



Bridgend County Borough Council

Retirement of Chief Executive

9 March 2007

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This report is made in our capacity as the Appointed Auditors of Bridgend County Borough Council, and it is based on information provided up to 2 March 2007.

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External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

This report cannot be relied up to detect all errors, weaknesses or opportunities for improvements in management's arrangements that might exist. Audited and inspected bodies should assess auditors' conclusions and recommendations for their wider implications before deciding whether to accept or implement them.

1 **Summary**

1.1 **Introduction**

In May 2006, the Chief Executive of Bridgend County Borough Council took early retirement from service, the terms of which involved a financial settlement. Subsequently we received a number of questions from electors asking us, as the appointed auditors of the Authority, to look into certain aspects of the Authority reaching agreement of the terms for such retirement. This report sets out the results of our enquiries conducted up to 2 March 2007 and is based on information provided by, and discussions held with, certain elected members and senior executives of the Authority and representatives of the Welsh Local Government Association (“WLGA”). Any information which may come to our attention subsequent to that date could affect our future observations and recommendations for action in this matter.

1.2 **Conclusion**

There was a lack of clarity in the roles and responsibilities of individuals involved in determining the terms of the Chief Executive’s retirement, and there were some deficiencies in the process by which the decision for the retirement was reached.

We consider that the cost of carrying out further investigation, or of preparing and submitting a case for the retirement decision to be set aside, would be disproportionate to the benefits which may be gained by the taxpayer. There is no overwhelming case to suggest this is an appropriate route to take. Accordingly we propose to take no further action on this matter.

Most of the terms of the agreed retirement package were in accordance with the Chief Executive’s contract of employment and the Council’s Corporate Policy, and were lawful.

The compromise agreement reached with the Chief Executive includes provision for the payment of an amount for future career support. This has not yet been claimed or paid. We are not fully persuaded that this expenditure would be lawful were it to be paid. However, the uncertainty of outcome were the matter of its lawfulness to be tested through the Courts, and the associated costs of such proceedings, result in our finding no justification for taking this matter further.

We are also concerned about the apparent breaches of members’ or officers’ Codes of Conduct, where confidential information appears to have been passed to inappropriate individuals and to the press.

1.3 **Recommendations**

This report contains a number of recommendations, which we re-iterate below.

The Authority’s Management’s responses to certain of those recommendations are outlined in the body of the report.

Report reference	Recommendation
2.3	Recommendation 1 – the Authority should urgently bring its performance management flagship project to a conclusion, and an appropriate appraisal process for directors, assistant directors and heads of service should be re-implemented.
2.3	Recommendation 2 – members carrying out appraisals for officers should be appropriately trained.
3.4	Recommendation 3 – Bridgend County Borough Council is periodically asked to take decisions on sensitive, controversial or difficult matters, and in many cases it is relatively easy to predict when these might occur. In such cases it is even more important than usual that officers prepare careful, well-reasoned cases to Members that describe all of the options and present all of the relevant facts.
3.4	<p>Recommendation 4 – that the Authority maintains clear evidence that it has made its decision after following appropriate processes, in knowledge of the facts, and has followed proper arrangements to make the best use of the Authority’s resources.</p> <p>A way of dealing with this may be to prepare a detailed report to members setting out the various options available to them and including a summary of the key processes carried out to prepare those options. The reports might also include the following items:</p> <ul style="list-style-type: none"> • Summary of any legal opinions – internal and external if applicable. • A direct commentary from the Monitoring Officer that he has looked at the legal implications and is satisfied that the proposed actions are lawful and that facts which could impinge on any decision have been presented. • A commentary of the various costs/benefits/risks applying to each of the options. These may be intangible as well as financial. • A commentary from the s151 Officer about the value for money/best value/affordability of each of the options. This might include a summary of the different valuation methods available and why a particular method has been chosen. <p>Risks are important as members should understand the implications of making particular decisions. Officers should also describe the steps taken to safeguard the Authority against risks associated with any particular decision or course of action. If there are clauses in proposed legal agreements that deal with particular risks, it would be helpful to explain them to members.</p> <p>We recognise that Bridgend County Borough Council does prepare detailed reports for members on issues, and so it should</p>

	be relatively straightforward to enhance them along the above lines.
5.3	<p>Recommendation 5 – We recommend that the Authority reminds members and officers of the Codes of Conduct relevant to the handling of sensitive information and that training sessions are conducted across the Authority as appropriate.</p> <p>The Authority should create clear links from its internal and external web-sites to the relevant codes of conduct for members and officers, and ensure these are updated upon introduction of new codes.</p>

