

Local Government and Housing  
Committee  
Welsh Parliament

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Dear Evan

## Escalation Process and Powers available to the Auditor General

As requested, please find attached a note describing the escalation process and powers available to the Auditor General.

During our oral evidence session, Committee members began to explore the potential for some legislative streamlining of the audit regime for town and community councils. Since then, we have given some thought to alternative models that might be considered if the Committee wished to recommend legislative change in this area. These are described in the second attached paper, which I hope the Committee will find helpful. We would, of course, be happy to discuss further.

Yours sincerely



**ADRIAN CROMPTON**  
**Auditor General for Wales**

Encs

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## Escalation process for non-submission of accounts for audit by community and town councils in Wales

### Background

- 1 Section 13 of the Public Audit (Wales) Act 2004 (the 2004 Act) requires all councils to make up their accounts to 31 March each year and to submit those accounts to the Auditor General who must audit them.
- 2 In giving evidence to the Local Government and Housing Committee meeting held on 14 November 2024, the Auditor General noted an on-going issue of non-submission of accounts for audit by community and town councils across Wales.
- 3 As at 14 November the position for recent financial years was as set out in Exhibit 1 below:

#### Exhibit 1: Outstanding accounts by financial year

	2019-20 and earlier	2020-21	2021-22	2022-23	2023-24
Accounts due for audit	449	740	740	737	737
Accounts submitted for audit	444	729	729	716	641
Outstanding accounts (i.e. not submitted)	5	11	11	21	96

Source: Audit Wales analysis

- 4 The 2023-24 accounts were due to be submitted for audit by 7 August 2024 at the latest. As exhibit 1 shows, at 14 November 2024, 96 councils had not submitted 2023-24 accounts for audit. At 30 September 2024 (not shown in exhibit 1), this number was 161.

- 5 The 2022-23 accounts were due to be submitted for audit by 7 August 2023 at the latest. At 30 September 2023, 180 councils had not submitted their 2022-23 accounts.
- 6 The equivalent number for 2021-22 was 150.
- 7 This data shows that a significant proportion of councils are late in submitting accounts for audit.
- 8 Following the meeting, the Committee requested further details of the escalation process followed regarding non-submission of accounts by community and town councils. The Committee also asked whether or not the Auditor General had sufficient statutory powers in relation to non-submission of accounts for audit.
- 9 This paper sets out the statutory background, including the Auditor General's right of access to information necessary to perform his functions and the process followed by auditors when dealing with non-submission of accounts, together with reporting options and the implications for fees.

### **The Auditor General's rights of access to information**

- 10 The Auditor General's rights of access to information and explanations relevant to the audit are set out in section 52 of the 2004 Act.
- 11 The Act provides that the Auditor General for Wales has a right of access at all reasonable times to every document relating to a local government body in Wales which appears to him necessary for the purposes of the audit. The Auditor General for Wales may require a person whom he thinks has relevant information to give him any assistance, information and explanation which the Auditor General for Wales thinks necessary for the purposes of the audit. In addition, under section 52(4), the Auditor General may require the person he believes has the relevant information to attend before him in person to give the assistance, information or explanation, or to produce any document which is held or controlled by the person and to which the Auditor General has a right of access.
- 12 Section 53 of the Act sets out that a person commits an offence if without reasonable excuse he fails to comply with a requirement imposed by the Auditor General under section 52(4).
- 13 It is for the Auditor General to enforce his rights set out in section 52. This means that it is for the Auditor General to pursue a prosecution if he considers that is necessary.

## Reporting options available to the Auditor General

- 14 As set out in sections 22 to 26 of the 2004 Act, the Auditor General has a range of reporting options available to draw attention to non-submission of accounts.
- 15 In the first instance, late preparation and submission of accounts may be reported in the Auditor General's opinion and report attached to the annual accounts on completion of the audit. This report is the general report provided for in section 23 of the 2004 Act. The report is normally brief and extends from 1 – 3 pages and includes a short explanation of the issues identified at audit and recommendations to the council. In most cases, this will be the approach followed.
- 16 In some cases, the audit identifies more widespread or complex issues at a council. In these cases, the audit team may prepare a longer form, stand-alone report. This report will be referenced in the Auditor General's opinion attached to the accounts. The report will explain issues in more detail and make a series of recommendations.
- 17 Two further options for more public reporting of issues and recommendations are:
  - Public interest reports—section 22 of the Act provides that the Auditor General must consider whether, in the public interest, he should make a report on any matter which comes to his notice during the audit, in order for it to be considered by the body or brought to the attention of the public. Any such reports must be considered by the council in accordance with the requirements of section 25 of the 2004 Act.
  - Statutory recommendations—section 25 of the 2004 Act also applies if the Auditor General sends to the council a written recommendation and states in the document containing the recommendation that in his opinion the recommendation should be considered in accordance with the requirements of section 25. We refer to these as 'statutory recommendations.'
- 18 In summary, a council that receives a report in the public interest or statutory recommendations must take the following steps:
  - Arrange a meeting of the full council within 30 days of receipt of the report or recommendations to consider the report and/or recommendations;
  - Advertise the meeting via a notice published in a newspaper circulating in the area;
  - At the meeting, consider the report or recommendations, whether the recommendations are to be accepted and what

