

# **Protecting the Public Purse - Efficacy at Local Council level?**

## **Executive Summary**

The slogan of the Audit Commission is that their function is “protecting the public purse”

But how effective and factual is their claim at the lowest level of democracy i.e. parish and town councils?

This brief study looks at the way in which public funds are administered and what remedies the public has in the event that local councils misuse or misappropriate the funds they receive or pay scant regard for laid down processes.

Due to resource constraint, this review looked at a small number of parish and town councils in England and arrived at conclusions that supported the findings of a more extensive study into the local councils in Wales issued by the Wales Audit Office on 30<sup>th</sup> June 2009

No such study was found that had been issued by the Audit Commission of England.

The results of this study indicates that there are higher instances than expected of breaches of internal procedures, breaches of codes of ethics, failure to adhere to the law and the failure to manage or identify risk.

Controlling councillors tend to be able to pursue their own agendas due to the non-involvement of the majority of the public.

The degree of expertise of councillors was also found to be poor and their understanding of laid down procedures was limited. Many only pay lip-service to correct processes.

The public believes that the Audit Commission examines the accounts of the local council and audits its operational procedures ensuring that it complies with laid down principles, is properly governed and is transparent in its processes.

The results found that this belief is totally misguided and in actual fact the Audit Commission tends to wash its hands of local council control; leaving it to the responsibility of the council’s internal auditor. In many cases the internal auditor is unqualified.

It was surprising to find that the HMRC also fails to apply tax law to the same extent as it does in the private sector.

**This study identifies that there is little or no protection of the public purse**



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# **Protecting the Public Purse - Efficacy at Local Council level?**

## **1.0 About this study**

Following a number of criticisms and private grumbles from residents in various local authority areas on their way in which their local councils operate, the Governance & Compliance Organisation decided to undertake a brief study to examine the basis of these protests and to establish whether they are justified.

It is conceded at the outset that this study is simply an overview of the situation due to lack of resource, but nevertheless the consistency of the results indicates that there are fundamental problems in protecting public funds and their proper administration.

The findings were further supported by the observations recorded in the Wales Audit Office publication dated 30<sup>th</sup> June 2009 entitled “Community council: Good Governance – Good Practice”.

The review presented here is focused on the lowest level of democracy i.e. parish and smaller town councils.

In considering the lowest level of democracy, the review will briefly examine how well it interfaces with and is administered by the principal authorities.

Also considered is an outline of the levels of governance and financial management that is being operated in the smaller councils and an impression of just how much confidence the public can have in the council controls and how it manages their funds

It is important to record at the outset that the published information by larger town councils (such as Godalming, Malmesbury and Skegness) suggests that they are being administered efficiently and are audited effectively.

The study also sets out to assess what routes are available for the public to complain if they feel that their local body is failing to manage its public funds properly, has acted illegally, or has failed to act in the public’s interest.

In arriving at its conclusions, the study has held direct discussions with the Audit Commission, local auditors, electors and other bodies and has entered into a variety of correspondence.

## 2.0 Introduction

The Government and Opposition parties all affirm that they will decentralise control of commune matters and pass community control to local authorities.

As part of this decentralisation the political parties are saying that they would encourage district councils and principal authorities to enforce and develop democratic control to the local level by establishing and empowering parish and town councils.

In the White Paper “Communities in Control – Real People, Real Power” published by the Department for Communities and Local Government the influence of the public through their local councils was considered important.

But none of the politicians understand that you cannot impose local control. There have been too many examples of governments trying to force controls and procedures from the top down. Computerisation of various activities has shown that unless one builds from the bottom up that it will fail. Imposing standards, targets and requirements on people at the lowest level just will not work.

To implement change one has to start from the foundations; canvassing open opinion at each level and to implement change by consensus and agreement by those at “the coal face”.

One can safely assume that a considerable proportion of the public feel that district councils and principal authorities already have too much control and seem increasingly to dictate how people will live or work within their areas. Reports in the national and local press supports and compounds this growing attitude.

In spite of the fact that the public resort to complaining about ever increasing restrictions that are placed upon them they take little interest in the day-to-day running of the locality. The public invariably feels that it has little control over what is happening, as councils appear to take no notice of their views or wishes. This engenders widespread apathy amongst the electorate. Councillors and local authority employees are then left to carry out their own agendas.

This resigned approach to local control by the electorate manifests itself in a lack of attendance at parish, town and district council meetings.

The result is that it is not uncommon for councillors to be re-elected by habit at the end of their term of office or to be returned unopposed.

Politicians will argue that elections are at the heart of democracy and that people should exercise their franchise.

In fact there is clear evidence that the public is continuing to lose its trust in elected people or bodies. Many feel that a councillor who holds office for 4 years will not interface with the whole electorate until the next elections and no matter what level of complaints are made no change will be effected.

There is a feeling in local communities that even if a principal authority councillor tries to make the case for the people they represent, in order to be seen to be representing the public

view they may be outvoted by covert arrangements with other councillors in order for the council to follow its own plans.

Due to the perceived lack of control or influence of their parish or town council over the district council, residents conclude that their local council is purely left to recommend or suggest to the local authority the views of the neighbourhood, that invariably are ignored.

However property and building development is one subject that local residents will take interest in.

Many papers and codes of practice have been published by the apparent ever increasing number of non-elected bodies that covers controls and standards of conduct in local government. These set down standards for financial control, ethics, governance and risk management.

But how good are these codes of practice and to what extent are they followed?  
Who monitors and reports on these issues?

At the district level controls may be relatively good as the authorities pay considerable sums of public money for professional people and proper audits.

But how effective are these regulations at the parish and town council level? To what extent are procedural codes and financial management implemented? And just who cares if procedures and processes are not followed.

This report looks at just who examines and audits the controls in councils where budgets are small, and how effective these audits are.

