in this report are mine. The responses received during the clearance process reflect disagreement with my findings and conclusions. However, I have sought to reflect such disagreements by appropriate references within the body of this report.

## **Magor with Undy Community Council**

- 14 The Council serves the Monmouthshire villages of Magor and Undy. The Council spends around £170,000 annually on local services including allotment sites, tennis courts and a multi-use games area. It funds its services primarily by means of a precept demanded from Monmouthshire County Council (the County Council).
- 15 Since 2013-14, the Council's precept has increased from £105,000 to over £200,000 (2018-19).

### Exhibit 1: precept level from 2013-14 to 2018-19

From 2013-14 to 2018-19, the Council increased its precept by almost £100,000 to £200,540.



Source: Magor with Undy Community Council accounts

16 The larger increases in precept 2014-15 to 2015-16 and 2017-18 and 2018-19 relate to the following<sup>1</sup>:

- 2014-15 and 2015-16
  - Play equipment fund;
  - Burial ground survey; and
  - Increased staff costs due to an increase in the clerk's hours
- 2017-18 and 2018-19
  - Salary allowance for the admin assistant
  - Tennis court refurbishment
  - Increase in Councillor allowances as a result of the Independent Remuneration Panel for Wales report on members allowances; and
  - Other various village improvements all under £5,000.

<sup>1</sup> Information provided by the Clerk

- 17 The County Council collects the precept through additional council tax charged to the Council's residents. The 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.
- 18 Small community councils such as Magor with Undy, normally rely on one key officer, the Clerk, to manage their administrative affairs. Often, 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 involves receiving and recording income, preparing cheque payments for signing by members, maintaining the accounting records and preparing the annual accounting statements.
- 19 As a result of the Clerk's sickness absence in 2018, from February 2018, the Council employed an Administrative Assistant. In addition to the Administrative Assistant, given the Clerk's absence was indefinite at the time, the Council obtained additional support for the Administrative Assistant by appointing an Administrative Support Officer.
- 20 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.
- 21 The Council has 13 elected councillors. Although they carry out many community activities, they are elected officials and not volunteers. As determined by the Independent Remuneration Panel for Wales (IRPW), councillors are entitled to receive a payment of £150 per year towards the costs and expenses of serving the community. Individual councillors may decline to receive the allowance. Additional allowances are payable to the former Chair and Vice-Chair subject to limitations set by the IRPW.

## Key findings

- 22 During 2018, relationships within the Council had broken down. This adversely affected how the Council conducted its business. This was not helpful for either its reputation or the delivery of services to the residents.
- 23 It is important to note that I identified no evidence to suggest that individuals within the Council deliberately sought to circumvent proper arrangements. However, overall the Council failed to ensure that it had an adequate and effective system of internal control in place. Although it had standing orders and financial regulations to govern how it conducts its business, it did not follow them.
- 24 The Council failed to adhere to its own internal rules for procuring services. Consequently, in my view, it incurred unlawful expenditure of more than £62,793.



Furthermore, based on the arrangements I identified during my audit, I conclude that, for the period subject to audit, the Council did not have proper arrangements in place to secure value for money.

- 25 The Council's processes for the appointment of staff are poor. My audit identified that it failed to follow proper process when recruiting staff and, in my view, has incurred unlawful expenditure of £22,337.
- 26 Notwithstanding that the Council's Financial Regulations specify that certain arrangements must be made in relation to its banking arrangements, the Council failed to implement important internal controls that should safeguard its finances.
- 27 During the course of my audit work additional matters were raised including:
- establishment of a Dropbox file storage facility and use of personal e-mail for Council business;
  - retention of IT equipment at a Councillors' home; and
  - ombudsman referrals.
- Whilst these issues identify conflicts and disagreements within the Council, in my view, these matters do not fall within the statutory remit set out by the Public Audit Wales Act 2004. Therefore, I do not include further comment on them in this report.
- 28 My detailed audit findings are set out in the remainder of this report.

## Recommendations and next steps

### My recommendations

- 29 I am making ten recommendations to the Council. These recommendations aim to help the Council to improve its financial management and governance arrangements. My recommendations to the Council are set out below.

#### Exhibit 2: Recommendations

I am making ten recommendations for improvement to the Council.

Recommendations	
<b>Financial Regulations</b>	
R1	The Responsible Finance Officer should ensure that three quotes are obtained for goods and services under £25,000.
R2	The Council should have a contract in place for all services which are going to take place long term (links to R1).

- R3 The Council should review its scheme of delegations to ensure that it is fit for purpose.
- R4 The Council should ensure at least one person has access to its bank accounts, as per the Financial Regulations.
- R5 An independent review of the bank reconciliations needs to be completed at least quarterly.

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#### **Recruitment policy**

- R6 The Council should develop, approve and adopt a recruitment policy.
- R7 All recruitment should be subject to a competitive process and where there are interim personnel in post, they should not be involved in the process.

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#### **Employment contract**

- R8 All employees should be issued with employment contracts.

