

# Failures in Financial Reporting and Unlawful Decision Making – Abergele Joint Burial Board

Audit year: 2017-18 and 2018-19

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This report draws attention to inadequacies in governance arrangements, financial management and internal control at Abergele Joint Burial Board and a failure by its constituent councils, Abergele Town Council and Towyn and Kinmel Bay Town Council to establish proper scrutiny arrangements over the Burial Board. It contains written recommendations made under section 25 of the Public Audit (Wales) Act 2004.

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# Summary report

## Introduction

- 1 This report summarises the findings and conclusions arising from my audit of the Abergele Joint Burial Board for the 2016-17 to 2018-19 financial years. In the course of the audit, matters were brought to my attention indicating deficiencies in financial governance and decision making, particularly in relation to the loss of funding for a Community Voice project and issues related to the former Clerk's terms and conditions of employment. My report draws the Council's attention to these failures in financial governance and decision making.
- 2 Under section 22 of the Public Audit (Wales) Act 2004 (the 2004) Act, I must consider whether in the public interest I should make a report on any matter which comes to my notice in the course of my audit in order for it to be considered by Abergele Joint Burial Board (the Burial Board), Abergele Town Council and Towyn and Kinmel Bay Town Council (the Councils) or be brought to the attention of the public. I must also consider whether or not I should issue written recommendations under section 25 of the 2004 Act.
- 3 In considering whether or not to issue a report in the public interest or to issue statutory recommendations, I take into account the scale and impact of the issues I have identified and the action the Burial Board and the Councils have subsequently taken to improve arrangements and minimise the risk of such failures recurring.
- 4 In view of the actions already taken by the Burial Board and the Councils during 2020 and 2021 and the nature and overall impact of the issues I report on, I have decided not to issue a report in the public interest and that statutory recommendations will be sufficient.
- 5 Therefore, to assist the Burial Board and the Councils to avoid similar issues recurring in the future, and acting under delegated arrangements, I am making written recommendations under section 25 of the Public Audit (Wales) Act 2004 (the 2004 Act).

## Abergele Joint Burial Board

- 6 The Burial Board serves the two communities of Abergele and Towyn and Kinmel Bay, providing burial services on behalf of the two Councils. Its annual income and expenditure are variable due to the nature of the services provided. It funds these services from contributions provided by the Councils and from burial fees charged for services to the public. **Exhibit 1** provides an overview of the Burial Board's income and expenditure over recent years.

## Exhibit 1: receipts and payments

|  | 2015-16 | 2016-17 | 2017-18 <sup>1</sup> |
|--|---------|---------|----------------------|
| Opening balance                          | £74,963 | £77,433 | £82,949              |
| Levy from constituent councils (+)       | £7,250  | £4,311  | £0                   |
| Other receipts including burial fees (+) | £8,454  | £11,641 | £3,759               |
| Staff costs (-)                          | £4,130  | £0      | £0                   |
| Other payments (-)                       | £9,104  | £10,436 | £9,473               |
| Closing balances                         | £77,433 | £82,949 | £77,235              |

Source: Abergele Joint Burial Board annual accounts

- 7 The Committee derives its funding from the public purse, either from fees charged for burials or by levies on Abergele Town Council and Towyn and Kinmel Bay Town Council. The two town councils are themselves funded by precept from Conwy County Borough Council. The precept is funded from additional council tax charges to council tax payers in Abergele and Towyn and Kinmel Bay. The Committee is, therefore, accountable to the local electorate.
- 8 Small local government bodies, such as the Burial Board, normally rely on one key officer, the Clerk, to manage their administrative affairs. Ordinarily, the Clerk is also appointed in the capacity of Responsible Financial Officer (RFO). The RFO is responsible for administering the financial affairs of the Council on a day-to-day basis. In particular, this involves receiving and recording income, preparing cheque payments for signing by members, maintaining the accounting records and preparing the annual accounting statements.
- 9 The Burial Board's Clerk/RFO is Councillor Delyth McRae. Councillor McRae is a serving councillor of Abergele Town Council. Mrs McRae is referred to as the Clerk for the remainder of this document.
- 10 Notwithstanding the role of the Clerk/RFO, by law (the Accounts and Audit (Wales) Regulations 2014 (the 2014 Regulations)), the responsibility for the stewardship of the Burial Board funds, including ensuring that it has effective and efficient financial management, rests with the Burial Board (that is, the members). This includes such things as establishing an appropriate system of internal control, including internal audit, and approving the annual accounting statements prior to submission to the external auditor for examination.