2 There was a lack of clarity in the roles and responsibilities of individuals involved in determining the terms of the Chief Executive's retirement

2.1 The authority was under pressure to improve performance

In 2005, the Authority received a number of reports from external agencies criticising aspects of its performance. They included:

- that associated with the Chief Inspector of Social Services in Wales implementing the protocol for serious concerns in Children's Services
- The Wales Audit Office's ("WAO") Corporate Culture Review, where the Authority identified shortcomings in its:
 - leadership and direction;
 - skills, capacity and capability;
 - communications; and
 - attitudes, behaviour and culture.
- Continued concerns in the WAO's Relationship Manager's Annual Letter, incorporating the annual audit letter.

The Authority agreed a set of three flagship projects (Performance Management, Human Resources and Procurement) that were intended to be the impetus for attaining an improvement in performance. At the request of the Cabinet and the Chief Executive respectively the Welsh Local Government Association ("WLGA") agreed to allocate resource to the Authority to facilitate this improvement.

As part of these initiatives, the Authority and the WLGA jointly commissioned a report from an external consultant into the Human Resources ("HR") function. This report raised further concerns over the effectiveness of that function.

In early 2006, Cabinet were growing concerned that the existing Corporate Management Board, as it was then operating, would be unable to deliver the improvement required in the Authority's performance. The Cabinet and Corporate Management Board held a joint session on 17 January 2006, where Cabinet expressed their concerns and demanded urgent action.

2.2 The Authority had acknowledged the need for a step change in its style of management

By March 2006, the members of the Cabinet were concerned that no action had been taken. The Leader and the Cabinet Member - Corporate Resources, on behalf of the Cabinet, sought an urgent meeting with the Chief Executive, facilitated by the WLGA.

An initial meeting took place on 24 March 2006 and was followed up by another on 27 March 2006. The outcome of these meetings was a mutual understanding that the Authority needed a different style of leadership to take it forward. The forthcoming retirement of the Deputy Chief Executive gave Bridgend the opportunity of creating a major step change at the most senior managerial levels if the Chief Executive were also to retire.

The Chief Executive offered to retire early if he and the Authority could reach suitable terms. It was recognised the full Council would have to approve the retirement.

2.3 **The performance management framework was ineffective, and there was no up to date appraisal of the Chief Executive's performance**

The performance management framework within Bridgend County Borough Council had for some time been recognised as ineffective. In our 2003/4 audit opinion on the corporate improvement plan we reported our conclusion that the framework needed to be developed, and summarised what we believed Bridgend should aim for as follows:

“Performance Management is an end to end process. It involves identifying objectives, preparing detailed strategies, action plans and targets, finding measures (performance indicators) that can be used to track progress against the plan, having a reliable process for reporting the key PIs to line managers, directors and members, taking action if the PIs are out of line, and ensuring that individuals' personal objectives and appraisals are focused on the achievement of the Authority's objectives.”

In our 2004/5 audit letter we recognised that the Authority had set up one of its flagship projects to implement a new performance management framework. By March 2006, limited progress had been made and the Authority was faced with trying to improve performance under the existing arrangements.

Specifically, there were no clear links between the performance of individual officers and the performance of the Authority. An appraisal process had been set up for directors, where a cross-party group of senior Members reviewed their performance. The Chief Executive was included in such a process in 2003 and 2004, but not in 2005. In our view, neither of the reviews that were carried out showed clear evidence, or criticism, of under-performance by the Chief Executive, while the 2004 review recorded “Positive steps forward from previous appraisal”.

Recommendation 1 – the Authority should urgently bring its performance management flagship project to a conclusion, and an appropriate appraisal process for directors, assistant directors and heads of service should be re-implemented.

Recommendation 2 – members carrying out appraisals for officers should be appropriately trained.