It appears that many inhabitants in areas under the control of parish and town councils often fail to clearly understand that their local council is funded by a precept that is incorporated within their council tax, or how this precept is calculated.

Where residents are aware that it is funded from the council tax they assume that bodies such as the district council, the Audit Commission, the Local Government Ombudsman, the HM Revenue and Customs and even the police will control any variances from the laid down standards and proper adherence to the law.

**To understand the results of this survey it is necessary to restate in summary the major elements and functionality of how local democracy works at the lowest levels**

## 3.0 Structure of Local Democracy

### 3.1 Parish and Town Councils

It is necessary to understand in summary the role and structure of the Parish or Town Council, its powers, and its limitations.

Parish & Town Councils (referred to as P&TCs) are elected bodies for a parish or town with perhaps between 7 or 15 elected people to act as councillors. Councillors are required to live within the area or within 2 or 3 miles of the parish or town. They may have little or no experience of serving on a council.

In some cases district councillors will also sit on the parish or town council as an elected representative on both.

The P&TCs precept included in the district council or principal authority tax in many cases may amount to less than £15,000.

Due to the higher number of residents or trader tax payers in town councils the amount received is considerably larger.

The calculation of the level of precept arises from a budget set by the parish or town council that reflects the wishes of the residents.

For special projects grants may be obtained from the local authority and /or from the county council.

The Commission for Rural Communities published guidance notes in April 2009, in which it sets out possible areas by which principal authorities can empower the P&TCs.

The authority to delegate is found in the Local Authorities Regulations 2000 and section 101 of the Local Government Act 1972 that sets out what functions can be deputised.

Functions typically delegated to a **parish** may just be the control of playgrounds, allotments, maintenance of churchyards, the provision of bus shelters and additional street lighting and waste bins.

The parish council is then consulted on issues such as planning applications and has the power to ask for specific road maintenance, footpath maintenance and can canvass transport companies for improved bus services etc.

**Town councils** being larger may be authorised to control other services that could include control of markets, street cleaning, provision of public conveniences and the issue of bus and rail passes, public notice boards and many others.

During the operation of these functions the parish or town council will use its resources raised from its precept to enhance public services and improve their local environment.

### 3.2 Delegation of Authority

Delegation by authority to a P&TC requires these lower level councils to make a formal application to the principal authority in the form of a clear business plan. The plan must include the capacity and the procedures for administering the responsibility requested, monitoring its performance and the skills available to undertake the function.

By its very nature the handling of public funds requires councils to have proper financial control, laid down processes and internal regulations, and methods of identifying risk.

To achieve control, it is recommended that councils retain the services of a clerk who is normally required to act as the Responsible Financial Officer (RFO). The clerk also takes control of the administration. An important function of the clerk includes giving legal advice to the council and ensures that the council follows its internal procedures, complies with the law and that the several deadlines required by the Audit Commission are achieved.

The council is also required to appoint an independent and competent person to act as an internal auditor, to verify that the council has proper control of the funds, has applied them legally and has adhered to the procedures and completed a proper assessment of risk.

A council must hold a minimum of 4 public meetings per year one of which must be an Annual Meeting at which it presents the annual return (and its accounts) duly signed off by the internal auditor. This enables the council to discuss the past year's activities with the residents and consult on the plans for the ensuing year..

Prior to this meeting the accounts and annual return are required to be laid open for 20 days during which time the public may examine the content of the documents. If there are entries with which any member of the public objects or requires further information they have the ability to raise questions

If the resident is unhappy with the reply they may refer the matter to the District Auditor to investigate, by completing a "Notice of Objection" that requires the District Auditor to consider the complaint and ask for clarification if it is felt that further information is required.

Having answered residents question about the Annual Return it is submitted to the District Auditor who has been appointed by the Audit Commission. After satisfying himself/herself of its accuracy and completeness they will sign off the accounts and return.

### 3.3 The Parish or Town Councillor

Councillors are elected for a nominal period of 4 years. Councillors must live within the area of the parish or town or have a business address in the area. They must be 21 years of age or older and must seek to serve their local community.

Very often Councillors have no specific management or financial experience and must rely on the clerk to steer them through the myriad of increasing legislation.

Parish and Town councillors are unpaid.



In taking up their appointment the councillor must sign an agreement to abide by the code of conduct that includes:-

- Attend meetings when advised. A councillor must attend at least one meeting every 6 months to avoid being disqualified as a councillor.
- Acquaint themselves with the subjects on the agenda and to form opinions on the issues. Where a majority decision is to be followed that differs from the councillor's preferred course action the councillor must abide by the majority decision and do their utmost to see that the resolution is carried out.
- Ensure that the council is properly managed and that public money and council assets are properly recorded and managed. The council will have published Standing Orders that establish the internal procedures and processes of the council operation that must be followed.
- Listen to the whole electorate and to pay due attention to their wishes.
- Maintain proper standards of conduct by which the councillor undertakes to operate transparently and to never use their position to secure personal gains for themselves family or friends.
- A councillor has a legal obligation to declare prejudicial interests. There is a legal obligation to formally disclose employer's details, property and landholdings within the parish or town and their business interests. This disclosure will be sent to the Monitoring Officer at the Principal Authority.
- Not to use the council resources for any party political purposes and not to disclose information that is confidential. Today very little of the council's actions are confidential and usually only refers to the details of contracts of employees.

Councillors are required to understand what the council is trying to achieve and must keep this at the front of their minds at all times. This will entail continual and comprehensive input from the electorate to ensure that the council reflects their changing views.

Just being elected at a given time does not automatically mean that the wishes of the public at that time will continue for the whole of the councillor's 4 year term of office.

### 3.4 The Clerk

As stated above the clerk is normally appointed the RFO but this is not essential. A councillor who has expertise in financial matters or where he/she agrees to take on the role of RFO still means that the day-to-day financial matters that includes placing of purchase orders, bank reconciliations, and raising of cheques continues to be undertaken by the clerk

In order to assist the clerk in ensuring that the council adheres to the law and to laid down external procedures and internal standing orders the clerk may be provided with study facilities to become a member of the Society of Local Council Clerks (SLCC) if they are not already a member.