<sup>1</sup> Accounts have not yet been provided for 2018-19 and 2019-20.

- 11 As a committee of two town councils, the town councils also have a significant role to play in the governance of the Burial Board. This report is therefore addressed to Abergele Town Council and Towyn and Kinmel Bay Town Council in addition to the Burial Board.

## **From mid-2016 the Burial Board has failed to ensure that its accounts are prepared and submitted for audit in accordance with statutory requirements**

### **The Burial Board is required by law to prepare its accounts each year, to have those accounts audited by the Auditor General for Wales and to make arrangements for public inspection of its accounts**

- 12 Section 13 of the Public Audit (Wales) Act 2004 (the 2004 Act) states that all local government bodies in Wales (including joint committees of community councils) must make up accounts to 31 March each year and must ensure that those accounts are audited by the Auditor General for Wales. The Burial Board must publish audited accounts by 30 September each year.
- 13 The 2004 Act also makes provision for local electors to inspect the accounts and to ask questions or make objections to the accounts to the Auditor General.

### **The Burial Board was referred to me due to delays in producing accounts for audit for 2015-16 and 2016-17**

- 14 My audit work on town and community councils focusses on an annual return completed by the councils and submitted to auditors working on my behalf. The annual return contains the annual accounting statements that the Council is required by law to prepare, and an annual governance statement which sets out how the council has managed its financial affairs.
- 15 My audit work is normally carried out by BDO, an accounting firm on my behalf. Delays in receiving the annual returns for 2016-17 and delays in receiving responses to audit queries arising from the 2015-16 audit, led BDO to refer the Burial Board to me in May 2018.
- 16 My audit work has identified significant non-compliance with audit requirements.

## Exhibit 2: submission of accounts

The Burial Board has failed to provide accounts for audit on a timely basis each year since 2015-16.

|                            | 2015-16    | 2016-17    | 2017-18    | 2018-19       | 2019-20       |
|----------------------------|------------|------------|------------|---------------|---------------|
| Certified by RFO           | 29.06.2016 | 30.07.2018 | 30.07.2018 | February 2020 | Not submitted |
| Approved by Burial Board   | 29.06.2016 | 30.07.2018 | 30.07.2018 | February 2020 | Not submitted |
| Audit status               | Incomplete | Incomplete | Incomplete | Incomplete    | Incomplete    |
| Required notices published | No         | No         | No         | No            | No            |

Source: Abergele Joint Burial Board annual returns and correspondence with BDO and Audit Wales

- 17 I have been provided with a copy of a letter from the Clerk addressed to BDO dated 30 July 2018 stating the 'I enclose Annual Governance Forms for the years 2016-7 & 2017/8... The supporting documents will be sent under separate cover in due course.' BDO did not receive this letter or the annual returns. The Clerk provided me with a copy of the annual returns under cover of a letter dated 1 August 2018.
- 18 No further information was provided by the Clerk to BDO and, therefore, in December 2018, I decided that the audit would be completed by Audit Wales. The Clerk attended an audit meeting in December 2018 and provided documentation to allow me to carry out the audit of the 2015-16 to 2017-18 accounts. The 2018-19 accounts were provided for audit in February 2020. To date I have not received the 2019-20 accounts. I am informed that these will be provided shortly and that the 2020-21 accounts will be available by June 2021.

## The Burial Board did not operate and meet for a period of almost two years leading to delays in submitting accounts

- 19 My audit established that the Burial Board did not hold any meetings between 29 June 2016 and 11 May 2018. I am informed that meetings were called but that these meetings were not quorate due to illness and lack of representation from one council. During this time, it was unable to make any decisions as every decision made by the Burial Board must be made by a majority of members present and voting at a meeting.