Recommendation 1

1(a) The Performance Management Framework was launched on 15 December 2006. Initial training sessions are being held on 22 and 23 March and 12 and 13 April 2007.

1(b) Directors now receive a 360 degree appraisal facilitated by an external organisation. Assistant Directors and Heads of Service will be appraised during April and May each year.

Recommendation 2

The Authority has adopted the SOLACE competency framework for the new Chief Executive. All Directors are subject to a 360 degree appraisal facilitated by an external organisation. The only appraisal carried out by members concerns the Chief Executive. Training has been undertaken and refresher training is currently being arranged.

2.4 Those delegated responsibility to handle the development of the terms of early retirement took advice

Cabinet took external advice from the WLGA throughout this process. They also sought advice in February 2006 from the Authority's Head of Legal Services, who is also the Authority's Monitoring Officer, on the different options that may be open to the Authority should it be desirable to effect a change of Chief Executive should that prove necessary.

Those delegated responsibility for handling this matter concluded that as there was no recorded evidence of under-performance by the Chief Executive, then the risk of having to pay significant sums under an industrial tribunal meant there was no option available to dismiss the Chief Executive for capability reasons.

Disciplinary investigations were underway into the conduct of two members of staff and the Chief Executive in respect of the running of the Electoral Services Department. The Chief Executive had direct line responsibility for this department, and was also the Returning Officer for elections, the latter being a position answerable to the Courts and not to the Authority on the administration of an election. At this stage in the early retirement process, that investigation was incomplete; there was no published conclusion – either positive or negative – about the performance of the Chief Executive in his capacity as either Returning Officer or as the Authority's senior executive with line responsibility for the Electoral Services function.

2.5 In their desire to bring about a speedy end to uncertainty of future management leadership, members carried out certain activities that should have been carried out by officers

Discussion and decision-making associated with the early retirement or departure of a Chief Executive can be sensitive and stressful, as proved to be the case for Bridgend. In the circumstances prevailing in this case, we do not consider it to have been inappropriate for initial discussions to have been carried out by the Leader and other Cabinet members.

Following initial discussion, Cabinet asked the Cabinet Member - Corporate Resources, advised by the WLGA, to negotiate with the Chief Executive's appointed representative on the terms of a retirement package. We consider it would have been preferable for this negotiation to have been carried out by a senior officer of the Council, and the results brought to members in the form of an options paper. We recognise there is a practical difficulty when the matter involves the Head of Paid Services and an improved option over a Cabinet Member (this is not a Cabinet function) would have been for Council to delegate the function to a committee advised by appropriate officers.

It is important for the proper running of a local authority that elected members make policy, reach appropriate decisions and monitor performance, while officers carry out executive activities. We do not consider that in this particular circumstance there was any intention on the part of elected members to over-step the mark in this regard. They were keen to bring about change in the Authority for positive effect.

There is an opportunity for the Welsh Assembly Government, the WLGA, the Auditor General for Wales and the Chief Executives' Associations (working in partnership) to prepare guidance for local government in Wales that sets out clearly the legal and other responsibilities, as well as best practice process, for the early termination (including dismissal, retirement and redundancy) of a Chief Executive's (and other senior executives') employment.

3 There were deficiencies in the process surrounding the decision to grant the early retirement

3.1 Senior officers took the retirement proposals, checked them and prepared submissions to Council

Once Cabinet had negotiated a provisional settlement with the Chief Executive, they asked a group of senior officers to review and check the proposal. The group included the Deputy Chief Executive, the Monitoring Officer and the Human Resources Manager.

The group checked the proposal and asked the Assistant Director – Finance to calculate the cost to the Authority. The Deputy Chief Executive, in his role as the Authority’s s151 Officer, considered whether the Authority were able to afford the proposals.

The Deputy Chief Executive then drafted two papers for Council. The first was to be taken in open session, and described the early retirement in general terms; the second contained personal details about the Chief Executive as an employee of the Council, and was therefore presented to a closed session of Council as a confidential item.

There was an error in extraction of one of the figures, but we do not consider this to have been a material item as a basis of forming a decision.