To further support the requirements of the work content of the clerk, the council normally belongs to their local branch of the National Association of Local Councils (NALC) where advice and information is readily available.



The clerk is also responsible for managing any staff, dealing with all correspondence, calling meetings, producing agendas in conjunction with the chairman and councillors, and the taking of minutes and their production.

As an office holder the clerk is legally an employee and is normally remunerated at rates laid down in the National Agreement on Salaries and Conditions of Service of Local Council Clerks in England and Wales. The agreement is made between the NALC and SLCC and is referred to as “Spinal Column Rates”

Under this agreement the job of the clerk in each council is initially assessed by the council using a points scale covering each element of the post:

- Experience and expertise
- Qualification
- Whether the clerk is the RFO
- Whether the council has achieved increased functions as a Quality council status or a Best Value
- The extent of functions devolved from the principal authority
- Staffing levels.

Other factors can be considered in assessing the points scored.

The total number of points sets out the agreed annual salary range for each post.

Salaries are normally paid pro-rata to the hours agreed within the contract of employment. Annual increments may be awarded with increasing experience. Any change to the remuneration requires the council to complete a proper job assessment.

Whether the RFO is or is not the clerk he/she will continue to work closely with the internal auditor

### **3.5 Appointment of the Internal Auditor**

In an open meeting the P&TC has a legal duty to appointment an individual or company that has been identified as having the right expertise and/or qualifications to undertake an annual audit of the council.

The person so appointed is called the internal auditor and is paid for their work.

The internal auditor does not have to be a qualified accountant.

However the internal auditor is required to verify that the council has:-

- Maintained proper records of accounts and has not misused public funds. In undertaking this it is confirmed that purchase and sales were supported by invoices properly approved. Bank accounts have been reconciled and all expenses properly recorded.
- Produced statements in accordance with Audit Regulations and the standards as laid down by the Chartered Institute of Public Finance and Accountancy (CIPFA)

- Only done what it has the legal power to do and has conformed to standing orders and all regulations.
- Complied with the law in every respect and that there are no contingent liabilities. This includes confirmation that the council has applied PAYE and NIC payments properly and has established contracts of employment.
- Laid the accounts open to the public for inspection
- Carried out a proper assessment of risks and has taken steps to manage these risks
- Ensured that procedures and controls have been followed and that during the internal audit the effectiveness of the procedures has been reviewed.
- Implemented all actions required by the Audit Commission's externally appointed auditor
- Confirmed that there could be no impending litigation, or liabilities or commitments that could arise during the year or after the year-end. This requires the council to disclose everything it should.
- That proper asset and investment registers have been maintained
- Established a precept through proper budgetary control
- That where there are charitable funds that the council has met its responsibilities under the trust deed

The resulting approved annual return confirming that all statement's are correct, is signed off by the council chairman, clerk, RFO, and internal auditor. The completed form is submitted to the Audit Commissions appointed auditors.

### 3.6 The Audit Commission and External Auditor.

**The Audit Commission** was established on 21 January 1983 under the Local Government Finance Act 1982 to take effect from the 1st April 1983.

Since that time the commission has grown and in 1990 was re-banded The Audit Commission for Local Authorities and National Health Service when it's scope was extended to include the NHS in addition to its existing role of auditing local authorities, police, fire and rescue, housing associations, central government and other publicly controlled organisations.

The commission answers to the Office of the Deputy Prime Minister.

The purpose of the Audit Commission is claimed to "Protect the Public Purse"

With such a vast role that requires the examination of some £200 billion the Commission is not able to undertake all audits with its 2500 employees. In consequence due to cost effectiveness the Commission appoints suitable independent people or firms to carry out audits on its behalf in local government.

These individuals or firms so appointed are defined as the **External Auditors**.

On being appointed an External Auditor is required to sign to confirm their agreement to a code of practice laid down by the Audit Commission and to undertake audits in accordance with this code to ensure that proper controls and accounting standards are maintained. The Audit Commission code sets out its strategic objectives to ensure that local authorities

maintain sound financial management, good governance, and accountably in order to drive towards improving systems and giving better value-for-money.

The code includes confirmation that the organisation has;

- focused on the aims of its citizens
- Performed clearly in defined functions and roles
- Has promoted good governance through its behaviour
- Been engaged in developing the capacity and capabilities of the body
- Taken informed and transparent decisions and has managed risk
- Engaged with stakeholders and has made itself accountable for its actions

The Audit Commission demands that public bodies operate ethically, selflessly, honestly, and with complete integrity.

Thereafter the external auditor is left to undertake its work with no interference from the Commission.

At the beginning of each year the external auditor agrees a fee level for undertaking the council's normal work of signing off the annual return at rates laid down by the Audit Commission

An important factor for the external auditor is to make sure that the annual return is completed on time.

Any special investigations or studies beyond its normal clearance work are charged back to the council.

## 4.0 Results of the Study

The way in which councils operate was found to be unsatisfactory in many cases.

### 4.1 Expertise of Councillors:

The lack of skills of the elected councillors was clear. Often councillors felt that they had gained their election for some purpose and it appeared that they saw this as a license to do what they wanted for the next 4 year period and that they were free to operate in any way that they wished.

Transparency was not a criterion

In several cases councillors said that they had been elected and that how they worked was not to be questioned by the public (usually little examination is made due to total public apathy) and that any small number of residents that asked questions or made observations were to be ignored

The election or re-election of councillors was all too often completed by the electorate on the basis of habit or politics rather than an examination of the policies that the candidates wished to pursue. Generally turnouts were low as the electorate feels that they have no influence on the parish or town council and that the councils themselves have little or no effectiveness at the district council or the principal authority level.

