

Inadequacies in Governance, Financial Management and Internal Control Arrangements – St Harmon Community Council

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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 St Harmon Community Council.

This report sets out a number of inadequacies in the Council's governance and financial management and internal control arrangements and makes two 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 St Harmon Community Council's (the Council) accounts for the 2018-19 financial year.
- 2 In the course of the audit, matters related 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.
- 3 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.
- 4 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.
- 5 I note that there are lessons to be learnt not just by this Council, but by all community councils in Wales.

St Harmon Community Council

- 6 The Council serves the villages of St Harmon and Pant-y-Dwr in Powys. In 2018-19, the Council spent £22,669 on local services and making grants to community groups. It funded this expenditure mainly through a precept of £9,995 from Powys County Council and a grant of £4,390 to be used for community benefit from a local windfarm company. As at 31 March 2019, the Council held £2,023 in reserves.
- 7 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 either elected by local electors or co-opted through an openly advertised co-option process. The Council is, therefore, accountable to the local electorate.
- 8 Many community councils such as St Harmon Community Council are very small organisations and normally rely on one key officer, the Clerk, to manage their administrative affairs. More often than not, the Clerk is also appointed as the Council's Responsible Financial Officer (RFO) charged under legislation with the proper administration of the Council's financial affairs. This includes administering the Council's arrangements for receiving and recording income, preparing cheque payments for signing by members, maintaining the accounting records and

preparing the annual accounting statements. The Clerk of St Harmon Community Council is also the Council's appointed RFO.

- 9 For the period covered by this report, the Council's Clerk was Katrina West (the former Clerk). The former Clerk was assisted by the Council Chair, Councillor Donald Jenkins (the Chairman). The Chairman had acted as temporary clerk prior to Ms West's appointment.
- 10 Notwithstanding the statutory role that the Council's RFO performs, by law, the Accounts and Audit (Wales) Regulations 2014 stipulate that responsibility for the stewardship of Council funds, including ensuring that the Council has effective and efficient financial management, rests with the members of the Council. This includes such things as establishing an appropriate system of internal control, ensuring that the Council has an adequate and effective internal audit, and approving the annual accounting statements prior to submission for audit.

My audit work

- 11 My audit work on community councils focuses 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.
- 12 During the 2018-19 audit concerns were raised with my auditors by several members of the public. These concerns related to the financial management and governance of the Council. I decided that it was necessary to address these concerns by asking my auditors to undertake a more detailed audit than would routinely be undertaken. This audit work has now been completed.
- 13 My findings, which reveal elements of poor governance and financial management, are summarised below, and are set out in detail in the remainder of this document.

Key findings

- 14 My audit found that the Council's overall governance and financial management standards were poor:
 - the Council had not put in place proper arrangements for the preparation, approval and submission for audit of its annual accounts and statement of internal control;
 - the Council's system of internal control was inadequate and ineffective;
 - the Council failed to comply with several legislative requirements;
 - the process for the appointment of the Council's Clerk and RFO was flawed and in my view potentially unlawful and the terms of her appointment were not properly approved or implemented;

- the Council breached its own procurement rules, entered into an irregular VAT arrangement and provided misleading information to my auditors about its contracting arrangements;
 - the Council's management and decision-making in respect of a community grant scheme was fundamentally flawed and potentially unlawful; and
 - the process that led to the co-option of two new members of the Council in February 2019 was fundamentally flawed and the Chairman and another councillor participated in the process despite having personal and prejudicial conflicts of interest in the outcome.
- 15 My auditors also found that the conduct of the Council's Chairman and the Council's former Clerk with regards to the matters highlighted in this report fell short of the standard that the public has a right to expect of public officials.

Recommendations

- 16 I am making 2 recommendations to address the issues I have highlighted in this document.

Recommendations

R1 I recommend that the Council prepares and agrees an action plan to address the numerous weaknesses and deficiencies in its governance and financial management arrangements identified within this document.

R2 I recommend that the Council consider whether there are matters raised in this report that should be referred to the Public Services Ombudsman for Wales as potential breaches of the Council's Member Code of Conduct.

Action already taken by the Council

- 17 It is important that the Council learns from these findings and addresses the deficiencies I have identified. In December 2020, the Council appointed a new Clerk. The Clerk has informed me that since her appointment she has undertaken a review of the Council's processes, policies and procedures. This review identified a number of the deficiencies set out in this report. The Clerk has prepared an action plan to address these deficiencies, and the Clerk has informed me that many of these improvement actions have been completed, and others are in the process of being addressed. My auditors will be monitoring the Council's progress in addressing its action plan in future audits.

Next steps

- 18 Sections 25 to 27 of the Public Audit (Wales) Act 2004 sets out the steps that the Council now needs to take in response to this report.
- 19 In summary, the Council must now consider the report and its recommendations at a public meeting of the Council within one month of the date that I issue the report.
- 20 Prior to the meeting, the Council must place a notice advertising the meeting in a newspaper circulating in the area. This notice must set out the date and time of the meeting and how members of the public can attend.
- 21 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.
- 22 The Council will then need to prepare a written response and agree the wording of that response with me before publishing its response in a local newspaper.

Ann-Marie Harkin

Executive Director – Audit Services

Audit Wales

For and on behalf of the Auditor General for Wales

Detailed report

The Council did not put in in place proper arrangements for the preparation, approval and submission for audit of its annual accounts and statement of internal control as required by legislation

Community councils are required by legislation to prepare and approve annual accounts and a statement of internal control and must submit them to the Auditor General as part of an Annual Return form

23 The Accounts and Audit (Wales) Regulations 2014 (the Regulations) set out requirements that the Council must adhere to when preparing, approving and submitting their accounts for audit. These requirements include:

- the Responsible Financial Officer (RFO) of a relevant body must, having prepared a record of the council's receipts and payments for the year of account, sign and date that record, and certify that it properly presents that body's receipts and payments for the year to which the record relates.
- by 30 June following the end of the accounting year, the members of the Council, meeting as a whole, must consider and approve the accounting statements for submission to the auditor.
- the council must, no later than 30 September immediately following the end of the financial year, publish the accounting statements or any certificate, opinion, or report issued, given or made by the auditor, or if the publication takes place prior to the conclusion of the audit and no such opinion has been given, together with a declaration and explanation of the fact that at the date of publication the auditor has given no opinion.

24 The Regulations require the Council to prepare its accounting statements as part of an Annual Return form. The Annual Return has four sections:

Section 1: The accounting statements setting out the receipts and payments and a statement of balances for the year of account. The RFO is required to certify 'the accounting statements contained in this Annual Return presents fairly the financial position of the Council, and properly presents receipts and payments for the year ended 31 March 20[XX]'

Section 2: The Annual Governance Statement (AGS). In this section the Council confirms that it has met its responsibility for ensuring that it has established a sound system of internal control. The preparation and approval of an AGS enables the Council to satisfy the Regulations' requirement that the full Council or a committee of the Council 'approve a statement on internal control prepared in accordance with proper practices'. The AGS records the Council's responses to 12 questions confirming that internal controls arrangements had been implemented and were operating during the year of account (**see paragraphs 57 to 59**). The Council Chairman is required to certify that the 'accounting statements and Annual Governance Statement were approved by the council under minute reference [XX]'

Section 3: The Annual Internal Audit Report. This section sets out the conclusions of a council's internal auditor's assessment of whether the Council complied with relevant procedures and controls expected to be in operation during the year of account. The report records the internal auditor's responses to 11 questions on expected key controls such as the Council's arrangements for budgeting, accounting, compliance with financial regulations etc (see paragraphs 106 to 111).

Section 4: The Auditor General's Audit Certificate and Report. This section is completed by the Auditor General's auditors when the audit is complete. It sets out whether in our opinion the Council's Annual Return is in accordance with proper practices and whether matters have come to our attention that give concern that relevant legislation and regulatory requirements have not been met.

The Council's accounts and AGS were inappropriately prepared by the Council's then Internal Auditor, compromising his ability to provide independent assurance to the Council

- 25 Internal audit is an important element of the Council's internal control system, and the work of the internal auditor provided independent assurance to members that financial controls are operating effectively, and proper accounting records have been maintained throughout the year. The work of internal audit is therefore crucial in informing member decisions on approving the annual accounts and annual governance statement. The internal auditor must therefore have no role in preparing the accounts or the AGS as undertaking these roles compromises their ability to provide independent assurance. When completing the Internal Audit section of the Annual Return, the internal auditor certifies that: 'I have not been involved in a management or administrative role within the body (including preparation of the accounts).'
- 26 The minutes of the Council's 8 May 2019 meeting state that the Council voted on and approved the Council's 2018-19 accounts and that 'preparations [were] being made for the internal audit'. The minutes also record that two members of the Council voted against the approval of the accounts.
- 27 The Chairman told my auditors that the information presented to the Council meeting of 8 May 2019 for approval was a financial spreadsheet maintained by the Council's Clerk and RFO. The Council meeting did not therefore receive the Council's accounts in the form required by the Regulations, ie the Council had not completed the Annual Return by that date. The Annual Return was not completed until 25 May 2019, meaning that the accounts required by the Regulations were not approved at the 8 May 2019 meeting.
- 28 The Chairman told my auditors that following the 8 May 2019 meeting, the Council's accounting records were presented by the former Clerk to the Council's then Internal Auditor, Mr Phillip Woosnam. The Chairman was present at the meeting.
- 29 When the former Clerk presented Mr Woosnam with the accounting records she also provided him with Council's 2018-19 uncompleted Annual Return with the expectation that he would complete the accounts and AGS sections of the form, in addition to the internal audit section. Mr Woosnam completed each of these sections. The Chairman wrote to my auditors on 21

August 2019 stating that he and the Clerk had 'mistakenly as we now know... left [Mr Woosnam] to fill in the return'. Mr Woosnam completed the accounts, AGS and internal audit sections of the Annual Return and certified in the internal audit section that he had not been involved in a management or administrative role within the body (including preparation of the accounts) even though he had personally produced the accounts and the AGS.

- 30 I consider that neither the Chairman nor the Clerk of the Council should have requested or permitted Mr Woosnam to complete the Council's accounts and AGS sections of the Annual Return. Whilst I understand that the Council's former Clerk did not wish to prepare these documents herself because she had not been in post for the period to which the accounts and AGS related, in her capacity as the Council's RFO she should have reported to the Council that it was unacceptable for the Council's then Internal Auditor to prepare the accounts or AGS.
- 31 On 14 December 2020 and again on 8 April 2021, the Chairman wrote to my auditors stating that he was not involved in presenting the Council's accounting records and the blank Annual Return to the Council's Internal Auditor, and that it was the Clerk alone who was responsible for presenting the uncompleted Annual Return to the Internal Auditor. Notwithstanding whether the Chairman personally gave the uncompleted Annual Return to the Internal Auditor, he has acknowledged in his correspondence of 8 April 2021 that he was present at the meeting with the Internal Auditor and was aware that the Clerk had provided the Internal Auditor with the Annual Return to complete. I therefore consider that the Chairman and the Clerk were both culpable in this matter.
- 32 I consider that Mr Woosnam's role in producing the Council's accounts and AGS fundamentally compromised his ability to provide independent assurance to the Council. As set out in **paragraphs 60 to 65** the accounts produced by Mr Woosnam were misstated. Furthermore, my audit found that many of the internal controls Mr Woosnam stated in the AGs were in place and operating effectively were either not in place or were not operating effectively as set out in **paragraphs 57 to 59**.

The Council's 2018-19 accounts were not lawfully approved by 30 June 2019 as required by legislation

- 33 Community Councils are required by legislation to approve their annual accounts for the year of account ended 31 March by 30 June of the same year. The minutes of the Council's 28 May 2019 meeting record 'the accounts have been returned from the internal auditor and his report was passed around all councillors. All councillors approved the report with no comments. Governance statement was then handed around for councillors (if Councillors [require a] copy please email [the Clerk]. One councillor requested copy to be sent to her. All councillors approved the accounts they are to be sent to the External Auditors'.
- 34 The minutes state that all members approved the accounts and specify that members were provided with three separate documents:
- accounts
 - a governance statement

- an internal audit report
- 35 Each of the above form part of the Annual Return. I would therefore have expected members to have been provided with a single document, ie the Annual Return form, not three separate documents. I therefore cannot be certain that the accounts 'approved by all members' at the meeting of 28 May 2019 were in the form required by proper practices.
- 36 Notwithstanding this uncertainty, members could not lawfully have approved its annual accounts at the meeting of 28 May 2019 for the following reasons:
- under the provisions of the Local Government Act 1972 (the 1972 Act) members are required to be sent at least 3 clear days before a meeting a summons specifying the business to be transacted at the meeting. The agenda for the 28 May 2019 meeting did not set out that members would be required to consider and vote on the approval of the 2018-19 annual accounts. The Council could not therefore lawfully approve the accounts at the 28 May 2019 meeting. The Council's own rules, its standing orders, state that other than procedural resolutions specified in the standing orders (not applicable in this case), 'no motion may be moved at a meeting unless it is included in the agenda'.
 - the 1972 Act also requires members to be provided with all documents relating to business to be transacted at least 3 clear days before a meeting. Members of the Council could not have been provided with a copy of the Council's accounts in the form prescribed by proper practices before 28 May 2019. The minutes record the circulation of the accounts AGS at the meeting itself.
- 37 I therefore consider that the Council failed to lawfully approve its 2018-19 annual accounts by 30 June 2019.

The Council failed to comply with legislative requirements to review and consider the effectiveness of its system of internal control and approve a statement of internal control/Annual Governance Statement

- 38 The Regulations set out that a community council must ensure that it has a sound system of internal control which facilitates the effective exercise of its functions including arrangements for:
- the management of risk; and
 - adequate and effective financial management.
- 39 The Regulations require the Council to conduct a review at least once a year of the effectiveness of its system of internal control and to consider the findings of the review by the members of the Council meeting as a whole.
- 40 After conducting the review, the Council must approve a statement on internal control prepared in accordance with proper practices. Proper practices set out that the required statement on internal control should be in the form of an Annual Governance Statement (AGS). The Annual Return includes a template AGS for completion and approval.
- 41 The Council failed to comply with the above requirements. The Council did not carry out its own review of the effectiveness of its system of internal control. In my view, this review should

have been undertaken by the Council's former Clerk. The Council's AGS submitted to my auditors, was completed by the Council's Internal Auditor, Mr Woosnam (**paragraphs 19 to 25**). The AGS prepared by Mr Woosnam was not approved by a meeting of the Council as set out in **paragraphs 37 to 47**).

