



CARMARTHENSHIRE COUNCIL'S PENSION AND LIBEL PAYMENTS 'UNLAWFUL'

**Appointed Auditor publishes two separate reports in the
public interest**

PRESS RELEASE – EMBARGOED until 00:01 hrs, 30 January 2014

Carmarthenshire County Council acted 'contrary to law' by making a decision that allows senior officers to opt out of the Local Government Pension Scheme (LGPS) – to avoid potential tax liabilities – and be paid a 'supplement', equivalent to their pension contributions, to enable them to make their own arrangements for retirement. It also acted unlawfully when it decided to grant an indemnity to the Chief Executive to bring a libel counterclaim against an individual.

The Appointed Auditor, Anthony Barrett, today publishes two reports in the public interest to highlight his concerns on both matters.

The Appointed Auditor's report on senior officers' pay and pensions concludes that the decisions were unlawful on a number of grounds:

- The Council does not have the power to remunerate staff to mitigate the effect of pension's legislation.
- In making the decision, relevant considerations were not taken into account (in breach of *Wednesbury* principles).
- The Council failed to have due regard to the public sector equality duty.
- The decision amounted to indirect discrimination.
- A senior officer who had a disqualifying personal and pecuniary interest in the decision, participated in the decision making process.

Last month, the Council rescinded its decision to offer a pay supplement in lieu of pension contributions and announced that no further payments will be made to the Chief Executive from January 2014. Over £27,000 was paid to the Chief Executive under the Scheme since 2012. While the Council's Executive Board does not agree that the decision was intrinsically unlawful, it did accept that there may have been shortcomings in the procedures adopted.

In his report on the indemnity for the libel counterclaim, the Appointed Auditor concludes that the Council does not have the legal powers to make such payments

and there were inadequacies in the processes adopted by the Council when making the decision.

The Council has paid out over £26,000 in external legal costs since 2012 under the decision to indemnify the Chief Executive. The libel counterclaim is still on-going and it is unclear what the final external legal costs to the Council will be.

Appointed Auditor and Assistant Auditor General, Anthony Barrett, said today:

“Carmarthenshire Council has acted unlawfully on two fundamental issues, both of which the public need to be fully aware of. The authority has taken decisions and used taxpayers money in areas that they do not have the legal powers to do so. I welcome the fact that the Council has rescinded its decision over the pensions issue, it now needs to do the same in relation to the libel indemnity granted to the Chief Executive.

It is also of vital importance that the Council addresses procedural weaknesses in its decision making, as highlighted in my two reports today, so that it exercises its discretion and authority properly on such important matters.”

ENDS

Notes to Editors:

- The Appointed Auditor has issued his reports in the public interest under Section 22 of the Public Audit (Wales) Act 2004.
- An Appointed Auditor is required to consider whether to issue a report in the public interest on any significant matter coming to his or her notice in the course of an audit, and to bring it to the attention of the audited body and the public.
- It gives the Council an opportunity to explain the important steps it has taken to improve arrangements and to ensure that the risk of such failures recurring is reduced to a minimum.
- After a report in the public interest is issued, the Council is required to consider the report at a full meeting of the Council within one month of the date of issue. At the meeting, the Council must 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.
- The Auditor General for Wales is responsible for appointing auditors of local government bodies. Once appointed these auditors are legally separate persons who exercise their own statutory functions independently.
- The Wales Audit Office mission is to promote improvement, so that people in Wales benefit from accountable, well-managed public services that offer the best possible value for money. It is also committed to identifying and spreading good practice across the Welsh public sector.

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