The study found that in several instances councillors did not even have a copy of the standing orders and were not alert to the procedures that they were to follow.

#### **A typical example of this was the recruitment or appointment and remuneration of the clerk.**

Chairmen of councils seem to believe that they have total control and as “Chief Executive” can do anything they like with no authority or discussion with the councillors – sometimes failing to even divulge what they have done until some time later.

Those standing orders examined during the study showed that councillors were required to advertise the post of clerk. Councillors were debarred from canvassing their own contacts or friends and that the council must make real efforts to advertise the vacancy. Councillors consistently say that when they advertise they get almost no applicants.

In one example the residents of one local council in the New Forest only learned of the retirement of a long serving clerk and the appointment of a replacement from the local newspaper.

During investigation more than one resident said that they would have liked to apply for the post but were unaware of the vacancy. Gossip in the locality indicated that the new clerk was being paid at the pro rata rate of £70,000 per annum.

In other cases clerks had been brought in ostensibly as a temporary incumbent with no resolution or discussion in the council. After a short time and with little or no advertising the vacancy the temporary clerks were appointed to the posts.

Remuneration levels were privately and arbitrarily decided by the chairman and later endorsed by the majority of the council. There appeared to be little or no effort to remunerate in accordance with Spinal Column rates.

## 4.2 Remuneration of the Clerk

Several councils employed clerks who worked in other councils or who worked in the council on a part-time capacity having other employment.

In these circumstances it was not uncommon for the clerk to be paid against an invoice with no deductions of PAYE or NIC. Councillors were unaware of the fact that clerks CANNOT be self-employed but are legally employees. Simple tax law procedures were unknown that requires that a clerk should either complete form a P46 or be taxed at Base Rate.

In one council, councillors said that as the clerk worked for other organisations they must be self-employed.

The regulation that controls the employment of the clerk is embodied in case law and Lords decisions as stated by the HMRC compliance officers.

In the case of Rowlatt J in *Great Western Railway Company v Bater* 8TC231 it was judicially defined that the word “office” meant “a permanent, substantive position which had an existence independent from the person that filled it, which went on and was filled in succession by successive holders”

This was slightly modified by Buckley J in the case of *Edwards v Clinch* 56TC367 and was redefined as a post that need not be permanent but it must have an endurance beyond the tenure of one man

When this reached the House of Lords, Lord Wilberforce said “...it must denote a post to which a person can be appointed which he can vacate and to which a successor can be appointed”

This is interpreted by the Revenue that there is legal authority for a council to appoint a Clerk and therefore create an “office holder” as contained in Section 112(1) Part V11 of the Local Government Act 1972, which states “a local authority shall appoint such officers as they think necessary for the proper discharge by the authority...”

Section 112 (2) states that “an officer appointed under subsection (1) shall hold office on such reasonable terms and conditions including conditions of remuneration as the authority appointing him think fit”

So whether the person is permanent or temporary they are an office holder and subject to PAYE.

Even when this information was brought to the notice of some chairmen of parish and town councils it was invariably ignored leaving the council with a PAYE and NIC liability.

Where a council finally disclosed to the HMRC that it had a liability to pay and made the remittance, the effect is that the councils pay the sum twice – once to the clerk and once to the HMRC. In cases where councils have declared the liability and have belatedly paid the unpaid tax and NIC they have also been fined by the Revenue.

In other cases the councils had simply not disclosed their liabilities.

The clerks too are not always honest and state that they are asking for direction from the local Association for Local Councils. In many cases this is untrue as the websites of the local associations invariably make it clear that clerks have to be employed under PAYE. In addition councils must establish a Contract of Employment.

The only dispensation from the HMRC is where the remuneration of the clerk is below £1000 per annum. In such cases PAYE may be ignored

#### **4.3 Establishment of Fixed Assets Records.**

As stated earlier councils are required to produce a list of assets and to manage them properly.

However some councils do not make proper lists and councillors do not understand what constitutes assets. They have no idea what must be listed or what items are to be ignored. The concept of revenue accounts and balance sheets was outside councillors' comprehension.

In some cases the councillors say that there are no assets as they have been fully depreciated and therefore written off the balance sheet.

This lack of records is not the correct handling of public property and is contrary to CIPFA standards.

In one case the study found that the chairman of one council with no authority or council discussion actually instructed Estate Agents to sell the freehold council offices. The council subsequently approved the action in retrospect by a majority of one vote.

Many months later councillors discovered that the chairman had leased the building for several thousand pounds less than the quoted sales price and was proposing to transfer the freehold to the subtenant in the premises free of charge or for a "peppercorn"

Following the sale of the lease the freehold value of the property disappeared from the balance sheet.

In addition other assets such as office furniture and equipment also disappeared from the balance sheet. As stated by one councillor this was because the assets had been fully depreciated and therefore their total value had been removed from the balance sheet.

In both these cases the accounts were not prepared in accordance with the standards as laid down by the Statement of Recommended Practice (SORP) issued by CIPFA even though the report of the internal auditors stated that they were.

In a meeting with the Audit Commission it was stated that small councils did not have to conform to normal accounting standards and very often did not maintain any proper books of account and purely used a receipts and payments system for reporting and controlling council assets.

#### **4.4 Misuse or Misapplication of Public Funds**

Arising out of the insular attitude of councillors, public questions about the manner in which public funds are administered is seen to be outside interference and harassment of councillors.

In many cases the detailed financial situation is hidden from the public and only disclosed at the year end. Residents attending council meetings will hear what the bank balances are and little more.

Although this is contrary to national codes of practice, some council contracts are awarded with no discussion at council meetings.

Depending on standing orders which may say that contracts of less than £300 or so do not require three competitive quotes, the best that the few people attending a meeting will hear is that Company A has been awarded the business.

Alternatively the public will hear that the work had already been completed by a person who clearly was not self-employed

Invitations to tender were virtually non-existent.