action (if any) to take in relation to the report or recommendations;

- As soon as practicable after the meeting, notify the Auditor General of the decisions taken at the meeting and obtain the Auditor General's approval of a written summary of those decisions; and
- Ensure that a notice containing the approved summary is published in a newspaper circulating in the area.

### **Audit fees**

- 19 Section 20 of the 2004 Act makes provision for the charging of audit fees to councils.
- 20 Our audit fees are charged in accordance with the provisions of the 2004 Act and as set out in section 20 of the 2004 Act, are payable in full by the Council.
- 21 Section 20 of the 2004 Act states that:
- the Wales Audit Office must charge a fee for the functions exercised by the Auditor General in auditing the council's accounts;
  - the fee must be charged in accordance with the annual Fee Scheme; and
  - the council must pay the fee payable in respect of the audit.
- 22 Insofar as it is reasonably possible to do so, all time spent in dealing with an individual council is charged directly to that council.

## **Dealing with non-responding or unco-operative councils**

### **Audit Wales's process for dealing with non-responding councils**

- 23 All councils receive an audit notice each year – usually around the end of March. This audit notice sets out the information we require for audit and sets out a timetable for submission of accounts and necessary supporting information. The audit notice is sent to the clerk – our primary point of contact with the council.
- 24 Many councils submit accounts a few days late. Therefore, we issue a first reminder to the council around a month after the audits were initially due for submission. This is a generic email sent to all outstanding councils. Around a month later, a further generic email is sent to those councils that remain outstanding. At this stage we set a

further deadline for submission of the accounts and supporting documents (this is of course later than the original deadline set in the original audit notice). We usually request that councils provide their accounts within a month of the second email being issued. In both emails we highlight the council's responsibilities and that the accounts are overdue.

- 25 In many cases, these two reminders will prompt councils to submit the accounts. If councils do not respond to these emails, we follow up each council on an individual basis.
- 26 This process involves confirming the contact details we hold to ensure our correspondence reaches the right address. We also seek to identify the council chair at this stage and copy the chair in on any correspondence with the clerk. We seek to agree a date for submission of accounts. At this stage, it is often the case that no accounts have been prepared by the council. Therefore, we specify a further extended deadline for submission so as to provide some time for the council to prepare accounts and to have the accounts approved by the council. This timeframe may extend to two months.
- 27 If there is no substantive response at this stage, we require the chair and clerk to attend in person to provide the information. To ensure that councils have limited excuse for not attending we offer a number of alternative dates. At this stage, councils will usually provide the annual accounts and supporting information.
- 28 If councils fail to provide information at this stage, we refer the matter to our Law and Ethics team who write to the Council notifying the clerk and chair of their obligations and that we may commence enforcement proceedings if they fail to comply.
- 29 At each stage, council clerks and chairs are informed of the following:
  - Likely need for additional audit procedures as a result of late submission and an increased risk assessment
  - potential reporting options available to the Auditor General and
  - the likelihood that additional audit fees will be charged.

### **Issues encountered when following this process**

- 30 We frequently encounter difficulties while going through this process:
  - There is a significant turnover of clerks in the sector. When we identify a change of clerk, we generally have to start the whole process of dealing with non-submission again more or less from

scratch, including setting a new realistic date for the submission of the accounts.

- In many cases, when a clerk leaves, the council omits or cannot arrange an orderly handover. We frequently find that the departing clerk has not handed over any documentation to the incoming clerk. This means the incoming clerk needs a longer run in period to prepare the accounts.
- Too often, councils will provide some but not all of the information needed. In such cases, the councils will usually state they have provided everything, despite this not actually being the case. We also find that when councils attend a meeting in person, they often do not bring all of the required information and promise to provide it shortly or request an alternate method of providing the information.
- Councils may drip feed information to us, significantly prolonging the process.