- 20 The minutes of the meeting held on 11 May 2018 refer to the approval of the minutes of the last meeting held on 29 June 2016. The minutes also refer to the provision of information on bank balances and notes, under 'Clerk's report', that 'the cemetery has seen a tremendous change over the past two years'.
- 21 I have not seen any evidence to suggest that the Burial Board made any decisions during this two-year period.
- 22 It is imperative that in order to exercise proper governance, the Burial Board meets on a periodic basis. The Burial Board approves fees and charges, items for payment and the annual accounts. In the absence of any meetings, the Burial Board is unable to properly discharge the burial functions it has been delegated with delivering.
- 23 I am informed that, since 2018, the Board has met on a regular basis.

## **Notwithstanding the Burial Board's responsibilities, a lack of understanding of the roles of the Burial Board and the town councils has led to a lack of oversight of the Burial Board by Abergele Town Council and Towyn and Kinmel Bay Town Council**

### **The Burial Board has been acting as an autonomous body without oversight by the two town councils**

- 24 I have been provided with a copy of correspondence between the Clerk and the clerk of Towyn and Kinmel Bay Town Council regarding the status of the Burial Board. In this correspondence, the Clerk asserts the following:
- 'Abergele Joint Burial Board has been in existence since 1886 and as we have our own standing orders, terms of reference and do annual returns there is conflicting advice, and as you are aware the rules for England and Wales do vary.
- 'At no time over the years has the [the Burial Committee] been required to forward copies of agendas, minutes, returns to the member councils in order for them to be discussed and reviewed with other councillors who are not part of the Burial Board, some information contained which is sometimes very sensitive information due to the very nature of the Burial Board.'
- 25 At an audit meeting in December 2018, the Clerk and member representatives of the Burial Board from each of the two councils, expressed their understanding that the Burial Board, while primarily made up of members of the two councils, was an entirely separate and independent body. The Clerk and members confirmed that no minutes or reports from the Burial Board are presented to the two town councils.



- 26 Council members have been informed that the Burial Board is not accountable to the town councils:
- The minutes of the September 2019 meeting of Abergele Town Council record the receipt of an email enquiry by Cllr Wood with a request for an update regarding the Abergele Joint Burial Board. The minutes record that “Cllr Wood expanded on his reasons for making this request but was informed that the AJBC has not received any precept for four years and was therefore not accountable to the Town Council.”
  - The minutes of the Towyn and Kinmel Bay Town Council meeting of 26 September 2018 record:
    - a) Draft minutes relating to Abergele Joint Burial Board should not be shared with either of the two Town Councils, until they have been approved by the Abergele Joint Burial Board.
    - c) There are only three Independent Burial Boards in Wales, and the Abergele Joint Burial Board is one of them.
- 27 Reference to the Burial Board in the town councils’ minutes since 2018 has been limited to reference to my ongoing audit.
- 28 Notwithstanding the assertions made by the Clerk and members of the Burial Board, I have been provided with a draft report prepared by the then Chief Legal Officer at Conwy County Borough Council from 1998. The report was prepared to address a dispute that had arisen over the contributions to be paid by the then constituent councils. This draft report clearly states that ‘The Abergele Joint Burial Committee (‘the Joint Committee’) is a Joint Committee established under section 102 of the Local Government Act 1972 to run the cemetery at Abergele. The members of the Joint Committee are the Community Councils of Abergele Town Council, Towyn and Kinmel Bay Town Council, Llanddulas and Rhyd y Foel Community Council and Llanfair Talhaiarn Community Council.
- 29 This draft report indicates that the Burial Board had in the past been aware of its status under the Local Government Act 1972 (LGA 1972).
- 30 The Burial Board was asked to provide further evidence to support its assertion that it is a separate, independent body, not subject to oversight by the town councils. No such additional evidence has been provided.

**The Burial Board is established under the Local Government Act 1972 as a joint committee delivering burial responsibilities for the constituent community councils and is therefore subject to oversight by the constituent councils**

- 31 In my view, the understanding of the Burial Board’s status held by the Burial Board and the town councils is flawed.