Notwithstanding the fact that the Council had not approved the AGS, the Council's Chairman certified that the Council had approved its 2018-19 AGS

- 42 On 28 May 2019 the Chairman certified the Annual Return stating 'I confirm that these accounting statements and Annual Governance Statement were approved by the Council under minute reference.' The relevant minute reference was not recorded on the Annual Return.
- 43 Minutes of a Council meeting held on 28 May 2019 state 'Governance statement was then handed around for councillors (if Councillors [require a] copy please email [the Clerk]. One councillor requested copy to be sent to her.
- 44 The Chairman and the former Clerk maintain that members of the Council approved the AGS at the meeting of 28 May 2019 despite this not being recorded in the minutes. My audit team has spoken to two other councillors present at the 28 May 2019 meeting who stated that they were not provided with an opportunity to approve the AGS.
- 45 I do not accept the Chairman's and the former Clerk's assertions that the AGS was approved but the decision was not recorded. This explanation is inconsistent with correspondence regarding the AGS that took place shortly after the 28 May 2019 meeting.
- 46 On 29 May 2019, one councillor requested by email that the former Clerk provide him with a copy of the 'Annual Return for 2018-19 (which I appreciate is only partially complete so far)'. It is clear from this request that the councillor believed that the Annual Return had not yet been fully completed, and therefore had not been approved.
- 47 The Clerk refused the request stating, 'the Annual return will be issued to all Councillors once it has been returned from the external auditors after the audit is complete and before the council meets to approve it [my emphasis]'. It appears that the Clerk was under the misapprehension that the Council's Annual Return which included the Council's AGS needed to be approved by the Council after the audit process was completed. This was incorrect as the AGS and the Council's accounts were required to be approved by the Council before submission for audit.
- 48 I am also concerned that the former Clerk declined the councillor's request for a copy of the AGS. As a member of the Council, the councillor had a legitimate right of access to the information requested, and the Clerk had no legitimate basis on which to refuse the request.
- 49 On 9 June 2019, following a request from a councillor for 'a copy of the unsigned governance statement that was passed around at the meeting [of 28 May 2019]', the Chairman declined the request on the basis that 'the external audit financial and governance statement will be supplied to all Councillors when it is returned by the external auditor after the audit is complete

and **before the council meets to approve it** [my emphasis] '. It appears that the Chairman was also under the misapprehension that the Annual Governance Statement was to be approved by the Council after my audit was completed.

- 50 The statement made by the Chairman indicates that he was aware that the AGS had not been approved by the Council at its meeting of 28 May 2019. I am also concerned that The Chairman declined the councillor's request for a copy of the AGS. The Chairman had no legitimate basis on which to refuse the request.
- 51 Notwithstanding the above, for the same reasons as set out in **paragraph 30**, the Council could not have lawfully considered and approved the AGS at its meeting of 28 May 2019.
- 52 I am satisfied that the AGS was not approved by a meeting of the Council on 28 May 2019, nor could it have been lawfully approved. I therefore consider that the Chairman wrongly certified that the Council has approved the AGS. I consider that the Chairman's conduct in this matter fell short of the standard the public has a right to expect.

The Council's accounts were amended after they had been considered by members, and the Chairman of the Council wrongly certified that the amended accounts had been approved

- 53 On 24 June 2019, my auditors received a copy of the Council's Annual Return certified by the Chairman and the former Clerk. My auditors noted that the accounting statements had been amended using correction fluid. Some of the amendments had been initialled DJ and some DWJ suggesting the amendments had been approved by Councillor Donald Jenkins.
- 54 My auditors raised this matter with the Chairman because the accounts submitted for external audit must be approved by members. If amendments are made to the accounts after the accounts have been approved they must be submitted to a meeting of the Council for re-approval.
- 55 On 21 August 2019, the Chairman wrote to my auditors stating that he 'carried out a final check on the [Annual Return] prior to the return going to [the External Auditor] so the alterations were carried out after the council approved the return but because of the deadline for the return there would not have been sufficient time to take it back to council, on reflection perhaps it would have been more appropriate to have sent it unaltered with an explanation to the discrepancies'.
- 56 Furthermore, in December 2019, the Chairman submitted a signed statement to a meeting of the Council in which he stated, 'the [2018-19 annual] return was altered to show the correct figures on the return before sending to the Auditors, and the auditors were informed of the reason why. The return was not sent back to the council before being sent to the auditor, therefore they have not been approved by council. The misstated accounts were the result of having a new and inexperienced clerk/RFO lack of knowledge and experience... The Clerk left the council in January 2019'.
- 57 The statement made by the Chairman was inaccurate, in that:
- the accounts had not been altered 'to show the correct figures'. In fact, the accounts remained misstated (**paragraphs 60 to 65**).

- the former Clerk referred to by the Chairman in **paragraph 50** had no involvement in the completion of the Council's 2018-19 Annual Return. As set out in **paragraphs 18 to 24**, the Annual Return was completed by the Council's Internal Auditor, based on accounting records provided to him by the new Clerk, Ms Katrina West, who was appointed in March 2018.

- 58 Notwithstanding the inaccuracies in the Chairman's statement, I note his acceptance in December 2019, as set out in **paragraph 50** that the Council's amended 2018-19 Annual Return had been submitted for audit without Council approval.
- 59 On 14 December 2020, the Chairman wrote to my auditors contradicting his previous written statements, stating: 'I believe the amended accounts were brought to the council on the 20th of June [2019] and that the Council approved them prior to them going to the external auditor.'
- 60 I consider the Chairman explanations implausible and inconsistent with his previous representations. I consider that the evidence that the accounts were not re-approved at the Council's 20 June 2019 meeting, is overwhelming. The minutes of that meeting of 20 June 2019 do not support Council Jenkins' representations in his correspondence of 14 December 2020.
- 61 I am satisfied that the Chairman was aware of the amendments to the accounts and had agreed to the amended accounts be submitted for audit without seeking re-approval from the Council. The accounts submitted for audit were not the accounts that the Council considered at its meeting on 28 May 2019, (notwithstanding as set out in **paragraph 30**, the Council was in any event unable to lawfully approve the accounts at that meeting).
- 62 The Chairman and former Clerk having amended the accounts, should have submitted the amended accounts to a meeting of the Council for approval before submitting them for audit. They failed to do so, and the Chairman wrongly certified that 'these accounting statements ... were approved by the Council' when in fact they had not been approved. The certification misled my auditors that the accounts presented for audit were those approved by the Council. I consider both the Chairman and the former Clerk's conduct in this matter fell short of the standard the public has a right to expect. I am also disappointed that the Chairman of the Council has sought to further mislead my auditors in the evidence he has submitted for audit consideration in respect of this matter.

The Council's system of internal control was inadequate and ineffective

The Council's Annual Governance Statement set out that the Council had established a sound system of internal control

- 63 The Annual Governance Statement (AGS) that forms part of the Council's Annual Return contains 12 assertions that the Council was required to consider and certify confirming that the Council had in place a sound system of internal control including sound arrangements for

preparing the annual accounts. The assertions include confirmation that proper arrangements were in place for:

- the preparation and approval of its accounting statements
- properly setting and managing its budget
- appointing a competent person, independent of the Council's financial controls and procedures, to undertake an adequate and effective internal audit of the Council's accounting records and control systems throughout the year
- ensuring compliance with relevant laws and regulations
- ensuring that all interested persons were given the opportunity to inspect the Council's accounts
- the adoption of rules (standing orders and financial regulations) stipulating how it would conduct its business, and for ensuring that the Council was following these rules
- ensuring all committees and sub-committees of the Council had been properly established and that appropriate terms of reference had been provided to these committees and sub-committees setting out their delegated responsibilities.

64 As set out in **paragraphs 19 to 25**, the AGS was wrongly completed by the Council's then Internal Auditor, Mr Woosnam, even though the responsibility for ensuring that the Council had a sound system of internal control rests with the members of the Council.

65 Mr Woosnam completed the AGS confirming that sound arrangements had been established in each of the 12 areas specified in the AGS. However, as set out in **paragraphs 60 to 111**, my auditors found that many of the assertions made were incorrect.

The Council failed to keep adequate or accurate accounts and accounting records

The 2018-19 accounts submitted by the Council for audit were misstated and had been artificially balanced

66 It is an important aspect of public accountability that when Council's produce accounts they are accurate and fairly present the financial position of the Council and its financial transactions for the year of account.

67 My auditors examined the submitted accounts and found they were misstated for the following reasons:

- the accounts did not include all transactions made by the Council during the year of account.
- the accounts were arithmetically incorrect.
- the accounts included internal transfers between the Council's bank accounts resulting in both receipts and payments being significantly overstated.
- the comparative figures for 2017-18 were misstated due to the incorrect exclusion of the balance and transactions for one of the Council's bank accounts.

- the accounts were presented as balanced accounts but had been artificially balanced. I concluded this on the basis that:
 - the stated opening bank balance was incorrect;
 - not all receipts and payments were recorded in the accounts; and
 - the accounts were arithmetically incorrect.

68 The decision to artificially balance the accounts was unacceptable. I am unclear whether this decision was taken by the Chairman who amended the accounts after the Council had authorised them, or by the former Clerk who certified that 'the accounting statements contained in this Annual Return presents fairly the financial position of the Council, and properly presents receipts and payments for the year ended 31 March 2019'. The former Clerk, as the Council's, RFO had a statutory duty to ensure that the Council had made proper arrangements for the administration of its financial affairs.

69 Whilst it is not unusual for accounts submitted for audit to contain errors or inaccuracies, I consider that the accounts submitted by the Council for audit were of a particularly poor standard.

The Council failed to maintain adequate or accurate accounting records

70 The Accounts and Audit (Wales) Regulations 2014 (the Regulations) set out that the RFO, must, on behalf of the Council, determine its accounting records, including the form of accounts and supporting accounting records, and its accounting control systems. The RFO must then ensure that the accounting control systems are observed and that the accounting records of the body are kept up to date and maintained in accordance with the requirements of any enactment and proper practices. To do this, the accounting records must contain entries from day to day of all sums of money received and paid by the Council and the matters to which those receipts and payments relate.

71 The Council did not in my view maintain adequate or accurate accounting records for the 2018-19 year of account. During 2018-19, the Chairman acted as RFO. **Exhibit 2** sets out some examples of where the Council's accounting records were deficient.

Exhibit 2: maintenance of accounting records

Exhibit summary: The Council did not maintain adequate and/or accurate accounting records.

Expected Accounting Records

Reconciliations between the Council's cashbook and bank account statements are carried out periodically and in all cases at the year end to identify errors and omissions in the Council's cashbook. Undertaking cashbook to bank reconciliations are therefore a fundamental financial control necessary to ensure all funds have been accounted for.

The Council should keep bank statements for all the bank accounts it operates. Bank statements are key accounting records to evidence what monies the Council has received and paid.

The Council should maintain an accurate cashbook/financial ledger detailing all transactions during the accounting year and what these transactions relating to, ie their classification.

The Council should have appropriate arrangements in place for authorisation of payments. This would usually include a record in the minutes of meeting of the Council of the payments that the Council has authorised.

Accounting records the audit found were in place at the Council

A year-end reconciliation was prepared and signed by the Council's Clerk/RFO, Chairman and Internal Auditor. However, the cashbook was artificially reconciled to the Council's bank accounts statements. The reconciliation has been manipulated by the use of 'balancing figures' and was inconsistent with the Council's bank statements, cashbook and financial statements. I do not know which of the signatories on the bank reconciliation were responsible for the falsification of this essential accounting record.

The Council was unable to provide several bank statements required for the audit, including bank statements for the period covering the accounting year-end of 31 March 2019.

The Council maintained a cashbook for the 2018-19. However, audit review found that a small number of transactions shown on the Council's bank statements had not been recorded in the cashbook.

The Council minutes do not routinely record payments made and the amount of those payments. I have therefore been unable to confirm whether payments made by the Council were properly approved.

Source: Audit work undertaken by the Auditor General's auditors.

72 I consider therefore that the Council did not maintain adequate and/or accurate accounting records.

The Council did not approve lawful budgets or precept requests for the 2018-19 and 2019-20 financial years and did not have proper budget monitoring arrangements in place

The Council did not approve a lawful budget or precept request for the 2018-19 financial year, or establish proper budget monitoring arrangements

- 73 The Local Government Finance Act 1992 (the 1992 Act) requires councils to calculate and approve an annual budget requirement. Section 41 of this Act allows councils to issue a precept, the basis of which is determined, in accordance with Section 50 of the Act, by the calculation of the budget requirement.
- 74 Each year, the Council issues a precept to the council tax billing authority, Powys County Council.
- 75 The precept issued to the council tax billing authority is the net amount of these items.
- 76 The budget is important because:
- it results in the setting of the precept for the year;
 - it gives the council authority to spend money in accordance with approved spending plans and financial regulations; and
 - it provides a basis for monitoring progress during the year by comparing actual to planned spending.
- 77 The budget is a crucial element of effective financial management and accountability and ultimately, reduces the amount of time councils spend managing their financial resources. In the absence of adequate budget setting and monitoring arrangements, councils are unable to effectively manage public funds and demonstrate compliance with statutory requirements.
- 78 During the course of my audit, the former Clerk provided my auditors with a document setting out the Council's budget for the 2018-19 financial year. I note that the Clerk was not in post at the time the budget was prepared and therefore was not involved in preparing the budget. The document sets out that the Council's anticipated expenditure to be funded through the precept was £9,995.
- 79 The budget document does not contain all the information required by the 1992 Act to enable members of the Council to set a lawful budget and determine its precept requirement.

Exhibit 3: the annual budget

The Council's 2018-19 budget does not contain the information required by the 1992 Act

1992 Act requirements: The 1992 Act specifies that the Council must calculate its budget requirement by considering the aggregate of:	The Council's 2018-19 budget does not include:
<p>The expenditure the Council estimates it will incur in the year in performing its functions.</p>	<p>All of the Council's expected expenditure in 2018-19. The Council only included expenditure to be funded through the precept</p>
<p>Such allowance as the Council estimates will be appropriate for contingencies in relation to expenditure.</p>	<p>Consideration of allowances for contingencies</p>
<p>The financial reserves which the Council estimates it will be appropriate to raise in the year for meeting its estimated future expenditure or to meet any deficit arising in an earlier financial year</p>	<p>Details of the Council's financial reserves and to raise or reduce the level of reserves by increasing or decreasing the precept request</p>
<p>The sums which it estimates will be payable to the Council for the year, other than the precept.</p>	<p>Council income from sources other than the precept. The Council received significant funding from a local windfarm</p>
<p>The amount of the financial reserves which the authority estimates that it will use in order to finance its expenditure.</p>	<p>Details of the Council's financial reserves and to raise or reduce the level of reserves by increasing or decreasing the precept request</p>

- 80 Furthermore, the budget does not set out a proposal of the amount of precept that should be sought from Powys County Council.
- 81 Not only does the budget paper lack sufficient detail, it is also almost completely lacking in narrative explaining how the figures included in the proposed budget had been derived. As such the paper was not an adequate basis for Council members to consider the budget and precept for the 2018-19 financial year.

- 82 Notwithstanding the deficiencies in the budget paper, the Council's meeting agendas and minutes provide no evidence that members of the Council were provided with a copy of the budget paper.
- 83 The minutes of a meeting held on 28 November 2017, record under 'Preliminary Budget/Precept Review' that the 'Council agreed at the level of Precept set for next [sic]'. It is unclear what information members of the Council considered at the meeting. The minutes do not record that members had access to the budget paper or that they approved a budget. Whilst the minutes record that the Council agreed a precept, the minutes do not specify the amount of the precept agreed. Furthermore, as the item in the minutes is headed up 'preliminary [my emphasis] budget/precept review', I am unclear that whatever was 'agreed' at the meeting of 28 November 2017 was intended to be the Council's final consideration of the budget. The minutes suggest otherwise as they record 'Clerk to look into the grants paid to the Hall as it is unclear what funding is expected next year'.
- 84 On 18 January 2018, the former Clerk of the Council submitted a precept request of £9,995 to Powys County Council. The requested precept was paid to the Council in three instalments in the 2018-19 year of account.
- 85 It is an important facet of good financial management and accountability that members of the Council throughout the year collectively review and monitor performance against the set budget. I have found no evidence in the minutes of Council meetings held during 2018-19 that Council members were provided with any information on performance against budget to enable members to undertake budget monitoring.
- 86 Despite the lack of budget monitoring, I note that the Council's AGS for the 2018-19 accounting year states that the Council had 'put in place arrangements for effective financial management during the year' and that it had properly set its budget and managed its money.
- 87 I consider that the Council did not approve a lawful budget or precept request for the 2019-20 financial year or establish proper budget monitoring arrangements.