## 5.0 Remedies available to the Public

The study looked at what routes were available to the public to complain about the misuse of funds by its council, breaches of codes of conduct and failures to maintain proper governance.

In theory there are a plethora of courses accessible.

### 5.1 Complain to the Council

Where a resident feels that a council has misapplied funds, failed to record financial figures, has failed to be open about the awards of contracts or to comply with the law, or has contravened laid down procedures, the initial route is for the public to make representation to the council via the clerk or direct to the chairman

This would seem to be the most useful and easiest.

But as stated above due to the fact that the bulk of the electorate do not attend meetings or are apathetic about the councils activities, this course of action is invariable futile

Councillors may just simply ignore the complaint

In the instance that a single councillor has committed a deed or made a remark that is contrary to "The Good Councillors Guide" "a member of the public may complain directly to the chairman or to the council as a whole via the clerk.

If the complaint is valid the chairman has the power to suspend that councillor for a period of time (say 2 meetings)

In the absence of any action by the chairman the member of public may complain to the Standards Board now renamed Standards for England

### 5.2 The Standards for England

The Board has been set up to improve ethical behaviour of people engaged in public life.

This will cover not just parish and town councillors, but will also encompass the principal authority, members of the police, fire services, national park authorities and passenger transport companies.

In order to advance their objectives the Board will work with local authorities providing support and advice in instances where it is felt that public servants have done or said something that is inappropriate. The authorities are left to investigate matters for themselves.

The Standards for England was set up under an Act of Parliament and in 2008 an amendment to its procedures resulted in the board not now investigating complaints itself but provides guidance to the local authority to undertake an investigation.



In consequence local authorities have established their own standards committees in an effort to raise standards on a more local basis by dealing with complaints more quickly with the benefit of local knowledge.

However the Board has retained the right to suspend a local standards committee if it feels that it is not operating properly. In such cases the Board can examine the issues itself or can instruct another authority's standards committee to investigate.

The Board will also take serious cases where the local authority refers it to them.

If a member of the public has suffered or believes they have suffered unsuitable behaviour they must write to the standards committee of the local authority in the first instance.

### **5.3 Complain to the Audit Commission's External Auditor**

If a member of the public or a group of residents are dissatisfied with issues that extend beyond ethics they may complain to the external auditor.

This may cover such things as breaches of standing orders, incorrect or failure to record financial transactions, failure to adhere to the law or to manage risk or provide effective governance or transparency.

The resident may bring this to the notice of the external auditor at any time.

When the auditor feels that the matter is sufficiently important he/she may simply write to the town or parish council bringing to its notice the requirements that it is failing to meet.

If the auditor is dissatisfied with the response he/she may implement a specific examination and produce a report (Flixborough parish council August 2005).

Alternatively the auditor may decide that the issues should be dealt with by the residents themselves and will advise them that before the annual accounts and return is submitted to the Audit Commission they are laid open for 20 days for inspection by the public.

At that time the resident may complete a "Notice of Objection"

In completing this form the complainant must state whether this matter has been raised with any other agency that includes:

- The police
- The Standards Board
- The council
- Ombudsman
- Local councillor

The complainant also has to specify what it is that they would like to auditor to do.

## 5.4 Ombudsman

The Ombudsman service is set up by central government to effectively arbitrate between a complainant and the parish or town council.

Before the Ombudsman's service will take a complaint the person must have made a formal complaint to the council and has been dissatisfied with the response or the lack of response.

Areas that the Ombudsman service will examine are limited to:

- Housing
- Planning
- Education
- Social care
- Housing benefit
- Council tax
- Transport and highways
- Environment and waste
- Neighbour nuisance and antisocial behaviour

If the council is found to have done something wrong, the Ombudsman service will talk to the council and will ask that the council to take action to put it right.

The Ombudsman has no legal power to force councils to follow their recommendations, but councils usually do.

Some of the things the ombudsman might ask a council to do are:

- apologise
- pay compensation
- do repairs to a council house
- take action or make a decision that it should have done before
- reconsider a decision that it did not take properly in the first place
- improve its procedures so that similar problems do not happen again to anyone else
- consider taking enforcement action against an unauthorised building close to a complainants home or against the unauthorised use of a building,
- hold a school admission appeal hearing for a child

It is noticeable the Ombudsman does not investigate financial irregularities in the recording of council transactions.

## 5.5 The District Councillor

The resident may make a complaint to the local district councillor asking them to investigate the issues.

The effectiveness of this depends on whether as in many cases the councillor also sits on the town or parish council as well as the principal authority.

Where the parish or town council is split on a political basis that may be the same as the councillor little will be achieved.

The chairman of the local council that wishes to ignore a complaint may simply say to the district councillor that the person making the complaint does so on political grounds or is just a troublemaker to be ignored.

Alternatively where the parish or town council is controlled by one group of people any complaint from the district councillor of another group may also be ignored

Members of the public interviewed said that the route through the district councillor to solve a local council problem was invariably not successful.

## **5.6 The Police**

Where an elector feels that there has been some breach of criminal law they may make a complaint to the police.

This will normally cover suspicion of fraud or corruption or intimidating behaviour likely to cause a breach of the peace.

It is for the police to decide whether the complaint is sufficiently important to be investigated and they may simply seek the opinion of the chairman of the council.

## **5.7 The Media**

Many electors feel that they would like to put their complaint in the public domain and make contact with the local press.

If the publication feels that the issues are of such public interest it may make its own investigations before publishing any material. They particularly like to avoid any dispute over the handling of public funds but may accept a complaint as a readers letter.

## **5.8 The HM Revenue & Customs**

- A member of the public may feel that the council has breached income tax regulations and can refer the matter to the HMRC local tax office or the compliance officer's department.

The Compliance Officer will copy the local Inspectors office when providing a decision.