3.2 The Authority did not seek external legal advice

In highly sensitive cases such as this, Authorities often take external legal advice. In part this may be due to a need to access specialised knowledge of employment and local government law, to avoid the risk of conflicts of interest facing officers involved in negotiation activities or to provide additional assurance to elected members over issues of legality and process.

The Head of Legal Services is an experienced employment lawyer and considered there was no benefit to the Authority from seeking external legal advice. We understand this position and recognise the need for officers to achieve value for money.

Where the Head of Legal Services is also the Monitoring Officer, as is now the case in Bridgend, there may be no independent challenge to the legal advice he or she provides. We recognise that the WLGA were also advising the Authority from an external perspective, and that the Deputy Chief Executive was closely involved at this stage. Given the particular circumstances of this case, we consider that the Authority may have benefited from the additional assurance which could have been provided by seeking an external legal opinion.

3.3 The business case for accepting early retirement was drafted and presented by an officer from the WLGA

As described in section 4.1, the early retirement fell within the Council's Corporate Policy "in the interest of the efficiency of the service to permit a fundamental improvement to the delivery of services". In order to demonstrate this, the WLGA's Head of Improvement, who had been working with Bridgend, drafted and presented a business case.

Although Council papers would ordinarily be presented by officers, there are good reasons why an external advisor might be used in these circumstances. These include:

- To ensure independence. The advisor would be seen as having nothing to gain from the final decision. In this case, over the early retirement of the Chief Executive.
- The use of an external advisor would overcome any potential for exertion of influence by the senior officer whose position is subject to evaluation.
- Officers might have their own roles in the Authority to defend.

3.4 The papers presented to Council did not contain all the possible options, nor was it clear to all members that there were alternative options

The confidential paper presented to closed session of Council summarised the package of benefits that the Chief Executive had negotiated. It also summarised the cost to the Authority of meeting each item of that package, and indicated when the money was likely to be payable.

The Deputy Chief Executive took members through the proposals, and the Monitoring Officer confirmed that in his opinion the proposals were lawful.

One of the key matters discussed was consistency with the Authority's normal practice in dealing with cases of early retirement. Officers advised members that if the Council were to adopt terms, in this instance, that were out of line with such practice, then there was a risk that the Chief Executive could make a claim against the Council under employment law.

At least some of the members believed that the package was "take it or leave it".

There were other possible options that could have been presented to Council. In section 2.4 we referred to a dismissal option. The Authority could have been presented with:

- an explanation of the statutory process associated with taking disciplinary action in respect of the Chief Executive;
- an assessment of the likely costs of having to deal with any case which may have been brought against it through an industrial tribunal; and

- an assessment of the potential damage to the reputation of the Authority were such an option to be followed.

Recommendation 3 – Bridgend County Borough Council is periodically asked to take decisions on sensitive, controversial or difficult matters, and in many cases it is relatively easy to predict when these might occur. In such cases it is even more important than usual that officers prepare careful, well-reasoned cases to Members that describe all of the options and present all of the relevant facts.

Recommendation 4 – that the Authority maintains clear evidence that it has made its decision after following appropriate processes, in knowledge of the facts, and has followed proper arrangements to make the best use of the Authority’s resources.

A way of dealing with this may be to prepare a detailed report to members setting out the various options available to them and including a summary of the key processes carried out to prepare those options. The reports might also include the following items:

- Summary of any legal opinions – internal and external if applicable.
- A direct commentary from the Monitoring Officer that he has looked at the legal implications and is satisfied that the proposed actions are lawful and that facts which could impinge on any decision have been presented.
- A commentary of the various costs/benefits/risks applying to each of the options. These may be intangible as well as financial.
- A commentary from the s151 Officer about the value for money/best value/affordability of each of the options. This might include a summary of the different valuation methods available and why a particular method has been chosen.

Risks are important as members should understand the implications of making particular decisions. Officers should also describe the steps taken to safeguard the Authority against risks associated with any particular decision or course of action. If there are clauses in proposed legal agreements that deal with particular risks, it would be helpful to explain them to members.

We recognise that Bridgend County Borough Council does prepare detailed reports for members on issues, and so it should be relatively straightforward to enhance them along the above lines.