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#### **Independent Remuneration Panel**

- R9 The Independent Remuneration Panel guidelines for allowances should be adhered to

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#### **Disclosure of payments to councillors**

- R10 The Council should ensure that its disclosure of payments to councillors accurately reflects the payments made.

## **Action taken by the Council**

- 30 During the clearance process, the current Chair, Councillor Sally Bailey, informed my audit team that the following recommendations have been actioned by the Council during the 2019-20 financial year:
- R3: The Council should review its scheme of delegations to ensure that it is fit for purpose.
  - R8: All employees should be issued with employment contracts.
  - R9: The Independent Remuneration Panel guidelines for allowances should be adhered to.
  - R10: The Council should ensure that its disclosure of payments to councillors accurately reflects the payments made.
- 31 She also noted that R4: The Council should ensure at least one person has access to its bank accounts, as per the Financial Regulations, was completed in 2018-19.



# Detailed report

## During 2018, broken relationships within the Council adversely affected how it conducted its business

### Divisions within the Council that are symptomatic of tensions and a lack of mutual respect and trust between members of the Council were identified

- 38 In addition to the governance failings noted in the remainder of this document, I have also witnessed significant tensions within the membership of the Council at the time covered by my audit.
- 39 Documents provided to me during audit fieldwork indicated that tensions were high and trust between members was low. In order to provide some context, I set out below some of the comments I noted during the audit in documentation and correspondence provided to me:
- 'the majority [of councillors] abuse their position'.
  - 'the farce with the recovery of IRPW monies was crooked'.
  - 'I was faced with hostility, animosity, bullying and unpleasant behaviour from... community councillors'.
  - 'this hostile behaviour was... largely conducted in public through social media'.
  - 'the Chair and Vice-former Chair are making decisions without the knowledge of full council and/or the committees'.
  - 'two to three councillors attempted to control the council, it was clear if anyone did not conform to their way of thinking, or their interpretation of the rules/standing orders etc. they were ill-informed'.
  - 'people were talked down to...this was tantamount to bullying'.
- The comments noted above are reinforced by the various written complaints made both within and outside of the Council in relation to member and officer behaviour.
- 40 It is not my role to comment on the validity or otherwise of these statements or to apportion any blame to any group or individual within the Council. However, the situation is damaging to the reputation of the Council and detrimental to the interests of the local community.
- 41 I urge the Council to bolster its governance changes alongside wider efforts to rebuild trust and mutual respect amongst its members.

## **The Council's minutes record some of the conflicts between members**

- 42 The minutes of the Council meetings held on 22 October and 12 November 2018 were not approved in accordance with the normal procedure<sup>2</sup>. These minutes were not approved until 14 January 2019, consideration of the minutes having been deferred during meetings held in November and December 2018. The minutes of the meetings held in November and December 2018 and in January 2019 record disagreements over the accuracy of the minutes.
- 43 The 14 January 2019 meeting was chaired by the former Vice-Chair<sup>3</sup> of the Council. On signing the minutes as having been approved by the Council, the former Vice-Chair appended a statement setting out
- ‘The Chairman of the meeting does not believe that the minutes of the meeting... the Ordinary Meeting [22 October and 12 November] were a correct record but this view was not upheld by the meeting and the minutes are confirmed as an accurate record of the proceedings.’
- 44 The Standing Orders adopted in April 2014 and amended in January 2016 and November 2017 and adopted by full Council in December 2017 (page 15D) state:
- ‘D) if the Chairman of the meeting does not consider the minutes to an accurate record of the meeting to which they relate, he shall sign the minutes and include a paragraph in the following terms or to the same affect...’
- The paragraph appended to the minutes by the former Vice-Chair is the paragraph set out in the Standing Orders.
- 45 Notwithstanding the provision made in the Standing Orders, in my view, it is not appropriate for the Chair of the meeting to record such disagreement as this facility is not available to any other member. Where there is disagreement, individual members should request that the vote be recorded.
- 46 Disagreements between members are also captured in the January 2019 minutes when concerns were expressed regarding the audit trail for work commissioned from One Voice Wales for professional support services.

## **Council minutes do not fully document the decision-making process**

- 47 Council minutes are not meant to be a verbatim record of the discussions that take place during meetings. However, they should be sufficient to record a summary of

<sup>2</sup> The draft minutes are presented to the subsequent meeting for confirmation of their accuracy.

<sup>3</sup> At the time of my audit, the vice-chair of the Council was former councillor Andrea Boyland.

the discussions held and the decisions made by the Council. My review of minutes noted the following:

- it was not always possible to establish exactly what was discussed and therefore how the Council reached a decision.
  - there was no record that councillors in attendance ever raised objections to decisions being proposed or made.
  - It was not clear if minutes were taken of all meetings classified as sensitive i.e. press and public excluded.
  - Not all minutes are present on the Council website site.
- 48 Councillors should ensure they are provided with all the information necessary to make an informed decision. Once agreed as an accurate record by majority vote<sup>4</sup>, the Chair of the meeting signs them as approved and they become the historic record of the business transacted at the meeting.
- 49 No amendments should be made, if there are inaccuracies these should be recorded at the next meeting.