- P&TCs are not registered for VAT but under a HMRC dispensation they may recover all input VAT paid on their purchases.

In circumstances where a council has wrongly handled the recovery of VAT the HMRC may be advised and it is then left to the local inspector's office to investigate the complaint

## **5.9 The Principal Authority**

It is often forgotten that P&TCs exist largely on delegated authority from the principal authority.

Where a person wishes to make a complaint they may do so to the Monitoring Officer of the local authority asking for intervention

## **5.10 Member of Parliament**

The final route available to a resident to complain if they feel that the council has failed to carry out what it should have done or has done things that it should not have done, is to refer matters to the Member of Parliament for the constituency.

The MP has no jurisdiction but may just ask the local principal authority to investigate.

## 6.0 The Efficacy of Complainant Routes

The number of routes available to the electorate to complain if they suspect fraud, corruption, theft, breaches of procedure, tax evasion, illegal activities, non-disclosure of prejudicial interests and any other non-ethical activities by individual councillors or council are extensive.

But how effective are they and with so many how do they interface?

Just how much influence does the P&TCs have on their District Council or principal authority?

The first place with any complaint is to go to the place where the problem has arisen i.e. the council itself.

### 6.1 Complaints to the council

In theory this route should solve all of the objections, bearing in mind that councillors have a duty to ensure that the council operates to internal and external standards and to comply with the law.

The complaint should be in writing via the clerk.

In reality unless the grievance is against one particular councillor the experience of the public is that this is a futile route.

As stated earlier, council chairman and other councillors often feel that any questions or complaints tend at best to be from an individual or a small number of electorate and they will do little to resolve the problem.

In one case repetitive complaints to the clerk and chairman about breaches of tax law and contravention in procedure were totally ignored. Councillors claimed that they were being victimised, harassed and bullied.

In other cases protests were simply ignored.

Where councils were divided on a political basis the majority party that had control claimed that the motive was political.

Councils simply applied public funds in any way they liked safe in the knowledge that the local press would not report financial matters.

In one case expensive items were bought with no intention for the council to use the item, Having made the purchase the item was donated to a local private club after the VAT had been recovered by the council

In other cases where the electorate had objected to a planning application and looked to the council to support their views the council did not always use its best efforts on behalf of the residents. As the percentage of the total electorate that did object was small the councils took the view that they were empowered to do as they wished.

Parish or town council objections to a development might appear to be genuine but residents often believe that the objections were left until the last date for filing and a very weak case was presented.

It is acknowledged that planning is a most emotive subject.

## **6.2 Complain to the District Councillor or to the Principal Authority.**

This was reported to be far from satisfactory by the public.

Where the councillor was also a member of the parish or town council the complaint was pointless.

If the district councillor was of the same political party again little support was forthcoming.

In other cases the district councillor had simply referred matters to officers of the district council or principal authority and left them to answer.

The experience of the public was that this was an unsuccessful path.

Their experience was coupled with direct complaints to the principal authority monitoring officer that had also proven to be unsuccessful.

It seemed to many that the principal authority did not take due notice of the parish or town council and considered that it was just a nuisance.

Conversely it looked as if it also suited officers in the authority to use the parish or town council as a buffer and an excuse to do nothing. Residents were advised to raise the issue with the local council

At best the monitoring officer would contact the resident informing them that they had contacted the council.

## **6.3 Complain to the Member of Parliament**

Whilst the MP may have shown sympathy with the elector there is little that they can do on their behalf.

Where the principal authority was of the same political persuasion there was little success.

## **6.4 Contact the Standards Board.**

As stated above the Standards Board will only advise the district council or principal authority on how to handle the enquiry.

There is no opportunity for the member of the public to appeal against the decision of the district council's standards committee which very often is guided by the councils monitoring officer.

Whilst in the past a central Standards Board did offer the opportunity of a successful hearing, after the changes there is now little hope.

But at no time will the Standards Board investigate financial matters.

As an example a complaint that a parish councillor was bankrupt or had been bankrupt was ignored by the Standards Board

## **6.5 Complain to the Local Government Ombudsman**

As stated above the Ombudsman will not enquire into financial matters.

In the Audit Commission publication "Councils' accounts – Your rights: England" on page 1 it states "If you think that your council has done something wrong and you are not satisfied with how the council has dealt with your complaint, you should contact the Local Government Ombudsman"

On Page 2 the publication says" The Ombudsman cannot deal with complaints about local councils"

A footnote says "Local Councils includes parish, town councils, joint committees of these organisations and parish meetings"

Complaining to the Local Government Ombudsman is not open to the public.

## **6.6 Contact the police**

Where a resident feels that funds are being misappropriated or there is a suspicion of fraud complaints to the police have proven to be unsuccessful.

At best the police will contact the council chairman.

The experience of residents in more than one area is that the police would take no notice and would not assume responsibility for any action unless asked to do so by the Audit Commission.

In one case where this arose, the residents referred the matter to the District Auditor who said that there was no need for the external auditor become involved as they had already been put on notice

In consequence nothing happened.

In this case residents intercepted correspondence sent by the police to councillors in the principal authority that could imply that the police were only working at the behest of councillors.

## **6.7 Contact the HMRC**

In cases where contact had been made with the Revenue regarding the lack of operation of PAYE on payments to the clerk there was no reaction from the HMRC leaving the parish or town council with the undeclared tax liability.

Providing that the council remained silent no action was taken by the Revenue.

In the case of the improper recovery of VAT, again the council was left with a tax liability that was ignored by the internal auditor.

But again the VAT office took no action.

## **6.8 Contact the Internal Auditor**

In none of the cases examined was this even attempted. Contact between the internal auditor and the council was purely through the RFO

In one case a member of the public checked that a qualified accountant who was a member of the Institute of Chartered Accountants in England & Wales (ICAEW) had completed the accounts and said during a telephone call that he had signed off the accounts

The accounts for the town council were flawed as they contained no records of assets, no proper assessment of risks, breaches of internal procedures and the lack of operation of PAYE

The accountant was a consultant but acted as a shadow director of the internal auditor's limited liability company and had signed of the accounts as compliant with all matters.