The Council did not approve a lawful budget or precept request for the 2019-20 financial year, or establish proper budget monitoring arrangements

- 88 The agenda for the Council's 18 December 2018 meeting includes an item 'preliminary budget/precept review'. The budget and precept due for consideration were the budget and precept for the 2019-20 year of account. The minutes of the meeting record that 'the budget was distributed to the Councillors and approved, [the Clerk] will be submitting it to [Powys County Council]'.
- 89 The Council has not provided me with a copy of the budget document referred to in the minutes of the 18 December 2018. I have therefore been unable to satisfy myself that the budget contained all the items required by legislation for the Council to make a lawful precept request to Powys County Council (**see paragraph 71**).
- 90 Notwithstanding the absence of evidence of whether the 'budget' included all required items, , any documents relating to the business to be transacted at the meeting were required to be provided to Members and published at least three clear days before the meeting. The minutes

record that 'the budget' was distributed during the meeting of 18 December 2018. As such, the budget and precept could not lawfully be considered and approved at this meeting. I therefore consider the Council set an unlawful budget for 2019-20.

- 91 The minutes do not record what the Members considered under the agenda item 'preliminary budget/precept review', whether any amendments were made to the budget distributed by the former Clerk or the amounts of the budget and precept approved by the Council.
- 92 On 18 December 2018, the former Clerk of the Council made a precept request to Powys County Council seeking £10,670 for 2019-20, based on estimated expenditure for that year of £10,670. I am not clear how these figures were determined.
- 93 It is an important facet of good financial management and accountability that members of the Council throughout the year collectively review and monitor performance against the set budget. I have found no evidence in the minutes of Council meetings that members of the Council were provided with any information on performance against budget to enable members to undertake budget monitoring. I am disturbed that when, in June 2019, one Council member made a reasonable request for a breakdown of Council expenditure, the Chairman replied 'the budget for this financial year is set and in operation, so will not be included in the agenda, however if you have a question you would like answering please let [the Clerk] know and we will do our best to answer it, we will be discussing the budget for 2020-21 later in the year.
- 94 I consider that the Council did not approve a lawful budget or precept request for the 2019-20 financial year or establish proper budget monitoring arrangements.

The Council adopted rules (standing orders and financial regulations) stipulating how it would conduct its business, but these rules were inadequate and were not always followed by the Council

Community councils should adopt rules (standing orders and financial regulations) as they are a key competent of an adequate and effective system of internal control

- 95 It is important that community councils have in place rules governing the way in which they will do business. These rules are often referred to as:
- standing orders – which govern the way in which the council will operate, eg how council meetings are to be conducted, the establishment and operation of committees and sub-committees, public access to meetings, code of conduct requirements, rules relating to member interests etc; and
 - financial regulations – which govern the way in which the council manages its financial affairs, eg financial delegation arrangements, banking of receipts, accounting and audit arrangements, payroll etc.
- 96 Other than a requirement set out in the 1972 Act for the Council to have standing orders with respect to contracts for the supply of goods and materials or the execution of works, there is

no direct legislative requirement for community councils to adopt standing orders and financial regulations. However, community councils are required by legislation to maintain an adequate system of internal control. I consider that adopting rules on how they will manage their affairs is a fundamental element of having an adequate system of internal control.

- 97 One Voice Wales, a membership organisation for community and town councils have provided its members with access to comprehensive model standing orders and financial regulations.

The Council's standing orders adopted in 2016 are inadequate in several key respects

- 98 At the start of my audit, my auditors asked the former Clerk to provide a copy of the Council's standing orders and financial regulations. She provided standing orders and financial regulations document which she maintained were the standing orders and financial regulations in force during 2018-19. These documents were of a very poor standard and were not consistent with legislative requirements. Later on, my auditors were informed that the standing orders provided by the Clerk were not in fact the standing orders and financial regulations that were in force during the 2018-19 financial year. It is concerning that the Council's Clerk appeared to have been unaware of which version of the standing orders and financial regulations were in force.
- 99 The Council has now provided my auditors with the correct version of the standing orders and financial regulations as adopted by the Council in 2016. These documents are more comprehensive than the versions originally provided by the Clerk. However, they fall well short of the model standing orders and financial regulations made available by One Voice Wales and are deficient in a number of key areas such as:
- the standing orders that relate to the procurement of goods, materials, services and the execution of works were inadequate and confused as set out in **paragraphs 183 to 186**).
 - the standing orders do not fully cover the legislative requirements for keeping minutes.
 - the procedure for dealing with member interests does not fully comply with legislative requirements.
 - the standing orders do not specify procedures for establishing and operating committees and sub-committees.
 - the standing orders do not specify key legislative requirements for the issue and publication of meeting agendas.

The Council did not have financial regulations in place in 2018-19 governing the conduct of financial management by the Council

- 100 Whilst I am satisfied the Council adopted standing orders in 2016, I have seen no evidence that the Council had financial regulations in place during 2018-19. This is a significant weakness in governance. I note that the Council has recently published undated financial regulations on its website. Whilst the financial regulations appear to be loosely based on the model financial regulations issued by One Voice Wales, they diverge from the One Voice

Wales model, and are deficient, particularly with respect to contracting and procurement requirements.

The Council did not always comply with its own standing orders

- 101 My auditors have found that on several occasions, the Council did not comply with the standing orders in force during the 2018-19 financial year. I have found no good reason why the Council departed from its standing orders. Examples of non-compliance include:
- the Council's standing orders state that except for procedural resolutions specified in the Standing Orders, 'no motion may be moved at a meeting unless it is included in the agenda. My auditors found that important non-procedural resolutions were put to Council although the business to which it relates was not included on the agenda. For example:
 - the minutes of the Council's 28 May 2019 meeting state that members approved the 2018-19 accounts of the Council. Although not stated in the minutes, a resolution was required to approve the accounts. The agenda for the meeting of 28 May 2019 states 'Internal Audit, Clerk has given Phil Woosnam accounts to proceed with Internal Audit'. There is no indication on the agenda that members would be required to approve the accounts at the meeting of 28 May 2019. The resolution put to members on 28 May 2019 was therefore contrary to the Council's standing orders.
 - at its meeting of the Council held on 29 January 2019 members voted to co-opt members to the Council. Although this is not set out in the minutes of the meeting of 29 January 2019, it is referred to in the minutes of a Council meeting held on 15 February 2019. The agenda for the Council meeting of 29 January 2019 (the agenda incorrectly records the meeting was to be held on 28 January 2019) states 'co-option, interviews planned for 26th January 2019. All interviews have been accepted'. There is no indication on the agenda that members would be asked to vote on the co-option of new members at the Council meeting of 29 January 2019. The resolution put to members on 29 January 2019 was therefore contrary to the Council's standing orders.
 - the Council's standing orders state that 'no discussion of the draft minutes of a preceding meeting shall take place except in relation to their accuracy. Minutes, including any amendment to correct their accuracy, shall be confirmed by resolution and shall be signed by the Chairman of the meeting and stand as an accurate record of the meeting to which they relate'. Draft minutes of a Council meeting held on 29 January 2019 record that no declarations of interest were made at the meeting of 29 January 2019. On 15 February 2019 the Council held a further meeting and members were asked to approve the minutes of the meeting of 29 January 2019. The minutes of 15 February 2019 state 'the Clerk is to amend the minutes from last month to add declarations of interest for Councillor Jenkins and Councillor Peter Hunt regarding co-option. The minutes dated 29 January 2019 approved and signed off'. Under the Council's standing orders the minutes could not be amended without a Council resolution. However, the minutes of the meeting of 15 February 2019 record that the decision to amend the minutes of 29 January 2019 was made without any resolution being passed by the Council.

- the Council has provided me with copies of tender notices that it maintains were issued to seek tenders for contracts. The standing orders stipulate the information that must be included in tender notices. The tender notices did not meet the standing order requirements (see paragraphs 202, 216 and 229)

The person appointed by the Council to undertake the internal audit of the Council was not sufficiently independent of the Council and did not undertake an adequate or effective internal audit

The Council appointed an internal auditor and agreed a comprehensive terms-of-engagement with him

- 102 The 2014 Regulations require all community councils to ensure that they have an adequate and effective system of internal audit in place.
- 103 Internal audit is an important part of the overall internal control framework. The internal auditor must be independent i.e. have no part in, the Council's decision-making process or any role in the maintenance of the accounting system and preparation of the annual accounts. The internal auditor should be engaged to deliver an agreed programme of work, their performance considered annually and reappointment minuted.
- 104 The Annual Return contains a template internal audit report that provides an example of the internal audit procedures that could be undertaken and provides a template to report audit findings to the Council. Completion of this template is not mandated but where it is not used, the Council should ensure that it receives a separate detailed report from the internal auditor. The internal audit's responsibilities and reporting arrangements should be clearly set out in terms of engagement.
- 105 The Council appointed Mr Philip Woosnam to undertake as its Internal Auditor for the 2018-19 year of account and provided him with a comprehensive terms-of-engagement dated 10 April 2018. Mr Woosnam signed accepting these terms on the same day. As set out in the terms of reference, Mr Woosnam's responsibilities as the Council's Internal Auditor included:
- reviewing whether the Council's financial management was adequate and effective and whether it has a sound system of internal control;
 - undertaking an internal audit to enable him to provide assurance to members and officers; and to complete and certify the template internal audit report in the Annual Return form;
 - reporting during the year the provisional findings of his work to the Clerk, and once a year, in April or May reporting the findings of his work for the previous financial year; and
 - undertaking the audit competently and in accordance with proper practices.
- 106 The terms of reference made provision for Mr Woosnam to be remunerated for the internal audit service he provided. However, Mr Woosnam did not request payment, nor was he paid for his work.

The Internal Auditor's independence was compromised, and he was therefore unable to provide the Council with an adequate internal audit

- 107 The internal audit terms of engagement accepted by Mr Woosnam set out that he must be 'sufficiently independent of other financial controls and procedures of the Council'. However, Mr Woosnam prepared the Council's 2018-19 annual accounts and AGS at the request of the former Clerk and with the knowledge of the Chairman. By undertaking these functions Mr Woosnam compromised his capacity to provide an independent and objective internal audit and therefore the Council did not maintain an adequate system of internal audit as required by the 2014 Regulations.

The Council's Internal Auditor failed to carry out an effective internal audit

- 108 On 25 May 2019, Mr Woosnam signed his completed internal audit report which formed part of the Council's 2018-19 annual return. He also provided the Council with a separate letter giving an audit opinion on the annual accounts. The sole concern Mr Woosnam raised in his reports related to the level of reserves held by the Council as at 31 March 2019.
- 109 The template internal audit report which form part of the Council's Annual Return form requires the Council's internal auditor to conclude on and provide assurance to the Council that proper arrangements are in place in each of 11 specified areas. Mr Woosnam concluded that in all, but one area, the level of Council reserves, proper arrangements had been made by the Council.
- 110 My audit work found that the Council did not have proper arrangements in place in most of the areas where Mr Woosnam provided positive assurance to the Council. The findings of my audit as set out in this document contradict the assurances given by Mr Woosnam. **Appendix 1** sets out where my audit findings differ from those reported by Mr Woosnam.
- 111 On 25 June 2019, Mr Woosnam sent a separate letter to the Council providing an audit opinion on the accounts stating that 'I believe that the audit evidence that has been given to me is sufficient and appropriate for me to provide a basis for an opinion. In my opinion therefore, the financial statements give a true and fair view of the above as of 31st March 2019.' It was inappropriate and irregular for the Council's then Internal Auditor to provide an audit opinion on accounts he himself had prepared. I also consider that the opinion he gave was incorrect, in that the accounts of the Council were misstated.
- 112 My auditors met with Mr Woosnam to ascertain what audit work he had undertaken in order to provide the positive assurance set out in his internal audit report and to give his audit opinion. Mr Woosnam was asked to provide his audit working papers detailing the audit tests he had undertaken. Mr Woosnam told my auditors that his working papers had been mislaid.
- 113 I would have expected Mr Woosnam to have reviewed most of the evidence, reference throughout this report, that my auditors reviewed for the purposes of this audit. The fact that Mr Woosnam reached such different conclusions to my auditors suggests that either Mr Woosnam did not undertake the work required to provide an effective internal audit, or he did not have the capability to undertake an internal audit of the Council. In either case, I consider that the Council did not comply with its duty to maintain an effective system of internal audit.

The Council did not comply with various legislative requirements

The Council failed to comply with its legal duties to maintain a register of members' interests

- 114 While carrying out their duties, members need to decide if they have a personal interest in business being conducted by the Council, and, if so, whether they need to disclose it. Councils are required by s81 of the Local Government Act 2000 to maintain a register of disclosed member interests. The Local Government (Democracy) (Wales) Act 2013 (the 2013 Act) requires local councils to publish the register in electronic form.
- 115 My audit found that the Council did not maintain an up-to-date register of member interests. The Council's website included a page for recording of disclosed interests. However, only two recorded interests were disclosed, and no interests had been published since 2017. Review of the Council's minutes found that other interests had been declared in Council meetings in both 2018 and 2019, but these interests had not been recorded in the register and published electronically.
- 116 I therefore consider the Council did not comply with the legislative requirements to maintain and publish electronically a register of disclosed member interests.

The Council failed to comply with a legislative requirement to publish information electronically

- 117 The Local Government (Democracy) (Wales) Act 2013 (the 2013 Act) requires local councils to publish specified information in electronic form to improve accountability of local councils to their electorates.
- 118 The information required to be published electronically includes:
- notice of the time and place of any intended Council meeting. This notice must be published at least three clear days before the meeting takes place.
 - any documents relating to business to be transacted at a forthcoming meeting (in so far as reasonably practicable). Documents relating to business to be conducted by the Council in private session, or where disclosure would breach other legislative provisions are not required to be disclosed.
 - minutes of the proceedings of the council's meetings and (in so far as is reasonably practicable) any documents which are referred to in the minutes. Documents relating to business to be conducted by the Council in private session, or where disclosure would breach other legislative provisions need not be disclosed.
 - audited statements of the council's accounts.
 - public notices required to be given by a community council; and
 - the register of members' interests.