## **Decision items are not always taken as separate agenda items**

- 50 My review of Council meeting minutes and agendas also highlighted that significant decisions of the Council are not discussed separately. Examples of this include:
- agreement to go ahead with the Administrative Assistant post was agreed through the Council agreeing the Admin and Personnel minutes.
  - appointment of the Administrative Support Officer was highlighted to members by means of a “Chair’s announcements” segment of meetings
  - agreement to pay for consultancy services was presented to Council after the contract had been signed by the former Chair.
- 51 During the clearance process councillors commented that the use of “Chair’s announcements” meant they were unable to make informed decisions. However, in my view it is still the responsibility of each member to ensure they are fully aware of the facts before making decisions.

<sup>4</sup> The Council as a whole takes corporate responsibility for their accuracy

The Council failed to adhere to its own internal rules for procuring services and consequently, in my view, it incurred unlawful expenditure of more than £62,973 and did not have proper arrangements in place to secure value for money

### **The Council has adopted standing orders and financial regulations, including regulations related to contracts, authorisation of payments and banking arrangements**

- 52 Standing Orders are the written rules of a local council. They are used to confirm a council's internal organisational, administrative and procurement procedures and procedural matters for meetings. Areas that the Standing Orders cover include:
- the procurement of contracts;
  - the statutory requirements for meetings of full council, councillors, the Responsible Financial Officer and Proper Officer; and
  - the number, place, quorum, notices and other procedures for committee and sub-committee meetings, because these are subject to fewer statutory requirements.
- 53 Financial Regulations are the 'Standing Orders' of the Council that regulate and control its financial affairs and accounting procedures.
- 54 The Standing Orders/Financial Regulations contain provisions to waive specific rules if it is necessary to do so, this should only be done in exceptional circumstances. The decision to do so should be clearly recorded by the Council.
- 55 My audit identified that the Council has Standing Orders/Financial Regulations in place. It last reviewed and approved its Standing Orders/Financial Regulations in May 2019. For the purposes of my audit, I examined compliance with the Standing Orders/Financial Regulations adopted in 2014 and amended in November 2017 and in force during 2018-19.
- 56 In particular, the Standing Orders/Financial Regulations contain rules for:
- procurement of contracts
  - authorisation of payments
  - banking arrangements

**Exhibit 3** below notes the Council's Standing Order thresholds.

**Exhibit 3: the Council's Standing Orders set thresholds for procurement of goods and services based on the value of contracts**

<b>Contract value</b>	<b>Standing Order requirement</b>
Under £3,000	Section 4.1 of the Financial Regulations confirms a committee has delegated responsibility to approve payments for projects within its allocated budget.
£3,000 to £25,000	The Council must obtain three quotes, with the Council determining the successful tenderer.
More than £25,000	Tenders.

Source: Magor with Undy Community Council Standing Orders adopted 2014, amended November 2017

**The Council did not comply with its standing orders and financial regulations when letting three contracts with a cumulative value of £36,780 as at 31 March 2019**

- 57 In considering the projected cost of any given contract, the Council should consider the estimated total value of the contract over the life of the contract rather than estimated costs for a single year. Furthermore, contracts should not be 'split' to ensure each lot does not exceed the Council's procurement threshold. I have been informed that this has not previously been considered by the Council.
- 58 A review of the Council's cashbook highlighted that since 2013-14 the Council regularly paid for the same service from the same company. **Exhibit 4** sets out the cumulative payments and the payments made in 2018-19 for each category of service.



**Exhibit 4: the Council has incurred over £36,000 on services for which there is no evidence to demonstrate it complied with its standing orders.**

<b>Service provided</b>	<b>Total payments from 2013-14 to 31 March 2019 £</b>	<b>Payments in 2018-19 £</b>	<b>Contract available</b>	<b>Evidence to support compliance with Standing Orders / Financial Regulations available</b>
Collecting dog-waste bins	22,000	5,222	No	No
Landscaping	7,245	320	No	No
Stationery	7,535	795	No	No
<b>TOTAL</b>	<b>36,780</b>	<b>6,337</b>		

Source: Magor with Undy Community Council cashbook

- 59 Although each individual payment made was below the £3,000 threshold for requiring quotations, the total value of work carried out significantly exceeds the Council's threshold for requiring competitive quotes. For example, in 2018-19 alone, the Council incurred expenditure totalling £5,222 for collecting dog-waste bins.
- 60 The former Chair<sup>5</sup> stated during clearance, that there is only one provider of dog bin collection and a tender process was conducted in 2017 for grass cutting. We have not been provided with evidence of any tender process.
- 61 For all the services listed in **Exhibit 4**, the Council has been unable to provide any evidence to confirm whether:
- it considered the total value of expenditure that was likely to be incurred under each contract;
  - it complied with its Standing Orders/Financial Regulations when letting these contracts; or
  - it lets these contracts on an annual basis.