- 31 In most cases, councils co-operate without any need for enforcement. However, in a small number of cases, we need to consider enforcement through the courts. In such cases, we need to be mindful that section 53 of the 2004 Act specifies that a person commits an offence if without reasonable excuse they do not comply with a requirement imposed under section 52 of the 2004 Act.
- 32 As noted at paragraph 12, it is for the Auditor General to pursue prosecution if he considers that is necessary. Prosecution is, however, expensive—legal fees alone would in each case easily well exceed £8,000, which in most circumstances would seem to be disproportionate. Current practice is therefore generally to seek compliance through persuasion. Although this a call on Audit Wales staff time and is not without cost, it will be less expensive than charges for legal advisers' time.

### **Impact of large-scale non-submission**

- 33 This process of chasing councils is resource intensive and time consuming. This means that we are not able to progress as quickly as we would like due to other resource pressures related to the audits.
- 34 Furthermore, the elapsed time to complete audits is significantly extended leading to additional administrative time being required to monitor progress of audits.

## Sufficiency of the powers available to deal with non-cooperation by councils

- 35 Community and town councils are the smallest public bodies in Wales. Although collectively they spend a significant amount of public money – approximately £65 million a year, individually they are a very small proportion of the overall public sector in Wales. Furthermore, clerks are often part time and receive little support in discharging their roles.
- 36 Given the expense of enforcing access rights through prosecution, there might be merit in providing for a fixed penalty notice mechanism. However, we do see some drawbacks to such an arrangement.
- 37 First, the availability of fixed penalty notices may act as a disincentive to individuals to take on the roles of clerk and councillor. As we understand that there are already shortages of willing individuals in some areas, this may be counterproductive.
- 38 Second, the issue of a fixed penalty notice would not preclude matters proceeding to court if the individual does not pay the notice. The risk of disproportionate expenditure in some cases therefore continues.
- 39 Overall, we consider that the enforcement arrangements available to the Auditor General are sufficient in the current context of community councils.
- 40 We consider that improved compliance with accounts submission is best first pursued through professional education and development of clerks and councillors, and ongoing support for them. Such education, development and support are matters for the councils themselves in the first instance, including through their associations (One Voice Wales and SLCC), but councils may benefit from further support from government in these areas.
- 41 While it would be tempting to ask auditors to provide such support, providing such a service to any significant extent would be at odds with audit independence under the terms of the Financial Reporting Council's Ethical Standard.

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## Alternative models for the accounts and audit of community and town councils in Wales

### Background

- 1 At the Local Government and Housing Committee meeting on 14 November 2024, the Committee explored how the current audit regime for community and town councils might be streamlined.
- 2 This paper sets out some options for amendment of the overall statutory framework that could assist in such reform. It considers the current model of audit in Wales and the models applied to parish councils in England and community councils in Scotland.
- 3 Each of the options identified below would require amendments to legislation.

### Comparative audit models

- 4 There are significant differences in the audit arrangements for Welsh community and town councils compared with those for English parish councils and Scottish community councils.

### Community and town councils in Wales

- 5 Section 13 of the Public Audit (Wales) Act 2004 (the 2004 Act) requires all councils to make up their accounts to 31 March each year and to submit those accounts to the Auditor General who must audit them. The Auditor General must then undertake the audit and discharge his functions within the framework of the 2004 Act and its subordinate legislation, the Accounts and Audit (Wales) Regulations 2014.
- 6 The Auditor General's functions include:
  - The audit of accounts;
  - Statutory reporting functions (sections 22 to 25);
  - Functions related to electors' questions and objections related to the accounts (sections 30 and 31); and
  - Functions related to unlawful expenditure (sections 32 to 34).

- 7 The requirements of the 2004 Act mean that the Auditor General must undertake an audit at all councils every year.