- 119 In most cases, community councils satisfy the requirement to publish this information electronically by publishing on their own websites.
- 120 The Council did not fully comply with the requirements to publish the above information electronically. Whilst the Council published agendas and minutes of most of its meetings on its website, my auditors found that not all these documents had been published. The Council did not have legitimate reason for not publishing agendas and minutes of all its meeting. Furthermore, my auditors found that the Council:
- did not publish electronically any documents relating to business to be transacted at forthcoming meetings, such as draft minutes, budget papers, accounts etc;
 - did not publish electronically any documents referred to in the minutes;
 - did not publish electronically its audited statements of accounts;
 - published electronically some, but not all, public notices it was required to give; and
 - published an incomplete register of member interests which included only two declarations.
- 121 I consider that the Council failed to comply with its duty to electronically publish all the information required by legislation and failed to act in an open and transparent manner.

The Council failed to comply with legislative requirements for the admittance of members of the public to Council meetings

- 122 Public access to meetings of community councils is governed by the Public Bodies (Admission to Meetings) Act 1960. Members of the public wishing to attend Council meetings must be admitted by the Council unless the Council passes a resolution to exclude members of the public from the proceedings. Where this occurs, the Council can meet in private session. The Act states that 'a body may, by resolution, exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings; and where such a resolution is passed, this Act shall not require the meeting to be open to the public during proceedings to which the resolution applies.'
- 123 There are likely to be few occasions where there is good reason for any council to exclude members of the public from council (or committee) meetings. Good reasons could include the need to discuss:
- staffing matters
 - terms of tenders
 - legal proceedings
 - early stages of disputes
- 124 The minutes of the Council record that there have been several occasions where members of the public were excluded from Council meetings, without the Council passing a resolution and setting out reasons for the exclusion.

125 In consequence, I consider that the Council has unlawfully excluded members of the public from Council meetings.

The Council failed to keep and approve minutes in accordance with legislative requirements, and the minutes that were kept were of a very poor standard

126 Community councils are required by the Local Government Act 1972 to take minutes of each meeting of the Council, (and of its committees and sub-committees). The minutes once approved by members in usually the next meeting, are required to be signed as approved by the person presiding at the meeting.

127 The minutes may be entered into a minute book, but alternatively the minutes may be recorded on loose leaves consecutively numbered. If minutes are kept in loose leaf form, the presiding officer is required to initial each leaf as well as signing the minutes as a whole.

128 The minutes of council meetings are of utmost importance because they are the historic record of a council's proceedings and detail the decisions taken by a council and the reasons for those decisions. They provide the evidence that the Council has acted in accordance with its legal powers. It is therefore critical that minutes are of a good quality.

129 The Council does not have a minute book and therefore its minutes were recorded on loose leaf. My auditors reviewed the 'approved minutes' of several Council meetings. They found that the loose leaves had not been consecutively numbered as required and each leaf had not been initialled by the officer presiding over the meeting. In each case, the reviewed minutes had been signed by the Chairman, Councillor Donald Jenkins.

130 My auditors also found that:

- the Chairman signed different versions of the minutes for the same meeting. It was therefore not possible to determine which minutes had been approved by members of the Council. In some cases, the differences were of significance, eg one signed version of the Council meeting held on 29 January 2019 records that the Chairman declared an interest in a co-option process where his wife was a candidate, a second signed copy of the minutes of the meeting on 29 January 2019 does not record that he made a declaration of interest.
- in most cases, the date on which the Chairman signed minutes as approved is not recorded. However, I note that whilst a meeting of the Council held on 18 December 2018 records that the Council approved the minutes of a meeting held on 27 November 2018, the Chairman signed and dated his signature 29 January 2019. It is therefore clear that on at least this occasion the minutes were not signed in the meeting at which they were approved.

131 Notwithstanding the failure of the Council to comply with the requirements of the Local Government Act 1972 in respect of keeping and approval of minutes, I consider that the minutes produced by the Council's former Clerk and RFO were of a very poor standard.

132 My auditors found that the minutes:

- were poorly drafted;
- did not clearly set out decisions made by the Council or the reasons for those decisions;
- lacked details on what had been agreed, eg the amount of the budget and precept approved by members, and the monetary value of tenders agreed by the Council;
- did not properly record declared member interests and action taken where interests were declared, ie the minutes do not set out the nature of the interest declared and whether the member declaring the interest left the room;
- did not clearly refer to agenda papers considered by the Council;
- did not always provide an accurate account of what occurred in meetings; and
- did not in most cases include details of payments approved.

133 I therefore consider that the Council did not retain and approve minutes in accordance with legislative requirements, and the minutes of the Council during the 2018-19 year of account were not of an acceptable standard.

The Council's former Clerk and RFO failed to provide agenda papers to members of the Council with three clear days' notice as required by legislation

134 The Local Government Act 1972 requires that at least 3 clear days' notice must be given of a meeting of a community council. Members of the Council must be sent a summons to attend the meeting which must specify the business proposed to be transacted at the meeting and must be signed by the proper officer (the RFO) of the council. Any documents relating to the business to be transacted at the meeting must also be published electronically (in so far as reasonably practicable).

135 If members of a council do not receive copies of documents relating to business to be transacted at a council meeting at least 3 clear days in advance of the meeting, that business cannot be lawfully transacted at the meeting. The notice period is important because it provides members sufficient time to review and consider matters, enabling them to make informed decisions.

136 The Council's former Clerk and RFO was responsible for preparing the agendas for Council meetings and distributing documents relating to business to be conducted at Council meetings. This included ensuring were provided with this information at least 3 clear days before a Council meeting.

137 It is evident from review of minutes of Council meetings that documents relating to business to be transacted at Council meetings were not always provided to members in advance of meetings. For example:

- on 27 November 2018, the full Council met. One of the items on the agenda for the meeting was 'Preliminary Budget/Precept review'. The minutes of the meeting record that the Council budget (for 2019-20) was distributed to the members of the Council at the meeting, and that the members approved the budget. As the statutory notice period for the provision of a document needed for consideration and approval of the budget was not

given, the Council could not lawfully approve the budget at the meeting of 27 November 2018.

- on 28 May 2019, a meeting of the Council took place, the Chairman and the former Clerk informed my auditors that at this meeting the Council approved the Council's 2018-19 accounts and the Council's 2018-19 Annual Governance Statement 2018-19. However, I note that the agenda for the meeting of 28 May 2018-19 does not state that members would be required to decide on whether to approve the accounts and the AGS at the meeting, and therefore as required notice had not been given these matters could not lawfully be considered.
- the minutes of the meeting of 28 May 2019 record that members approved the Council's accounts at the meeting. Members of the Council could not have seen a copy of the accounts certified by the former Clerk and RFO before 28 May 2019 in advance of that date because the Clerk and RFO's signature on the accounts is dated 28 May 2019. I therefore consider that the Council could not lawfully approve the accounts on that date as members were not provided with the certified accounts at least 3 clear days before the meeting. The minutes of the meeting of 28 May 2019 do not record that the AGS was approved by members at that meeting. The minutes do however record that the AGS was 'handed round for councillors'. The AGS could therefore not lawfully have been approved at the meeting as the document had not been circulated at least 3 clear days before the meeting.

138 I therefore consider that the former Clerk/RFO of the Council did not provide information required by members to lawful transact business with the statutory notice period required by legislation.

The Council made personal information publicly available and in so doing, in my view breached the provisions of the Data Protection Act 2014

139 The Council is subject to the provisions of the Data Protection Act 2014 (DPA) and may only disclose personal information for a lawful purpose or with the consent of the individual(s) concerned.

140 During the course of my audit, two examples came to light where the Council was in my view in breach of the provisions of the DPA.

- the Council routinely named members of the public who attended Council meetings in the public minutes of those meetings. I am not aware of any lawful purpose for recording this information in Council minutes, and the Council did not seek consent from or issue privacy notices to those named.
- the Council made the employment contract, which contained personal information of its former Clerk and RFO, available for public inspection as part of the statutory process for interested parties to inspect the Council's accounts. However, the Public Audit (Wales) Act 2004 specifically states that public inspection rights do not extend to inspecting 'any

accounts or other document relating to a body to the extent that the accounts contain, or the document contains, personal information’.

141 I therefore consider that in respect of the above matters the Council was potentially in breach of the Data Protection Act 2014.

The Council established three sub-committees, but these sub-committees were not properly constituted and made decisions without having the delegated authority to do so

Councils have the power to establish committees and sub-committees to discharge some of the Council’s functions

142 Community councils operate under legislative provisions that set out their duties, functions and powers. The functions of community councils are required by default to be exercised by all members of the council collectively in a properly convened meeting of the council. However, the Local Government Act 1972 states that a ‘local authority may arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority’.

143 A meeting of all members of a council may therefore resolve to establish a committee(s) to discharge functions of the council. A properly established committee may appoint a sub-committee to discharge some of the functions delegated by the full Council to the committee. The full Council may also delegate the discharge of functions to an officer of the Council. St Harmon Community Council's only officer is its Clerk and RFO.

144 I note that whilst the Council's is empowered by legislation to arrange for the discharge of its functions by committees or sub-committees, the Council's own standing orders do not include provision for the establishment of committees or sub-committees (other than non-decision-making advisory committees).

The Council set up three sub-committees but in two cases there is no evidence the Council approved their establishment and therefore these sub-committee had no lawful authority to exercise any of the Council’s functions

145 At the commencement of the audit, my auditors requested information on committees or sub-committees established by the Council. I was informed by the Chairman of the Council that two sub-committees had been established by the Council:

- a recruitment sub-committee established 27 February 2018 for the purpose of recruiting a new Council Clerk; and
- a playground sub-committee established in July 2018.

146 Whilst my auditors were only informed of the existence of two Council sub-committees, during the course of the audit, my auditors became aware that the Council had set up a further sub-committee ‘to discuss and make recommendations regarding the Local Development Plan (LDP) as it would affect St Harmon Community Council and our County Councillor’.

- 147 I am unclear on what basis the established sub-committees were classified as 'sub-committees'. Sub-committees are appointed by committees to discharge some of that committee's functions. However, the Council did not establish any committees. It appears to the Council's sub-committees were to all intents and purposes committees rather than sub-committees of the Council.
- 148 Minutes of a meeting of the Council held on 31 July 2018 record 'suggested a different meeting/committee to form re playground'. The minutes of the meeting do not record that the Council resolved to establish a playground committee/sub-committee. The minutes of the next Council meeting held on 28 August 2018 show that a playground sub-committee had been established and had met. The Council has not been able to provide my auditors with evidence that members approved the establishment of the playground sub-committee. In the absence of evidence that the Council approved the establishment of this sub-committee, I consider that it had no authority to lawfully discharge any functions of the Council.
- 149 During the course of the audit, my auditors became aware that the Council had set up a further sub-committee that had met on 18 May 2018 to 'discuss and make recommendations regarding the Local Development Plan as it would affect St Harmon Community Council and our County Councillor'. The meeting was chaired by the Chairman of the Council and two other community councillors attended the meeting.
- 150 My auditors found no evidence that the establishment of this sub-committee was discussed or agreed in a meeting of the full Council. In the absence of evidence that the Council approved the establishment of this sub-committee, I consider that that it had no authority to lawfully discharge any functions of the Council.

The sub-committees established by the Council were not provided with proper terms governing their operation

- 151 It is crucial that whenever a committee or sub-committee is established that it is given a clear written remit and a terms-of-reference setting out how the committee or sub-committee is required to operate. For example:
- the extent of the delegations/decision-making powers granted to the committee/sub-committee
 - the rules governing its operation
 - election/appointment of a chair
 - quorum
 - requirements for minutes
 - reporting arrangements
- 152 The Council did not agree any remit or terms of reference for the playground or LDP sub-committees, and therefore no rules were established governing their operation, including their delegated functions or membership. I am unclear who determined the membership of these sub-committees.

- 153 Members approved the establishment of the recruitment sub-committee at a meeting held on 27 February 2018 and determined that the sub-committee would have delegated authority 'to review applicants and carry out interviews' of candidates for the post of Council Clerk. The Council also agreed the membership of the sub-committee. However, the Council did not agree a written terms-of-reference for the sub-committee covering matters such as quorum, appointment of a Chair, minuting and reporting requirements.

The recruitment and LDP sub-committees exercised functions of the Council without having the lawful authority to do so

- 154 As set out in **paragraphs 166 to 169**, the recruitment sub-committee was granted delegated authority by the Council 'to review applicants and carry out interviews' of candidates for the post of Council Clerk. However, the recruitment sub-committee exceeded its delegated authority and in March 2018 appointed a new Clerk without the approval of the Council. I consider therefore that members of the recruitment sub-committee acted without the lawful authority to do so when appointing a new Council Clerk.
- 155 The minutes of a meeting held on 18 May 2018 of the LDP sub-committee' record that the members present discussed proposals put forward in a consultation document by the Local Democracy and Boundary Commission for Wales (LDBCW) for electoral ward restructuring (which included proposals for the ward in which St Harmon was located). The sub-committee identified reasons why it was against the proposal relating to St Harmon put forward by the LDBCW and resolved to respond to the LDBCW recommending an alternative option.
- 156 The meeting was chaired by the Chairman of the Council and two other community councillors were present.
- 157 In the absence of any evidence that the Council had approved the establishment of the LDP sub-committee and granted it delegated authority to make recommendations on behalf of the Council to the LDBCW consultation, I consider that the members of the sub-committee acted without the lawful authority to do so.

The Council failed to publish electronically the agendas and minutes of its sub-committees as required by legislation

- 158 As set out in **paragraphs 115 to 119**, the Council is required to publish electronically the agendas and minutes of meeting of the Council. This includes meeting of Council committees and sub-committees. This is an important aspect of public transparency.
- 159 The agendas and minutes of the Council's three sub-committees were not published as required by legislation.

The Council did not put in place proper arrangements to ensure that interested persons had the opportunity to inspect the Council's accounts

- 160 Section 30 of the Public Audit (Wales) Act 2004 sets out that at an audit of accounts an interested person may–
- a. inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them.
 - b. make a copy of all or any part of the accounts and of any of the other documents mentioned in paragraph (a).
- 161 The Accounts and Audit (Wales) Regulations 2014 require the Council to make the documents noted above, available for public inspection on reasonable notice, during a period of 20 working days before the date appointed by the Auditor General.
- 162 For the 2018-19 audit, the inspection period was set for 1 to 26 July 2019.
- 163 In mid-July 2019, local residents contacted my audit team to express concerns regarding the Council's arrangements for public inspection of accounts. These concerns included:
- access to the records was restricted to just one day per week due to the former Clerk's work pattern.
 - despite electors providing more than a week's notice of their intention to inspect the accounting records, the former Clerk and Chair declined to make the accounts available for inspection as requested.
 - the Chair stated at a meeting that 'tenders, invoices and receipts' would not be available for inspection during the 1 to 26 July inspection period because they had been sent to the External Auditor.
- 164 Following extensive correspondence between my audit team, the former Clerk, and the Chair, I concluded that the Council Chair and the former Clerk had actively obstructed electors in their attempts to exercise their rights under section 30 of the 2004 Act by:
- seeking to restrict the dates the accounts and supporting records were available for inspection.
 - failing to accommodate electors who had provided reasonable notice of their intention to exercise their rights; and
 - imposing further restrictions on how inspections were to be carried out including seeking to record inspections and limit the numbers present.
- 165 To remedy these deficiencies, a new date (30 September 2019) was set for the exercise of electors' rights and a further inspection period was set for 2 to 27 September 2019.
- 166 I am satisfied that the Council put in place reasonable arrangements for interested persons to inspect the Council's accounting records between 2 and 27 September 2019. However, as set out in **paragraphs 48 to 56**, the accounts submitted for audit were not approved by the Council as required by legislation, and therefore I consider that interested parties were not provided with the opportunity to inspect the accounts to be audited. I therefore intend to

appoint a new date for exercise of electors' rights and a further period to enable interested parties to inspect the Council's approved 2018-19 accounts.