<sup>5</sup> At the time of my review the Council's chair was Cllr Donna James

- 62 While it is possible to waive the requirements of its standing orders when necessary<sup>6</sup>, no evidence has been provided to me either in the Council's minutes, to demonstrate that it agreed to the Standing Orders and Financial Regulations being waived in respect of these payments.
- 63 In my view, the Council's failure to comply with its own regulations means that it has incurred unlawful expenditure totalling £36,780.

### **The Council is unable to demonstrate that it complied with its approval limits within its Financial Regulations, for services which had a cumulative value of £5,192 as at 31 March 2019**

- 64 As set out in **Exhibit 3** above, the Council must approve all expenditure proposed by a committee when there is no project allocated within the committee's budget.
- 65 Section 4.1 of Financial Regulations and the Admin and Personnel Committee's Terms of Reference confirm that the Committee has delegated responsibility to approve payments for projects within its allocated budget.
- 66 My audit identified two occasions (**Exhibit 5**) during 2018-19 where the Committee exceeded its delegated authority and approved expenditure for projects that, although were in its remit, were not within an allocated budget and therefore required full Council approval. This expenditure was incurred without obtaining full Council approval prior to engaging in the contracts.

#### **Exhibit 5: the Admin and Personnel Committee incurred £5,192 on two projects that were outside of its delegated authority**

<b>Service provided</b>	<b>Payments in 2018-19 £</b>	<b>Contract available</b>	<b>Evidence to support compliance with Standing Orders / Financial Regulations available</b>
Professional support services	3,059	No	No
Consultancy fees	2,600	No	No

<sup>6</sup> For example, where there is only one supplier. However, it is incumbent on the Council to establish there is only one supplier.

Service provided	Payments in 2018-19 £	Contract available	Evidence to support compliance with Standing Orders / Financial Regulations available
<b>TOTAL</b>	<b>5,659</b>		

Source: Magor with Undy Community Council cashbook

- 67 Notwithstanding that I have not seen evidence to suggest that the Council has delegated authority to incur expenditure to its committees, any committee with delegated authority to incur expenditure on behalf of the Council, would still need to follow the Council's Standing Orders and Financial Regulations. The Council has not provided any evidence that the Committee sought to obtain three quotes for consultancy services prior to incurring the expenditure.
- 68 In respect of the Consultancy fees, the Admin & Personnel Committee on 24 October 2018 discussed an alleged data breach. The minutes record that 'It was agreed to approach Mon CC to ascertain whether there was a suitable level of expertise in-house or, if not, that they recommend a suitable consultant or subcontractor'. The minutes do not record that the committee considered this to be an urgent matter and that the standing orders should be waived, and the requirement for three quotes disapplied.
- 69 Following the Council's approach to Monmouthshire County Council, the County Council stated they were unable to undertake the work but provided the Council's former Chair with contact details for a consultant. I have not seen any recorded decision by the Council to then approach the consultant.
- 70 The former Chair has stated that there was a 'written statement of work/contract' for the consultancy services 'issued 25/10/18'. She has provided me with a copy of a 'Statement of Work' with the contractor. This has been signed by the former Chair, on behalf of the Council. The Statement of Work is not signed by the consultant.
- 71 In an e-mail dated 26 October 2018 to the former Vice-Chair she stated 'We have been authorised by A&P and that will be reflected in the confidential minutes. We are also authorised under the financial regs'. The Council's former Chair also stated, 'I did strive to gain a number of quotes on behalf of the Council.'
- 72 The former Chair of the Committee<sup>7</sup> 'advised' the Council on 10 December 2018, that this 'fell within the delegated Admin & Personnel Committee budget amount

<sup>7</sup> At the time of my audit the Chair of the Admin and Personnel Committee was former councillor Andrea Boyland.

and due to the urgency and circumstances three quotations were not required.’  
The Council approved the payment to Bridewell at this meeting.

- 73 However, the Council’s approved 2018-19 budget, does not clearly identify any budget lines specifically allocated to the Admin and Personnel Committee. Furthermore, the minutes of the Council meeting held on 10 December 2018 record that: ‘The Clerk advised that Full Council had not discharged any budget functions to its committees.’
- 74 My review of Council minutes and discussions with the Clerk and former Chair of the Council has not identified evidence to support the basis for the Financial Regulations being waived in respect of these payments.
- 75 In my view, the Council’s failure to comply with its own regulations means that it has incurred unlawful expenditure totalling £5,192.

### **The failure to follow proper processes in letting contracts and the lack of written contracts or terms of reference mean that the Council is unable to demonstrate it has proper arrangements in place to secure economy, efficiency and effectiveness (or value for money) in its use of resources**

- 76 When procuring goods and services of significant values to the Council, it is important that the Council tests the market to ensure that it gets a competitive quotation for the goods or services it is buying. In the absence of any competitive procurement process, the Council cannot demonstrate that it has received value for money.
- 77 Furthermore, in order to demonstrate it has secured value for money under a contract, the Council should have clear, written contracts with suppliers of goods and services. Written contracts are important because they outline expectations for both parties, protect both parties if those expectations are not met and lock in the price that will be paid for the goods or services.
- 78 For each of the contracts listed in **Exhibit 4** and **Exhibit 5**, the Council does not have a written contract or any terms of reference for the services it has procured. This means that it has no clear understanding of what is expected from each contractor either in terms of services to be provided or performance standards. Consequently, this means that it cannot demonstrate that it has:
- received the services it expected to receive when letting the work; and
  - has secured value for money.
- 79 As a result of the deficiencies identified above, I conclude that the council has not made proper arrangements to secure economy, efficiency and effectiveness in its use of resources.