### **Parish councils in England**

- 8 There are around 10,000 parish and town councils in England. These English councils have broadly the same powers and functions as community councils in Wales. They are subject to the accounts and audit provisions of the Local Audit and Accountability Act 2014, subject to provisions made for smaller authorities by the Local Audit (Smaller Authorities) Regulations 2015 (the Smaller Authority Regulations), and the Accounts and Audit Regulations 2015 (the English Accounts & Audit Regulations).
- 9 The English Accounts & Audit Regulations impose broadly the same responsibilities on English parish councils as the 2014 (Wales) Regulations impose on community councils in Wales regarding the preparation of accounts.
- 10 The Smaller Authority Regulations allow, but do not require, a smaller authority to certify themselves as an exempt authority for a financial year if:
- the qualifying condition for that authority and that financial year is met--i.e. that the higher of the council's receipts/income and payments/expenditure does not exceed £25,000;
  - the financial year is not one of the first three years of the authority's existence; and
  - certain specified circumstances do not apply in relation to the keeping of the accounts for the preceding financial year or to the audit of those accounts. These circumstances include:
    - the local auditor has made a public interest report or a written recommendation in respect of the authority or any entity connected with it;
    - the local auditor has issued an advisory notice and has not withdrawn the notice;
    - the local auditor has commenced judicial review proceedings and the proceedings have not been withdrawn nor has the court found against the auditor;
    - the local auditor has made an application to the court for a declaration that an item of account is unlawful, and the application has not been withdrawn nor has the court refused to make the declaration; or

- the court has declared an item of account unlawful.
- 11 In practice, this means that the majority of English parish councils with income and expenditure less than £25,000 are exempt from normal audit requirements.
  - 12 However, all councils are still required to complete, approve and publish an Annual Governance and Accountability Report.
  - 13 English parish councils are also subject to a transparency code that requires extensive online publication of accounting and other information on council websites. Such requirements seem to be a prudent measure to prevent complete loss of accountability for spending in the absence of an annual audit.
  - 14 Although most councils fall within the exemption outlined above, all councils must have an appointed auditor who will receive any questions or objections from electors and may undertake audit work in relation to these matters.

### **Community councils in Scotland**

- 15 Community councils in Scotland are quite different in structure and functions to community councils in Wales. There are currently approximately 1,200 active community councils in Scotland. In Scotland, community councils are voluntary organisations set up under schemes provided for by statute by the local authority and run by local residents to act on behalf of their areas. The local authorities exercise statutory oversight of their local community councils.
- 16 Scottish community councils have fewer functions than their English or Welsh counterparts. Scottish community councils represent their communities to the local authority, undertaking local surveys and campaigning on local issues. They may carry out local projects and organise community events.
- 17 In particular, unlike in England and Wales, Scottish community councils do not have the right to raise funds by setting a precept on local taxes, and are instead dependent upon local authority grant funding, which is usually received for running costs only. Councils may however obtain additional funds such as through lottery grants.
- 18 In Scotland, while the schemes that establish community councils provide for the preparation of accounts and their independent examination or audit, there is no equivalent to the Welsh and English statutory requirements for external audit.
- 19 Councils are required by the schemes that establish them to prepare annual accounts and to appoint an independent examiner or auditor

of those accounts. There is no general requirement for community council account examiners or auditors to have professional qualifications; the only requirement is that they are independent, i.e. not be members of the community council. The recommended programme of work for independent examiners and external auditors in Scotland is similar to that carried out by internal auditors in England and Wales.

- 20 The administration grant from the local authority is paid annually, on submission of examined or audited annual accounts for the previous financial year.

### **Possible models for Wales**

- 21 While the Auditor General can determine what and how much audit work to undertake in any given financial year in relation to community council accounts, he is restricted by the statutory requirement for him to audit the accounts of every community council every year. This means that significant changes to the audit requirements would most likely require amendments to the 2004 Act.
- 22 Potential alternative models are set out below. We suggest that a key principle that should be applied in considering these potential alternative models is that those who raise and spend local taxes should be held accountable for the use of those local taxes.

### **Option 1: Replace audit by the Auditor General with other audit or independent examination**

- 23 Option 1 would be to adopt an approach similar to that applied in Scotland. The 2004 Act could be amended to replace the requirement for councils to submit the accounts for audit by the Auditor General with a requirement for councils to appoint their own external auditor. The individuals that currently provide internal audit to community councils may be suitable to take on this role, but this would only be appropriate if the current requirement for internal audit was removed.
- 24 In order to ensure that councils account for the monies they raise, spend and manage, local authorities could be required to withhold precepts until such time as they receive audited accounts from the community councils. Checking for audited accounts would, however, be an additional task for the authorities.

- 25 In order to ensure consistency of approach across the sector it may be necessary for guidance to be issued for external auditors of community councils and potentially additional support for councils looking for an external auditor.
- 26 The Auditor General's report on internal audit arrangements in the sector highlighted concerns over the adequacy of internal audit and highlighted that around 10% of councils did not have an internal auditor. Therefore, it seems quite likely that some community councils may face challenges in finding suitable persons willing and able to undertake the audit or examination.

