

## **ADVISORY NOTICE: PEMBROKESHIRE COUNTY COUNCIL**

### **STATEMENT OF REASONS**

1. On 28<sup>th</sup> October 2014 I issued and served on Pembrokeshire County Council (“the Council”) a copy of an Advisory Notice under section 33 of the Public Audit (Wales) Act 2004 (as amended). A copy of that Advisory Notice was also served on the Leader of the Council, the Council’s Chief Finance Officer and the Council’s Monitoring Officer.
2. I issued the said Advisory Notice as I have reason to believe that the Council has made a decision which, if implemented, would involve the Council incurring expenditure which is unlawful. That decision, taken by the Council at its meeting on 16<sup>th</sup> October 2014, is to enter into a “settlement agreement” with the Council’s Chief Executive, Mr Bryn Parry-Jones, terminating the employment of the Chief Executive on financial terms which I am advised and consider are unlawful.
3. This document is my statement of reasons for my belief referred to in paragraph 2 of the said Advisory Notice and in paragraph 2 above.
4. On 28<sup>th</sup> September 2011 the Council’s Senior Staff Committee approved the payment of pay supplements (in lieu of employer pension contributions) to the Chief Executive (and other senior officers). I took the view, on advice, that the said decision was unlawful at least for the following reasons:-
  - a. the decision taken by the Senior Staff Committee was ‘ultra vires’ and could not lawfully be implemented because the Council’s powers to set reasonable remuneration cannot be used for the purpose of the

avoidance or mitigation of the effect of pensions legislation (which was the reason for the introduction of the pay supplements);

- b. in making the decision, relevant considerations were not taken into account, by the Senior Staff Committee in breach of *Wednesbury* principles;
- c. the Council failed to have due regard to the public sector equality duty;
- d. the decision constituted indirect discrimination; and
- e. senior officers (including the Chief Executive) who had a disqualifying personal and pecuniary interest in the decision, participated in the decision making process.

5. In January 2014 I issued a Report in the Public Interest which refers at greater length to the reasons why the decision of the Senior Staff Committee to make payment of the said pay supplements is in my view, and I am so advised, unlawful. The Council has since rescinded the decision to make the pay supplements but not before payments totalling £51,011 have been made to the Chief Executive and another officer.

6. This statement of reasons, however, relates to the decision to enter into the said proposed settlement agreement which decision was taken by the Council at its meeting on 16<sup>th</sup> October 2014. In taking that decision, the Council are relying on and have taken into account the (unlawful) pay supplements. The proposed settlement agreement approved by the Council on 16<sup>th</sup> October 2014 involves the Council unlawfully taking into account the said (unlawful) pay supplements in calculating a payment to the Chief Executive in lieu of 3

months' notice, in calculating an enhanced severance payment to the Chief Executive and in making payment of further (unlawful) pay supplements to the Chief Executive in respect of the period April 2014 to October 2014.

7. On advice, I take the view, that to the extent that the financial terms of any settlement agreement with the Chief Executive relies on and/or gives effect to the (unlawful) pay supplements, any decision to enter into a settlement agreement on those terms would itself be unlawful as:

- a. being beyond the powers of the Council;
- b. involving the Council misdirecting itself in law; and
- c. involving the Council taking into account an irrelevant consideration.

8. For the reasons given above, I have reason to believe that the Council's said decision to enter into the proposed settlement agreement with the Chief Executive on the financial terms proposed, if implemented, would involve the Council incurring expenditure which is unlawful.



Anthony Barrett

Appointed Auditor

29 October 2014