**The Council has failed to follow proper process when recruiting staff and, in my view, has incurred a total unlawful expenditure of £22,595**

**The Council did not comply with its own requirements to consider a recruitment business case to support the appointment of staff**

- 80 A review of the Council's website and discussions with the Clerk and former Chair have established that Magor with Undy does not have a staff recruitment policy. However, the Financial Regulations (7.8) refer to staff recruitment stating;
- 'Before employing interim staff the Council must consider a full business case.'
- This is the only reference within the Regulations and no provisions are made for permanent employees.
- 81 For several years the Council recognised that the Clerk's workload was increasing. At the Council's September 2014 meeting the Council resolved that it
- 'should explore the possibility of a clerk from another Town and Community Council supporting the office on a temporary basis for up to 10 hours per week.'
- The Council included a sum of £8,000 for office support in its 2015-16 budget.
- 82 The former Chair has provided notes from a finance meeting held on 14 January 2016 which states that the budget for office support might be used for projects out of budget, or to subsidise the precept, or it could be earmarked for support staff during 2016-17. The minutes of this meeting state:
- 'the 2015/2016 budget of £8k for a support worker be earmarked to cover the cost of any one off ad-hoc work, or a support worker if required in 2016/2017 due to any increase in workload from Devolution of Services from Monmouthshire County Council.'
- 83 Further discussions were held at the December 2015 Admin and Personnel Committee and January 2016 full Council meetings. The minutes of the January 2016 Council meeting record that the Council agreed:
- 'that in special circumstances the Council could utilise work experience placements from Caldicot School (if the timing allows), use employment agency staff, or a 'recommend a friend policy' for one-off ad-hoc work.'
- This decision coincided with the Council agreeing to allow the Clerk to increase her working hours from part time to full time.
- 84 In January 2017, the Finance meeting agreed 'To carry over any unused 2016/2017 budgets or earmarked funds for use in 2017/2018 or for inclusion in

General Reserves.’ A similar resolution was made in the January 2018 Finance meeting was made, to carry forward funds into 2018-19.

- 85 In January 2018, some three and a half years after the original discussions, Council resolved to earmark £8,000 for ‘proposed new admin support staff’ at its budget planning meeting.
- 86 In February 2018 after the Clerk’s period of sick leave, the Council became aware that a former Administrative Assistant from a neighbouring Town Council was available to undertake work.
- 87 Following the meeting, the Clerk advised the former Chair that she was keen to utilise the individual’s expertise. Subsequently the individual started working with the Council on an ad hoc basis as Administrative Assistant.
- 88 Notwithstanding that the Council had made budgetary provision to fund support staff, it was required under its Financial Regulations to consider a business case prior to making an interim appointment.
- 89 The former Chair of Council and former Chair of the Admin and Personnel Committee noted when responding to the factual accuracy of our report
- ‘There is no mandatory requirement to ‘complete’ a business case but to ‘consider’ one.’

They explained that in their view, the Council had complied with its Financial Regulations to consider a business case, as there was a verbal discussion around the appointment at a number of council and committee meetings.

- 90 However, the current Chair stated that although
- ‘Council had discussed options in the past, [it had]... certainly not discussed this in Full prior to the Chair undertaking the recruitment process on this occasion.’
- 91 Due to a lack of corroborative evidence, I have been unable to establish with certainty what consideration the Council gave to the need for additional administrative support.
- 92 I consider that for the Council to comply with its Financial Regulations and to obtain adequate assurance over the value for money of appointing interim employees, it should have prepared and considered a written business case. In the absence of such a documented business case, there is no evidence of what was discussed and what factors were taken into consideration by the Council.
- 93 My audit also identified similar deficiencies in the Council’s subsequent appointment of the Administrative Support Officer in May 2018. Therefore, I consider that the Council failed to the requirements set out in its Financial Regulations. In my view it therefore acted contrary to law and incurred unlawful expenditure of £1,155.72 during 2017-18 (Administrative Assistant) and £1,413.20 during 2018-19 (Administrative Support Officer)<sup>8</sup>.