The Council failed to comply with legal requirements in several other areas

167 In addition to the areas of non-compliance with legal requirements highlighted above, the Council also failed to comply with legal requirements in several other areas highlighted in this report:

- the process that led to the Council appointing a new Clerk in March 2018 was potentially unlawful (**paragraphs 166 to 172**).
- the Council did not comply with its own Contract Standing Orders made under the provisions of the Local Government Act 1972 when procuring goods and services (**paragraphs 183 to 239**).
- the way in which the Council administered a community grant scheme was potentially unlawful (**paragraphs 245 to 249**).
- the Council's process leading to the co-option of two new Councillors in February 2019 was contrary to law (**paragraphs 250 to 289**).

The process that led to the appointment of the Council Clerk and RFO in March 2018 was flawed and potentially unlawful and the terms of her appointment were not properly approved or implemented

The process that led to the appointment of the Council Clerk and RFO in March 2018 was flawed and potentially unlawful

168 At a Council meeting held on 19 December 2017, the then Council Clerk and RFO gave notice of her resignation. The minutes of the meeting record that her notice was accepted and 'no thanks was given for [her] service'. The Council advertised seeking to recruit a new Clerk and RFO.

169 The minutes of a Council meeting held on 27 February 2018 record that three applications for the vacancy had been received and that members agreed to form a 'sub-committee' comprising three members including the Chairman of the Council, Councillor Donald Jenkins 'to review applicants and carry out interviews'.

170 As set out in **paragraphs 140 to 142**, whilst community councils are able to arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority, it is critical that members of the full Council approve a remit and terms-of-reference for committees or sub-committees to ensure that the extent of their delegated authority is

clear, they operate within a proper framework and execute their delegated functions transparently.

- 171 The Council did not approve a terms-of-reference for the recruitment sub-committee. However, the extent of the functions delegated to the sub-committee were clearly articulated in the Council meeting of 27 February 2018. The sub-committee was 'to review applicants and carry out interviews'. The Council did not grant the sub-committee powers to appoint a new Clerk and RFO or approve the terms of appointment.
- 172 On 15 March 2018, the sub-committee met and interviewed one candidate for the post, Ms West. The minutes of the meeting record that the Chairman chaired the meeting. A further sub-committee meeting chaired by the Chairman took place on 17 March 2018 and two further candidates were interviewed. The minutes of the sub-committee meeting held on 17 March 2018 state that after discussing the three candidates it was 'decided that out of the three [Ms West] possessed everything the council was looking for, it was decided that the Chairman would inform all candidates in writing of their decision'. The minutes of the sub-committee do not record that the sub-committee considered or decided the terms and conditions of Ms West's appointment as Clerk and RFO of the Council.
- 173 On 27 March 2018, the full Council met, and the minutes of the meeting record that the Chairman 'introduced [Ms West] as the new Clerk'. The minutes make no reference to the terms or conditions on which she had been appointed.
- 174 I consider that the appointment of Ms West was made by a Council's sub-committee which had not been granted delegated authority by the Council to make the appointment. In consequence I consider the appointment was fundamentally flawed and in my view an unlawful decision.

The terms and conditions of the Clerk and RFO's employment were not properly approved

- 175 The financial commitment involved in the appointment of a new Clerk by a small community council is significant, and it is therefore essential that the terms of the appointment are properly considered by members of the Council either meeting in full Council or in a properly constituted committee/sub-committee.
- 176 Following Ms West's appointment in March 2018, she was given a contract of employment setting out her terms and conditions including rate of remuneration. The contract states that her employment 'commences on 2nd April 2017'. This appears to be a typographical error and should have read 2nd April 2018. The contract records that 'it is anticipated that the work will take an average of 26 hours per month' and 'your salary is in accordance with the current National Joint Council for Local Government Services (NJC) Scale LC1 Spinal Point 15 (currently £8.873 per hour)'. The contract has been signed by Councillor Donald Jenkins and Ms West but is undated.
- 177 My auditors have reviewed the Council minutes for 2018 but have not been able to find any reference to the Council considering or approving the terms of Ms West's appointment or authorising the Chairman to sign a contract of employment. The Council was unable to

delegate the function of approving the Clerk's terms to the Chairman, other than to authorise the signing of a contract that had been approved by a meeting of the Council. Furthermore, I have seen no evidence that the Council sought to grant such a delegation.

- 178 I therefore consider that in agreeing a contract of employment with Ms West, on behalf of the Council, the Chairman acted outside his lawful remit and took on functions that were reserved for members of the Council acting collectively.
- 179 The Council has provided me with a revised contract of employment that it maintains was agreed with Ms West some months after her employment commenced. The contract is unsigned and undated. Most of the contractual terms remain unchanged. However, the contract has been amended to state 'it is anticipated that the work will take an average of 30 hours per month'. This increase in working hours resulted in a pay increase because Ms West was paid on an hourly rate.
- 180 My auditors have reviewed the minutes of the Council. The minutes for a meeting of the Council dated 26 June 2018 record that 'Clerks Contract is to be amended to 30 hours a [month] with a 12 [month] review'. The minutes provide no explanation for the change and it is unclear from the minutes whether members of the Council approved the change or were simply informed of it.
- 181 I note that the Council meetings held in October 2018, November 2018, December 2018 and January 2019 all state 'signing of contract (clerk) referred to next meeting'. I have found no evidence that the Clerk's updated contract was ever signed.

The former Clerk was paid less than the amount set out in her contract of employment

- 182 As set out in **paragraph 174**, the Clerk's contract of employment stated that she would be paid at NJC 'Scale LC1 Spinal Point 15 (currently £8.873 per hour)'.
- 183 However, at the time Ms West was appointed Spinal Point 15 was not £8.873 per hour but £9.32 per hour, rising to £11.88 per hour in 2019-20.
- 184 Ms West was paid by the Council at £8.873 per hour during her employment and not at Spinal Point 15 as set out in her contract. This resulted in Ms West being underpaid, (although I note that Ms West personally administering the Council's payroll). After my auditors informed the Council of the underpayment, members of the Council agreed that Ms West should receive a back-payment of £608.10 to correct the error.

The Council breached its own procurement rules, entered into an irregular VAT arrangement and provided false information to the Auditor General's auditors about its contracting arrangements

The Council had in place rules governing the procurement of the supply of goods, materials and the execution of works, but these rules were inadequate

- 185 Under section 135 of the Local Government Act 1972 community councils are required to make standing orders with respect to contracts for the supply of goods or materials or for the execution of works. These standing orders must include arrangements for securing competition for such contracts and how tenders will be invited. The legislation enables councils to specify a contract price under which tenders will not be required.
- 186 The Council's approved standing orders document include rules relating to the procurement of contracts for the supply of goods or materials or for the execution of works. They state that 'the Council shall consider and approve financial regulations drawn up by the Responsible Financial Officer, which shall include detailed arrangements in respect of the following procurement policies (subject to standing order 30(b) below) where the contract has an estimated value of less than £1,000'. Standing Order 30(b) states, 'any proposed contract for the supply of goods, materials, services and the execution of works with an estimated value in excess of £10,000 shall be procured on the basis of a formal tender'.
- 187 I have seen no evidence that the Council approved financial regulations as required under its standing orders setting out procurement policies for contracts with an estimated value of under £1,000. Whilst the standing orders specified that contracts of over £10,000 would require formal tendering, the standing orders are silent on all procurement requirements for any contracts with a value between of under £10,000. As such I consider that the contract standing orders were fundamentally flawed and are likely to be non-compliant with the requirements of the Local Government Act 1972.
- 188 The only contracts required by the Council's standing orders to be formally tendered were those with a value of over £10,000. In my view, this value is disproportionately high in view of the size of the Council. It is unlikely that the Council would award any contracts above this value, and as such would never be required to subject any contract to competition, or due to the deficiencies of the standing orders ever have to make arrangements to secure competition for any contract award.

The Council did not comply with procurement rules

In 2018-19, the Council entered into four contracts with values in excess of £1,000

- 189 As set out in **paragraphs 184 to 186**, the Council's standing orders required contracts for the supply of goods, materials, services and the execution of works with an estimated value in excess of £10,000 be procured on the basis of a formal tender process. The standing orders do not specify how contracts with a value of under £10,000 were to be procured.
- 190 During the 2018-19 year of account, the Council did not award any contracts with a value in excess of £10,000 and therefore it was not required under its standing orders to seek formal tenders for any contracts awarded in 2018-19. However, the Council has a duty to ensure that it can demonstrate economy, efficiency and effectiveness in its use of resources. The Council was therefore required to ensure that the price paid for the procurement of goods and services and the execution of works was competitive. Many local councils satisfy this requirement by seeking estimates or quotations from a number of potential suppliers.
- 191 During 2018-19, the Council awarded four contracts with a value in excess of £1,000. These contracts were for:
- the re-fencing of land known as 'the recreation ground';
 - the fitting of seating benches;
 - the repair/refurbishment of bus shelters; and
 - the renovation of a phone box and the fitting of a defibrillator within it.
- 192 As part of the audit of the Council's 2018-19 accounts, my auditors requested evidence to show how these contracts had been procured. The Clerk and RFO provided my auditors with notices inviting tenders for three of these contracts, and the Chairman of the Council told my auditors that he had advertised these contract opportunities by placing the tender notices on community notice board. With regards to the fourth contract, a contract for re-fencing the land known as 'the recreation ground', my auditors were provided with no evidence of how the contract had been procured.
- 193 I have significant concerns regarding the procurement process that led to the award of each of the four contracts, as set out below.

The Council paid £1,694.80 for the repair of fencing to a plot of land known as the recreation field but is unable to demonstrate that it achieved value for money from this contract

- 194 In March 2019, the Council paid £1,694.80 for the repair of a plot of land known as the recreational field. When I commenced my audit of the Council's 2018-19 accounts, the Council's Chairman and its former Clerk and RFO informed members of my audit team that they did not know what the Council's interest in this land was. They were unclear who owned the land, although they believed that it was possible that the land was held in trust on behalf of the community of St Harmon, and the Council might be a corporate trustee. The Council had, however, granted a lease on the land for grazing rights for an annual consideration of £200

per annum (£275 from 1 March 2019). I am unclear why the Council decided to incur expenditure on fencing the land, (or grant a lease on the land), when it was unknown whether it had an interest in the land.

- 195 When this matter was raised with the Chairman and former Clerk of the Council, the Council made enquiries of HM Land Registry who provided documentation confirming the land is owned by the Council and is not held in trust.
- 196 At some point towards the start of the 2018-19 year of account, the Council identified that repairs were needed to the fencing around the land. The minutes of a meeting of the Council held on 6 June 2018 record that 'Recreational Field Annual Inspection – [a named Councillor] to chase quote for repair works'. I am unclear who asked this councillor to obtain a quotation for repairing the fencing, and my expectation is that where quotations are required to procure a service, quotations should be obtained by the Council's Clerk and RFO and not individual Council members.
- 197 Minutes of meetings of the Council held in June, September and October 2018 record that the Councillor was yet to obtain a quotation for the work. The minutes of a Council meeting held on 27 November 2018 state that [the Councillor] 'is still to obtain a quote for repairs to edging/fencing, it was explained that no works can be carried out until a quote is submitted to the councillors for approval. It was suggested that maybe a quote for all the fencing to be replaced as it seems there is lots of posts and fencing that are rotten'.
- 198 Notwithstanding the Council's recognition that work could not proceed until the Council had approved a quotation, work did proceed, and an invoice dated 10 January 2019 was sent to the Council for payment. My auditors were told that the councillor concerned had found a contractor who was willing to undertake the work. However, after inspecting the fencing, the contractor carried out the repairs without providing a quotation.
- 199 The Council was unable to pay the invoice because due to reasons I have not explored, the Council's bankers closed the Council's bank accounts (the Chairman has told my auditors that the accounts were closed due to an error by the bank). However, another member of the Council made a payment to the contractor out of his own bank account to settle the invoice. The Councillor who made the payment told my auditors that he made the payment because the contractor was self-employed and relied on being paid promptly. I note that on 20 January 2019, the Chairman and the former Clerk of the Council wrote to the Councillor who made the payment stating 'on behalf of St Harmon Community Council we are writing this letter in acknowledgment that you have paid an invoice from your personnel account for the repairs to the fencing [of the] recreational field for the sum of £1694.80. This letter is to agree that this sum will be paid back to yourself once the bank issues have been rectified.' I consider that the Chairman and the former Clerk had no authority to send this letter given that the work had been carried out without the Council's approval and no payment had been authorised by a meeting of the Council.
- 200 The minutes of a Council meeting held on 26 February 2019 record 'invoice from [a contractor] for fencing to field – [the Chairman of the Council] reminded all Councillors that this amount would clear our Recreational field account. Cllrs agreed to pay the invoice of £1694.80'. The minutes do not record that the work had not been tendered or a quotation approved by the

Council. The minutes make no reference to the fact that the contractor had already been paid without Council approval by one of the councillors, and that the former Clerk and Chairman had already assured that member that he would be reimbursed, even though the Clerk and the Chairman had no authority to provide this assurance.

- 201 I consider that the way in which the Council procured and paid for the repair of the recreation field fencing was highly irregular and the Council is now unable to demonstrate that it has achieved value for money in respect of this contract.

The Chairman and Clerk of the Council have failed to provide a consistent explanation of how the services of a contractor to fit new seating benches in the community area were procured and as a consequence the Council is unable to demonstrate that it achieved value for money from this contract

- 202 During the 2017-18 year of account, my auditors were provided evidence by the Council's former Clerk and RFO, that the Council had formally sought tenders for fitting of new seating benches in the Council's area. The minutes of a Council meeting held on 30 January 2018 record that the Council approved the purchase of three benches that would require fitting.

- 203 The Council's Chairman, the Chairman told members of my audit team that at some point in February 2018 the Council issued a tender notice for this contract opportunity and that he personally placed the invitation to tender notice on community notice boards in the Council's area.

- 204 The Council has provided me with a copy of the notice. In my view, the notice is completely inadequate, and fails to comply with the Council's standing orders for the following reasons. The notice:

- is undated.
- does not specify a closing date for receipt of tenders. The standing orders state that 'tenders are to be sent, in a sealed marked envelope, to the Proper Officer by a stated date and time'.
does not specify that tenders should be submitted in sealed envelopes marked up as such, as required by the standing orders.
- does not specify the number, type or location of the benches to be fitted and the type of fitting required. The Council's standing orders set out that 'a specification of the goods, materials, services and the execution of works shall be drawn up'.
- does not state whether tenderers should tender gross or not of tax.
- states that tenders could be submitted via the Council's website. Despite the, the Council's standing orders requiring tenders to be submitted to the Clerk in sealed marked envelopes, with all tenders to be opened after the deadline for receipt of tenders. These requirements could have been achieved if tenders were submitted through the Council's website.