Authority Management Response:

The Authority has implemented a new report template that ensures the robustness/completeness of reports. There are set headings which require the report author to address purpose, background and other essential points of the report. Detailed guidance on the requirements of the new report protocol have been developed and communicated. All reports are also subject to a stringent authorisation process, requiring approval from Legal, Finance and the appropriate Cabinet Member. Officers are encouraged to engage with Cabinet members at an early stage so that they are familiar with all the options and have the opportunity to influence and make an informed decision. The Authority will review the template periodically to ensure it best meets the needs of the Authority and best practice.

3.5 The possible impact of the outcome of the investigation of the electoral services function was not taken into account when members made the decision to accept a proposal for early retirement

At the time of the acceptance by Council of his early retirement, the Chief Executive was participating in an independent investigation into his role as line manager of the electoral services department. There were a number of allegations into the running of the department, the conduct of elections and whether inappropriate payments had been made to officers within the department (but not to the Chief Executive). There was a separate internal investigation into the conduct of the two senior members of staff in the department (again, not the Chief Executive).

The investigation into the Chief Executive was largely complete but the report had not been formally issued as there were concerns that it might prejudice the Authority's own internal investigation into the activities of the two staff members referred to previously.

The Head of Legal Services, who was the officer that commissioned the external independent investigation into the role of the Chief Executive in Electoral Services, advised senior members of the status of the investigation and the improbability of a decision to dismiss the Chief Executive. On that basis, the Head of Legal Services was prepared to allow the retirement proposals to go to Council.

In the legal agreement between the Chief Executive and the Authority, there is a specific term requiring the Chief Executive to answer any questions that relate to electoral services.

In considering whether Council had all the relevant facts before it when it reached the decision to accept the terms of the Chief Executive's early retirement, we believe the potential for criticism of the Chief Executive as an outcome of the electoral services investigation was a relevant fact, and the decision on the Chief Executive's retirement should not have been reached until the investigation was complete. Once that stage had been reached the outcome may have influenced any decision to instigate a more detailed consideration of the statutory process associated with dismissal on the grounds of performance issues. The members (who had the responsibility for deciding on the retirement) did not have that relevant information. With the knowledge, albeit in hindsight, of the outcome of the external independent investigation we recommend a tightening of procedural aspects associated with the presentation to Council of issues for their decision (see Recommendations 3 and 4 foregoing) rather than any other formal action in this regard.

3.6 In the light of the outcome of the independent investigation of the electoral services function, in our view there is no strong case for further challenge or seeking to over-turn the Council’s decision, and scant justification for incurring costs associated with such a course of action

There are some mitigating circumstances.

- Members were aware at the time of taking the decision to accept the terms of the Chief Executive’s early retirement that an investigation was underway into the Chief Executive’s conduct over electoral services, and they could have refused to take a decision over the retirement of the Chief Executive until they knew the outcome.
- The independent investigator found that the Chief Executive had committed “technical misconduct” only, and concluded that there was no case for disciplinary proceedings against the Chief Executive. The Head of Legal Services had made enquiries as to this outcome, albeit in advance of the publication thereof, and had exercised his judgement that only a more serious and adverse recommendation from the independent investigator would have been likely to have influenced any decision on the terms of early retirement.
- As there was no case for disciplinary proceedings suggested by the independent investigation of electoral services, we do not see that the papers presented to Council about the retirement could have been materially different from those that were presented had the results of that independent investigation been published prior to the Council taking their decision.

Given these circumstances, we consider that there would be disproportionate cost to the tax-payer in attempting to over-turn the decision for early retirement on these grounds and propose no further action.

4 Most of the terms of the agreed retirement package were in accordance with the Chief Executive’s contract of employment and the Council’s Corporate Policy, and were lawful. They were considered by the Monitoring Officer and Deputy Chief Executive to be in line with elsewhere in local government

The detailed terms and conditions of employment relating to individual staff members are in principle confidential. Many of the terms in this particular retirement have already become public knowledge. We refer in this report to the general terms without specifically stating the amounts received by the former Chief Executive.

In the case of the career support element of the package, we refer to the amount involved, as we believe it is important in order to obtain an understanding of the issue.