- 32 The LGA 1972 provides the statutory basis for the provision of burial functions by local government bodies. Section 214 Cemeteries and crematoria states that:
- (1) The following authorities, that is to say, the councils of Welsh counties, county boroughs... and communities... shall be burial authorities for the purposes of, and have the functions given to them by, the following provisions of this section and Schedule 26 to this Act, and—
    - (a) the powers conferred by the Burial Acts 1852 to 1906 to provide burial grounds shall cease to be exercisable; and
    - (b) any existing burial board, joint burial board or joint committee with the powers of such a board established under the Burial Act 1852 or section 53(2) of the Local Government Act 1894 or by any local statutory provision shall cease to exist.
  - (2) Burial authorities may provide and maintain cemeteries whether in or outside their area.
- 33 Section 214 of the LGA 1972 therefore makes it clear that:
- a. the community (town) councils are the burial authorities;
  - b. statutory functions conferred under previous legislation cease to apply; and
  - c. the pre-existing burial boards and committees were abolished.
- 34 Further detail relating to the discharge of functions of burial authorities are provided by Schedule 26 of the LGA 1972. Paragraph 1 states:
- 'In relation to a cemetery or crematorium maintained immediately before 1st April 1974 by a burial board, joint burial board or committee which ceases to exist by virtue of section 214 above the functions conferred by the said section 214 and this Schedule shall, subject to the provisions of any order made under section 254 above, be exercised on and after that date by whichever of the following burial authorities is relevant:—
- (a) where the area of the board or committee becomes wholly comprised on that date in a... community having a... community council, whether separate or common, that council;
  - (b) where that area becomes comprised in two or more such... communities, the councils of those... communities, acting jointly;'
- 35 Therefore, in this instance Abergele Town Council and Towyn and Kinmel Bay Town Council are both burial authorities for the purpose of the Act and jointly exercise burial functions. These functions are exercised by the Burial Board, being a joint committee of the two town councils and not an independent body. It then follows that the Burial Board is accountable to the two town councils and is subject to oversight by the town councils.
- 36 I am informed that Llanddulas and Rhyd y Foel Community Council withdrew from the Board following the 1996 local government reorganisation and Llanfair Talhaiarn Community Council withdrew as no residents of the Council had been buried in the cemetery for some time.

## **There has been a lack of oversight of the Burial Board by the constituent town councils**

- 37 My review of the minutes of both town councils suggests that there is limited oversight of the Burial Board by the town councils. Reference to the Burial Board in the town councils' minutes since 2018 has been limited to reference to my ongoing audit.
- 38 As a consequence of this, there has been a lack of oversight of the Burial Board and insufficient attention drawn to the delays in completion of the statutory accounts.
- 39 In its response to my initial findings, Towyn & Kinmel Bay Town Council drew my attention to previous correspondence with the Burial Board, in which the Burial Board asserted it was not accountable to the town councils. The Council highlighted that the Burial Board had failed to provide information to the Council when requested to do so.
- 40 Both Abergele Town Council and Towyn and Kinmel Bay Town Council also identified the steps they intend to take to address the weaknesses identified in this report including receiving minutes, annual accounts and regular reports from the Burial Board.
- 41 The Board itself has resolved to work with the two councils to provide sufficient information and reports to improve transparency and facilitate scrutiny by the councils.

## **The employment of a serving councillor in a paid role by the Burial Board will render unlawful any remuneration paid to the councillor in her role as the Clerk to the Burial Board**

- 42 Section 112 of the LGA 1972 establishes the statutory power for councils to appoint staff and states:
- (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...
  - (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...
  - (5) Without prejudice to the provisions of subsection (1) above, a... community council may appoint one or more persons from among their number to be officers of the council, without remuneration.