Subsequently the issue was referred to the Professional Conduct Department of the ICAEW who stated that neither the company CEO nor the company "... Are members of this institute, consequently we are not in a position to consider your complaint"

"Your contention that employees or associates of XXXXXXXX Ltd who are Institute members might be involved in the work is not sufficient for the Institute to take disciplinary interest as they are not named the responsible individual for the work to be done....."

The ICAEW recommendation was to refer the matters to the Audit Commission.



## 6.9 The Audit Commission

According to the Audit Commission procedures, where a member of the public has an issue with the accounts, they may make a complaint whilst the accounts are laid open for 20 days prior to the submission of the annual return to the External Auditor.

In parish and small town councils the means of advising the public that the accounts are laid open is often by posting a notice on the village or town notice board, the C of E church porch, the village pub, or shop.

It was raised with the Audit Commission that other religions would not visit the church or even the pub.

The village notice board was often located at the village or town hall where children's nurseries were being run. In today's world people felt guilty about standing reading public notices outside a children's nursery.

This solely left the local shop which may not be open when the public are around.

The Audit Commission said that this was most unfortunate but the public had 20 days to object to the accounts.

Where the electors did object and completed a "Notice of objection" question 9 asks:-  
"Have you raised this issue with any other agency?"

- The police
- Standards Board
- The council
- Ombudsman
- Local councillor
- Other

From the forgoing it has been established that:

- the Standards Board, and Ombudsman have no authority
- That the Local councillor and council itself is pointless
- and that the police will only react if requested by the Audit Commission

The Audit Commission publication "Councils' accounts: Your rights: England" says that the public can refer a matter(s) to the external auditor at any time. However if the member of the public does not complete the objection form during the 20 days inspection they lose the right to complain.

Whether the external auditor has been informed before the open inspection of accounts by the public during the 20 day period or during this period by the submission of a "notice of objection" it is up to the external auditor to decide what he/she thinks is important.

Page 5 of the Audit Commission publication states that an elector has the right to receive copies of the accounts. If the council does not provide them “the auditor is not able to get involved on your behalf”

Referring to the right to notify the external auditor at any time page 5 of the publication states “the auditor does not have to say, at this stage, whether they think something the council has done or an item in the accounts is unlawful”

Indeed during an interview with the Audit Commission it was stated that the external auditor is not required to establish that the council has adhered to the law beyond the internal auditors report.

In response to the question about councils failing to operate PAYE the Audit Commission executive said that it was possible that the internal auditor did not know that PAYE should be operated and perhaps even the external auditor was unqualified and did not know.

The Audit Commission publication (page 6) says that when the external auditor decides to take no action the public’s only recourse is to appeal to the Court.

This situation was confirmed during the meeting with the Audit Commission. In instances where the external auditor decides to ignore the issues the Audit Commission has no power to interfere.

It was put to the Audit Commission executive that it was a surprise to electors that where complaints have been made about the misuse or misapplication of public funds, the external auditor charges the council for simply writing letters or any other work undertaken.

Thus the public pays for the Audit Commission yet again out of their precept

Misuse of funds costs the public money and to complain also costs the public money!

It seems that there is no protection of public funds!

During the interview with the Audit Commission it was said that if the external auditor decided that a report is required this could cost as much as £20,000 again to be paid by the parish or town council out of its precept.

Where the public felt aggrieved it was stated that they could only refer matters to the Court and would have to meet the costs themselves.

However the Audit Commission publication (page 13) states “An auditor and a Court cannot question a council’s policy decisions unless these are unlawful”

In response to the concern that councils do not adhere to laid down procedures the Audit Commission said that this was unimportant and was not a major issue to the external auditor.

Page 9 of the publication adds “Once the auditor has completed the audit, you will no longer be able to ask questions or object to the accounts for that year”

The result is that the opportunity to protect public funds is limited in the extreme

In the case of a parish council where the precept amounted to £12,000, the council failed to operate PAYE and paid the clerk gross. Subsequently they paid the HMRC the un-deducted PAYE and NIC meaning that they had paid the debt twice that amounted to some £1000. In addition they were fined by the HMRC.

Complaints to the external auditor who chose to do nothing submitted a fee note for a further £800 for correspondence

Thus 16% of the precept for that year was spent improperly.

Residents had no redress.

## 7.0 Conclusion

From the study it became clear that the systems for the protection of public funds were ineffective.

It was most surprising to find that the HMRC showed no interest in ensuring that parish and town councils adhered to taxation law.

To make an assessment of the value of tax not collected it was surprising to find that no-one seemed to know exactly how many councils there are in England and Wales.

The NALC states in its publication "What is a parish or town council" that "there are around 10,000 community, parish and town councils in England and Wales...."

DEFRA have estimated that there are approximately 8,700 parish and town councils whilst the Office of National Statistics has identified 10,420.

Private research completed by Richard Kimber of Political Science Resources has indicated 9900 councils of which 8,092 were parish councils and 591 town councils. The remainder were parish committees that had no financial control

The Audit Commission's final accounts for 2009 state that the Commission is responsible for the audit of around 11,000 public bodies. By definition of its purpose this will include, NHS, police, Fire services another bodies in addition to principal and local authorities. Thus it seems that even they do not know how many types of council exist.

With uncertainty of how many P&TCs there are it is not surprising that there is little effective control

### 7.1 The HMRC

a) PAYE. A major area of financial management for P&TCs is stated as the operation of PAYE. Its failure results invariably results in undisclosed liabilities.

Assuming that there are 10,000 parish and town councils in England and Wales and that the average pay to a clerk is £6,000 per year the total expense from public funds is £60 million per year.