4.1 The agreed retirement package was consistent with other employees who have retired early, and in accordance with the Council’s Corporate Policy

The Chief Executive’s early retirement took place under Bridgend County Borough Council’s Corporate Policy on “Early Retirement and Redundancy, Ill Health Retirement, Long Service Award and Flexible retirement” issued in July 2002. It took place under Scheme B – Early Retirement in the interest of the efficiency of the service, and Criterion A, specifically to permit a fundamental improvement to the delivery of services.

We have reviewed the details of the retirement package and confirm that the calculations were performed correctly under the Corporate Policy.

4.2 The Chief Executive received pay in lieu of notice, which we consider reasonable in these circumstances

The Chief Executive’s contract of employment required both him and the Authority to give three months’ notice of termination of employment. This would normally mean that an employee should work for three months after giving notice to retire, allowing the Authority time to prepare arrangements for the employment of a successor.

It has not been the normal practice for Bridgend County Borough Council to waive the notice period for retiring staff, nor to pay staff for that waived notice period.

Notwithstanding the foregoing, we would expect the Authority to follow good business practice upon receipt of advice of termination of employment from a senior member of its management team. Namely to manage the organisation’s risk and the particular circumstances associated with the notice so given. In this case, the particular Scheme B and objectives as outlined in 4.1 above.

In this case, we consider it appropriate and reasonable for the Authority not to require the Chief Executive to work his notice period, and to have received pay in lieu of notice.

4.3 The compromise agreement reached with the Chief Executive includes provision for the payment of an amount for future career support. This has not yet been claimed or paid. We are not fully persuaded that this expenditure would be lawful were it to be paid. However, the uncertainty of outcome were the matter of its lawfulness to be tested through the Courts, and the associated costs of such proceedings, result in our finding no justification for taking this matter further.

The negotiated package included a sum of £5,000 as “career support”. The agreement reached was to provide the Chief Executive with support should he require some re-training in order to fulfil other roles after his retirement (whether in paid or voluntary employment). He was to be entitled to carry out the training and submit invoices from the trainers to the Council, up to the sum of £5,000. This support has not yet been claimed or paid.

Payments to retiring officers for career support is an area that has not been fully tested in the courts, and so there is some uncertainty over whether it would be lawful or not. The question of severance powers is not a new issue nationally. It has been before the courts on a number of occasions, the leading case being known as the North Tyneside case (*Allsop v North Tyneside MBC (1992) 90 LGR 462*). The decision in that case was that no local authority may make severance (including pension) payments beyond those it is specifically required or empowered to make under statute or regulations made pursuant to statute. A later case, *Nicholls v London Borough of Greenwich*, allowed authorities to pay retirement gratuities in accordance with the individual’s contract of employment, but there were no such terms in the employment contract of Bridgend’s former Chief Executive.

We are aware that the senior executives involved in preparing the case and the details of the retirement package to be put before the Council did not feel this aspect of the package was unlawful and they believed they were following examples set elsewhere in Wales in the past. Officers believe the Authority has the power to make such an award given the circumstances of this matter:

- Firstly as it was a fundamental part of the Compromise Agreement reached.
- Secondly, under Section 111 of the Local Government Act 1972 where:

““(1) Without prejudice to section 111 above but subject to the provisions of this Act, a local authority shall appoint such officers as they think necessary for the proper discharge by the authority of such of their or another authority’s functions as fall to be discharged by them and the carrying out of any obligations incurred by them in connection with an agreement made by them in pursuance of section 113 below, (2). An officer appointed under subsection (1) above shall hold office on such reasonable terms and conditions, including conditions as to remuneration, as the authority appointing him think fit.”

Taking the second argument first, we consider that training a former Chief Executive to fulfill a role at another unspecified organisation after his retirement, does not help an Authority to discharge any of their functions. In our view, if the Authority relied only upon that argument, career support would therefore be unlawful if it were to be paid, because of the following aspect of the same section of the Act:

“a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.”

The Monitoring Officer has recently sought Counsel’s opinion on the career support payable to the former Chief Executive. Counsel concluded that in these particular circumstances, which she considered were to facilitate the swift departure of the Chief Executive whilst protecting the Council from employment claims:

“ the Council was empowered by s111 of the Local Government Act 1972 to enter into clause 1.4 of the compromise agreement with the former Chief Executive, to pay him up to £5,000 for his future career development, because concluding mutually agreeable terms for his departure, which were reasonable and not irrationally generous, constituted part of the Council’s function as an employer.”