<sup>8</sup> Gross figures provided by the Clerk of Magor with Undy Community Council

## The creation of a substantive and permanent post of Administrative Assistant without Council approval exceeded the remit of the Admin and Personnel Committee and has led to the Council incurring unlawful expenditure of £20,026

- 94 The January 2018 Council minutes indicate that an additional budget of £8,000 was earmarked for 'proposed new support staff'. The minutes do not record what new posts for support staff were to be created.
- 95 It should be noted that circa £1,156 of this budget had been utilised by appointing an interim Administrative Assistant during February and March 2018. Therefore, the £16,000 budget allocated by the Council had been depleted prior to the permanent appointment of the Administrative Assistant.
- 96 In March 2018, due to the Clerk's sickness absence, the Admin and Personnel Committee made recommendations to Council:
- a. to recommend that the vacant post is advertised as agreed
  - b. to recommend council grants delegated power to Admin & Personnel Committee to appoint'
- 97 The former Chair of Council and former Chair of the Admin and Personnel Committee noted in response to my initial findings, that the terms of reference of the Admin and Personnel Committee include a bullet point, which states 'recruitment'. In their view, this gives the committee delegated authority to perform any duty in relation to recruitment including creation of establishment posts.
- 98 I have not seen evidence to suggest that an establishment post had been created by March 2018. There appears to have been limited Council scrutiny of the minutes of the Admin and Personnel Committee of March 2018. At the April 2018 Council meeting, the minutes simply state:
- 'To receive draft minutes of Admin & Personnel Cttee held 29.3.18 and consider the recommendations [attached]
- Resolved:** to approve the minutes and recommendations of Admin & Personnel Committee 29.3.18.'
- 99 Following a recruitment process, the temporary Administrative Assistant was appointed to the permanent position in May 2018.
- 100 In her response to the clearance process the current Chair noted
- 'Full Council were then notified, during the former Chair's announcements and not as part of a separate agenda item.' (see paragraph 39)
- 101 I conclude that the Council's appointment of the Administrative Assistant is deficient in a number of ways:
- the Council has delegated to the Admin and Personnel Committee, the powers to recruit staff. The delegation does not state that the Committee has the power to create establishment posts. This is important as any posts

created may impact on the Council's overall budget and the budgets delegated to other committees.

- the cost of the Administrative Assistant's post exceeded the budgeted amount of £16,000. The Admin and Personnel Committee's delegated functions do not extend to application or virement of expenditure from other budgets (outside of its remit).
- no additional budgetary requirement or virement was considered by the Council.
- the minutes of the Council meeting of April 2018, as set out above indicates, that the Council simply adopted the recommendations made by the Admin and Personnel Committee with little or no scrutiny of the recommendations and budget implications.

102 As a consequence of these deficiencies, I consider that the Committee acted contrary to law and the expenditure incurred by the Council is therefore unlawful.

## **The Council did not follow a lawful process when appointing an Administrative Support Officer**

103 During the 30 May 2018 Admin and Personnel Committee meeting, it was confirmed that the Clerk's period of sickness was indefinite. The former Chair of the Admin and Personnel Committee requested that the Committee consider additional support in the office to cover the two days shortfall.

104 The minutes of the committee meeting record 'The committee agreed to employ additional support in the absence of the clerk as it considered the council needed full time officer cover.'

105 The former Chair of the Admin and Personnel Committee confirmed that the former Chair of the Council had approached the candidate who had come second in the recent application for Administrative Assistant and that she was willing to work on a temporary basis.

106 The minutes also note '[the former] Chair of Admin and Personnel advised that under the Terms of Reference of A&P Committee it had a budget and authority to spend/employ up to £5,000'. The money allocated to pay for the post would be out of council reserves. However, on reviewing the financial regulations it is clear that to use the money from reserves approval would be required from Council. The Financial Regulations state:

'Expenditure on revenue items may be authorised up to the amounts included for that class of expenditure in the approved budget. This authority is to be determined by:

- the RFO for any items below £1000;
- The RFO and Chairman of the Council for items over £1000 and up to £5000; or
- the Council for all items over £5,000.'



- 107 The former Chair states that this was to be funded from the £8,000 carried forward from 2015-16 and the £8,000 budgeted for in 2018-19. I note that the cost of the Administrative Assistant post in 2018-19 was £20,025.83, this would have depleted the budgetary provision available.
- 108 The subsequent minutes of full Council dated 14 June 2018, record the following in relation to the appointment '034 Chair's Announcements: ...Additional support for the office being looked at.' (**see paragraph 39**). The former Chair notes that the minutes do not represent her detailed announcement. She believes the minutes do not demonstrate that the Full Council were updated and supported this approach.
- 109 In my view, the appointment process for the role of Administrative Support Officer was deficient for the following reasons:
- there is no evidence that a business case was considered; and
  - the Committee does not have delegated authority to allocate Council reserves.
- 110 As a consequence of these deficiencies, I consider that the Committee acted contrary to law and the expenditure of £1,413 incurred for the post of Administrative Support is contrary to law.

## **The recruitment process adopted by the Council for the Administrative Assistant was robust**

- 111 Paragraph 45 indicates that the Council did not have an established recruitment process for permanent employees. However, on determining to appoint the Administrative Assistant on a permanent basis, the former Chair of the Admin and Personnel Committee, in consultation with the former Chair of Council, compiled a process which included the following:
- job description and employee specification, which included essential and desirable criteria;
  - scoring matrix for the applications forms received to determine who received an interview, this contained a minimum score;
  - interview criteria, with a scoring guide; and
  - scoring matrix for the interview.
- 112 In my view, this procedure ensured that the appointment process itself was robust. However, I have seen only limited evidence that members of the committee contributed to the development of the procedure.