- 205 The minutes of a Council meeting dated 27 March 2018 record 'benches – chairman [Councillor Donald Jenkins] reported he is in receipt of the benches agreed to approach [a private contractor] with regards to fitting'. I am unclear why the Chairman of the Council

decided to approach a single contractor regarding the fitting of benches if a tender process for the fitting of the benches was already in progress. The contractor concerned was the husband of one of then serving members of the Council. I note that the member concerned consistently declared her interest when her husband undertook paid work for the Council.

- 206 The contractor submitted an estimate dated April 2018 to the Council for fitting the benches. The estimate was for £800 (£600 labour and £200 materials).
- 207 The minutes of a Council meeting held on 24 April 2018 record 'benches – [contractor approached by The Chairman] appointed works will commence when weather permitting'. It is not clear from the minutes whether the award of the contract was approved by the Council, or whether the Council was simply informed of the appointment. The minutes do not record the amount of the estimate submitted by the contractor, even though this information was necessary in order for members to determine whether to accept the estimate.
- 208 It is evident that an agreement was made with the contractor that the Council would pay for the materials required to complete the work even though his tender stated that he would provide both labour and materials and he himself ordered the materials. This arrangement was not authorised in a meeting of the Council. I consider it probable that either the Clerk or the Chairman of the Council agreed this with the contractor. On 30 May 2018, the Council paid the contractor £600 for his labour and on 12 June 2018 paid £186,06 to building suppliers for the materials purchased by the contractor. The Council reclaimed the VAT it had paid on the invoices for building materials from HMRC despite the fact that it paid for the materials on behalf of the contractor.
- 209 On 18 November 2020, my auditors wrote to the Council's Chairman to seek confirmation on how the contract was procured. On 14 December 2020, the Chairman responded stating that 'both the benches and bus shelters [see paragraphs 224 to 239 below with regards to the bus shelter refurbishment contract] had been on the council's agenda for a number of years, with a contractor being engaged to repair both, there is no evidence that tenders were sort [sic] for this work which was before I arrived on the council. Discussion on [the benches and bus shelters] was on going all through 2017 and into [2018]. There had been failed attempts by both previous clerk/chair and myself and the [next Clerk] to contact the contractor for an update on work progressing, problem with work done and a Finnish [sic] date, but each time we had no response. The decision was taken by council late in 2017 to replace the benches.'
- 210 However, the Chairman response of 14 December 2020 related to a previous failed procurement, and not the procurement process referred to in paragraphs 201 to 205 of this report which occurred whilst the Chairman was Chairman of the Council. His comments were therefore not relevant to the contract procured in 2018 and to which this document refers.
- 211 I have significant concern as to how the contract for fixing of community benches was procured in early 2018. The Chairman previously informed my auditors that the Council had sought tenders for the fixing of the benches (and repair of bus shelters) and that he had personally fixed tender notices to notice boards in the community. Furthermore, the former Clerk provided my auditors with copies of the tender notices that she maintained had been issued. However,

- minutes of meetings of the Council during this period do not record that tenders were sought for this contract.
- the minutes of the Council meeting dated 27 March 2018 record 'benches - chairman [Councillor Donald Jenkins] reported he is in receipt of the benches agreed to approach [a private contractor] with regards to fitting'. If a tender had been issued seeking tenders to fit benches, it would have been entirely inappropriate for the Chairman to approach a single contractor to carry out this service.

212 I cannot now be certain how the Council procured the services of the contractor who fitted the benches and whether the services was procured competitively. As a consequence, the Council is unable to demonstrate that it achieved value for money in respect of this contract. On balance, I consider it unlikely that tenders were sought for this service, and that the tender notice submitted for audit was an attempt to mislead my auditors that tenders had been sought.

When procuring the refurbishment of a phone box and the fitting of a defibrillator within it, the service required was not adequately specified and the procurement process breached the Council's own standing orders

- 213 The minutes of a Council meeting held on 27 March 2018 record that a telephone box maintained by the Council had been damaged and would require repair. After further discussions held at Council meetings in April and May 2018 it was decided to explore the possibility of refurbishing the phone box and fitting a defibrillator within it, and that the work would be put out to tender.
- 214 The minutes of a Council meeting held on 26 June 2018 record that a tender notice had been issued and the deadline for receipt of tenders had been set for 31 July 2018. The minutes also record that a grant had been sought for the purchase of a defibrillator.
- 215 The Clerk of the Council has provided my auditors with a copy of the tender notice which my auditors were told was published on notice boards in the Council area.
- 216 The tender notice says 'St Harmon Telephone Box, we are looking for tenders to be submitted for the following works:
- re-decorate and refurbishment
 - bookshelves to be made/fitted inside
 - cupboard to be made/fitted to house a defibrillator.'
- 217 The tender notice states that tenders were to be submitted to the Council's former Clerk, Ms West at her postal address, or via the internet.
- 218 In my view, the tender notice is completely inadequate for the following reasons and fails to comply with the requirements of the Council's standing orders for the following reasons, the notice:
- is undated.
 - does not specify a closing date for receipt of tenders. The standing orders state that 'tenders are to be sent, in a sealed marked envelope, to the Proper Officer by a stated date and time'.

does not specify that tenders should be submitted in sealed envelopes marked up as such, as required by the standing orders.

- does not specify the refurbishment required. The Council's standing orders set out that 'a specification of the goods, materials, services and the execution of works shall be drawn up'.
- does not state whether tenderers should tender gross or net of tax.
- states that tenders could be submitted via the Council's website. Despite this, the Council's standing orders requiring tenders to be submitted to the Clerk in sealed marked envelopes, with all tenders to be opened after the deadline for receipt of tenders. These requirements could have been achieved if tenders were submitted through the Council's website.

- 219 Minutes of a Council meeting held on 31 July 2018 state that one tender had been received from the same contractor who the Council had awarded a contract for fitting benches. The price tendered for the phone box was £1800. The minutes also record that the Council had been awarded a grant towards the purchase of a defibrillator but that the Council would still need to pay £600 towards its purchase.
- 220 The minutes of the meeting record that members were concerned about the cost but 'after a long discussion/vote the tender was agreed'.
- 221 The Council's former Clerk provided my auditors with a copy of the tender submitted by the sole tenderer. The tender is dated July 2018 and the costs were split by labour (£1,600) and materials (£200).
- 222 It was agreed that the Council would pay invoices for the purchase of materials required to complete the work even though his tender stated that the contractor would provide both labour and materials and the contractor ordered the building materials. This arrangement was not authorised in a meeting of the Council. I consider that either the former Clerk or the Chairman of the Council agreed this with the contractor. The Council reclaimed the VAT it had paid on the invoices for building materials from HMRC despite the fact that the Council paid for the materials on behalf of the contractor.
- 223 The contractor carried out and completed the refurbishment of the phone box between August 2018 and December 2018.
- 224 The Council paid the contractor £1,700 for his labour (the tendered price was £1,600). The Council also paid £245.82 to a building supplier for the materials ordered by the contractor (the tendered price was £200). The Council incurred expenditure of £145.82 above the amount tendered.
- 225 I consider that the Council failed to comply with its own contract standing orders in respect of the contract awarded for the refurbishment of the phone box. The tender notice is unfit for purpose and the absence of a deadline for receipt of tenders meant that it was not possible to comply with the requirement to open all sealed tenders simultaneously. I also have concerns regarding the Council's treatment of VAT on contractual payments (**paragraphs 240 to 244**).

The Chairman and former Clerk of the Council failed to provide a credible or consistent explanation of how the services of a contractor to repair two bus shelters in the community area were procured and submitted a false document to my auditors to evidence that a contract had been subjected to competition

- 226 During 2017, the Council recognised that bus shelters located in St Harmon and Pant-y -Dŵr, which it was responsible for maintaining, required refurbishment. The Chairman of the Council during the audit process told my auditors that at some point in December 2017 or January 2018, the Council published a tender notice on notice boards in the Council area seeking tenders for the work.
- 227 The minutes of a Council meeting held on 30 January 2018 record that 'quotations were received for repair and refurbishment of the bus shelters in Pant-y-Dŵr and St Harmon from [the same contractor awarded contracts by the Council for fitting benches and refurbishing a phone box]. These were approved with work to commence A.S.A.P, Pant-y-Dŵr should be dealt with first'.
- 228 The former Clerk of the Council provided my audit team with a copy of the tender notice, and I have been told by the Chairman of the Council, Councillor Donald Jenkins that the tender notice was published on notice boards in the Council area.
- 229 The tender notice says 'St Harmon Bus Shelter, we are looking for tenders to be submitted for the following: re-decorate and refurbishment of bus shelters:
- 230 The tender notice states that tenders were to be submitted to the Clerk, Ms West at her postal address, or via the Council's website.
- 231 In my view, the tender notice was inadequate and failed to comply with the requirement of the Council's standing orders for the following reasons. The notice,
- is undated.
 - does not specify a closing date for receipt of tenders. The standing orders state that 'tenders are to be sent, in a sealed marked envelope, to the Proper Officer by a stated date and time'.
 - does not specify that tenders should be submitted in sealed envelopes marked up as such, as required by the standing orders.
 - does not provide a specification of the work or materials required or how many bus shelters require refurbishment. The Council's standing orders set out that 'a specification of the goods, materials, services and the execution of works shall be drawn up'.
 - does not state whether tenderers should tender gross or not of tax.
 - states that tenders could be submitted via the Council's website. Despite the, the Council's standing orders requiring tenders to be submitted to the Clerk in sealed marked envelopes, with all tenders to be opened after the deadline for receipt of tenders. These requirements could have been achieved if tenders were submitted through the Council's website.
- 232 On examination of the tender notice provided by the former Clerk, Ms West, my auditors noted that the tender notice stated that tenders for the bus shelter refurbishment were to be

submitted to Ms West at her postal address, or via the Council's website. However, Ms West had not been appointed as the Council Clerk at the time the tender notice had supposedly been issued.

- 233 My auditors questioned the Chairman and the former Clerk of the Council about this anomaly. They were unable to provide an explanation as to why Ms West was named on the document. However, the Chairman maintained that he had personally posted the tender notice on community notice boards in the Council's area.
- 234 Ms West has provided me with two documents from the contractor in question dated January 2018. One document is an estimate for refurbishment of the St Harmon bus shelter and the second document for the refurbishment of the Pany y Dŵr bus shelter. The combined price amounts to £3,350 (£2,150 labour and £1,400 materials)
- 235 The minutes of the Council meeting of 30 January 2018 do not indicate that members were told the value of the tenders submitted by the contractor.
- 236 An agreement was made with the contractor that the Council would pay for the materials required to complete the work even though the tender submitted by the contractor stated that the contractor would provide both labour and materials and the contractor ordered the materials. This arrangement was not authorised in a meeting of the Council. I consider that either the Clerk or the Chairman of the Council agreed this with the contractor. The Council reclaimed the VAT it had paid on the invoices for building materials from HMRC despite the fact that it had paid for the materials on behalf of the contractor.
- 237 The minutes of a Council meeting held on 27 March 2018 state 'Bus shelters - [the sole contractor who had submitted tenders] appointed. requested money upfront, agreed £500 on start of the job, date needs to be agreed of start/completion'. Whilst the minutes state that the contractor was appointed, this decision had already been made in the Council meeting of 30 January 2018. I note the decision of the Council to make an up-front payment of £500 to the contractor. I do not consider this good practice as it puts the Council at unnecessary financial risk.
- 238 The contractor did not commence work on the bus shelters until May 2018. On 21 May 2018, the Council made an up-front payment of £500 to the contractor and a final payment of £1,900 on 27 June 2018. These payments totalling £2,400 were for labour costs. The contractor had tendered labour costs at £2,150. The Council also paid £1,250.04 to building suppliers for the materials purchased by the contractor, compared to the amount tendered by the contractor.
- 239 On 18 November 2020, my auditors wrote to the Council's Chairman to seek confirmation on how the contract was procured. On 14 December 2020, the Chairman responded stating that the bus shelter bus shelters refurbishment had been on the council's agenda for a number of years, and a contractor had been engaged for this work, but, 'there is no evidence that tenders were sort [sic] for this work which was before I arrived on the council. Discussion on [the bus shelter refurbishment] was on going all through 2017 and into [2018]. There had been failed attempts by both previous clerk/chair and myself and the [next Clerk] to contact the contractor for an update on work progressing, problem with work done and a Finnish [sic] date, but each time we had no response'.

- 240 I consider The Chairman representations on this matter to lack credibility for the following reasons:
- the Chairman previously informed my auditors that he had personally fixed tender notices to notice boards in the community. Furthermore, the former Clerk provided my auditors with a copy of the tender notice she maintained had been issued. The Chairman latest explanation that tenders were not in fact sought is irreconcilable to his earlier account. I am satisfied that the tender notice sent to my auditors was not, nor could it have been a genuine document for the reason set out in **paragraphs 230 to 231**. I consider it probable that this document was provided to my auditors with the intention of misleading my auditors that the contract had been awarded on a competitive basis.
 - in the Chairman's correspondence of 14 December 2020, he maintains that a contractor was engaged to refurbish the bus shelters before he 'arrived on the Council'. He maintains that during 2017 and 2018 the former Chairman and Clerk had attempted without success to 'contact the contractor for an update on work progressing, problem with work done and the [finish] date'. This explanation is inconsistent with the Council's own records. The minutes of a Council meeting held on 27 March 2018 record that the contractor was appointed on that date. The Chairman joined the Council on 16 May 2017 and was appointed the Council Chairman later that year.
- 241 In providing a false document for the purpose of audit and in failing to provide accurate explanations to my auditors, I consider that the conduct of the Chairman and former Clerk in respect of this matter fall well short of the standard the public has a right to expect.

The Council's arrangement to pay invoices for materials on behalf of a Council contractor was irregular leading to a financial gain to the contractor and a loss to HMRC

- 242 Community councils can reclaim VAT paid on the purchase of goods, services and the execution of public works by the council from HMRC. Community councils cannot reclaim VAT on behalf of other organisations and cannot enter into administrative arrangements to pay invoices on behalf of other organisations to avoid those organisations having to pay VAT.
- 243 During 2017-18 and 2018-19, the Council entered into three contracts with one contractor. These contracts were for the:
- refurbishment of two bus shelters;
 - fitting of three seating benches; and
 - refurbishment of a telephone box.
- 244 During 2018-19, the Council made payments in respect of these contracts amounting to £6,382.28. The contractor provided estimates/tenders for each of the contracts which included both labour and materials. As the contractor had tendered for the contracts on the basis that he would supply both labour and materials, I would have expected him to have purchased the materials and invoiced the Council at the price tendered for each of the contracted jobs.

- 245 The contractor ordered and collected the materials from building suppliers but asked for the invoices for these materials to be sent to the Council for payment. The invoices from the building suppliers included VAT. The Council then reclaimed the VAT it had paid from HMRC. The contractor could not reclaim the VAT on these invoices because he was not VAT registered. Whilst this arrangement was cost neutral to the Council, the contractor avoided paying VAT amounting to £280.33 on his own purchases resulting in a loss to the public purse. The contractor invoiced the Council separately for his labour costs.
- 246 I am uncertain who within the Council agreed that the Council would pay invoices on behalf of the contractor. I have seen no evidence in the minutes of meetings of the Council that the members meeting collectively agreed to this arrangement. I consider it probable that either the Council's Chair or its former Clerk agreed this arrangement with the contractor. In my view, the Council had no power to reclaim VAT from HMRC on expenditure relating to another party, I consider that the action of the Council to reclaim VAT on behalf of a third party was inappropriate and illegitimate.