## **Option 2: Smaller council exemption from audit by the Auditor**

### **General**

- 27 The English model provides an example where some councils are exempt from audit requirements.
- 28 An amendment could be made to the 2004 Act to introduce a similar exemption from audit for smaller councils below a set threshold (as in England) or for all community councils.
- 29 Councils would still need to advertise local inspection of accounts and advertise electors' rights to ask questions or make objections to accounts at audit but would not need to submit accounts for audit below a set threshold of income/expenditure.
- 30 The Auditor General would have a duty to consider undertaking audit work when matters are drawn to his attention during the inspection period, e.g. in response to questions and objections from local electors or whistleblowers. We expect however that despite this duty on the Auditor General the majority of councils would not be subject to external audit.
- 31 One of the weaknesses with the English arrangements is that councils may simply not prepare annual accounts, make arrangements for public inspection of accounts or comply fully with any transparency code. We gather that sometimes that these requirements are overlooked because of the lack of annual audit requirements, and this can lead to the council incurring additional expenditure.
- 32 Our experience in Wales suggests that a significant number of councils would be in this position.

### **Option 3: General exemption from audit by the Auditor General but with a requirement to submit accounts to the Auditor General**

- 33 A third option may include amending the 2004 Act, retaining the requirement for councils to submit their accounts to the Auditor General each year but with an amendment to give the Auditor General discretion as to the extent of audit work required, including the option not to audit the accounts.
- 34 The Auditor General could then consider whether or not there is a need for any external audit work. This consideration might encompass:
- Analytical review of the accounts to identify trends that may need explanation;
  - Issues arising in previous years;
  - Consideration of any questions, objections or other correspondence related to the accounts; and
  - Whether or not accounts have been filed on a timely basis.
- 35 Where the Auditor General considers it appropriate to do so, he may undertake such audit work as is necessary to address his concerns. This would allow flexibility for the Auditor General, in consultation with the sector and Welsh Government, to set the threshold at which an external audit is required.
- 36 Where no audit work is undertaken, no audit opinion or certificate would be issued, and no audit fee would be charged.

### **Hybrid options**

- 37 The various options are likely to have certain advantages and disadvantages. The options described above could be combined in certain respects to provide further options. For example, replacement of audit by the Auditor General (option 1) could be made confined to smaller councils, such those below a specified expenditure threshold (option 2).
- 38 For example, a new arrangement might include:
- a) Replacing the requirement for annual audit by the Auditor General for small community councils with expenditure below £25,000, with a requirement for the council to obtain an audit or independent examination from elsewhere and to provide audited/examined accounts to the Auditor General and the

billing authority from which the council wishes to receive a precept; and

- b) Providing that where a council fails to provide audited/examined accounts by a set deadline (e.g. 30 September), or where electors or whistleblowers raise matters that are not addressed in the auditor's/examiner's report, the Auditor General may undertake further audit work and report.
- 39 Any changes such as those outlined above would need to keep in mind the potential friction by councils challenging the undertaking of audit work prompted by questions or objections, on the grounds that they consider such questions and objections are ill-founded or malicious.

### **Consequential issues**

- 40 The comments above only address the relatively narrow issue of how the statutory requirement for audit of community councils might be amended. They do not address any consequential issues, such as the effect on councils wishing to exercise the general power of competence (GPOC).
- 41 In the case of councils wishing to exercise the GPOC, at present such a council must meet three qualifying conditions, one of which is that its two most recent audit reports must be unqualified. Withdrawal of the requirement to have an annual external audit would, unless consequential amendments are made to legislation, prevent councils wishing to exercise GPOC from doing this. One way of addressing this might be to amend section 13 of the 2004 Act to allow a council to request that the Auditor General undertakes an audit in any given year.
- 42 The form and content of the Annual Return is agreed between Audit Wales, One Voice Wales, SLCC and Welsh Government each year. The return itself is issued to councils by Audit Wales alongside a proforma audit notice as a matter of convenience.
- 43 Audit Wales could continue to issue councils with the annual returns and proforma notices for public inspection and log the accounts data on receipt of the council approved annual returns. But with many councils no longer paying audit fees, consideration would need to be given as to whether some or all of the work still undertaken by Audit Wales should be funded by supply rather than fees charged to a smaller number of councils.