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**Our Ref:**

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**SAAA Ref:**

SB05875

**MINEHEAD TOWN COUNCIL**

**Public Interest Report in relation to the Annual Governance and Accountability Return (AGAR)  
2022/23**

Dear Members

We are the auditor appointed to carry out a limited assurance review of the Council's AGAR for the year ended 31 March 2023. In exercise of our power under Paragraph 1 of Schedule 7 of the Local Audit and Accountability Act 2014 (the 2014 Act), we have decided to issue this Public Interest Report so that matters may be considered by the Council and brought to the attention of the public.

***Background***

During July 2020 and during their probationary period, the Council terminated the employment of a former employee following their suspension in October 2019. The decision to terminate the employment was upheld by two appeals panels.

The former employee had already commenced proceedings against the Council and individuals including current and former councillors and Council employees.

The Council decided to defend the claims at an Employment Tribunal. One claim was struck out and, during the hearing in June 2022, the other claims were dropped.

In May 2020, the Council decided to delegate the oversight of the Council's legal representation, liaison with human resources (HR) advisors and co-ordination of the administration of the case to a Councillor with HR experience (the Councillor) and to the Council's Locum Clerk.

The following payments were made to the Councillor in the year ended 31 March 2023 in connection with the case:

Date	'Remuneration'	Advance for expenses	Expenses	'Honorary'	Total
13/04/2022	£768.89		£161.00		£929.89
18/05/2022	£900.00		£99.00		£999.00
14/06/2022	£900.00		£99.00		£999.00
16/06/2022		£4,000.00			£4,000.00
28/09/2022	-£4,636.00	-£4,000.00	£2,324.00	£25,000.00	£18,688.00
	<b>-£2,067.11</b>	<b>£0.00</b>	<b>£2,683.00</b>	<b>£25,000.00</b>	<b>£25,615.89</b>

The terms 'remuneration' and 'honorary' were those used by the Council.

Local government electors, in exercise of their rights under Section 27 of the 2014 Act, made objections to the Council's accounts in respect of certain matters relating to these payments. We have carefully considered those objections and decided to issue this Public Interest Report.

### ***Payments made to a member of the Council***

In our view, the Council did not have the power to make the 'honorary' payment to the Councillor. As part of our consideration of this issue, the Council has not provided any legal basis on which the payments were made, nor was any recorded in the Council's meeting minutes or internal records. We have also considered the following factors in reaching this conclusion:

- Under Regulation 25 of the Local Authorities (Members' Allowances) (England) Regulations 2003, a parish council may in certain circumstances pay its members a 'basic allowance'. However, such an allowance must, save in the case of the Chair, be equal and annual and would not empower a payment in respect of specific duties. Furthermore, the other requirements of Regulation 25, including publishing a public notice of the proposed basic allowance and considering a report from a Parish Council Remuneration Panel, were not complied with in this case. This leads us to conclude that the payments were not intended to be a basic allowance; and
- The minutes of the Council meeting of 30 June 2020 refer to the Councillor having been given 'delegated powers'. Under Section 101 of the Local Government Act 1972 (the 1972 Act), the Council was empowered to delegate functions to an officer of the Council. Section 112(5) of the 1972 Act empowers the Council to appoint a member as an officer but without remuneration. As such, if the Councillor had been delegated powers to exercise the Council's functions in respect of the tribunal case, this would have been in their capacity as an officer of the Council. The power would not however have authorised the Councillor to receive remuneration for the exercise of those functions, as this is precluded by Section 112(5).

An argument has been advanced to us that the Council contracted with a company in which the Councillor had an interest and that such a relationship authorised payment. We have been provided with no documentary evidence to support such a contractual relationship, despite specific requests. The Council's description of the payment as an 'honorary' is also inconsistent with a genuine contractual relationship. Even if one existed, and could be evidenced with the documentation, it would not provide support for payments to the Councillor that the Council had no power to make.

We note that at some meetings during the preparation for the Employment Tribunal and subsequently, the Council minutes include references to costs and loss of earnings in relation to the case and Employment Tribunal being re-imbursed to the Councillor and the payment of an ‘honorarium’ to the Councillor. However:

- no consideration of the powers to make such payments was ever minuted; and
- the amount of the ‘honorarium’ and the detailed basis for its calculation was only minuted at the time of the approval of the payment.

In our view, the Council should have properly considered and documented its consideration of the power to make such payments and, at the outset, the detailed basis for making such payments.

We are also concerned about the payment of expenses to the Councillor. While these payments were not unlawful:

- there was no prior agreement of the basis on which expenses were to be reimbursed; and
- a significant advance was made for expenses substantially in excess of the expenses subsequently claimed, due to the earlier than expected conclusion of the hearing.

**We recommend that in the future the Council:**

- **seeks independent advice before agreeing to make payments to a member of the Council, directly addressing the legal basis on which such payments may be made;**
- **unambiguously determines in advance the amount of remuneration or the basis for remuneration of any person it engages;**
- **determines in advance the basis for payments of expenses of any person it engages; and**
- **does not make any payments in advance to any person it engages.**

#### ***Management of the Employment Tribunal case***

Employment disputes can be disruptive, time-consuming and costly. The outcome of Employment Tribunal cases is uncertain. Councils have to make decisions about whether to defend such proceedings or whether to agree a settlement with those bringing cases against them, weighing a number of factors. In our view, such decisions should be made with the benefit of independent professional advice from a lawyer and the basis for decisions should be clearly documented.

We are concerned that there is no explicit, documented decision to settle or defend the Employment Tribunal claim, made with the benefit of independent professional advice from a lawyer and setting out the grounds for the decision.

**We recommend that in the future the Council:**

- **obtains independent authoritative advice from a lawyer on any decision to settle or defend a claim against it;**
- **considers that advice; and**
- **documents the basis for its decision.**

### **Consideration of this report**

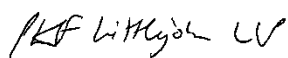
Under Schedule 7 of the 2014 Act, the Council has a statutory duty:

- as soon as practicable to publish on its website this report and a notice identifying the subject matter of the report and details of where and when the report may be inspected and copied;
- as soon as practicable to send a copy of this report to all councillors;
- to allow inspection of this report without payment and provide a copy on payment of a reasonable sum;
- to consider the report at a Council meeting held within one month from the date that the Council receives this report, unless we agree to extend that period;
- to publish on its website a notice stating the date, time and place of the Council meeting, that it is to consider this report and the subject matter of this report;
- not to exclude the report under Section 1(4)(b) of the Public Bodies (Access to Meetings) Act 1960;
- at the Council meeting to decide whether action is required in response to the report and, if so, what action;
- as soon as practicable after the Council meeting to notify us of the Council's decisions; and
- as soon as practicable after the Council meeting to publish on its website a notice containing a summary of its decisions that has been approved by us.

Under Paragraph 3(1) of Schedule 7 of the 2014 Act, we have a duty to send a copy of this report to the Secretary of State. We may also send a copy to anybody we think appropriate. We are therefore supplying a copy of this report to:

- the Secretary of State for Housing, Communities and Local Government;
- Smaller Authorities' Audit Appointments Ltd; and
- the Objectors to the Council's AGAR for the year ended 31 March 2023.

Kind regards



For and on behalf of PKF Littlejohn LLP