## The Council has made unlawful payments to an individual member totalling £500

### Council members are entitled to receive allowances paid in accordance with rates set by the Independent Remuneration Panel for Wales

- 113 Under the Local Government (Wales) Measure 2011, community councils have statutory authority to pay allowances to their members. The Independent Remuneration Panel for Wales (IRPW) is responsible for determining the level of payments to elected members of community councils in Wales including the maximum amount that may be paid.
- 114 Each council is required to determine how many payments are to be made. At the council meeting on 25 June 2018, the Council resolved to adopt the allowances set out in the IRPW's annual report for 2018-19.

### Payments made by the Council during 2018-19 exceed the maximum set by the IRPW and, therefore, I consider that the excess payment of £500 to be unlawful

- 115 The IRPW annual report sets out that all members may receive a payment of £150 per year towards the costs and expenses (telephone, broadband, stationery, etc) of serving their community.
- 116 The IRPW recognises that specific member roles within the larger community and town councils, for example chairs of committees, will involve greater responsibility. It is also likely that larger councils will have a greater number of committees, reflecting its level of activity. The IRPW identifies larger councils as those where income or expenditure exceeds £200,000.
- 117 The IRPW made the following determination:  
'Determination 46: Community and town councils in Group A must make available an annual payment of £500 each to a minimum of 1 and a maximum of 5 members in recognition of specific responsibilities. This is in addition to the £150 payment for costs and expenses.'
- 118 At its meeting on 25 June 2018 the Council decided to adopt the IRPW recommendations. The minutes state "  
'044.1 To adopt IRPW Annual Report 2018 [Pages 40 – 45 refer] (attached) Resolved: To adopt IRPW Annual Report 2018  
044.2 To approve payments of determinations 47–53 as set out in MUCC Budget 2018/19 The chair referred to the numerous meetings when determinations 47 – 53 were agreed and a copy of MUCC Budget v

Actuals 2018/19 containing a breakdown of the determinations was attached to the agenda.

Resolved: To approve payments of determinations 47-53 as set out in MUCC Budget 2018/19'

- 119 These minutes do not record how payments are to be made. **Exhibit 6** sets out the payments made by the Council in July 2018 and identifies that one member received allowances that exceed the maximum payments allowed by the IRPW.

**Exhibit 7: payments to councillors in 2018-19**

Councillor	2018-19 allowances paid £	Maximum allowed <sup>9</sup> £
Members without additional responsibilities (each)	150	150
Chair	1,650	1,650 <sup>10</sup>
Vice-Chair of the Council and Chair of Admin and Personnel	1,150	1,150 <sup>11</sup>
Chair of Parks and Open Spaces and Chair of Communication and Community Liaison <sup>12</sup>	1,150 <sup>13</sup>	650 <sup>14</sup>

<sup>10</sup> Includes the Chair's allowance and the basic members' allowance.

<sup>11</sup> Includes the Vice-Chair allowance, the basic member allowance and a special responsibility allowance as Chair of a committee.

<sup>12</sup> At the time of my audit, the Chair of the Parks and Open Spaces and the Communication and Community Liaison Committees was former councillor Mike Boyland.

<sup>13</sup> On report clearance, former councillor Mike Boyland advised me that he gave his allowances to charity.

<sup>14</sup> Includes the basic member allowance and a specific responsibility allowance as Chair of a committee. Only one specific responsibility allowance may be paid to an individual member.

Source: Magor with Undy 2018-19 Cash Book

- 120 The roles of Chair of the Parks and Open Spaces Committee and Chair of Communication and Community Liaison Committee were both held by the same member. The Council paid two specific responsibility allowances to reflect that this member chaired two committees.
- 121 In my view, the IRPW Determination for 2018-19 is clear that individual members may only receive one specific responsibility payment of £500 even when they hold more than one specific responsibility:
- the determination states that up to 5 members may receive a payment of £500 to reflect additional responsibilities. It does not state that £500 is to be paid for each additional responsibility.
  - subsequent determinations (52 and 53) deal with additional allowances for the Civic Head and Deputy Civic Head. These determinations state that the Civic and Deputy Civic Head allowances are payable 'in addition to the £150 payment for costs and expenses and the £500 senior salary if these are claimed'. These determinations indicate a singular senior salary may be paid.
- 122 Therefore, I conclude that this member has received £500 in excess of the allowances authorised by the IRPW.
- 123 In a response to my provisional findings, the former Chair of the Parks and Open Spaces and the Communication and Community Liaison Committees has stated that he does not consider there to have been an overpayment. He stated that 'the Council agreed to adopt the IRPW 2018/19 Annual Report in its entirety but, more specifically, also agreed the schedule of payments to individual members at a subsequent meeting. This was all well in advance of the publication of the [IRPW] 2019/20 [annual report] which was, admittedly, tighter on language and direction, but which post-dated the £1,150 payment [he] received by many months. Any reference to previous payments (even if via inferred future guidance) would therefore seem retrospective.' He also stated: 'although the 2018/19 IRPW guidance doesn't say that members may receive more than one payment under the "additional responsibilities" capture, neither does it say that they cannot.'
- 124 In its 2019-20 Annual Report, the IRPW clarifies that 'In all cases, a Councillor can only have one payment of £500 regardless of how many senior roles they hold within their Council.'<sup>15</sup> It should be noted that the IRPW did not amend the wording of the determination itself but provided additional clarification.
- 125 Notwithstanding the response received to my provisional findings, in my view, in deciding to pay more than one senior role allowance to an individual member, the Council misinterpreted the IRPW determination and acted contrary to law, incurring expenditure that is unlawful.