We note that this advice is contrary to that expressed elsewhere. Whilst we are not fully persuaded that a Court would agree with this conclusion, we recognise that the Authority does now have an external legal opinion supporting its position, and that there would be considerable cost to the taxpayers of Bridgend in seeking further legal opinion, let alone meeting the potential cost of a case in the High Court. When we compare this with the inherent uncertainty of outcome in a court case and the potential cost to the Authority of up to £5,000 in meeting its obligation under the compromise agreement, we conclude there is no justification for taking this matter further.

5 We are concerned at the way in which confidential information was “leaked” to the press during the process

5.1 Any period of uncertainty associated with the early retirement of a chief executive is likely to pose significant risk for an organisation

An organisation’s chief executive will play a pivotal role in driving the achievement of strategy and performance delivery. When an individual leaves office, whether in the public or private sector, there is a period of uncertainty at the organisation. There can be a range of reactions - from staff members engaging in gossip to more serious impacts where projects pause, initiatives fail and momentum disappears. The organisation needs to be able to respond properly in order to minimise the risks to service delivery.

When the Chief Executive of Bridgend CBC agreed to retire early, the senior members and officers needed time to put appropriate plans into place. This should have included a communication plan so that members and staff were informed properly in a structured and considered way.

5.2 When the press report was published, the Council and Chief Executive had not agreed the terms of the departure, and either side could have changed their minds. It is possible that the press coverage put both parties in a position where they were compelled to reach an agreement.

The story appeared in the local newspaper within ten days of the Chief Executive agreeing with the Cabinet that he would be prepared to consider a package for early retirement. At that time, the Council and Chief Executive were still discussing the terms of his departure. It would have been very difficult for the Chief Executive to continue in post once his desire to leave was known by all staff members. There was a risk that this put unnecessary pressure on the Chief Executive and the Council to come to an agreement. Furthermore, as the likelihood of the Chief Executive’s departure was being reported in public, then were the outcome to have been different a scenario could have arisen whereby the Chief Executive may have had grounds for unfair dismissal.

5.3 We consider that releasing confidential information of this kind, and when the matter was still under internal discussion, was a breach of the Code of Conduct of members or officers.

Paragraph 5 (a) of the Model Code of Conduct for Members of County Borough Councils issued by the National Assembly for Wales in June 2001 states that members:

“must not disclose information given in confidence, without the express consent of a person authorised to give such consent, or unless required by law to do so;”

The Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001 states:

“certain information may be confidential or sensitive and therefore not appropriate for a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions”

In this case, the information that the Chief Executive was seeking to retire had been passed to a small group of senior members and officers in confidence, and it was clearly sensitive. We are not in a position to discover how this information was released to the press at that particular time or by whom it was released, but in our view it represented a breach of a relevant Code of Conduct.

Recommendation 5 – We recommend that the Authority reminds members and officers of the Codes of Conduct relevant to the handling of sensitive information and that training sessions are conducted across the Authority as appropriate.

The Authority should create clear links from its internal and external web-sites to the relevant codes of conduct for members and officers, and ensure these are updated upon introduction of new codes.

Authority Management Response:

The Monitoring Officer took a report to Council in May 2005 dealing specifically with this type of disclosure to the local press, in which both members and officers were provided with detailed advice on their respective positions in relation to breach of confidentiality. The action set out in the report, that distribution of confidential reports and minutes should be restricted, was put in place immediately. The issue of duty of confidence will be further emphasised in all future member training, particularly during the implementation period for the new Member Code of Conduct for Wales.

The current Code of Conduct for Members is on the BCBC website as part of the Constitution, but arrangements are being made to post the Code separately, in the “Elected Representatives” sector of the website. Links will then be set up from the Members’ pages, currently being developed, and from the Local Democracy pages. Further links will be created as the opportunity arises, for example in bulletins, providing information on the proposed new Code.

Officers are expressly bound to a duty of confidence in their terms and conditions, and also in the Code of Conduct for Employees. This Code is shortly to be reviewed and revised, when the duty of confidence and sanctions for breach will be strengthened.