- 43 Section 116 of the LGA 1972 explicitly prohibits councils from employing serving members as paid officers:
- ‘A person shall, so long as he is, and for twelve months after he ceases to be, a member of a local authority, be disqualified for being appointed [or elected] by that authority to any paid office, other than to the office of chairman or vice-chairman...’
- 44 On this basis, while I accept that Councillor McRae has been fulfilling the role of Clerk to the Committee and has entered into a contract of employment in good faith, it is inappropriate for her to be employed in paid office to support the Committee. I consider it is important to also highlight that that this has been an historic practice with serving councillors employed as the clerk before Councillor McRae.
- 45 Based on the information provided for audit, it does not appear that the Clerk has received remuneration for the 2016-17 and 2017-18 financial years. However, any expenditure thus incurred in subsequent years, would in my opinion be contrary to section 116 of the LGA 1972.

## Information required to be disclosed publicly has not been disclosed by the Committee or the Councils

- 46 The Local Government (Democracy) (Wales) Act 2013 (the 2013 Act) requires the council to make available various documents via its website. The changes introduced by the 2013 Act are designed to enhance the accountability of local councils and their committees to their electorates.
- 47 My audit identified that the Burial Board has not established a website of its own and has not made arrangements with one of the constituent town councils to publish the information it is required to publish electronically.
- 48 **Exhibit 3** sets out some of the information the Council is required to publish by law and my audit assessment of compliance.

### Exhibit 3: information required to be published electronically in addition to the annual accounts

The Burial Board has not published the majority of the information it is required to publish by law.

| Publication requirement   | Audit assessment of compliance | Comment  |
|---|--------------------------------|--|
| Public notices including notices setting out the public rights of inspection of accounts under the 2004 Act | Not compliant                  | No evidence of publication   |
| Annual accounts   | Not compliant                  | No evidence of preparation for 2018-19 or publication for any year |
| Register of members' interests  | Not compliant                  | No evidence of publication   |
| Contact details for members   | Not compliant                  | No evidence of publication   |
| Minutes, agendas and papers of formal meetings  | Not compliant                  | No online publication of any committee meetings                    |

Source: Audit Wales assessment

- 49 In my view, the Burial Board and the town councils have failed to meet the basic transparency and accountability standards required of community councils in Wales.

## Statutory recommendations and next steps

### Statutory recommendations

- 50 I draw the Burial Board's and the Councils' attention to the following recommendations to address the deficiencies identified during the audit. In my opinion, the Council should consider these recommendations in accordance with the requirements of section 25 of the Public Audit (Wales) Act 2004.

#### Exhibit 4: statutory recommendations

The Burial Board and the Councils should consider the following four recommendations in accordance with section 25 of the Public Audit (Wales) Act 2004:

| Statutory recommendations |  |
|---------------------------|--|
| R1                        | The Burial Board should ensure that the annual accounts are brought up to date as soon as possible and for 2020-21 onwards are prepared and approved in accordance with the Regulations.   |
| R2                        | The Burial Board should ensure that the annual accounts are provided to the Auditor General immediately after approval along with the information required for the audit.  |
| R3                        | The Burial Board should ensure when making decisions that concern its normal processes eg employment of staff, it ensures that it understands the relevant statutory framework and seeks external advice where appropriate to do so. |
| R4                        | The Councils should ensure that they exercise appropriate scrutiny over the activities of the Burial Board including receiving regular reports on the Board's activities.  |

#### Next steps

- 51 The Burial Board and the Councils have already considered a draft of my report and taken some steps to address the recommendations made. However, notwithstanding any action already taken, section 25 of the 2004 Act now requires the Burial Board and the Councils to consider the recommendations made in this report at a meeting held within one month of the date that I issue the recommendations.
- 52 At these meetings, the Burial Board and the Councils will need to decide:
- whether the recommendations in the report are to be accepted; and
  - what action (if any) to take in response to the report and recommendations.
- 53 Each body will then need to prepare a written response and agree the wording of that response with me before publishing its response.

54 I also draw attention to the publicity requirements for the meeting that are set out in section 26 of the 2004 Act.

Ann-Marie Harkin  
Executive Director – Audit Services  
Audit Wales



Audit Wales  
24 Cathedral Road  
Cardiff CF11 9LJ

Tel: 029 2032 0500

Fax: 029 2032 0600

Textphone: 029 2032 0660

E-mail: [info@audit.wales](mailto:info@audit.wales)

Website: [www.audit.wales](http://www.audit.wales)

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