<sup>15</sup> Paragraph 13.17 of the IRPW Annual Report 2019-2020

## **The Council does not have in place an adequate and effective system of internal control and fails to comply with its own financial regulations**

### **The Council is required to ensure that it has in place a sound system of internal control and this system incorporates the Council's Financial Regulations**

- 126 Regulation 5 of the Accounts and Audit (Wales) Regulations 2014 requires that the Council has in place a sound system of internal control which facilitates the effective exercise of the Council's functions and which includes adequate and effective financial management.
- 127 Regulation 6 requires the Responsible Finance Officer to ensure that the Council has in place accounting control systems that must include measures to:
- ensure that the Council's financial transactions are recorded as soon as reasonably practicable and as accurately as reasonably possible; and
  - enable the prevention and detection of inaccuracies and fraud, and the ability to reconstitute any lost records.
- 128 As part of this control framework, the Council has established its Financial Regulations. The Council should adhere to these Financial Regulations other than in exceptional circumstances.

### **It is unclear whether the existing banking arrangements comply with the Council's Financial Regulations and are sufficient to protect the Council in the absence of the Clerk**

- 129 The Council's Financial Regulations (6.11) state that where access to the Council's records on a computer require a PIN or password, a note shall be made of the PIN or passwords and shall be handed to and retained by the Chairman of the Council in a sealed, dated envelope.
- 130 In an interview on 6 June 2019 with the former Chair and former Vice-Chair of the Council, the former Chair stated that she does not have the details required to access the Council's banking system. The former Chair maintains that the bank details have been noted in a sealed envelope by the Clerk and placed in a location only known by the Clerk's husband. The minutes of 2 October 2018, Admin and Personnel Committee confirm 'the Clerk has still not provided a sealed envelope to the Chair of the Council containing passwords and logins for emergency use, as first requested November 2017'.
- 131 However, we have been provided with a copy of an e-mail from the former Chair dated 2 November 2018, which stated

'In line with our Financial Regulation 6:11 I am informing you that the sealed envelope containing the passwords and login details for the office Computer was opened by me today in the presence of two Councillors and witnessed by the IT Auditor.'

- 132 In addition, the clerk has stated that the former Chair did have access to the Council's banking system. She stated that 'The previous Chair did not wish to hold a copy of the passwords at her home address and kept them in a sealed dated envelope in a filing draw at the Council office. When Cllr James took over as Chair, she was advised of the previous Chair's decision and wished to continue as was. As and when passwords were changed, then the Chair's envelope in the filing drawer was also updated'.
- 133 If due to the Clerks unavailability, the Council is unable to access online banking, there is a risk that the Council would be unable to meet its financial obligations as they fall due. It is unclear why authorised signatories, other than the clerk, could not obtain log-in credentials from the bank in order to access on-line banking.
- 134 The clerk stated 'Since the Council moved across to on-line banking to monitor its accounts and pay the salaries', both the former Chair and another signatory 'have the ability to access the Council's accounts online, view statements etc and, if necessary, move monies between accounts or make a payment. Both would be needed if required to make a payment. Each of them has been issued with a 'card', membership number, PIN and 'authenticator' personal to them for use with the Council's account on-line'. In addition, 'the Council's cheque book was also available within the Office cash box, to which the Admin Assistant had access. All invoices during my [the clerk's] absence were paid, by cheque, in the usual manner'.
- 135 In a written submission, the current Chair has stated she has the necessary access and passwords to the Council's internet banking facility and had this access during the period the Clerk was on sick leave.
- 136 The dispute over the access to on-line banking means it is unclear if the Council's banking arrangements are in line with its Financial Regulations and are robust enough to ensure business continuity.

## **An independent review is not conducted of the bank reconciliations**

- 137 The Council's own Financial Regulations require that a member of the Council, other than the Chair, should be appointed to verify the bank reconciliations produced by the Responsible Financial Officer on a regular basis.
- 138 The internal audit report for the financial year 2018-19 identified that no evidence had been provided to indicate that a nominated member of the Council reviews and verifies the bank reconciliations prepared by the Clerk.
- 139 For 2018-19 the Council relied on the Responsible Finance Officer, to ensure bank reconciliations were correctly prepared. Consequently, the Council can take no assurance over the adequacy of the control required by its Financial Regulations.



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