The Council management and decision-making in respect of a community grant scheme was fundamentally flawed and potentially unlawful

- 247 During 2018-19 the Council received funding of £4,390 from the windfarm. In 2019-20 the Council received further funding from the windfarm amounting to £12,375.
- 248 The Council determined that the funding received should be distributed to local community groups through a 'Community Fund Grant'.
- 249 During the course of the audit, my auditors received correspondence raising concerns regarding the administration of the community grant scheme and, in particular, about the way in which members decided, in a meeting of the Council held on 3 October 2019, to award community grants.
- 250 My auditors carried out audit enquiries into the matters raised. In October 2019, my auditors wrote to the Council setting out a number of serious concerns regarding the way in which the Council was administering the Community Grant Scheme, and recommendations for improving the operation of the Fund. These concerns were as follows:
- the Council failed to put in place a documented policy or procedure governing the operation of the community grant scheme;
 - the Council did not have an agreed grant-funding policy covering matters such as eligibility criteria, terms and conditions of grant funding, assessment measures etc; and
 - the grant application process was poorly conceived and inconsistently applied.
- 251 The basis on which the Council determined which applications should be approved for funding at its meeting held on 3 October 2019 was perverse, unfair and potentially unlawful. On receipt of the correspondence from my auditors, the Council resolved not to make the grant payments

approved at the Council meeting of 3 October 2019 and have taken action to address the audit recommendations relating to the administration and operation of the community grant scheme.

The process that led to the co-option of two new members of the Council in February 2019 was fundamentally flawed and the Chairman and another councillor participated in the process despite having personal and prejudicial interests in the outcome

The Chairman and the former Clerk of the Council inappropriately decided to accept an application for co-option from the Chairman's wife although she had applied after the deadline for applications

- 252 On 25 September 2018, the minutes of a meeting of the full Council record that the Council was seeking to fill two councillor vacancies. The Council subsequently posted a public notice of its intention to co-op two new councillors for the St Harmon Community Ward. Interested persons were invited to contact the then Council Clerk for further information or to apply for co-option. The deadline to apply for co-option was set by the Council as 30 November 2018. The Council arranged an open morning for the 10 November 2018 with a view to co-opting interested persons as members of the Council.
- 253 The minutes of a meeting of the full Council meeting held on 27 November 2018 record that 'we had 4 parties interested in the Councillor positions, it was agreed to interview all candidates. [the Clerk] to write to all candidates to invite them for interviews on Saturday 26th January [2019]'.
- 254 The former Clerk provided my auditors with documents titled 'Community Councillor Enquiry Form' completed by two applicants. These documents are essentially completed application forms. The former Clerk also provided my auditors with a document entitled 'Interested Parties in Councillors'. This document had been completed by the other two applicants. Both documents required broadly the same information fields to be completed. I am therefore satisfied that four individuals applied to be co-opted to the Council as stated in the minutes of the meeting held on 27 November 2018, (albeit that the deadline for applications was 30 November 2018).
- 255 On 28 November 2018, the former Clerk wrote to each of the four applicants inviting them to attend an interview on 26 January 2018 regarding the Councillor vacancy.
- 256 The minutes of a meeting of the full Council held on 18 December 2018 record, as they relate to the co-option process, that 'All candidates have replied and are attending the interviews on 26th January. [A Powys County Council representative present at the meeting] commented that this process should not take this long and [the Council Chairman, Councillor Donald Jenkins] replied that December was too busy for interviewing and as we did not know all of the

candidate's interviews were necessary. January was provisionally booked for ... meetings and the 26th was just before the next council meeting to make the decision'.

- 257 On 21 December 2018, Mrs Sheila Jenkins, the wife of Councillor Donald Jenkins wrote to the former Clerk stating that she had been considering applying for co-option to the Council, and 'would very much like to help [Donald Jenkins] in this work. [Donald Jenkins] and I have spoken about this and he feels that if that's what I want to do then he dos [sic] not have a problem with it. I raised the question of having husband and wife on the council, but he assured me that there was no legal restriction to it the only restrictions were that I must have lived in the community for at least a year and be on the electoral register. I meet both these qualifications, so I am putting myself forward for co-option'. Mrs Jenkins did not complete the application form for co-option. She has told my auditors that she was unaware that the deadline to apply for co-option had passed, and the Council's Clerk did not inform her of this fact when responding to her application. In fact, the Clerk wrote to Ms Jenkins inviting her to attend an interview for co-option on 26 January 2020. Mrs Jenkins has told my auditors that 'if [she] had been made aware of the facts [she] would not have proceeded with [her] application.
- 258 I consider that the Council should not have accepted an application from Mrs Jenkins because the deadline for applications had ended on 30 November 2018. However, the Chairman and the former Clerk told members of my audit team that that they decided to accept Mrs Jenkins' application.
- 259 The Chairman told my auditors that neither he, nor the Clerk had 'realised until 2nd of January 2019 when sorting out the notice for co-option that Mrs Sheila Jenkins application was after the closing date' I do not accept this explanation, because they had themselves set the deadline on the published co-option notice. Furthermore, even if this was the case I have been provided with no evidence to suggest that the Chairman and the former Clerk informed members of the Council that Mrs Jenkins had missed the deadline to apply to be co-opted as a member of the Council. I am of the view that the decision to accept Mrs Jenkins application was unjustified and inappropriate. Furthermore, the Chairman should have had no involvement in considering his wife's application because he had a personal and prejudicial interest in this matter. His involvement in the process when he had a clear conflict of interest means that he has exposed himself to allegations of bias.

The Chairman of the Council and another councillor participated in the interview process for co-option of new members despite having conflicts of interest

- 260 On 26 January 2019, interviews took place as part of the process to fill the two councillor vacancies. My auditors were told that two of the four candidates who applied for co-option before the deadline did not attend for interview. The remaining two candidates who had applied for co-option before the deadline were interviewed on 26 January 2019, as was Mrs Jenkins, who had applied after the deadline for applications.

- 261 The Council has not retained records of the interviews. The Chairman has told my auditors that whilst he interviewed two of the candidates, he did not interview his wife. I also note that another member of the Council, Councillor Hunt, who was at that time the Vice-Chairman of the Council also participated in the interview process despite subsequently declaring that he had a personal interest in the co-option process because he was a friend of one of the candidates. Councillor Hunt told my auditors that he was informed by the Chairman of the Council that he could not interview one of the candidates because 'he was friendly with [her] as they had both been members of the Village Hall Committee'. However, Councillor Hunt also told my auditors that he did not agree that he was a personal friend of the candidate concerned. Councillor Hunt participated in the interview process but maintains that he did not interview the candidate. The Chairman told him he should not interview.
- 262 As set out in **paragraphs 282 to 283**, Councillors Donald Jenkins and Councillor Hunt later acknowledged they had personal interests in respect of the co-option process. Whilst I accept that they did not interview the candidates to whom their interests related, nevertheless, they participated in the interview process, and in my view, members of the public might reasonably conclude that their interests may have significantly affected their ability to assess the candidates they interviewed objectively. The Chairman has acknowledged that he should not have participated in the interview process.
- 263 The Council has adopted the Model Code of Conduct prescribed by the Local Authorities (Model Code of Conduct) (Wales) Order 2008 (The Model Code)¹. The Model Code states that Members must observe this code of conduct:
- whenever they conduct the business or are present at a meeting of their authority;
 - whenever they act, claim to act or give the impression they are acting in the role of member to which they were elected or appointed;
 - whenever they act, claim to act or give the impression they are acting as a representative of their authority; and
 - at all times and in any capacity, in respect of conduct which could reasonably be construed as bringing their office or authority into disrepute, or to use or attempt to use their position improperly to confer on or secure for themselves, or any other person, an advantage or create or avoid for themselves, or any other person a disadvantage.
- 264 The Code requires that Members must,
- 'in all matters consider whether they have a personal interest, and whether this code of conduct requires them to disclose that interest'.
 - where they have a personal interest in the business of the authority and attend a meeting at which that business is considered, 'disclose orally to that meeting the existence and nature of their interest before or at the commencement of that consideration, or where the interest becomes apparent'.
 - where the personal interest is also a prejudicial interest, ie one which a member of the public with knowledge of the relevant facts would reasonably regard that interest as so significant that it is likely to prejudice the Member's judgement of the public interest, the

¹ As amended by the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 (No. 2016/84).

Member must, (unless granted a dispensation to remain) withdraw from the meeting room whilst the item in which he/she has an interest is being considered.

- before, or immediately after the close of the meeting where the oral disclosure is made give written notification to the Council of the interest. The written declaration to include at a minimum, details of the personal interest, details of the business to which the personal interest related and the signature of the member making the declaration.

265 The note kept by the Scrutiny Manager and Head of Democratic Services does not record that the Chairman raised his involvement in the interview process even though one of the candidates was his wife.

266 I consider that Councillors Jenkins and Hunt participated in the interview process for co-option of new members despite having interests that members of the public with knowledge of the relevant facts would reasonably regard as so significant that they were likely to prejudice the Member's judgement of the public interest. By participating in the interview process, I consider it probable that they were in breach of the Code of Conduct. I note, and do not contest, Councillor Hunt's representation that he was not in fact a personal friend of a candidate. However, given that he declared that he had a personal interest in the co-option process at a Council meeting held on 15 February 2019, and declared in writing that interest regarded a friendship with one of the candidates, he should not have participated in any part of the co-option process.

The Chairman of the Council and another councillor failed to abide by the requirements of the Member Code of Conduct when they participated in the co-option of new Council members

267 On 29 January 2019, in advance of the full Council meeting to consider co-opting members to the Council, the Chairman made a telephone call to Powys County Council's Scrutiny Manager and Head of Democratic Services. The purpose of the call was to seek advice on certain aspects of the co-option process. The Chairman told the Scrutiny Manager and Head of Democratic Services that a group of Members had interviewed candidates on 26 January 2019 and a meeting of the Council was due to consider their applications later that evening (29 January 2019). The written record of the call maintained by the Scrutiny Manager and Head of Democratic Services records that the Chairman wanted advice on whether:

- the meeting could be held in private session, ie whether members of the public could be excluded from attending; and
- candidates who had applied could be excluded from consideration.

268 The Scrutiny Manager and Head of Democratic Services advised the Chairman that:

- any person who had applied and was eligible to stand for co-option could not be rejected as a candidate by the Council; and
- whilst the Council could exclude members of the public from a meeting of the Council due to the confidentiality nature of the matter(s) to be discussed, he questioned 'why co-option would be confidential'.

269 On 29 January 2019 at 7pm, the full Council met. The business to be conducted included the co-option of two new members. I consider that the Chairman of the Council, Councillor Donald Jenkins had a personal and prejudicial interest in this matter because his wife was one of the candidates for co-option. Councillor Hunt also had a personal and prejudicial interest in that he subsequently declared that he was a friend of one of the candidates. In order to comply with the Code of Conduct requirements, I would have expected the Chairman and Councillor Hunt at the meeting of 29 January 2019 to have,

- orally disclosed the existence and nature of their interest at the start of the meeting of 29 January 2019, or before the item relating to the co-option of members was to be considered by the Council;
- withdrawn from the meeting whilst the co-option of members was considered by the Council; and
- before, or immediately after the meeting provided written notification to the Council of their interests, setting out the details of the interest, details of the business to which the personal interest related, ie the co-option process, and their signatures.

270 The minutes of the meeting of 29 January 2019 record that an elected member of Powys County Council present at the meeting, 'challenged the validity of the co-option process' and that, 'Due to co-option process being challenged this decision/discussion is to be referred until the Council seeks legal guidance from our legal representative at Powys County Council has been taken. [The Clerk] will write to all candidates informing them of this. This is to be discussed at another meeting - tbc'.

271 The minutes of the meeting of 29 January 2019 are poor. They do not record what, if any information was provided to members regarding the interview process what was discussed regarding co-option, nor does it record that the members of the Council voted to appoint Mrs Jenkins and another member of the public as co-opted members. However, the minutes of the following Council meeting held on 15 February 2019 are clear that a ballot of members was held at the meeting of 29 January 2019.

272 The Council's former Clerk and Chair have told my auditors that the Chairman and Councillor Hunt declared their interests in the co-option proceedings and withdrew from the Council meeting of 29 January 2019. However, I have been unable to confirm that this was indeed the case for the following reasons:

- the Council has provided me with two different versions of the minutes of the meeting held on 29 January 2019. One version of the minutes records that the Chairman and Councillor Hunt declared their interests. The second version of the minutes records that no interests were declared. Both versions of the minutes have been signed by the Chairman in his capacity of Chairman of the Council. The Chairman signature has not been dated on either version of the minutes.
- the version of the minutes which states that the Chairman and Councillor Hunt declared their interest does not record the nature of their interests. The nature of the interests was required to be declares in accordance with the member Code of Conduct.
- whilst the Chairman maintains that he and Councillor Hunt withdrew from the meeting whilst co-option was considered, neither version of the minutes referred to above record

this. Furthermore, the minutes do not record that a new Chair was appointed, which would have been required had the Chairman left the meeting.

- 273 Neither version of the minutes of the Council meeting held on 29 January 2019 records that members of the public were required to leave the meeting whilst the co-option of members was considered. However, members of the public who attended the meeting have told me that they were asked to leave the meeting. As set out in **paragraph 266**, Powys County Council's Scrutiny Manager and Head of Democratic Services had questioned why a discussion about co-option should be considered confidential and required members of the public to be required to leave the meeting. In any event, the decision to exclude the public was unlawful, in that the Council failed to make a resolution to exclude the public setting out its reasons for doing so, as required by section 1(2) Public Bodies (Admission to Meetings) Act 1960 (**see paragraphs 120 to 123**).
- 274 On 30 January 2019, the Chairman made a telephone call to Powys County Council's Scrutiny Manager and Head of Democratic Services, who kept a detailed note of what The Chairman told him. The note records that:
- the Powys County Councillor present at the meeting of 29 January 2019 had questioned whether he (the Chairman) could take part in the meeting when one of the applicants was his own wife;
 - the Chairman had remained in the meeting for the discussion but had withdrawn when applicants were voted on; and
 - the Chairman believed that he could participate in the co-option process as under election law he was able to vote for his wife.
- 275 The note of the conversation also records the advice given by Powys County Council's Scrutiny Manager and Head of Democratic Services to the Chairman:
- election law did not apply to Council meetings;
 - the Chairman was bound by the Members' Code of Conduct and that he was potentially in breach of that Code as he had failed to declare an interest and leave the room;
 - that it would be a sensible course of action for the Council to re-start the whole co-option process; and
 - if the Council sought to co-opt councillors and the Chairman's wife was a candidate, the Chairman should leave the meeting whilst co-option was considered, (as should any other Councillor who had a close personal association with any of the applicants).
- 276 The Chairman has written to me stating that 'I think the advice that your auditor claims was given to be [sic] by the scrutiny officer is a fiction of some ones [sic] imagination' However, my auditors have not 'claimed' the advice was given by Powys County Council's Scrutiny Manager and Head of Democratic Services. The advice is clearly set out in the contemporaneous notes that the Scrutiny Manager and Head of Democratic Services kept of his telephone conversation with the Chairman on 30 January 2019.
- 277 I consider it probable that the Chairman and Councillor Hunt did not declare their interests at the Council meeting of 29 January 2019. I note that the Powys County Council's Scrutiny Manager and Head of Democratic Services having spoken to the Chairman the next day

understood that the Chairman had not declared his interest at the meeting and had participated in the discussion regarding the candidates, and he felt it necessary to advise The Chairman that 'he was bound by the Members' Code of Conduct and that he was now potentially in breach of that Code as he failed to disclose an interest and leave the room'. (I accept that Councillors Jenkins and Hunt may have left the room after the discussion but before the vote, but this is not sufficient to satisfy the Code requirements). The Chairman maintains that the contemporaneous notes kept by Powys County Council's Scrutiny Manager and Head of Democratic Services of his telephone conversation with the Chairman on 30 January 2019 are untrue. I see no reason why Powys County Council's Scrutiny Manager and Head of Democratic Services would have fabricated his account of the telephone conversation as has been suggested by the Chairman.