Assuming that only 50% of P&TCs operate PAYE then some £30m is paid as cash in hand.

Tax and employers NIC on this figure would be approximately £6m - £7m per annum

In addition some clerks were paid in excess of the Revenue 40p per mile for the use of their own car, and were even paid to travel from their homes to the council offices

Benefit returns of P11Ds or P9Ds were not completed

Whilst there is sympathy with the HMRC in identifying where councils exist due to only vague number of councils being declared it is not surprising that no efforts seem to be made to inspect P&TCs books. The HMRC did not even try to make direct contact with councils and many P&TCs had not even registered.

It was suggested to the Audit Commission that in the private sector great efforts are made by the Revenue to inspect the books in the SME sector. The reply was that it was not viable to inspect small P&TCs.

Confirmation of compliance was left to the internal auditor where it was repeated that perhaps they did not know under what laws clerks were employed.

It was also surprising to find that even when the HMRC was informed that PAYE was not being operated the HMRC ignored it.

b) VAT. Whilst VAT is not a big issue, evidence was found that VAT was being incorrectly recovered by some P&TCs.

In one case the VAT office had been informed 3 times that where one council was incorrectly recovering input tax they chose to ignore the recovery.

Output tax had also been charged on the disposal of assets what had been done with no invoices.

Again it was stated that this is down to the examination and confirmation of the internal auditor

Again in the private sector this would not be overlooked

## 7.2 The Audit Commission

Generally the public thinks that the Audit Commission is funded from government funds. It is not understood that the local community pays for the audit.

Under the Audit Commission's Standard Guidance notes to external auditors on the scope and approach to the audit of small bodies and councils with an income or expense of less than £200,000 per annum is that the audit is at a basic audit standard.

The evidence of this brief study suggests that very often the smaller councils audit is generally poorly done.

Assuming that of the 10,000 P&TCs where their income is on average £25,000 per year (small parish councils income £18,000 whilst town councils precept amounts to £160,000) equates to around £150 million to £200 million per year. This is a conservative estimate.

The report "Community councils; Good Governance – Good Practice" issued in June 2009 by the Wales Audit Office states that in Wales there 700 community councils with a combined expenditure of £35 million. Most community councils spend less than £50,000 per year.

According to the Audit Commission executive during an interview it was stated that the basic audit requires no formal accounts and is of limited assurance.

Any greater audit would not be financially viable.

Nevertheless to the public it would seem that this is of importance.

Poor audits create the opportunity for fraud

According to Paul Waugh Political Correspondent of the Independent in an article as long ago as December 1999 he reported that fraud of £108million had been identified in local authorities.

However this was purely the value that had been identified.

The report by the Wales Audit Office says that since 1<sup>st</sup> April 2005 auditors have identified over £100,000 of fraud. Again these are the identified frauds.

During the meeting with the Audit Commission the executive again admitted that checking of the procedures to avoid fraudulent practices or the misapplication of funds was for the internal auditor and not the external auditor. It was also not for the external auditor to ensure that councils were adhering to the law.

## 8.0 Final View

The plain simple conclusion of this study is that there is no effective audit or proper control of public finances at the lowest levels of democracy.

Procedures and the format of Standing Orders looks very impressive but it appears that where there are breaches no one is bothered.

Contraventions appear to be quite frequent.

The HMRC does not bother to operate in accordance with tax law systems and the Audit Commission makes a lot of noise but actually it is totally ineffective

The public can have no faith in what the Audit Commission does and residents have no effective route to protect public cash

From correspondence and conversation with the Audit Commission the most important factor that emerged was that all the “boxes are ticked” on the returns and that the forms are filed on time.

One could be forgiven in believing that the way in which the systems are set up is simply to ensure that problems are not found and that a quiet life ensues.

No-one really cares.

What was also surprising was that during the meeting with the Audit Commission executive he stated that he had been aware for a long time of a council where expenditure was much greater than it should have been as the clerk had misapplied the public funds. He said quite clearly that this was none of the Audit Commission’s business.

The findings discovered that the Audit Commission slogan “Protecting the Public Purse” is totally misleading and is ineffective.

## 9.0 Recommendations

Before any further devolvement of control is made by central government to principal authorities and the empowerment of local councils, a system of protecting public funds must be properly installed.

This would involve a proper study and the development of effective management systems beyond that continual ones that are supposed to operate.

For example during an earlier discussion with the District Auditor over totally different matters his written reply was that a senior executive at a district council was permitted to place a purchase order for up to £25,000 and sign off the invoice for payment with no discussion with anyone else.

This was considered a small purchase and was within the procedures.

The public is already sceptical of the control of finances by the Parliamentary parties but it would seem that the lack of control extends through the principal authorities to the local level.

A proper and effective study will also involve an examination of the operation of District Councils and Principal Authorities. All too often members of the public who could be valuable on standards committees are rejected whilst less experienced and less qualified people who are “friends” are appointed.

The establishment of lists of properly qualified independent residents who can be called upon by the public to act as arbiters in disputes with principal authorities, district councils and parish & town councils would be most useful. The creation and appointment to this panel should be outside the control of councils and should be set up by the Audit Commission.

With the increasing numbers of retired experienced people this resource should be utilised.

Internal auditors should also be made more accountable

If central government is determined to devolve controls to the local level it should seek ways to fund the Audit Commission by other means and should pass legislation to ensure that all councillors are also accountable for their actions. This should enable the Audit Commission to bring legal action against fraudulent councillors and not leave it for the public to motivate the police.

It was stated that if councillors were made more accountable then people would not stand as councillors.

It was noted from the published accounts for the year ended 31<sup>st</sup> March 2009 that the Audit Commission operates as a profit centre. It was delighted to report a surplus of £5.3 million (2.4% of turnover)

The Audit Commission executive stated that closer audits of local councils were not viable.

From the public point of view it is essential for proper democracy.