- 278 The Chairman maintains that the minutes of the Council meeting of 29 January 2019 are incorrect. He has told my auditors that he declared his interest in the co-option process at the meeting and withdrew from the meeting before any discussion of co-option took place. I do not accept the Chairman position. The minutes of the Council meetings are the official record of the Council's proceedings. The minutes of the meeting held on 29 January 2019 do not record that the Chairman left the meeting whilst the co-option process was discussed (as set out in paragraph 270, whilst I have been provided with two different signed versions of the minutes neither version records that the Chairman left the meeting). On 15 February 2019, members of the Council approved the minutes of the meeting of 29 January 2019, thereby confirming that the minutes were a true and accurate record of the meeting of 29 January 2019.
- 279 Another Councillor who was present at the meeting has written to my auditors stating that Councillors Jenkins and Hunt declared their interests, withdrew from the meeting whilst discussions took place, and she chaired the meeting in their absence. This position is supportive of the Chairman account. However, this Councillor has also written to my auditors stating, 'we were informed (by Powys Scrutiny Manager and Head of Democratic Services) that we would have to convene another meeting to select the new Councillors as it was believed that we had not acted within the law. We did so [a further meeting took place on 15 February 2019] and the vote remained the same'.
- 280 If Councillors Jenkins and Hunt had declared their interests and withdrawn from the discussions on the co-option process, there would have been no reason to hold a second meeting because the legal requirements for declaration and non-participation would have been met. The fact that members of the Council considered it necessary to hold a further meeting on 15 February 2019 strongly suggest that Councillors Hunt and Jenkins did not declare their interests in the co-option process and absence themselves from the meeting whilst co-option was discussed.
- 281 The Chairman maintains that my audit findings are flawed because I have not interviewed each member of the Council present at the meeting. He also maintains that the contemporaneous notes kept by Powys County Council's Scrutiny Manager and Head of Democratic Services of their telephone conversation of 30 January 2019 are 'untrue and never took place'. I do not consider it necessary to interview the members present at the meeting of 29 January 2019, because these members, including the Chairman have already confirmed that the account set out in the minutes of the meeting is accurate. If the minutes of the meeting of 29 January 2019 were inaccurate, given Councillors Jenkins and Hunt's interests, I would

have expected them to have requested that the minutes be amended prior to their approval. In fact, the Chairman signed the minutes in his capacity as Council Chairman confirming their accuracy. Furthermore, as set out in **paragraph 277**, the fact that members of the Council decided to re-run the meeting on 15 February 2019, indicates that members accepted at the time that proper process had not been followed at the meeting of 29 January 2019.

- 282 Notwithstanding whether the Chairman and Councillor Hunt orally declared their interests in the meeting of 29 January 2019, where a personal interest is declared orally at a meeting of the Council, the member declaring that interest is required to at the meeting, or immediately after the meeting, complete written notification to the Council of their interest (**paragraph 262**). The Council provides 2-sided template forms for members to complete to provide written notification of their interests. The first side of the form sets out the meeting at which an oral declaration was made, the agenda item it related to, and the nature of the personal interest declared. The second side includes provision for the councillor declaring their interest to sign and date the form.
- 283 Councillors Donald Jenkins and Hunt did not complete the required forms at or immediately after the Council meeting of 29 January 2019 as required by the Code of Conduct. Minutes of a Council meeting dated 26 February 2019 record that by that date the Chairman and Hunt had not returned completed forms to the Council Clerk in respect of the meeting of 29 January 2019. Where written notification of a personal interests is not made in accordance with the Code, ie at or immediately after an oral declaration is purported to have been made at a Council meeting, the Code of Conduct states that the interest will be deemed to have not been disclosed.
- 284 The Council has provided me with completed forms setting out that Councillors Jenkins and Hunt orally declared personal interests in respect of the co-option process at the Council meeting of 29 January 2019. I note that the Council has been unable to provide me with the second page of either of these forms which should have been signed and dated by Councillors Jenkins and Hunt. I am therefore unclear when these forms were completed or whether they were ever signed as required by the Code of Conduct. The failure of the Chairman and Councillor Hunt to provide written notification of their interests at or immediately after the meeting of 29 January 2019 means that in accordance with the Code of Conduct they are deemed not to have declared their interests. I therefore consider that the Chairman and Councillor Hunt did not comply with the Code of Conduct requirements to:
- orally declare their personal/prejudicial interests in the co-option process at the Council meeting held on 29 January 2019;
 - withdraw from the meeting whilst the co-option process when a matter they had a personal/prejudicial interest in was being considered; and
 - complete and return to the Council, at or immediately after the Council meeting of 29 January 2019, written notification of interests they maintain they declared orally at that meeting.
- 285 The Chairman maintains that he returned the declaration of interest forms to the Clerk 'as the minutes of the 15th February show'. However, the minutes of the Council meetings held on 15

February 2019 and 26 February 2019 both record that the relevant forms had not been completed and signed at those dates.

- 286 I consider that Councillors Donald Jenkins and Hunt participated in the Council's co-option decision-making process when they were disqualified from doing so because of their prejudicial interests in the matter. Their involvement has potentially rendered the decision-making process contrary to law. I consider that the conduct of Councillors Jenkins and Hunt was not of the standard that the public has a right to expect from its public officials.
- 287 On 15 February 2019, a meeting of the full Council met. The main item of business on the agenda was the co-option of members. The minutes of the meeting of 15 February record that the Clerk was 'to amend the minutes from last month to add declarations of interest for Cllr Jenkins and Cllr Peter Hunt regarding co-option. The minutes of 26th January 2019 [the Council did not hold a meeting on 26 January 2019, but a meeting was held on 29 January 2019] - approved and signed off'. The minutes do not record who requested the amendment to the minutes of the January meeting or that the Council voted to amend the minutes, as was required by the Council's standing orders.
- 288 The minutes of 15 February 2019 record that Councillor Donald Jenkins and Councillor Hunt declared interests in the co-option process to be considered at the meeting, albeit the minutes of the meeting do not record what the nature of their interests was.
- the minutes also record that the Chairman informed the Council that he had 'taken legal advice following procedures, the interview process both the standing orders and code of conduct were in breach. The Code of Conduct 2007 - Councillors are not allowed to take part if relative or friend is wishing to stand'. The Chairman appears to be referring to his telephone conversations with Powys County Council's Scrutiny Manager and Head of Democratic Services on 30 January 2019. In that call the Chairman was informed that he was bound by the Members' Code of Conduct and that he was potentially in breach of that Code because at the meeting of 29 January 2019 he had failed to declare an interest and leave the room whilst his wife's co-option was considered, and that the whole co-option process should be re-started. The minutes of the Council meeting held on 15 February 2020 do not record that the Chairman informed the meeting of the advice of the Scrutiny Manager and Head of Democratic Services that the co-option process should be re-started.
- 289 The minutes of the meeting of 15 February 2019 record that members of the public were asked to leave the meeting whilst the co-option of members was considered. The Council did not pass a resolution to exclude members of the public setting out its reasons for the exclusion as required by section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 and therefore the exclusion of members of the public was contrary to law. which states in section 1(2). Councillors Jenkins and Hunt also left the room whilst the co-option of members was considered by the Council, (the Council had two vacancies for co-opted members and was considering three candidates for these vacancies).
- 290 The minutes record that 'the remaining Cllrs decided to stand with the original decision of the ballot vote previously in light of the new information of the elections' and Mrs Jenkins, (the wife of Councillor Donald Jenkins) and one of the other two candidates were co-opted). The reason given for the selection of these two candidates over the unsuccessful candidate was 'Cllrs felt

that with the election coming up soon that [the unsuccessful candidate] would have a better chance at being elected'.

291 I consider that the way in which the Council co-opted members to the Council on 15 February 2019 was fundamentally flawed for the following reasons:

- Powys County Council's Scrutiny Manager and Head of Democratic Services advised the Chairman of the Council that in the light of his participation in the co-option process despite having a conflict of interest, the co-option process should be completely re-started. Despite this advice, the process was not re-started, and the Council decided to stand by the vote they had taken at the Council meeting of 29 January 2019 in which Councillors Jenkins and Hunt had participated despite being disqualified from doing so. The Chairman has told my auditors that he informed the Council of the advice of Powys County Council's Scrutiny Manager and Head of Democratic Services, and that his fellow councillors decided to disregard the advice. However, I note that the minutes of the meeting of 15 February 2019 make no reference to the advice, the Council considering the advice or the reasons why they chose to disregard it. I therefore consider it probable that the Chairman did not communicate the advice to members of the Council.
- the minutes of the meeting of 15 February 2019 indicate that the decision on which candidates to co-opt was not based on any objective criteria and did not take into account information obtained as part of the application and interview process. The minutes record that the reason why the unsuccessful candidate was not co-opted was because she 'would have a better chance at being elected' in a forthcoming election. I consider that this was an irrelevant consideration in deciding who should be co-opted onto the Council, and the Council should have co-opted the best candidates to undertake the role based on pre-determined assessment criteria. The failure of the Council to take into account relevant considerations such as the skills and experience of the candidates, and to disregard an irrelevant consideration, ie the likelihood of one of the candidates to be elected in the future, has resulted in the decision-making process being unfair and potentially unlawful.

Appendix 1

Internal Audit reported findings on the Council's 2018-19 accounts compared to the Auditor General's findings on the same issues

Statement to be agreed/disagreed by the Internal Auditor	Conclusion of the Council's Internal Auditor	Conclusion of the Auditor General's auditors
<p>Have appropriate books of account have been properly kept throughout the year?</p>	<p>Yes, appropriate tested carried out and found to be correct.</p>	<p>No. The Council did not keep proper accounting records and the accounts presented for audit (which the Council's internal auditor had himself prepared were materially misstated (paragraphs 60 to 67)).</p>
<p>Have the Council's financial regulations been met, payments supported by invoices, expenditure approved, and VAT appropriately accounted for?</p>	<p>Yes, Financial Regulations met and checked accordingly and found to be correct.</p>	<p>No. The Council's financial regulations were not complied with in respect of the procurement of goods and services, and VAT on materials purchased for tendered works was wrongly claimed from HMRC by the Council (paragraphs 183 to 244).</p>
<p>Has the Council assessed the significant risks to achieving its objectives and reviewed the adequacy of arrangements to manage these?</p>	<p>Yes, risk assessment report achieved by the Council.</p>	<p>Partially. The Council has a risk register that sets out financial and general risks how the Council will manage those risks. However, the risk register does not include all key risks, and my audit found that many of the risk management measures were not operating in practice.</p>

Statement to be agreed/disagreed by the Internal Auditor	Conclusion of the Council's Internal Auditor	Conclusion of the Auditor General's auditors
<p>Has the annual precept requirement resulted from an adequate budgetary process, progress against the budget, was the budget regularly monitored and were reserves appropriate?</p>	<p>No, the Council overspent [in the 2018-19 year] in line with need. This cannot continue as reserves are now only [£500]. Have spoken to Chair and RFO who state that this will be addressed.</p>	<p>No, The Council's precept requirement was not based on an adequate budgetary process, and the budget was not set in accordance with legislative requirements. The budget was not regularly monitored throughout the year. Whilst the internal auditor stated that the Council had reserves of £500 at 31 March 2019, the Council's reserves at this date actually stood at £2,023 (paragraphs 69 to 83).</p>
<p>Was expected income fully received, based on correct prices, properly recorded and promptly banked, and was VAT appropriately accounted for?</p>	<p>Yes, checked and found to be correct.</p>	<p>Yes, expected income was received, properly recorded and banked.</p>
<p>Were petty cash payments properly supported by receipts, was expenditure approved, and VAT appropriately accounted for?</p>	<p>Yes, checked and found to be correct.</p>	<p>Not applicable, the Council did not operate petty cash payments.</p>
<p>Were salaries to employees and allowances to members paid in accordance with</p>	<p>Yes, properly applied and checked accordingly.</p>	<p>No. I have found no evidence that the Council approved the Clerk's contracts of employment</p>

Statement to be agreed/disagreed by the Internal Auditor	Conclusion of the Council's Internal Auditor	Conclusion of the Auditor General's auditors
Council approvals, and PAYE and NI requirements properly applied?		which contained details of her contractual hours and remuneration. The salary payments to the Clerk were not in accordance with her contracts of employment. (paragraphs 173 to 182) . I am satisfied that PAYE and NI requirements were properly applied.
Were asset and investment registers complete and accurate, and properly maintained?	Yes, records properly maintained by the Council.	No, my auditors found that the value of assets disclosed in the Council's accounts was inconsistent with that disclosed in the asset and investment register and that land owned by the Council known as the Recreation Field had not been included in the asset register.
Were periodic and year-end bank account reconciliations were properly carried out?	Yes, checked and found to be correct.	No, whilst the Council produced a bank reconciliation document. However, the cashbook was artificially balanced to the Council's bank statements and the reconciliation was not inconsistent with the version of the annual accounts approved by the Council, or the annual accounts submitted for

Statement to be agreed/disagreed by the Internal Auditor	Conclusion of the Council's Internal Auditor	Conclusion of the Auditor General's auditors
		<p>audit. The reconciliation document was signed and dated by the Council's Clerk and RFO, Ms West, the Council Chairman, Councillor Donald Jenkins and the Council's internal auditor Mr Woosnam. In my view, Mr Woosnam should have identified that this key check had not been performed properly (Exhibit 2).</p>
<p>Were accounting statements prepared during the year on the correct accounting basis (receipts and payments/income and expenditure), agreed with the cashbook, and were they supported by an adequate audit trail from underlying records, and where appropriate, were debtors and creditors properly recorded?</p>	<p>Yes, checked and found to be correct.</p>	<p>Partially, the accounting statements were correctly prepared on a receipts and payments basis, but the accounting statements were materially misstated and did not agree to the Council's cashbook. Moreover, the cashbook had not been properly reconciled to the Council's transactions at bank (paragraph 60 to 65).</p>
<p>Has the Council met its responsibilities as a trustee (if applicable)?</p>	<p>Yes, responsibilities met as required.</p>	<p>Not applicable as the Council held no funds on trust.</p>

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Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg a Saesneg.